

SIZING UP THE PROSECUTION

A QUICK GUIDE TO LOCAL PROSECUTION



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INTRODUCTION: WHY PROSECUTION?

Prosecutors fill a unique role in the United States because their primary responsibility in the courtroom is to ascertain the truth and seek justice. While defense attorneys are obligated to vigorously defend their clients whether guilty or not, prosecutors exercise the sovereign power of the state by representing the best interests of the community, which not only includes prosecuting crimes but also honoring the rights of the accused. As one current prosecutor put it, “The only obligation I have every day is to do the right thing.”

For many law students, prosecution work is an attractive form of public service. It also offers immediate opportunities for litigation experience. Unlike large firms where associates often must wait years before being given the opportunity to appear in court, assistant district attorneys manage sizeable caseloads and try cases soon after joining the office. For many, the combination of “doing good” and getting valuable courtroom experience makes prosecution work attractive.

As you read through this guide, never lose sight of the harsh reality entailed in the work of the prosecutor. Prosecutors wield a power that is part of the state's most profound act – the ability to strip an individual of liberty, and even of life itself. Needless to say, emotions run high, and the work can therefore be draining. Criminal cases involve pain, sorrow, and violence (the violence inflicted on the victim and the state violence inflicted on the convicted defendant through the act of sentencing and punishment). Courtrooms are grim places. If you prefer to use your legal skills to bring people together to produce a joyous outcome, then other forms of work might be more suitable. Satisfaction in the life of a prosecutor must be derived from the role that he or she plays in a criminal justice system that, when it operates effectively and fairly, expresses the deepest values of our society. It is challenging and emotional work – and therein lies its attraction. But it is not for everyone. As with any meaningful pursuit, self-knowledge is critical.

First, this guide will review the various prosecution positions in local, state and federal government. Next, it will provide insight into the job itself and considerations in deciding whether to become a prosecutor. Lastly, the unique hiring and interview process will be discussed.

DIFFERENCES AMONG FEDERAL, STATE, AND LOCAL PROSECUTING OFFICES

Within the field of prosecution, there is an array of different offices that handle varying types of crime on a local, state, and federal level. This guide will focus on the hiring process and characteristics of local district attorney’s offices; it will also provide descriptions of the other prosecuting offices and the types of cases they handle.

Local: District Attorney’s Offices

What most people think of when they think of crime – assaults, murders, burglaries, drunk driving – is handled by local prosecuting offices, generally called district attorney’s (DA’s) offices. (Note: in some states, the local prosecuting offices are called state attorney’s offices or county or city attorney’s offices). When the police arrest an assault or robbery suspect, they promptly contact the DA’s office to have charges filed and to make arrangements for an initial court appearance. When the police respond to a crime scene for a homicide, an assistant district attorney (ADA) will often

appear there as well. From relatively minor offenses such as shoplifting and reckless driving to the most serious of murder cases, DA's offices are responsible for most criminal prosecutions in this country.

State: Attorney General's Offices

In most states, the state attorney general has jurisdiction to prosecute violations of the state's criminal laws. However, most attorneys' general (AG's) offices do not ordinarily prosecute the day-to-day matters of the local police. Instead, prosecutors in AG's offices supplement the work of district attorneys by taking those cases that DA's offices, with the tremendous pressure of their own caseloads, do not have the resources to cover. For example, a DA's Office may handle individual auto thefts, but the state AG's office may conduct a long-term investigation into an automobile insurance fraud ring and follow through with the resulting prosecution. An AG's Office may, to cite another example, assume responsibility for a politically sensitive case that a DA finds difficult to investigate and prosecute.

Typical areas an AG's Office may focus on include consumer protection, environmental protection, drug trafficking, and fraud or embezzlement. Unlike a DA's Office, which is devoted exclusively to enforcing criminal laws, an AG's Office may use civil statutes and remedies as well as criminal prosecutions to protect the public in these areas. An AG's Office might, for example, bring a civil suit against a retail chain to stop unscrupulous credit practices, which, although not criminal, violate civil consumer protection laws.

Federal: United States Attorney's Offices and "Main Justice"

The United States Department of Justice (DOJ) is responsible for the prosecution of all federal crimes and handles a wide array of both white-collar and violent crime cases through its United States Attorney's Offices (USAOs) in every state and through the litigating divisions of DOJ in Washington DC (known as "Main Justice").

Some crimes are uniquely federal, in which case only the federal government can prosecute them. The evasion of federal income taxes and counterfeiting are examples of such crimes. Many other criminal acts violate both federal and state law and could, at least theoretically, be prosecuted by federal, state, or local authorities. USAOs prosecute violations of criminal law in the areas of bank fraud, health care fraud, investment scams, income tax evasion, fraud in federal government programs, firearm trafficking, narcotics trafficking, money laundering, organized crime, civil rights offenses, and public corruption, among others. Like many AG's Offices, USAOs also have a civil division to protect the public using quasi-prosecutorial civil statutes and remedies. Assistant United States Attorneys (AUSAs) in a civil division may, for example, bring civil suit to combat housing or employment discrimination, health care fraud, or environmental damage.

For more information on US Attorney's Offices including applying to become a federal prosecutor, please refer to the OPIA Insider Guide: *Fast Track to the United States Attorney's Office*.

WHAT A LOCAL PROSECUTOR DOES

Most assistant district attorneys spend hours each day in court, either on trial or handling initial appearances, motion hearings, pleas and sentencing. Nearly every day ADAs have contact with police officers, victims of crime and their families, and witnesses. They carry large caseloads, handling dozens or, in some offices, even hundreds of cases at one time. The daily demands require high energy, an ability to think on one's feet, and a talent for juggling multiple tasks. ADAs make highly consequential decisions every day as to whether to prosecute a particular suspect, whether to accept a plea bargain in a given case or risk taking it to trial, and whether to argue a certain point of law. Working on the front lines of a heavily burdened criminal justice system, ADAs have the opportunity to make the system serve the needs of the public and victims of crime while respecting the rights of the accused.

For most violent crimes, assistant district attorneys become involved soon after the initial criminal investigation has been completed. Once police authorities have collected and analyzed all of the relevant evidence in a case, the information is brought to the district attorney's office, where an ADA will usually decide whether or not to bring charges, and what the charges should be. If charges are filed, the ADA will be required to present the case to a grand jury or to a judge in a preliminary hearing to establish the sufficiency of the evidence to proceed to an indictment, and eventually a trial.

Most cases that come across a prosecutor's desk do not go to trial. Indeed, if all cases proceeded to trial, the justice system would become backlogged to the point of collapse. Instead, most cases are resolved through negotiation – known as plea-bargaining – in which defendants admit guilt in exchange for a lesser sentence. When cases do move on to trial, however, almost all of a prosecutor's time becomes dedicated to trial preparation. For many prosecutors, a single trial can require hundreds of hours of preparation, forcing them to shift all of their other priorities. Trials themselves can last anywhere from days to months, which is why many note that flexibility and the ability to prioritize are some of the most important characteristics of a successful prosecutor.

In most jurisdictions, the types of cases that an ADA will be responsible for are determined by experience level. For the first year or two, ADAs generally handle misdemeanor cases like drunk driving, petty theft, etc. Then ADAs usually are promoted to investigate and prosecute felonies like robbery, rape, and ultimately homicides. In larger jurisdictions, like the District Attorney's Offices in New York City, felonies may be divided even further into a special victims unit, gang crimes division, homicide team, etc. Felonies generally are much more involved and time consuming, and consequently, when assistant district attorneys move up to felonies, their caseload usually decreases.

The life of an ADA is busy and fast paced, and while the hours might not be as long as those of a corporate litigator, the job demands considerable commitment and dedication. First-year prosecutors in major metropolitan areas may work odd hours, including night or weekend shifts when they oversee the arraignment of defendants. Median salaries for ADAs usually vary depending on the location, but hover around \$45,000 per year. For more information on the range of salaries for ADAs, you can also refer to the NALP Public Sector and Public Interest Attorney Salary Report, www.nalp.org.

DECIDING TO BECOME A PROSECUTOR

Should I Be a Defender or Prosecutor?

One of the questions that future criminal lawyers ask themselves is: defense or prosecution? The question is important because, though both defense attorneys and prosecutors practice criminal law and try the same types of cases, the difference in what they do and how they do it are substantial. While public defenders represent individuals, prosecutors represent the state, which creates a number of responsibilities and implications. While defense attorneys are required to vigorously advocate for the interests of their clients, whether or not they believe that they are guilty, prosecutors press charges only when they believe that a crime has been committed, and at any stage in the criminal process, they can reduce or even drop charges. During plea negotiations, the District Attorney's office usually will set the terms of the negotiation. Prosecutors also must take the initiative in presenting a case. This leaves the defense in a responsive mode, negotiating with ADAs and providing argument and possibly evidence and witnesses to cast doubt upon the validity of the prosecution's case. Consequently, it should be no surprise that during trial, the defense presents its case second, after the prosecution has already finished calling its witnesses. For many prosecutors, they see their role as creating a strong case and fortifying it against attacks mounted by the defense.

Qualities of a Successful Prosecutor

Another way to think about becoming a prosecutor is to consider the qualities of a successful one. Among the many qualities of successful prosecutors, one of the most important is the ability to work with all kinds of people. You may think that because prosecutors will not be representing an accused, they will not have to learn how to interact with individuals who may be under stress and otherwise difficult to deal with. Not so. Prosecutors regularly work with law enforcement officials, criminal investigators, scientists, victims, witnesses, defense attorneys, juries, and judges. Victims and witnesses to crimes may have criminal records that might be just as extensive if not more extensive than those associated with the accused. One of the challenges prosecutors speak of is the difficulty in coordinating a large number of witnesses during trial. The ability to work with a diverse group of people is a key quality of most successful prosecutors. As one prosecutor put it, "I deal with people who might be considered a bit rough on the edges everyday, but that's one of the favorite parts of my job."

Because of the fast-paced nature of a district attorney's office, self-motivation and responsibility are also characteristics of successful prosecutors. Virtually all report that most of the time they are working independently with little supervision. They develop judgment, as many quandaries arise that can't be resolved by consulting a law book. Trials can be enormously stressful, often consuming a prosecutor's life for weeks or months. The ability to ask questions, argue forcefully while under stress, and communicate effectively are equally vital. This is why stamina and the capacity to work hard are essential attributes. When on trial, prosecutors live and breathe their cases, constantly thinking about their strategy and how to persuade the jury.

While a thorough knowledge of a state's penal code and criminal system are assumed, many veterans of criminal law, both defense lawyers and prosecutors, point out that "street-smarts" and an ability to know the "unspoken rules" can be extremely useful both in and out of court. Prosecutors will appear before the same judges and clerks, and face the same members of the defense bar on an almost daily basis. The most successful prosecutors will learn how to relate well with any group of

people over time; knowing how to navigate their way around the courthouse while remembering the idiosyncrasies of the participants is thus a valued skill. Sensitivity, a good memory, and close attention to detail are also marks of good prosecutors. Above all, a reputation for fundamental fairness and honesty as well as credibility and trustworthiness must be nurtured.

Prosecutors must be comfortable with the myriad of imperfections in the criminal justice system. Prosecutors may be called upon to bring charges against sympathetic individuals – the elderly, the young, the poor, and other vulnerable members of society. Many prosecutors express dissatisfaction with the prevalence of plea-bargaining and the idea that defendants are punished without being given a maximum sentence. Although prosecutors work towards eliminating crime and violence, defendants may not always be punished to the full extent of the law. The converse is also true: many defendants receive harsh sentences under tough penal provisions, even though surrounding circumstances suggest some leniency is warranted.

Successful prosecutors truly believe in what they do and are committed to public service. For most prosecutors, the reason why they are willing to give up their nights and weekends and lucrative salaries and devote countless hours to trial preparation is because they believe in the justice system. If a prosecutor is not convinced quickly that he or she is doing important and necessary work that is benefiting society, the work can become intensely draining and disheartening.

Questions to Ask Yourself

1. Why do you want to become a prosecutor?

During the interview, you'll need to say why you want to become a prosecutor. And you need to say it effectively. District attorney's offices are seeking people dedicated to public service and committed to fighting crime and seeking justice. DA offices want more than smart law graduates who seek litigation experience. They want people who are committed to the mission that animates the day-to-day challenges confronting a prosecutor. Anyone who does not enjoy working in the trenches of the criminal justice system will have a difficult time on the job.

2. Can I handle the responsibilities and inevitable compromises of prosecution?

The work of an assistant district attorney can at times be extremely stressful, and prosecutors necessarily must be mature and responsible enough to handle the often overwhelming caseload and daily, highly consequential decisions made under pressure. Decisions that a prosecutor makes will affect the lives of many people, starting with the victim and the accused. Because ADAs are given so much discretion in their cases, there is a tremendous expectation that ADAs will exercise good judgment.

When balancing competing interests, you'll need the ability to accept the inevitable compromises in the justice system that allow for defendants, a vast majority of the time, to be punished less severely in exchange for a guilty plea. For many prosecutors, the least satisfying part of the job is plea-bargaining. For others, sentencing proceedings can be difficult, as there are times when prosecutors must argue for higher punishments than they personally think the defendant deserves.

3. Am I willing to accept the sacrifices in exchange for the rewards of public service?

There are sacrifices in becoming a prosecutor. Even after many years, prosecutors earn less than first year associates at major law firms. Prosecutors will not have the same perks and benefits as attorneys at law firms. ADAs regularly type their own motions, do their own photocopying, and have little or no paralegals to help with the vast paperwork.

For most people who have chosen the path of a public service career in prosecution, the rewards outweigh the costs. As one prosecutor put it: “The primary reason I enjoy being a prosecutor is the feeling that I am doing something important, something that matters to people and to society. Most days I leave my job feeling good about myself, and feeling like I have accomplished something that will affect people in a positive way. I truly believe in what I do, and every day I look forward to going to work. I don’t think that you can get that from many jobs in the legal field.”

CHOOSING THE RIGHT OFFICE

Beyond geographic location, salary, and benefits, there are a number of distinct characteristics of district attorney’s offices that should be considered when choosing the right office for you.

Training/Mentor Programs

For new assistant district attorneys, the level and type of training an office provides can vary tremendously. While some offices will require new ADAs to participate in training programs for several weeks before touching a single case, other offices assign cases to new hires during their first week with less supervision. While most offices will fall somewhere in-between, the kind of training and mentorship offered is important to consider when choosing among offices.

When starting off as a prosecutor, feedback and constructive criticism from a mentor or a supervisor is extremely helpful. Some offices provide mentorship programs to help new hires become acclimated by assigning more experienced attorneys to supervise them. These supervisors help them to improve by reviewing their cases and watching their performance on trial. At other offices, though, a sink or swim approach is taken with the belief that a new ADA will benefit from real-life experience, working on cases while making mistakes and learning from them. It is important for new prosecutors to find the learning environment that suits their individual needs.

Resources

The amount of resources that an office has for investigation and support staff is critical in evaluating different offices. Because district attorney’s offices are funded by the counties and cities, which they serve, their budgets can be limited, which means that for many offices, space, computers, and resources for investigation can be extremely limited. In those offices, prosecutors with a decade of experience may be sharing a cubicle with two or three other colleagues. It is not uncommon for attorneys to have to use computer equipment that is outdated. District attorney’s offices may be short-staffed, thus requiring prosecutors take on administrative duties that paralegals might do at large law firms. Attorneys at many DA’s offices will write and file their own motions, make their own photocopies, and schedule their own appointments to meet with witnesses and police officers.

Because of the financial constraints at any DA's offices, it can never be expected that an office will have the resources and staff of a large law firm. Nevertheless, if space, staff support, and resources for research and investigation are important, prospective applicants should ask about the office's commitment to supporting their ADAs with staff, technology, and investigative resources.

Assignment of Cases & Office Philosophy

Be sure to evaluate the office's system of how cases are assigned and litigated. Usually most offices require rookie ADAs handle misdemeanors and more experienced prosecutors take on felonies. Other offices will approach the actual litigation of cases with different philosophies. Cases are prosecuted vertically, that is, the prosecutor that is initially assigned a case after arraignment will handle all investigation, interviewing, plea-bargaining, trials, or appeals that may occur with that case. Cases are also handled horizontally, where a particular section will handle all of the cases, which are currently being investigated in their area of expertise such as gang violence. Some offices allow prosecutors to handle their own cases on appeal while other offices have a unit dedicated to appellate practice.

There are pros and cons to both philosophies. In a vertical structure, prosecutors become familiar with the cases and develop strong working relationships with the witnesses and police officers involved. Consequently, it makes sense for the same attorney handling a case from inception to completion. Many offices that have established a horizontal system have found it helpful for ADAs to become specialists with a particular category of crime. Ultimately, it is important to determine which model suits your ultimate career goals.

Office Reputation

In considering prosecution offices, bear in mind that, like any law office, cultures and work environments vary, as do reputations. District attorneys offices measure success differently. Some measure success based on conviction rate which puts pressure on ADAs that may undermine the search for justice. For others, fundamental fairness and integrity are paramount and there is room for independent judgment and discretion. You might want to examine how aggressively a particular prosecution office pursues criminal convictions and assess your own views on that issue.

Typical Caseload Standards/Time Commitments

Unless working on a difficult time-intensive case, virtually all prosecutors juggle many cases. One way to differentiate between district attorney offices and determine job satisfaction is the size of the typical caseload. Although one can never predict how far a particular case will go through the criminal justice system, the number of cases given to an ADA can be an indicator of how many hours ADAs usually work, the number of hours that are dedicated to each case, and whether one can do the necessary work each case requires.

Learn about any irregular institutional time commitments required for ADAs. In some offices such as the New York County District Attorney's Office, assistant district attorneys work a week of night court and a week drafting accusatory instruments (complaints) several times each year during their

first year or so on the job. These assignments are in addition to the normal caseload responsibilities and can be quite strenuous.

Office Mobility/Room for Advancement

Prospective ADAs, if they have preferences, should determine how best to advance to more challenging and complex crimes they feel passionate about. At some offices, there are special bureaus or divisions, which will handle particular types of felony in a homicide or special victims unit. At smaller offices, however, the cases are often distributed more equally among the entire felony team. Some offices have policies that make moving from one division or bureau to another more difficult. At some offices, any openings in a particular division will be on a first-come, first-serve basis, while at other offices, ADAs will be required to apply for a transfer and obtain the recommendation of a supervisor.

Office Reputation

The reputation of an office can have a marked effect upon job satisfaction. In some localities, district attorney's offices will have shaky relationships with the courts, and this tension can make trying cases difficult for prosecutors. The reputation and philosophy of the elected district attorney will also have an impact upon the way an office is run. For example, if the district attorney is especially committed to prosecuting quality of life crimes, one can expect to see a higher number of misdemeanor cases in the office. Recently elected district attorneys will often look to make changes to the structure of an office, creating new departments or eliminating others, sometimes shaking up the status quo.

Consider the strength of the relationship between the district attorney's office and the police department. When both offices have a good working relationship, many aspects of investigating and litigating cases become easier. Where police departments work closely with DA's offices, ADAs will be able to use the investigative resources of the police department more effectively. A strong working relationship with the police department makes scheduling court dates with officers that much easier.

Various offices will also measure the success of its ADAs differently. While some offices will stress an ethical search for justice and truth, other offices may measure the success of its attorneys based on their conviction rates, placing a pressure upon ADAs to win under all circumstances. Although offices may not be completely forthcoming about their philosophies during interviews, it is important to find out as much as possible what an office expects from its ADAs: to win, or to do the right thing.

Some questions to ask about the history of the office: What is the conviction rate for cases that go to trial? What is the trial/plea ratio? Does the office have a history of scandals, corruption, or withholding evidencing? Prospective applicants need to research an office's reputation and personality when deciding where to apply.

APPLYING TO BECOME A PROSECUTOR

Developing Your Resume

Because prosecutors must be able to advocate before a judge or jury, students interested in becoming prosecutors should work on developing experience that demonstrates the ability to work with others, exhibit sound judgment and potential trial ability. Students should focus on activities that demonstrate an ability to speak in public and explain complicated legal issues while thinking on their feet.

1. **Classes/Clinicals** – There are a number of recommended classes and clinical opportunities for students interested in becoming prosecutors. In addition to the required Criminal Law course, consider: Criminal Justice Institute (CJI), Trial Advocacy Workshop (TAW) Advanced Criminal Procedure, Evidence, and Federal Criminal Law, Introduction to Advocacy: Criminal Prosecution Perspectives (offers placement in local prosecution offices), Capital Punishment in America (offers placement in capital defender offices during winter term), Introduction to Advocacy: Criminal Justice. Advocacy skills developed through the Legal Aid Bureau and WilmerHale Legal Services Center will also aid in building your experience.
2. **Summer Internships** – Many DA's offices offer summer internship opportunities. These internships can be highly competitive, but attainable for 1Ls and 2Ls. Depending on the office, interns often write appellate briefs and trial memoranda, help prepare cases for the grand jury, and second seat trials. Often, those interns who have completed evidence and their first-year will be permitted pursuant to the state bar's student practice act, to appear in court on the record. As an added bonus, in many offices, 2L interns who wish to apply for a job at the same District Attorney's Office will often be granted an interview at the end of the summer before other applicants.
3. **Student Practice Groups and Activities** – Participation in student practice groups is a great way to start developing advocacy skills. Harvard Defenders, Prison Legal Assistance Program (PLAP), and Tenant Advocacy Program all offer that opportunity. Moot court is a traditional means of gaining oral advocacy skills.
4. **Clerkships** – If serious about pursuing a career in prosecution, it is often advisable to clerk for a court in the same jurisdiction where you hope to work. District attorney's offices look favorably upon applicants who already have experience working on criminal cases as having a head start to learning some of the nuances of litigating in that jurisdiction.

Deadlines/Timing of Hiring Process

Most district attorney's offices do not participate in the On-Campus Interviewing (OCI) Program at HLS. Because deadlines and required application materials for each District Attorney's office vary, students need to be proactive by contacting each office directly. Generally, for many large District Attorney's offices with annual hiring cycles, deadlines for application materials are in early October or November. Application materials include a cover letter and resume, with some offices requesting

transcripts, writing samples, reference letters, and statements of interest about the applicant's commitment to public service and working in a DA's office. These offices usually process their applications in late November, December and January. Interviews usually take place January through March with offers made sometime in April, May and June.

Many offices do not follow this particular time-line. Some offices will only accept applicants who have already passed the bar exam, which means that students entering their 3L year will be unable to apply until after bar passage. Other offices will have hiring cycles with application deadlines in the spring for positions that begin the following January. For the vast majority of other local offices, ADAs will be hired on an as-needed basis; applicants interested in working in a small county office are advised to check with that office directly.

As no offices have the identical hiring practice, details about the application process for DA's offices are usually posted on the office's website. If the information is not available online, students are advised to call individual offices for more information. The hiring director or human resources department usually manages the application process and can answer specific questions.

INTERVIEWING

Unlike many interviews for jobs in the private sector, interviews for positions at district attorney's offices are designed to be intense, stressful, and demanding. They seek to weed out less serious candidates and subject the applicant to a demanding setting simulating the courtroom.

Offices will ask applicants hypothetical questions about difficult ethical situations or questions about an applicant's stance on a controversial issue in criminal law. Questions about use of discretion are frequently asked with the goal of dissecting the applicant's decision making process as applied to a specific fact pattern. At some offices, interviewers may even ask applicants to deliver an impromptu opening or closing statement. You may be interviewed by a group of prosecutors each asking variations of the same question, each time ratcheting up the ethical quandary. These exercises are all designed to see how well applicants can handle pressure and stress because the job will be equally, if not more, grueling than the interview itself.

Interviewers are looking for applicants who will be able to interact with a tremendous variety of people on a daily basis. Interviewers will often pay close attention to how friendly or relatable an applicant seems during an interview. At some offices, interviewers will ask applicants to role-play a first meeting with an emotional rape or domestic violence victim in order to evaluate their ability to work with people, no matter their history or background.

Finally, DA's offices are looking for applicants who will follow the standing policies and procedures of an office, despite whatever personal feelings or opinions an applicant might bring to the job. This means that if asked for an opinion about the war on drugs, the focus is on the procedures and standards that have been set by the office, and the law, not on his/her own personal beliefs. Interviewers seek to determine how the applicant reconciles his/her views with office policies and enforcing the law.

If you are unsure of the law in that jurisdiction, you'll need to try to do your best to answer the question. Think carefully while avoiding exhibiting uncertainty. When you engage in an enthusiastic discussion of the fact pattern, you'll gain points for a flexible and quick thinking mind.

Hiring Process Generally

Although specific hiring practices will vary from office to office, there are usually several rounds of interviews for each applicant before any offer is made. If the office follows the typical hiring cycle for new ADAs, the initial screening interviews begin in October or November, sometimes on campus. Subsequent second round interviews occur typically in January or February and continue until as late as April. Applicants can expect to have anywhere between 2-4 interviews per office during the process. These are panel interviews with line prosecutors, bureau chiefs, hiring directors, and executive level staff, or with panels consisting of 2-8 staff members at an office. The final step in the interviewing process will often be one-on-one with the District Attorney, where the offer for employment may be made.

Questions to Expect at Every Interview and How to Answer Them

The First Question: Why do you want to become a prosecutor?

Because the job of a prosecutor can be so stressful and difficult, district attorney's offices are looking for applicants who have a commitment to public service and future attorneys who will genuinely enjoy making a difference in society, despite the low salaries, long work hours, and few resources. Interviewers look for applicants who will be satisfied with their jobs and have a strong likelihood of staying long term. Consequently, answers that demonstrate a personal commitment to serving others, fighting crime, or preserving justice are the most effective. Personal stories referring to specific instances in an applicant's life can often be especially compelling if pertinent. Referencing criminal law classes and clinics can display a strong interest in the work, and public sector employment and volunteer work can demonstrate hands on experience. In short, applicants are expected to explain why their set of experiences and education has led to a decision to prosecute.

Why do you want to prosecute in this office?

Applicants can also expect to be asked, "Why prosecute here?" District attorney's offices know that applicants serious about becoming ADAs will apply to multiple offices, which is why offices want to know where an applicant will work if given multiple offers. If asked what other offices you have applied to, you should be completely honest and forthcoming. However, you'll also need to provide specific reasons why you are interested in that specific office; whether it is a connection with a prosecutor in the office, a unique program or initiative within the office, a preference for the vertical/horizontal prosecution system, or even a background in the area and a desire to make an impact on the community. Highlighting a connection to the community is a plus.

Criminal Hypothetical Questions

Along with the standard job interview questions, applicants can expect to be asked at both panel and individual interviews to address a set of questions involving a hypothetical situation(s). These hypothetical questions can cover the death or missing witness, gray areas in the rules of evidence and discovery disclosure obligations, day-of-trial crises, and more. The hypotheticals are designed to test an applicant's ability to handle high-pressure situations and think on his/her feet. Although hypotheticals may ask some specific questions with straightforward answers based on black letter

law, more often, hypothetical questions will have no clear legal answers because they are ethical or situation-based quandaries. When asking hypotheticals, the interviewer is assessing the applicant's ability to spot issues, ask the right questions, and to address both the legal and ethical concerns raised. Frequently interviewers will follow-up with "What-if" questions, changing certain facts to determine how the applicant can adapt to rapidly changing fact patterns in one particular situation. When answering these questions, applicants should be clear to acknowledge the various arguments involved and show they understand the multiple issues in the case, but when called upon, they should take a position and defend it vigorously.

Some hypothetical questions are designed to get at your openness to seek supervision, whether you substitute your personal judgment and feelings over office policies and are designed to test your ethical boundaries. Others hypothetical questions are designed to determine whether you can put your natural sympathies aside, whether you're likely to act hastily when assessing the veracity of a witness, how you'd deal with a police officer who's not telling the truth or a judge who's bearing down on you.

The best way to prepare for criminal hypothetical questions in interviews is to practice in person with an experienced mock interviewer who, in addition to being able to offer advice about the responsiveness of your answers, can also provide feedback on eye contact and other body language. At OPIA, mock interviews with hypothetical questions can be scheduled any time and are heavily encouraged.

Preparing for the Panel Interview

After the initial screening interview, an applicant can expect to have at least one panel interview with several attorneys. This format will consist of the applicant sitting in front of a panel of attorneys and fielding questions from everyone. At the least, the panel interview tests an applicant's ability to connect with multiple people at once, much like a prosecutor has to connect with an entire jury during trial. Offices will often include an element of stress during the panel interview by rapidly shooting questions, interrupting, or including one or more people on the panel to play "bad-cops" and dispute the statements of the interviewee. A current prosecutor even noted that during his panel interview, members of the office would rotate in and out of the room, substituting for each other in an attempt to distract and unsettle him.

The best way to approach the panel interview is to remain calm and respectful throughout the entire process. Applicants must make eye contact with every member of the panel, not just the person that posed a particular question, and when interrupted, politely requesting to quickly finish their first answer before moving onto another question is entirely appropriate. When answering questions or statements made by the "bad-cop", it is advisable not to become argumentative or defensive, but to remain composed and focused on the substance of the questions being asked.

BACKGROUND CHECK

Once hired, the final step before employment is a background check. This check is not nearly as extensive as the security clearance checks in other government agencies; however, it will still include a drug test and a search for a criminal record and auto violations and possibly a credit check. For any specific questions regarding background checks, speak to an OPIA advisor before contacting the individual office.

CONCLUSION

After interviewing more than a dozen local, state, and federal prosecutors for this guide, it has become apparent that a career in criminal prosecution in a local District Attorney's office is extremely rewarding, both personally and professionally. Generally speaking, criminal prosecutors are extremely satisfied with their work, and while the salary and lack of resources can be sources of distress, prosecutors universally acknowledge that the daily trial experience and ability to see their work make a difference in society is worth it.

NARRATIVES

Tracy Conn HLS '05 – Manhattan DA's Office

I came to HLS knowing that I wanted to be a criminal prosecutor. I hoped to work as an Assistant District Attorney at the Manhattan District Attorney's Office, where I had worked as a paralegal prior to law school, or elsewhere in New York City, but was also open to working in other cities or at the federal level. I was drawn to criminal work because I felt that, as a prosecutor, I could really give back to a community and work with and for victims of crime, which I feel passionately about. In addition, I found criminal cases fascinating.

In law school, I took the classes that most interested me. Many, but not all, of those turned out to be criminal law classes, including Advanced Criminal Procedure, Conducting Investigations, and Prosecution Perspectives. I also took as many clinical courses as possible. In addition to Prosecution Perspectives, I took Government Lawyer and did an independent clinical in which I worked with Diane Rosenfeld to study domestic homicides in Massachusetts. Through Prosecution Perspectives and Government Lawyer, I worked at the Essex District Attorney's Office and the U.S. Attorney's Office for the District of Massachusetts, which provided invaluable experience in seeing how prosecutors' offices function. At those offices, I had the opportunity to draft motions and to stand up in court to make bail applications, among other things. I highly recommend clinical work to anyone interested in prosecution since, in most prosecutors' offices, you will be given your own caseload immediately and expected to handle all aspects of each case, including court appearances and written work. Having any prior experience in those areas definitely helps!

During both summers in law school, I also worked at prosecutors' offices – the U.S. Attorney's Office for the Southern District of New York and the Department of Justice, Child Exploitation and Obscenity Section. Like my clinicals, that experience has helped me in my current job and certainly made the interview process a lot easier. Having a breadth of prosecution experience meant I never had to justify my interest in prosecution or explain my resume. That said, working in only prosecutors' offices is definitely not the only way to get a job in criminal prosecution. It can also make sense for financial or professional reasons to take a job in a firm one summer. But, I would definitely recommend working in at least one prosecutor's office before applying to a prosecutor's office for a post-law-school job.

I found it helpful to have worked in both state and federal prosecutors' offices. There are significant differences in the resources and the types of cases handled by each type of office. I discovered, through my internships, that I am most interested in the street-level, and sometimes violent, cases more frequently handled at the state level than the financial crimes usually prosecuted by a federal office. However, working at a district attorney's office also involves more of a financial

sacrifice than working for a U.S. Attorney's Office or the Department of Justice. Taking an internship at each type of office can help you to figure out which offers the right balance for you.

As I neared the end of law school, I applied to district attorney's offices in New York and Boston and the Department of Justice. I ended up with an offer at the Manhattan District Attorney's Office and accepted it. I have now been at that office for almost two years. I have spent that time working in the Appeals Bureau, where I handle criminal appeals in all types of cases. I have mainly focused on sex offenses, at my own choosing, but I have also handled robberies, burglaries, drug crimes, and manslaughter, among other types of crime. During my time in Appeals, I have argued about fifteen cases in court, including one at the New York State Court of Appeals, the highest state court in New York. While I work with an editor on each brief I file, I have a level of independence rare for a second-year attorney. I plan to transfer to the trial division of my office at the end of the summer, which will offer me trial experience and everything that goes along with that, including working with victims, witnesses, and police officers, and making daily court appearances.

I have found work in criminal prosecution to be extremely rewarding. Unlike nearly all other jobs in the law, I don't have a client I work for, other than the People of the State of New York. That means that I can do what I believe is right in each case, which is a tremendous privilege. The work is fulfilling, and the cases are interesting. I truly look forward to going to work each day.

Work in criminal prosecution is not without its challenges, however. There is a clear financial sacrifice involved – assistant district attorneys typically make about one-third the amount that lawyers at firms do. The LIPP program definitely does a lot to make living on a prosecutor's salary possible. While the financial sacrifice is considerable, I would urge you not to feel that you have to work for a firm if you don't want to. If criminal prosecution is what you truly want to do, there is no substitute.

In addition to seeking internships in prosecutors' offices and taking criminal law classes, I would urge you to speak with prosecutors in offices you are interested in about what their experiences have been like. I am happy to speak with anyone interested in the Manhattan District Attorney's Office or criminal prosecution in general. I would also suggest researching the hiring process of particular offices before you begin the application process, since it can involve many rounds of interviews and substantive questions. While you're in law school, if you know you're interested in prosecutorial work and not in working at a firm, I would suggest taking courses you're interested in and not feeling like you need to take some of the generally recommended classes – i.e. Corporations, Tax (unless you're interested in white-collar criminal work). I have never regretted not taking some of the more corporate-focused classes, and have benefited by picking classes that interested me, both because I was more engaged in class during law school than I would have been otherwise, and because I learned material that has helped me in my current job.

Good luck, future prosecutors!

David Deakin, HLS '91 – Suffolk County DA's Office

When I came to HLS in the fall of 1988, it was with dreams of becoming a criminal defense lawyer – the next Clarence Darrow or Gerry Spence – which goes to show you that I am a better lawyer than career planner. After three enjoyable years at the Law School, highlighted by my participation in the Harvard Defenders, I clerked for a year for then-Justice Ruth I. Abrams of the Massachusetts Supreme Judicial Court. [Parenthetically, I strongly recommend a judicial clerkship for anyone intending to practice law after graduation, regardless of the individual's intended area of practice.]

Not long into my clerkship year, I began applying to public defenders offices in and around Boston. Their responses, though encouraging, indicated that they would not be hiring until the spring or early summer. Justice Abrams, who had worked as a prosecutor before becoming a judge, advised me that "the best way to learn to take a case apart is first to learn how to put one together." This advice, the truth of which I have come to question, led me also to apply to local district attorneys' offices. An early, enthusiastic offer from the office of then-Norfolk County District Attorney, now United States Representative William D. Delahunt, landed me as a rookie prosecutor in Quincy District Court in the fall of 1992. My plan – and the District Attorney's – was for me to work there for one or two years before switching sides. See Robert Burns on the best laid plans of mice and men.

The pace of the work in Quincy was mind-boggling at first, and many of the cases seemed trivial compared to the cases I had read about in newspapers and books. Nonetheless, I enjoyed tremendously negotiating the steep learning curve, and before long I was trying minor cases before judges. Within nine months, I was trying cases before juries. At the outset, my cases mostly involved charges of operating under the influence of alcohol, bar fights, and petty larceny. Within my first year, however, I began working on domestic violence cases. I found that I took tremendous satisfaction from working with survivors of violent crime. It appealed to me tremendously to try to hold their abusers accountable for their crimes and, in some cases at least, help them protect themselves from further violence.

After two years in Quincy District Court, I took a position with Norfolk County's Domestic Violence and Sexual Assault Unit. My responsibility was to travel to each of the district courts, handling the most serious cases of domestic violence, sexual assault and child abuse that were going forward in the district courts. In my fourth year, I also began presenting cases to the Grand Jury for indictment.

Then, in the beginning of 1996, I was approached by the office of then-Suffolk County District Attorney Ralph Martin about the possibility of coming to work in the office's superior court Child Abuse Unit. Although I very much enjoyed my work with victims of family violence and sexual assault, I had begun to think about the challenges of gang and homicide prosecution. By accepting a job in a specialized child abuse unit – dedicated to prosecuting the most serious cases of child physical and sexual abuse – I worried that I would be pigeonholing myself. At the same time, however, I saw it as a way of getting my foot in the door of a major metropolitan district attorney's office and then, possibly, making the transition to the most serious cases of street violence.

I took the job and immediately was glad I had. I forgot all about making any transition as I was now investigating and prosecuting tremendously significant cases ranging from shaken babies to the most serious sexual assaults on children to cases of extreme medical neglect. In 1998, I was put in charge of the unit. In 2004, District Attorney Dan Conley combined the Child Abuse, Domestic Violence, and Sexual Assault Units into a Family Protection & Sexual Assault Unit, and I was named its first chief.

As a family violence and sexual assault prosecutor, I have handled many fascinating, cutting-edge cases. From the clergy abuse scandal, to twenty-year old rape cases solved by the CODIS (national DNA database) system, to a case of a serial rapist whose DNA also matched his identical twin, to child homicide cases, I have been challenged as a prosecutor and a trial lawyer. I regularly work with medical, psychological, and forensic experts to investigate cases and present them to juries.

Most important, I love my work, and I wake up (almost) every morning looking forward to getting to the office. I have the amazing luxury as a lawyer never to have to take a position that I do not believe is right, fair, and just. Indeed, I have an ethical obligation not to do so. If you love trial work in the interest of justice, there is no better field than prosecution.

There are two downsides to being a prosecutor. The first is the stress. Of course, there is stress in any legal job, but working on issues of great importance to the public – sometimes issues of life and death – is uniquely stressful. The other side of that coin, however, is that the work is stressful precisely because it *is* important. For me, the added tension is more than worth it. The second is the money. Almost no one ever got rich as a prosecutor (Marsha Clark, Christopher Darden, and a few others are the exceptions that prove the rule). If you stick with it, however, you can get to the point of at least modest affluence. If you aspire to more than that, prosecution probably is not for you.

As for advice, I would suggest that if you are interested in becoming a prosecutor – or a criminal defense attorney, for that matter – take every opportunity you have to get into court. Take every clinical course that is offered, regardless of which side of the criminal bar you are on. Identify prosecutors' offices that interest you, and seek out internships there. [I was a summer associate at large Boston law firms both summers in law school. I did this to help defray the cost of my legal education and because I did not want to rule out large, corporate law firms without giving them a chance. In retrospect, I am glad that I did. Remember, however, that internships are available throughout the year, not only in the summer.] Talk to prosecutors, and find out what they like – and do not like – about their offices. Apply for judicial clerkships. Most important, give prosecution a chance early in your career.

Asit Panwala – San Francisco DA's Office

It's the middle of the day; I haven't eaten, my coffee has gone cold, and I am waiting for my witness to appear. Its "180.80" day and I need to present my victim to the grand jury or the Defendant is released from jail on an attempted murder case. I tried to find an available investigator, but there are none around. So instead, I borrowed a white Chevy Lumina, circa 1992, and drove to the home of Deshaun Coleman. Deshaun stated that he worked in construction, but really watching his block is his business. He's not a drug dealer, but he keeps people in line. He's perhaps the enforcer. The defendants, two brothers, wanted to sell cocaine on his block and asked him for permission. He would not acquiesce and they shot at him, hitting him and several other men. One had already been indicted by a grand jury and now we were bringing charges against the second, the shooter. Deshaun was lucky not to have a felony record. Our office had tried him for a murder two years ago. He claimed self-defense and was acquitted. Deshaun had admitted to me that he brought a gun to the meeting with the two defendants, but he never got a chance to pull it out. He was certainly lacking in moral character but nevertheless he did not deserve to be shot on the street. I went to his home in the projects, and found him. I drove him back to court and felt connected with him because we talked about his plans for the future. He testified in front of the grand jury that day, and I was able to keep the shooter in custody. It was a small victory, but an important one.

As a prosecutor, it is not enough to believe the laws protect each of us. It falls upon us to make sure that those who are least likely to report crime have their voices heard. It is easy to complain that the city isn't doing enough to stop crime. It is much harder to persuade victims, who went to failing schools, lived in impoverished neighborhoods, and were even prosecuted to come to court.

How did I end up here? I interviewed for the job during my third year. I remember having to swallow when I told the interviewer, "Yes I understand that I will be sending people to jail." I wasn't drawn to this job because I would have the power to punish. I was drawn to this job because I would decide whether we would file charges, whether the police went too far in seeking evidence, and what a fair outcome was for a case. Yes, I have dismissed cases where men ran from the police

and were found with a gun, mask, and gloves. I did so because their Constitutional rights matter just as ours do. We as prosecutors are the gatekeepers of the criminal justice system. So if you were interested in becoming a great defense attorney, I would recommend you take your compassion, sense of fairness and determination and become a prosecutor. Use your skills to decide to whether we should spend our resources trying a case. Use your sense of justice to decide what's fair. Use your ability to compel witnesses to find out the truth even if means dismissing your case. A prosecutor who acts conscientiously is one who can walk home from work with his head high, knowing that he fought for what he believed in.

Nicholas Walsh '00 – Suffolk County DA's Office

For the past two years, I have served as an Assistant District Attorney in the Suffolk County District Attorney's Office, just across the river from Harvard Law School in Boston. I am assigned to the Boston Municipal Court – Central Division, the downtown trial court that handles misdemeanors and low-level felonies. My job is the composite of two separate functions: first, I help process the daily business of the court by answering on 20 to 80 cases every day in the arraignment, pretrial, and trial sessions, which formally start at 9:00 a.m., routinely last until 1:00 p.m., and sometimes stretch to 4:30 p.m. or later; second, I investigate and prepare the cases that are assigned to me, which starts after I get out of court and routinely lasts until 7:00 or 8:00 p.m., sometimes later, and can spill over into the weekend. The first of those two functions can be tiring, but teaches a young lawyer the basic nuances of oral presentation in the courtroom. The second is the more creative side of the job, allowing ADAs to work with police and security companies and victims to put together the proof needed to secure a successful prosecution, however that might be defined. Interrupting this daily rhythm is the trial. Periodically, one of my cases goes to trial, and I find myself in the midst of an honest-to-goodness courtroom trial, making a pitch for a conviction to a judge or jury. Trials are the marquee events of the justice system, and a major perk of the job. There has been much commentary in the press of late about how the jury trial is fading away, but not so for ADAs. We try cases, and lots of them.

I decided to become a prosecutor because I believe that a criminal prosecutor has the ability to shape his or her local community. Of course, that impact can be good or bad, depending on how a particular prosecutor wields the vast power vested in the office. The American criminal justice system is built on a prosecutor granted with tremendous discretion and power. It is the prosecutor, generally, that makes basic decisions about whether to charge a person with a crime, and if charged, with what crimes, and if charged with certain crimes, what dispositions are appropriate (within some boundaries set by the legislature and judiciary). Although I do not represent victims – I am the Commonwealth's representative – I am often their only voice in the system, fighting for them, looking to secure some justice for what happened to them and perhaps some restitution. At the same time, I do not turn a blind eye to what might benefit the defendants I am prosecuting. It is my job as well to structure dispositions to fit individuals, resolving some cases in ways that are short of convictions, placing other people on probation with conditions for drug treatment and job training, and yes, sending yet others in jail. Not a day goes by when I have not had a significant impact on several lives in my community.

Additionally, I believe that effective courtroom advocacy is an important skill that a young litigator should develop so that he or she can draw on those abilities throughout the rest of his or her career. There are many litigation jobs that teach research and written advocacy; almost none that teaches courtroom rhetoric. My job is a notable exception. Every single day I am in court,

learning by doing, training in the art of courtroom oratory. If you choose to become an ADA, you will too.

If you are interested in becoming an ADA, the standard path to a District Attorney's Office is simply to apply straight out of law school. Offices have different hiring practices, but working during a summer at the office you want to work at is certainly a good idea as it gives you advocates within the office that can lobby for your hiring. I took a different path. After graduation, I clerked for a federal district court judge for two years, then spent three years at a small firm litigating federal civil cases and doing some criminal defense work. I am in the distinct minority of my peers with that type of legal experience, although I believe it serves me well.

To sum it all up: being an ADA is a unique, adrenaline-filled, and rewarding experience. It exposes young lawyers to unparalleled courtroom opportunities and gives them huge responsibility early in their careers. I love my job and highly recommend it to you. Good luck!

RESOURCES

www.prosecutor.info – This website includes links to more than 2800 local District Attorney's Offices in the United States.

Harvard Law School Alumni Advising Network – Currently, there are a number of Harvard Law School alumni who have worked or are currently working at local district attorney's offices. The Harvard Alumni Network can be a resource to contact additional current and former prosecutors. Contact OPIA for a list of HLS alums who are prosecutors.

For additional advice and information on applying to DA's offices, the following OPIA advisors are available:

Carolyn Stafford Stein, OPIA Attorney Advisor, HLS '85

Lisa D. Williams, OPIA Assistant Director for JD Advising

Listed below are some of the organizations, which focus on local prosecution and can help you locate and learn about district attorney's offices.

NATIONAL DISTRICT ATTORNEYS ASSOCIATION (NDAA)

National District Attorneys Association, 99 Canal Center Plaza, Suite 510, Alexandria, VA 22314
703-836-3195 | Fax 703-836-3195

The organization is dedicated to promoting the study and research of the law, as well as the diffusion of knowledge to prosecuting attorneys, lawyers, and law enforcement personnel.

The following books and publications may also provide useful practical advice as well as personal perspectives and anecdotes.

Armstrong, Richard. How to Get a Job in a Prosecutor's Office. Charlottesville, VA: University of Virginia Law School, 2001. www.law.virginia.edu/pdf/prosecutorhowto.pdf.

Fisher, Jory and Nicole Vikan. The Criminal Hypothetical and Other Unique Aspects of the Criminal Law Interview Process. Washington, DC: National Association for Legal Career Professionals, November 2006. (Password Protected; See OPIA for access)

Straus, Serena. Bronx D.A. Fort Lee, NJ: Barricade Books, 2006.

Lowenthal, Gary T. Down and Dirty Justice. Fair Hills, NJ: New Horizon P, 2003.

Batt, Marissa N. Ready for the People. New York: Arcade, 2004.

Delsohn, Gary. The Prosecutors. New York: Dutton, 2003.