

**LIFE AFTER LAW SCHOOL: EXPERIENCE IN
THE MIAMI-DADE COUNTY STATE ATTORNEY'S**

OFFICE*

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Know thyself.

Inscribed on the temple of Apollo at Delphi¹

It was a pattern to which I grew accustomed. Friends and interviewers looked at my resumé and perhaps even considered their experiences with me. Then they asked the question: "Aren't you more inclined to work for the Public Defender's Office?" "After all," each would continue, "your resumé indicates you spent three years working with juvenile delinquents and performing service projects for the indigent." Ironically, their point makes sense to most people. I suppose it is commonly understood that Assistant Public Defenders help society by keeping people out of jail while prosecutors help society by putting people in jail. While both of these beliefs may be correct, the equation I considered in deciding on a career as a prosecutor included many additional factors. Below are many of the points to ponder in determining whether a career in prosecution will be a good decision.

I. CONSIDERING A CAREER IN PROSECUTION

A. Duty to Seek Justice

I remember Professor Robert Bickel, during my Employment Discrimination class, standing on the tips of his toes showing his typical exuberance for the subject, and stating that, in employment discrimination law, it is not necessarily the plaintiff's attorney who

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1. THE OXFORD DICTIONARY OF QUOTATIONS 21 (Angela Partington ed., 4th ed. 1992).

has the greatest impact on furthering the rights of employees and in shaping the law. Actually, it is the company's in-house counsel who can shape the policies of these companies: combining the law, with that attorney's belief, with what is right.

In a similar vein, prosecutors often have a greater impact on society than public defenders. The public defender's job is to exonerate the client from pending criminal charges. In this regard, the public defender does not have much latitude to "do" what is best for the client.

The prosecutor, on the other hand, has a duty to seek justice. At the Miami-Dade County State Attorney's Office, and perhaps at all prosecutor's offices, each prosecutor has discretion to decide how to proceed with a particular defendant.

For instance, I recently watched my division partner² offer a defendant a plea with which I disagreed. A woman (the Defendant) was charged with petit theft. The arrest form stated that the Defendant filled her shopping cart with various items from the clothing store. As she waited in the checkout line, store security observed her furtively place a seven dollar headband on her three-year old child. The Defendant paid the cashier for the items in the cart, but left the store without paying for the headband.

The Defendant had no prior criminal history, which enabled the prosecutor to extend a once-in-a-lifetime plea offer. In a case such as this, involving a low-level misdemeanor, we as prosecutors can decide to offer a defendant a series of classes as part of a plea negotiation. The topics of the classes offered relate to the crime for which the defendant is charged. For instance, there are anti-theft classes, anger control classes, and anti-drug classes. When the defendant completes the classes and pays the program fee, the State drops the underlying case. The defendant's record indicates only that the State dropped the charge. I felt this Defendant was a good candidate for the program and that she would benefit from the five-week theft class. My partner felt her misbehavior was severe and merited a more punitive plea. He

2. By division partner, I am referring to a prosecutor with whom I work daily in my assigned courtroom. The courthouse is divided into courtrooms — also known as divisions. Each division has a judge and the judge's staff. The State Attorney assigns at least three assistant state attorneys to each division to prosecute the cases that are assigned to each division. These prosecutors who are in a division together work as a team to assure that each case is justly handled.

offered her a withhold of adjudication,³ court costs, and three months of reporting probation during which time she had to complete the theft classes and perform twenty-five community service hours. My partner was more deeply offended than I was by this Defendant's conduct. He felt that this woman was contributing to the delinquency of her three-year old daughter by using the child as an instrumentality of her crime. My partner held his opinion and he used it to resolve this case in a just way. I held my opinion and I privately informed him of it before the Defendant (and her attorney) accepted the plea. Although my partner and I often have different opinions on the plea offer that is most appropriate in various cases, both of our positions are acceptable to our office and we continue to work well together. In fact, our different perspectives enhance our performance in pursuing justice, as we continue to consider each other's opinions before we make our decisions.

B. Fighting Crime

Many of the Assistant State Attorneys (ASAs) with whom I have spoken have a desire to impact crime in the community. While numerous reasons exist for each prosecutor's aspiration to fight crime, perhaps the strongest motivation comes from life experience. Indeed, many prosecutors have been affected by crime and wish to focus their energies on safeguarding the community from such crime.

For instance, one of my prior supervisors had experienced the damage and pain caused by a driver impaired by alcohol: this prosecutor's mother was killed by an impaired driver. Clearly one of this prosecutor's goals was to deter impaired drivers from causing similar pain to others. But this prosecutor was not only interested in prosecuting impaired drivers, she was also a strong advocate in the prosecution of other crimes on behalf of the State.

C. Supporting Victims

3. The court can withhold a final judgment of guilt if it places a defendant on probation. *See* FLA. R. CRIM. P. 3.670.

While many people believe it is the public defenders who aid the unfortunate, those who are accused of crimes, I am constantly reminded of the service that prosecutors provide for the other unfortunate people, those who are the victims of crimes. Victims often have few places to turn for support, particularly if the perpetrator has too little money to make a civil lawsuit worthwhile. Victims call on prosecutors to ensure the perpetrator is found guilty and pays for his or her transgressions (and if that verdict can lead to compensation for the victim's damages, so much the better).

One case I prosecuted involved a Defendant who presented himself to his victim as a licensed and bonded roofer. To provide a roof over her family's head, the victim borrowed from her disabled son's trust account. The victim signed the Defendant's formal, authentic-looking roofing contract and gave him \$1200 as a down-payment. That was the last time she saw the Defendant — that is, until she came to court to testify against him. The Defendant took a plea when his attorney informed him that I was prepared to proceed against him in a trial and that, if he was found guilty, he would most likely end up in jail that very night. The Defendant pled “no contest” to the charge of contracting without a license and, in addition to other parameters of his sentence, he was ordered to send the victim \$100 per month until his debt was repaid.

Lest you think that all prosecutors' cases are resolved neatly and to the victims' satisfaction, this case may have a happy ending, but we haven't achieved it yet. I have since been in contact with the victim who reported that the Defendant was delinquent in his payment schedule. The next step will involve proving to the judge that the Defendant has the money to pay the victim but yet chooses to not comply with the court's order. Unfortunately, the old saying rings true to victims everywhere, “You can't get blood from a stone.” Nevertheless, the victim in this case was able to come to court and watch the man who cheated her out of her son's money rise before the court to receive an adjudication of guilt for contracting without a license. In this case, I believe that at least some justice was done.

D. Opening Doors

By starting off your legal career as an ASA, you are certainly not closing any doors. As a law student, I spent a great deal of time considering my career path. I decided that I didn't want to limit my possibilities in any way by choosing a legal specialty that would not pan out (either because I would learn I didn't enjoy that area of law, the job opportunities in that area would become scarce, or because that area was not financially or intellectually sustaining). By getting your feet wet as a prosecutor, you are expanding your marketability in many areas as you learn about the law, lawyers, and the courtroom.

1. Trial Experience

Trial experience is the number one reason most prosecutors will tell you they have chosen their career path. In my twelve months as a Miami-Dade County ASA, I have tried thirteen jury trials and over one hundred bench trials. If that seems like a lot, it is actually infinitesimal in comparison to the amount of cases that I prepared or began to try but did not result in a completed trial (for instance, when the defendant accepts a plea offer after the trial commenced, or when I have had to drop a case because an essential witness failed to appear).

Much of this experience is directly transferable for those prosecutors who wish to become criminal defense attorneys. In fact, one clear and obvious career path following a few years as a prosecutor is to switch over to do criminal work as a defense attorney. But many believe that trial experience is valuable regardless of the next legal career move. If an ASA later becomes a trial attorney in a civil firm, that ASA's experience with *voir dire*, opening statements, direct examination, cross examination, and closing arguments will certainly be useful skills to have honed. But there are less obvious skills that will also be transferable, such as courtroom presence, demeanor with the judge and jury, organization, and comfort in trial settings.

2. United States Attorney's Office

Several of my peers are focused on becoming Assistant United States Attorneys. The clearest path to make this goal a reality is through a state prosecutor's office. After about five years of quality state prosecution, many believe that ASAs are highly marketable with the United States Attorney's Office. While there are no guarantees,

experience as a state prosecutor can, at the very least, give you a basis of deciding whether you truly want to become a federal prosecutor and will offer you some advantage in making that career path more attainable.

3. *Politics*

What better way to start off a career in the public eye than to prosecute crimes? Prosecutors are constantly in the news for performing what society considers good deeds. Yet prosecutors are merely going about their jobs in the ordinary course. Numerous prosecutors have spring-boarded into politics from a career as an assistant state attorney. Some of the more notable former prosecutors include former Senator Bob Dole and Mayor Rudolph Giuliani.⁴

II. *THE MIAMI-DADE COUNTY STATE ATTORNEY'S OFFICE*

Through research and interviews across the country with different state attorneys' offices, I learned what is reinforced daily in my experience at the Miami-Dade County State Attorney's Office: there are countless reasons lawyers choose prosecutorial careers. I assume that, like me, each prosecutor considered his or her specific combination of reasons and life-goals before choosing this career path. When all of these different people come to work together they create an office that reaps significant benefits from its tremendous diversity.

A. Large Office

The Miami-Dade County State Attorney's Office is the third largest prosecutor's office in the country. Working in such a large office in a large city makes the ASA's experience in Miami different than an ASA's experience in a smaller locale (such as Bradenton, Florida, where I was a legal intern during my third year of law school). The large class of ASAs beginning their careers as prosecutors

4. Politicians who once worked in the Miami-Dade County State Attorney's Office include State Representative Gaston Canton and State Senator and Chair of the Senate Criminal Justice Appropriations Committee Alex Villalobos. While United States Attorney General Janet Reno is not a politician, employees at my office take great pride in knowing that she was the Miami-Dade County State Attorney before she became the United States Attorney General.

together was diverse in ethnicity, gender, and geographic background. Ralph Waldo Emerson said, "Men who know the same things are not long the best company for each other."⁵ Indeed, it is true that diverse people who work together toward common goals create an extraordinarily powerful team. When I began working at the Miami-Dade County State Attorney's Office, it was exciting for me to meet peers from law schools in New York, Virginia, California, Georgia, New Hampshire, and Missouri. With this diversity, the ASAs constantly compare thoughts about the laws to which they have been exposed, how matters are handled in other regions, and how different people are affected by these laws.

B. Young Prosecutors

Another enjoyable aspect of the Miami-Dade County State Attorney's Office, which I believe is similar in other offices, is the many young, idealistic prosecutors who become your colleagues. In my office I would guess the average age of county court prosecutors is twenty-five. Of course, as the office promotes each employee, the higher ranks contain older prosecutors with tremendous legal experience. These are the career prosecutors.

C. Volume and Variety of Crime

The big-city office also allows prosecutors to experience a wide variety of criminal cases. I have already handled charges involving traffic fatalities, contracting without a license, worthless check, lewd and lascivious behavior, driving under the influence (DUI), drugs possession and sale, prostitution, gambling, battery, robbery, burglary, and many other crimes.

Some cases are complex and often even more interesting. For example, I worked on a complicated DUI case in which I called on two expert witnesses to testify on behalf of the State of Florida: a drug recognition expert and a toxicologist. Needless to say, the facts were the simple part of proving this case.

The Defendant was arrested when an officer found him driving while his normal faculties were impaired. The complicated, and

5. RALPH WALDO EMERSON, REPRESENTATIVE MEN 22 (Pamela Schirmeister ed., 1995).

perhaps more interesting part of the case was proving to the jury the cause of the Defendant's impairment beyond a reasonable doubt.

In Florida, impairment must come from alcohol, a controlled substance, or a substance listed in the DUI statute.⁶ Simply proving a person was impaired by an unknown substance is insufficient to prove DUI. The extra challenge in this case was that the Defendant was HIV positive and had taken a cocktail of many different medications.

The drug recognition expert who examined him on the night of the arrest was able to testify that the Defendant appeared to be under the influence of a central nervous system stimulant, such as cocaine. The toxicologist was able to confirm through the presence of cocaine metabolites in the Defendant's urine specimen that the Defendant had recently ingested cocaine. The toxicologist was also able to explain to the jury that the many other HIV-related drugs in the Defendant's urine were not causing the impairment that the drug recognition expert noticed on the night of the Defendant's arrest.

Perhaps other state attorneys have similar experiences with such issues, but it is my understanding that a prosecutor in a large city, like Miami, has access to more opportunities to prosecute a wide variety of crimes. As complicated as this case may sound, I was called in by my co-counsel to co-chair this case less than thirty minutes before I began picking the jury. I spent the evening, following our first night of court recess, learning about this type of case and preparing for the following day. In addition, I had to prepare my portion of the work for my regularly assigned courtroom where my other partners and I still had to complete each morning's calendars. Then, as the afternoon arrived, I had to scurry out of my normal courtroom to jump back into the trial, which resumed after the judge finished her calendar for the day.

D. High Cost of Living/Low Salary

Perhaps the main impetus in my determination to become a prosecutor came from the lips of ex-prosecutors. Universally, ex-prosecutors told me that their work at the State Attorney's Office was the best time in their careers. So, why did they leave? Again the

6. *See* FLA. STAT. § 316.193 (1999).

answer is equally universal and absolute: money. Take a large city and determine what is one of the lowest paying legal jobs — Assistant State Attorney.⁷ To make matters even more difficult for the determined applicant, gaining a position as a prosecutor is a highly competitive endeavor. During our initial training we were told that the Miami-Dade County State Attorney's Office received approximately 2000 applications and interviewed approximately 700 candidates before hiring 42 attorneys.

E. Fastest Promotional Track

Upon entry, I was told that the Miami-Dade County State Attorney's Office is the fastest promotional office in the country. The common path for a new ASA is to start in the one-month training class. In this highly structured orientation program, the new prosecutors learn in an organized classroom setting trial advocacy skills as well as substantive law, criminal procedure, and office policy. During this time, ASAs familiarize themselves with each other and the office culture. Then it's into the pits. In our office, beginning prosecutors are promoted from trying misdemeanor cases in county court to trying felony cases in circuit court after about one year's time. The pressure to learn and become proficient is intense within such a fast promotional track, especially because one's caseload is always large and challenging. On the other hand, at such a fast pace, the learning curve is tremendous and continuously rewarding.

III. LANDING A PROSECUTOR'S JOB

There are a number of things you can do to improve your chances of being offered a position as an Assistant State Attorney while helping yourself to determine whether this is indeed your best career option.

First, you will rapidly learn that obtaining employment as a state attorney is a highly competitive and potentially lengthy process. You must keep in mind that you are competing with applicants from all over the United States, including applicants who have degrees from Ivy League schools, prior law enforcement experience, prior legal

7. To see a comparison of cost of living indices click on lawyer recruitment at the following Web address: <<http://www.state.fl.us/sa11/>>.

careers, and helpful connections to that State Attorney's Office. Further, you are competing with applicants from different walks of life and experience. Therefore, it is important that you set yourself apart when filling-out your employment application and during the interviewing process.

Second, you can prepare to be a prosecutor by taking classes (and achieving high grades) related to the tasks you will be performing as a prosecutor. For instance, Evidence, Trial Advocacy, Criminal Procedure, and Constitutional Law are classes that cover topics prosecutors come across on a daily basis. In this regard, I recommend that if you are unsure of whether you want to become a prosecutor, you should take these courses to give you a better idea of what the "job" will entail.

Third, you should complete a clinic or seek an internship with a State Attorney's Office during law school. This opportunity will allow you to experience what it is to be a prosecutor and to determine whether it is something you enjoy and/or are interested in pursuing. Further, you will be in contact with prosecutors, allowing yourself to learn about the prosecutors' experiences while making potentially important connections in the application process. You will also be able to learn "real life" criminal law and courtroom skills that will be invaluable in your career as an attorney, even if you choose to not pursue a career as a prosecutor. In the event you cannot participate in a clinic or clerkship, you should contact State Attorney's Offices near you or your school to discuss volunteer programs and internships. Again, nothing can be more valuable than trying out your prospective job before you have to make a commitment to it.

Fourth, approach your professors for letters of recommendation. Letters of recommendation from professors who taught you Evidence, Trial Advocacy, Criminal Procedure, and Constitutional Law would probably be most helpful because those professors will be able to address your skills that pertain to being a prosecutor. Additionally, you should seek letters of recommendation from professors who may have connections with the State Attorney's Office, either through the professor's prior employment or through some other means. In the event you have not taken a class with a professor you know to have a connection to a State Attorney's Office, I recommend that you nevertheless approach that professor for suggestions on how you should proceed in your employment endeavors.

Finally, submit your application early to the State Attorney's Offices in which you are interested. The Miami-Dade County State Attorney's Office interviews applicants three times before offering a position. Accordingly, State Attorney Offices may begin the interviewing process up to a year before offering a position. Consequently, after inquiring about the preferences of the offices to which you are applying, I urge you to submit your application as soon as the offices are willing to receive them.

Keep in mind that the above are merely my general recommendations. Obviously, following these suggestions will not guarantee you an offer from a State Attorney's Office; however, the above strategy will give you a basis to determine whether a career as a prosecutor is indeed something you want to pursue, while allowing you to better your chances of obtaining such a job in the process.

IV. CONCLUSION — SO . . . WHY DO I WANT TO BE A PROSECUTOR?

So, why did I want to be a prosecutor? How did I answer this question that arose daily in my life as a law student and as I networked and interviewed for work as an attorney?

Well, it wasn't for the money, but life experience has taught me the answer. As a teacher and counselor of adjudicated juvenile delinquents, I never met one student who I felt would have been better off if he had won his case against the prosecutors. Instead, I learned that different programs hold different benefits for diverse individual defendants.

Yes, I wanted to prosecute because those kids should have been in the system earlier in their lives when the impact from the programs could have redirected their subsequent criminal actions.

In my third and final round of interviews, I explained my rationale to Katherine Fernandez Rundle, the State Attorney, who is now my boss. She appeared to agree that I had a good reason to pursue a career in her office. Now, as I consider my experience throughout the past year, I too can stand on my tip-toes when I discuss all the great reasons to be a prosecutor and how glad I am that I made this decision.