

# Careers in Prosecution



OFFICE OF PUBLIC INTEREST PROGRAMS  
UCLA SCHOOL OF LAW

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## ACKNOWLEDGMENTS

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## ABOUT UCLA SCHOOL OF LAW

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UCLA School of Law, founded in 1949, is the youngest major law school in the nation and has established a tradition of innovation in its approach to teaching, research, and scholarship. With a rigorous public interest curriculum, the school is a preeminent training ground for students committed to careers across a spectrum of public interest practice areas.

## ABOUT THE OFFICE OF PUBLIC INTEREST PROGRAMS

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The Office of Public Interest Programs strives to enhance UCLA School of Law's commitment to public service by offering an array of services to students and alumni. The Office's principal goal is to encourage students and alumni to embrace a career that incorporates an ongoing commitment to public service.

## INTRODUCTION

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*“The District Attorney also has the power and responsibility to seek the dismissal of any case that the prosecutor concludes is in the interests of justice. That single responsibility—plus the authority to decide what, if any charges should be filed against any person—is a heavy responsibility, but a responsibility I was eager to embrace.”*

- Gil Garcetti, Former District Attorney for Los Angeles County, UCLA School of Law Class of 1967

*“As a prosecutor, I truly believe that I am one of the last lines of defense to ensure that justice is sought. The incredible discretion that comes with my role is not taken for granted. . . In this role as a prosecutor, I have the opportunity to seek justice on behalf of victims but also to give people second chances.”*

- James Daniels, Deputy Prosecuting Attorney for King County Prosecuting Attorney’s Office, UCLA School of Law Class of 2010

“The prosecutor has more control over life, liberty, and reputation than any other person in America,” declared Robert H. Jackson, Attorney General of the United States, to a conference of federal prosecutors gathered at Washington, D.C., on April 1, 1940. The government grants prosecutors this control through the granting of various powers: to charge their fellow persons with crimes, present cases to the grand jury, indict their fellow persons, and hold them for trial. If the prosecutor obtains a conviction, the prosecutor can also make recommendations for sentencing, probation, and parole. This incredible power and discretion means, as Attorney General Jackson continued, that “while the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.”

This *Careers in Prosecution* guide was created to help law students and law school graduates who are interested in performing the duties of a prosecutor. The guide is divided into six parts. The first part contains narratives from UCLA School of Law alumni working as prosecutors across the nation. The second part contains narratives from recent UCLA School of Law graduates who have worked at various prosecution offices. The third part describes the different institutional prosecution systems on the federal, state, county, and city levels. The fifth part gives law students advice on how to prepare for a career in prosecution. It reviews relevant courses and extracurricular activities, provides guidance for applying to summer law clerk positions, and highlights various post-graduate opportunities related to prosecution work, including fellowships. Finally, the sixth part contains helpful advice on how to succeed in prosecution interviews. This part also includes sample questions and other materials used during actual prosecution interviews for summer and post-graduate positions.

## I. ALUMNI NARRATIVES

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There are multiple and diverse paths to pursuing a career in prosecution. UCLA School of Law alumni exemplify the variety of career paths that can lead to a satisfying career as a prosecutor. These alumni narratives also highlight the different types of prosecution work that are available in different institutional settings.

*Disclaimer: The views expressed in this section are entirely the views of the authors and do not represent any other person or entity.*

### GIL GARCETTI, '67

Former District Attorney for Los Angeles County, Los Angeles, California

When I was in law school my goal was first to be a trial lawyer, not a “litigator”, but someone who actually was a lawyer who tried cases in front of a jury. Soon after my first year of law school, I refined that goal to be a trial lawyer in the Public Defender’s office.

I entered law school at UCLA in 1964 in the middle of the American political unrest that came with the Vietnam War, the assassinations of President Kennedy and Rev. Martin Luther King, and police abuse of civil right protesters across our country. My belief was that through work with the Public Defender’s office, I could help rectify the wrongs being perpetrated by the criminal justice system.

After graduation in 1967 I became involved in the 1968 Presidential election. What I saw take place throughout the campaign, especially at the Democratic National Convention in Chicago, greatly fortified my desire to join the Public Defender’s office to help rectify the abuses of the police and the entire criminal justice system.

So, in 1968 I joined the Los Angeles County District Attorney’s office. Yes, you read right. I went from wanting to join the Public Defender’s office to joining the Los Angeles District Attorney’s office. How did this happen? In 1968 when you applied for any legal office in the county you were interviewed by the county’s three legal offices: County Counsel, Public Defender, and District Attorney. I was fortunate to receive offers from all three offices.

A law school friend of mine had also planned to join the Public Defender’s office. When I learned that he had joined the District Attorney’s office, I asked him why. He asked me to spend the day with him and assured me I would see why he chose prosecution. I did so, and I immediately saw the wisdom and calculation in his decision.

The District Attorney’s office is where most of the critical decisions in the criminal justice system are made: whether to prosecute; which crime and level of crime should be charged; whether to require more investigation before a filing decision is made; how to determine the appropriate sentence in the 95+% of cases that are settled before trial. But the District Attorney also has the power and responsibility to seek the dismissal of any case that the prosecutor concludes is in the interests of justice. That single responsibility—plus the authority to decide what, if any charges should be filed against any person—is a heavy responsibility, but a responsibility I was eager to embrace.

I joined the Los Angeles County District Attorney's office in November 1968 ready to try any case for the next three to four years before leaving for private practice. I wound up staying for thirty-two years. I began my career like all young deputies: trying misdemeanor jury trials, handling preliminary hearings, and learning how to file, or decline, prosecution cases brought to the office by various police agencies. After about a year, I started trying low-level felony jury trials, but quickly started handling more important and sometimes complex cases. I loved jury trials. While it pitted you and your intelligence, preparation, and advocacy skills against defense counsel and sometimes even the court, I hopefully never lost sight of the unique responsibility prosecutors carry.

This responsibility is NOT to gain a guilty verdict by any means possible. Prosecutors have an ethical responsibility to seek justice in every case. Even if a prosecutor knows that the evidence establishes the guilt of an accused, but the prosecutor also knows, for example, that evidence was unlawfully obtained, or that a witness is fabricating testimony, or that the police are hiding evidence that makes a successful prosecution more difficult to obtain, the prosecutor is bound by a sworn allegiance to the Constitution, laws, and prosecutorial ethics to reveal to the court and the defense those facts.

Although I never intended or joined the office to become the elected District Attorney, I was elected to that position in November 1992. I was now able to set the priorities of the office and to change the face of the office. My priorities were domestic violence, juvenile crime, sexual assaults, and gangs, but also crime prevention programs and child support collections. But perhaps the most important thing any District Attorney does is to make the decision whom to hire. My goal was to change the face of the DA's office. That meant hiring many more women, minorities, LGBT, and to hire lawyers who truly understood the unique responsibilities and authority the office and every deputy district attorney carries. When my tenure ended in 2000, I left office proud of what we had accomplished during my time as District Attorney.

### MICHAEL D. SCHWARTZ, '79

Special Assistant District Attorney, Ventura County District Attorney's Office, Ventura, California

Being a criminal prosecutor is the best law job there is. Unlike most lawyers, prosecutors have the luxury of seeking justice in every case. Maybe that sounds corny, but it's true. If you think the defendant might be innocent, don't file the case. If you believe a filed case has become unprovable, dismiss it. If you think a crime deserves a minimal sentence, ask for a minimal sentence. If you think a defendant needs to be locked up forever, seek that sort of sentence. While defense attorneys serve an essential role, prosecutors have more power—and more responsibility—to affect the outcome of cases.

I didn't set out to be a prosecutor. I was a liberal (and I pretty much still am). I did a summer clerkship for a firm that did civil and administrative law but I didn't enjoy it. I did on-campus interviews for civil firms—commercial transactions, real estate ventures, billable hours. I tried to look interested, but it all sounded so boring. I included the Ventura District Attorney's Office on my interview dance card, and I was intrigued. The subject matter of stabbings, car crashes, and police pursuits was just so much more exciting. There is a reason that the TV shows on criminal justice vastly outnumber the shows about probate appeals.

I started as a post-bar law clerk, and when I passed the bar, I was sworn in as a deputy district attorney. Within two weeks, I put on my first misdemeanor jury trial. I picked a jury, figured out what witnesses to call and what to ask them, made and responded to objections, cross-examined the defendant, gave a closing argument, and won! There is no civil job anywhere that will get you into the courtroom so quickly and frequently. I was in court almost every day for something—a motion to suppress evidence, an arraignment and sentencing calendar, or a trial. It was exhilarating and I learned so much that first year.

My second assignment was juvenile court. I felt like a member of an elite club with special terminology and dispositional options that few people knew. If rehabilitation was possible for anybody, it was for juveniles. From there I did stints in felony preliminary hearings, felony trials, complaint filing, and writs and appeals. I rounded out my experience base learning civil practice prosecuting consumer and environmental cases.

During my career I worked on capital cases, argued in the Ninth Circuit and California Supreme Court, and became a recognized expert on exculpatory evidence and police misconduct under *Brady v. Maryland*. I drove a crooked plumber out of business, got restitution for crime victims, and locked up some dangerous people. And always, the goal is seeking justice.

It's hard to believe that it has been 38 years, and that I am nearing retirement. I am a manager now, and it is odd to work with attorneys who were not even alive when I started. In my mind, I still see myself as the fresh-out-of-law-school, know-nothing novice, figuring things out as I went along. It has been a great career choice for me.

If you are considering applying for a job as a prosecutor, I suggest you do one or more clerkships with prosecutors' offices to see if prosecution is a good fit, and to demonstrate your interest to employers. If you can, get into court and put on evidentiary hearings like motions to suppress and preliminary hearings, or even a trial. This kind of experience will set you apart from other applicants. I also suggest classes and activities that will develop your oral advocacy skills like moot court, mock trial, and trial advocacy classes. Whether you make a career of prosecution, or use it to develop your legal skills, it is interesting, personally fulfilling, and gives you the opportunity to make your community a safer place.

### JAMES DANIELS, '10

Deputy Prosecuting Attorney, King County Prosecuting Attorney's Office, Seattle, Washington

I am a deputy prosecuting attorney at the King County Prosecuting Attorney's Office, currently assigned to the Homicide and Violent Crimes Unit, where I focus on trial work. During my time serving King County I have completed over twenty felony trials to verdict. My cases range from robbery and burglaries to serious assaults and murder. When a trial is assigned to me, I manage the case from start to finish. This includes negotiations with the defense, plea hearings, trials, and sentencing. When I entered UCLA Law, I was unsure of what avenue to pursue, but I was always drawn to criminal justice. The summer after the first year, I did an internship with the Los Angeles County District Attorney's office. There, in the hardcore gang unit, I did legal research, worked on briefs, and was even able to watch an attorney make the arguments that I wrote. After that summer, I knew I wanted to pursue a path that involved the courtroom and criminal law. However, I was still undecided on what side I wanted to be on—defense, or prosecution.



During my last semester at UCLA, I had the opportunity to take the Criminal Defense Clinic, where we were able to work on a federal misdemeanor trial with our clinic faculty and the Los Angeles Federal Public Defender's Office. We met with clients, did legal research, and even had the opportunity to appear in court to defend our client at trial. That experience was the highlight of my law school career. I left UCLA knowing that I still wanted to work in criminal law, but was still undecided on what side I wanted to join. Having worked for prosecutors and defenders, I was able to see that there was valuable work to be done on both sides.

What led me to the prosecutor's office was somewhat of a chance encounter. At my swearing-in ceremony, the newly elected King County Prosecutor gave the keynote speech. We met after the swearing-in ceremony and he asked me what I was doing for work. I told him I was looking for a job in criminal law. I even said I was interested in either side. Looking back, it was foolish to tell the King County Prosecutor I was interested in both sides of criminal law. Despite that, he told me to send him my resume, and that maybe they could convince me that prosecution was the side to be on. The Prosecutor saw that I had worked during law school with the Los Angeles County District Attorney's office in the gang unit. As fortune would have it, early in his own career, the Prosecutor had trained in Los Angeles with that same unit.

That chance encounter has led me from being a contract attorney prosecuting misdemeanors to becoming a deputy prosecutor assigned to some very serious cases. I have now done this work for over seven years, and some people will question how I, an African-American male, can be a prosecutor when there are so many glaring racial disparities in our criminal justice system. As a prosecutor, I truly believe that I am one of the last lines of defense to ensure that justice is sought. The incredible discretion that comes with my role is not taken for granted. Every day I work to ensure that people are treated fairly and just. That can mean seeking the most serious charge, but it also can mean reducing a case or even dismissing a case if that is what justice requires. Over my career, I have seen that the job is not about wins and losses, but seeking justice.

One example of the ability prosecutors have to seek justice is from my time with the Juvenile Court unit. Typically, the youths facing prosecution only after they exhausted diversion programs. One of those programs was a newly formed "180 program." By completing that program, juveniles charged with misdemeanors and some low-level felonies were given the opportunity to have criminal charges declined. The youths were required to go to a four-hour program on a Saturday, listen to people from the community, and participate in workshops. I myself have spoken at the program several times to give my perspective and let the youth know that this program was their last chance to avoid having a criminal record. In this role as a prosecutor, I have the opportunity to seek justice on behalf of victims but also to give people second chances. I feel incredibly fortunate for the path that has led me to this career and enjoy the work very much.

## [JULIUS J. NAM, '12](#)

Former Assistant United States Attorney, U.S. Attorney's Office, Riverside, California

I entered UCLA Law thinking I wanted to become a public defender. I joined the David J. Epstein Program in Public Interest Law and Policy, threw myself into the Reentry Clinic, and interned at the Federal Public Defender's Office. Three years after graduation, however, I became a federal prosecutor and served three fulfilling years prosecuting criminal cases. Here's why.

*Being a prosecutor is as much about not prosecuting a case as it is about prosecuting one.*

A prosecutor can only charge cases that law enforcement agencies investigate and bring. Upon presentation, the prosecutor makes an independent evaluation to determine whether an actual crime has been committed, whether there is sufficient evidence to prove the crime beyond a reasonable doubt, whether the defendant can raise valid defenses, and whether the crime is one that should indeed be criminally prosecuted (as opposed to seeking alternative non-criminal remedies). Whether or not a case should be prosecuted boils down to the question: What is the right and just thing to do under the law with the facts presented?

Learning about the prosecutor's ability to make independent and rigorous evaluation of individual cases – and ultimately to decline as well as to accept cases – contributed to my decision to become a prosecutor. That is an important and exciting decision that only prosecutors can make. I firmly believe that a prosecutor's calling is both to charge and not charge a case. Both, together, constitute prosecution of justice that I have found to be profoundly fulfilling.

*Prosecution is a proactive and constructive process.*

Prosecuting a case is very much like leading a team of inquisitive individuals to put together a 5,000-piece jigsaw puzzle without having the “answer” picture to guide you. Prosecutorial work is thus a proactive, constructive, and even creative process, which I have found to match my skill set and personality better than the largely reactive work that the defense must engage in.

When a law enforcement agency presents a case, it comes with a certain theory of the case with substantial evidence gathered to back up that theory. Often, however, much additional investigative work still remains. It then falls on the prosecutor to lead the process of further building the case with the case agents to meet the “beyond a reasonable doubt” standard of proof. That requires analyzing the existing evidence, making inferences from the evidence, identifying sources of evidence that may have been overlooked, re-interviewing witnesses with new questions, and reconstructing the theory of the case in light of any new evidence. That process demands a proactive, constructive, and critical mind and skill set – tethered of course, to the law, facts, evidence, and reason. This process is also significantly different from the reactive posture that the defense, for the most part, has to take.

The prosecutor's “directorial” decisions help shape which and how many defendants get charged, which charges are filed, which victims' stories are told, which evidence is introduced at trial, and what kind of sentences defendants ultimately receive. Also, those decisions, on occasion, lead to dismissal of counts or entire cases, when the prosecutor recognizes that the evidence does not support the theory of the case. Exercised in concert with the goal of doing the right and just thing in each case (so as to balance the interests of the community, the victims, and the defendant), the constructive work of prosecution provides an extraordinary sense of fulfillment. That certainly was my experience as a prosecutor.

*Judgment and compassion are indispensable qualities for each prosecutor.*

Hands down, the most important quality that a prosecutor should have is thus sound judgment. Through my descriptions above, I hope I have made clear the preeminence of judgment for a prosecutor.

*Compassion, in my view, is the most underappreciated quality of a prosecutor.*

Every prosecutorial decision is grounded in the balancing of the interests of the community, the victims, and the defendant. This balancing is not some abstract exercise that has already been carried out for the prosecutor in the statutes, department manuals, or sentencing guidelines. It is an active exercise of judgment that is guided by compassion and recognition of the human dimensions for all involved, including the defendant(s), in the tragic drama of a criminal prosecution. As one of the leading actors in that drama, prosecutors must be guided by compassion to treat all persons and evidence with fairness and integrity, interact with every victim with empathy and sensitivity, regard each defendant with respect and humanity, and use the available power and resources with care and humility.

By exercising judgment with compassion, prosecutors can take steps toward inspiring trust in the criminal justice system and bringing dignity to the community's collective condemnation of evil in society. That is an ideal that prosecutors embrace and aspire to in their daily work as a prosecutor.

NATHAN GUTTMAN, '13

Deputy Attorney General, California Department of Justice, Los Angeles, California

I work for the California Attorney General, prosecuting felony convictions on appellate and habeas review in state and federal courts. I decided to become a prosecutor because I wanted a say in the difficult choices that prosecutors make. These decisions involve some considerations common to trial and appellate contexts. For example, all prosecutors represent varied interests: the public we serve includes criminal victims and defendants; individual people and the collective electorate. And all of our choices affect people's lives. But other challenges are unique to appellate practice – challenges that can motivate and engage public interest-minded lawyers.

Most importantly, appellate prosecutors practice in courts that make new law. In those courts, the existing legal authority is just the starting point for the conversation. To be persuasive there, we must demonstrate the fairness of our proposed result—both the legal rule and the individual disposition. And appellate courts demand frankness: they seek our input even when they reject our ultimate position, so we must forthrightly advocate our underlying concerns in a way that resonates with contrary viewpoints. Of course, the hard part is initially distilling these concerns in light of the varied interests we represent. In my office, we hone these ideas through discussion among a diverse group of colleagues with expertise at every level of the appellate court system.

This type of advocacy presents practical and conceptual challenges. Conceptually, appellate prosecutors must square procedure with reality. We often argue about how a court should make a given decision, including whether the court should make that decision at all. Cases are won and lost on these procedural issues, which courts sometimes discount as distractions from a defendant's substantive claims. Successful procedural arguments take issues that appear purely abstract and make them concrete—an achievable sort of alchemy.

And on the practical side, appellate prosecutors often have the relative luxuries of a static record and a generous timeframe; however, courts also expect our work to reflect those conditions. As a result, we must be able to juggle multiple cases until a court needs us to delve into a single issue. Then, we might devote months to preparing briefing or argument on that sole topic. For example, I

have spent a whole day working on one crucial paragraph of a brief. The payoff is familiar to public servants: in making a hard problem easy, we erase the evidence of our own effort, but our ideas get a shot at reality.

Most people interested in prosecution know that prosecutors work toward goals such as holding murderers accountable, disrupting cycles of domestic violence, and obtaining restitution for fraud victims. And most people interested in prosecution also know that appellate prosecutors work to protect the judgments that are necessary to achieve those results. But the process of appellate prosecution may be less well known. The unique properties of the appellate process add another type of meaning to my work as a public interest-minded lawyer.

## II. RECENT ALUMNI NARRATIVES

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The following narratives from UCLA School of Law's Class of 2017 graduates highlight multiple ways in which students have pursued coursework, extracurricular activities, and summer positions to prepare themselves for a career in prosecution work. As these alumni have gone through both law school and job application processes more recently, their narratives may be of particular interest to current students.

### MICHAEL HANOVER, '17

Assistant District Attorney, Harris County District Attorney's Office, Houston, Texas

September 3rd, 2017. The very day Hurricane Harvey moved east out of Houston, I drove in from the west with my entire life packed into the bed of my truck. Back in October of 2016, after a grueling interview process, I found out I had earned a job offer with the Harris County District Attorney's Office (HCDAO) and I promptly accepted. I wanted this job, called the Pre-Commit Program, because it is a fast track to becoming a prosecutor after graduation and the bar exam. Within a week of arriving to Houston, I was given my own caseload of about 400 active cases. I was immediately positioned as a prosecutor (with supervision and a temporary bar card) in a County Criminal Court at Law.

We all saw media coverage of Hurricane Harvey's merciless destruction. My first weekend on the job, I lived the aftermath firsthand, ripping drywall and tiling out of the flooded home of a new colleague. The Harris County Criminal Justice Center (CJC) flooded, and then it mildewed, making it uninhabitable. HCDAO and the entire criminal court system were forced to relocate during my first few weeks of work. We arrived each morning in court attire, handled our morning dockets, and in the afternoon changed into jeans, t-shirts, and air-filtering masks to haul our files, supplies, and cabinets out of the CJC over four city blocks in the summer heat. We didn't ask questions. We didn't procrastinate or complain. We just did it. We set up a new open floor office in a different county building. I can see each of the approximately fifty prosecutors working in the Division from my desk. Through the process of figuring out how to maintain our justice system in the wake of a terrible natural disaster, I became part of a new family.

I decided to become a prosecutor because of the delicate balance of responsibilities involved. A prosecutor is all at once a guardian of each defendant's constitutional rights, an advocate for the community, and a voice for the victims of crime. Things get interesting when these roles come into conflict, and it is sure to happen almost every day. Last week, I was able to secure restitution

for an elderly woman whose wallet had been stolen. In the wallet was \$900 in cash from her husband's final social security check. Since the crime was committed, not only did her husband pass away, she lost both her house and car to the hurricane. After a period of collecting and analyzing evidence, I had the privilege of telling her the case was resolved and there was restitution money on the way. Her tearful response was to thank me for believing in her when she was so sure no one else did. I hung up the phone with a newfound certainty that this is the most fulfilling career I could have chosen after my time at UCLA. It was just \$900, an amount that pales in comparison to a big law weekly salary, and yet it gave way to a conversation I will always remember.

To conclude, I do have some advice for law students seeking to join a prosecutor's office after graduation. First and foremost, develop the credentials required to survive the application process. Mock trial or trial advocacy classes are crucial. Internships at a District Attorney's office are a must. Second, start early in developing an understanding of what the hiring process is like. The hiring processes are very similar—most involve panel interviews and difficult hypothetical questions or mock trial exercises. Have a plan for how you will respond if you are asked to give an opening statement about a set of facts you were given orally three minutes prior. Don't waste time worrying about how impossible that may sound. Finally, think long and hard about why you want to be a prosecutor, and be prepared to talk about it at length. And then, when you are chosen for this job, arrive to work ready to enjoy what you have worked so hard to achieve.

#### LAUREN KAYE, '17

Deputy District Attorney, San Bernadino County District Attorney's Office, San Bernadino, California

Before law school, I knew that I wanted my legal career to involve representing the public interest, lots of trial work, and civil servitude. Thus, I have chosen to pursue a career as a criminal prosecutor.

In between college and law school, I interned for the Orange County District Attorney's Taskforce Review Aimed at Catching Killers, Rapists, and Sexual Offenders (TRACKRS) Unit. During this internship, I read countless police reports of alleged homicide and sexual assault crimes. Sadly, many of the sexual assault cases involved children. With each tale of an abused child, my resolve to become a prosecutor boldened because I wanted to stop the abuse, stop the cycle, and stop the suffering.

During my 1L year at UCLA Law, in addition to enjoying Criminal Law, I had a blast volunteering with Teen Court through the El Centro Legal Clinic. This experience was great because it reinforced my desire to work in the criminal justice system as I assisted the jury of high school students deliberate the consequences for nonviolent juvenile offenders participating in the diversion programs intended to shield them from prosecution.

I spent both summers in law school with the Los Angeles County District Attorney's Office. I was specifically assigned to the Hardcore Gang Unit in the Compton Branch for my first summer. As someone who grew up in Irvine, California, which has won the title of "Safest City in the United States" several times in the last fifteen years, this assignment was eye-opening. My supervising deputy district attorney expressed fairness in the courtroom and kindness to victims and their families, qualities I hope to emulate when I become a prosecutor. In addition to working on

interesting cases, I went on a ride-along with a sheriff deputy and saw how cases develop from the ground up.

In the fall semester of my 2L year, I took Evidence, Constitutional Criminal Procedure, and Criminal Trial Advocacy. All these courses are extremely helpful to pursuing a career in prosecution. Evidence is imperative to become certified in California, which allows you to argue in court under the supervision of a licensed attorney. Trial Advocacy was helpful because I practiced skills for giving opening statements and closing arguments, and leading direct and cross examinations. These skills are especially important to practice because many prosecution offices require giving an opening or closing during the interview.

During my second internship at the Los Angeles County District Attorney's Office, I argued a couple of preliminary hearings and an opposition to a motion to suppress evidence in court. My supervisor in the Victim Impact Program let me write most of the motions for his trials, which allowed me the opportunity to practice researching and writing evidentiary motions for domestic violence and sexual assault cases.

Firmly set on becoming a criminal prosecutor, I took Advanced Criminal Procedure during the fall semester of my 3L year. This course is great for future criminal lawyers because it covers the ethical obligations of criminal prosecutors and defense attorneys and delves deeper into the procedural rules that govern how a case progresses through the criminal justice system. For my last semester at UCLA, I participated in the Youth & Justice Clinic. This experience was extraordinary because we had the rare opportunity to observe proceedings in the Los Angeles Juvenile Delinquency Court, interview judges, and hear past juvenile offenders speak about their experiences in the system.

Because of the rewarding experience I had in the Youth & Justice Clinic, I asked to work in the Juvenile Unit at my post-bar placement in the Santa Clara County District Attorney's Office. This Unit gave me ample opportunities to work on my trial skills. In just six weeks, I prepared and successfully argued three bench trials involving criminal threats, assault, and resisting a peace officer. In addition to improving my trial skills, these trials were personally fulfilling because I felt that I was seeking justice for my victims by holding their perpetrators responsible for their violent actions.

Prosecutors have a unique responsibility to make complex decisions that go beyond individual victims and impact the broader public interest. As someone who seeks to serve my community by protecting the vulnerable and holding the guilty accountable, I am proud to serve the people of my county as a prosecutor.

### III. PROSECUTION SYSTEMS

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Prosecution systems are typically structured as federal, state, or local government entities. Different levels of prosecution offices handle different types of cases. Regardless of the office, however, students should be advised that prosecution offices in the United States are part of the Executive Branch. Thus, an office's practices and policies can differ depending on the politics of its leader. While at the local level, it is not uncommon for a District Attorney to preside over a county for over a decade, the state and federal levels tend to have more turnover.

## **FEDERAL PROSECUTION SYSTEM—U.S. DEPARTMENT OF JUSTICE**

The United States Department of Justice is responsible for the enforcement of federal laws throughout the United States. The Department of Justice handles the majority of criminal cases it pursues through the 93 United States Attorneys and their offices. Cases handled by United States Attorney Offices (USAOs) include bank fraud, terrorism, environmental crimes, money laundering, narcotics trafficking, organized crime, and public corruption. Most United States Attorney's Offices do not hire directly out of law school. One exception is the USAO for Washington, D.C., which prosecutes local crimes and hires recent graduates. Most prosecutors working in a USAO have been routed from other jobs, such as a private law firm or a state prosecutors' office. Due to the complexity of most federal cases, investigations can be lengthy, with the result that federal prosecutors typically handle fewer trials than their state or local counterparts.

## **STATE PROSECUTION SYSTEM—ATTORNEY GENERAL'S OFFICE**

Every state and territory in the United States has a state attorney general, who serves as the chief legal advisor to the state government and is the state's chief law enforcement officer. The Attorney General's responsibilities include safeguarding the state, preserving the state's natural resources, enforcing civil rights laws, and helping victims of identity theft, mortgage-related fraud, illegal business practices, and other consumer crimes.

In larger states, State Attorney General's Offices focus on crimes that the local district attorney's offices cannot handle for any number of reasons. The scope of the case may encompass multiple counties, or there might be a conflict of interest for the local prosecuting office. Due to the complexity of most cases handled by the State Attorney General, it can be some time before a recent graduate is able to preside over their first trial.

## **LOCAL PROSECUTION SYSTEM—DISTRICT ATTORNEY'S OFFICE**

Most crimes are handled by local prosecuting offices. Generally, these are called District Attorney's Offices, though in some states they are called County Offices. The types of cases dealt with by a District Attorney's Office range from misdemeanors, including petty theft and reckless driving, to felonies, including sexual assault and murder. Because the caseload of a district attorney's office is so numerous, with some of the cases relatively minor in nature, new attorneys have plenty of opportunity to earn courtroom experience relatively quickly. As certified law clerks, 2Ls can conduct preliminary hearings, evidence suppression hearings, and in some offices, even a trial.

## **LOCAL PROSECUTION SYSTEM – CITY ATTORNEY'S OFFICE**

Some larger states, including California, have both City Attorney and District Attorney Offices. In these structures, City Attorney Offices handle violations of the city municipal code and misdemeanors that occur within the city's limits, while the District Attorney's Office handles felonies, as well as any misdemeanor occurring in multiple cities. Similar to District Attorney's Offices, the relatively minor nature of some of the offenses handled by City Attorney's Offices allow new attorneys to gain substantial experience relatively quickly.

## IV. PREPARING FOR A CAREER IN PROSECUTION

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This part provides a general background on how to pursue a career as a prosecutor. It is organized according to class year. However, students and recent graduates may find the entire discussion useful.

### 1L STUDENTS

#### COURSEWORK AND EXTRACURRICULAR ACTIVITIES

During the first year of law school, students should focus on building a resume that demonstrates a dedication to oral advocacy and public interest work. For example, 1L students can seek opportunities through student-led organizations, such as El Centro Legal, to better understand the needs of the community. Moot Court competitions are excellent opportunities to strengthen oral advocacy and writing skills. First-year students should also consider joining student organizations or journals focused on criminal justice issues and attending lectures and panels on criminal justice topics.

With regards to coursework, while the six substantive law courses are generally fixed, *Legal Research and Writing* provides a good opportunity to sharpen research and writing skills. These skills will prove invaluable during the 1L summer at any public interest organization.

#### WHEN AND WHERE TO APPLY

While each prosecution office has their own application timeline, 1L students should begin to make contact with offices after finals in December. An exception, however, exists for students interested in clerking at a federal prosecutor's office, as many federal offices have application deadlines in December. Throughout the school year, 1L students interested in prosecution should attend public interest or government career fairs, such as the Fall Government and Public Interest Information Fair held here at UCLA School of Law, where prosecution offices are often in attendance.

Although it is not crucial for a student's first summer to be spent where the student would ultimately like to practice, 1L students are advised to establish a relationship with offices they are specifically interested in for post-graduate work as soon as possible. It is common for offices to hire students who have spent a summer and/or semester with them.

#### THE 1L SUMMER EXPERIENCE

1L students spending their summer at a prosecutor's office can expect to perform legal research and writing tasks and observe attorneys in court. A common experience for 1Ls in a prosecution office involves writing a motion, and then going to court to see a prosecutor argue their motion. Aside from writing tasks, other experiences include a "ride-along", where a 1L student accompanies a law enforcement officer on their shift, tours of crime laboratories, and oral advocacy training sessions. These experiences can vary greatly from office to office, so 1L students should inquire as to what kind of training and experience a prospective office offers to 1L students.



## 2L STUDENTS

### COURSEWORK AND EXTRACURRICULAR ACTIVITIES

2L students are strongly encouraged to take Evidence and Criminal Procedure courses as soon as possible. First, these courses share many of same themes and vocabulary with the world of criminal prosecution. By taking these classes, students will become comfortable with the language of prosecutors, aiding them in interviews for summer positions. For example, interviewers may ask a hypothetical about a “suppression motion”. Such a motion involves the suppression of evidence due to a violation of the Fourth Amendment, a topic well covered in Criminal Procedure courses.

Second, these courses are often required to become a certified law clerk. In most states, certification allows students to argue motions and conduct preliminary hearings under the supervision of an experienced prosecutor. This courtroom experience is invaluable for any budding litigator. Thus, many prosecution offices require certification for their 2L interns, making the certification courses a priority.

Beyond these two courses, 2L students should seek oral advocacy courses. Comfort with public speaking is one of the most foundational skills of a prosecutor, and these courses provide valuable opportunities to develop those skills.

As for extracurricular activities, Moot Court and Mock Trial also provide good opportunities to practice oral advocacy. 2L students should also consider an externship (either full- or part-time) at a prosecution office in order to build connections and practice legal writing.

*“Trial Advocacy was helpful because I practiced skills for giving opening statements and closing arguments, and leading direct and cross examinations. These skills are especially important to practice because many prosecution offices require giving an opening or closing during the interview.”*

- Lauren Kaye, UCLA School of Law Class of 2017

### WHEN AND WHERE TO APPLY

While different offices and programs have different application timelines, 2L students should try to make contact with places of interest during the buildup to On-Campus Interviews (OCI) in the summer. Some prosecution offices may do interviews at OCI. 2L students interested in permanent employment opportunities might want to prioritize employers that routinely hire entry-level attorneys out of the summer class. Students are also heavily encouraged to reach out to prosecutors at that office for information about their experiences. UCLA Law alumni are especially willing to share about their lives as prosecutors, and can even help students with the application process.

Although spending a summer at an office does not guarantee that a student will be hired after graduation, due to the time and training invested in 2L students, prosecution offices are often loyal to those who have previously worked in their office. At a minimum, working for a particular office during 2L summer will give a student insight into the hiring process for permanent positions, including the timing for applications and familiarity with the attorneys who interview job candidates.

## THE 2L SUMMER EXPERIENCE

The most important distinction between 2L and 1L summers at prosecution offices is the ability to serve as a certified law clerk. 2L students certified under the state bar have the opportunity to submit motions under their name, negotiate with defense attorneys, and go on the court record—all under the supervision of an experienced attorney. Certified 2L students will often argue motions, conduct preliminary hearings, and investigate cases themselves. This work involves interviewing police officers and witnesses, collecting evidence, and organizing it for presentation in court.

Different offices offer different experiences for 2Ls. While many will allow 2L students to argue motions and conduct preliminary hearings, some offer the opportunity to conduct a misdemeanor trial. During the application process, 2L students should inquire as to the courtroom opportunities each office provides.

## 3L STUDENTS

### COURSEWORK AND EXTRACURRICULAR ACTIVITIES

Like 2L students, 3L students should continue to pursue courses, clinics, and extracurricular activities that develop the skill set relevant to prosecution work. 3L students may also want to strategically pursue an externship opportunity with a potential post-graduate employer, or take an advanced course in criminal procedure or legal writing. These types of experiences will be impressive to future employers who are looking for advocacy experience as well as evidence of dedication to a career in prosecution.

### WHEN AND WHERE TO APPLY

3L students should make contact with offices of interest before the time classes begin in the fall. As each office has their own timeline, it is important to gather information regarding application dates and hiring priorities. As discussed below, in addition to reaching out to offices that offer permanent positions, 3L students should also look into offices that offer post-bar clerkships, fellowships, or unpaid volunteer opportunities. Along with their own research, students are encouraged to ask the Office of Career Services and/or Office of Public Interest Programs about additional opportunities.

### POST-BAR CLERKSHIPS

If an offer to work at a prosecution office cannot be secured prior to taking the bar, 3L students dedicated to pursuing prosecution work should consider pursuing a “post-bar clerkship” with an office. A post-bar clerkship is a position with a prosecution office during the period graduates wait for bar results and are thus ineligible for permanent positions at many offices. Many District Attorney Offices in California do not hire 3Ls for permanent positions, but instead interview 3Ls for their post-bar program. Many post-bar clerkships are competitive positions that require applying during the third year of law school.

Some post-bar clerkships are paid positions, but many are unpaid volunteer positions. The main benefit of post-bar clerkships is that they provide graduates with the opportunity to acquire trial experience and continue building their resumes until other openings occur. Although working as a

post-bar clerk does not guarantee later employment as an attorney with the office, post-bar clerks are the first to know when openings occur.

## V. FELLOWSHIPS

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Students interested in a career in prosecution should consider applying for a post-graduate public interest fellowship. Fellowships are particularly worthwhile because they give fellows an opportunity to gain valuable experience while serving communities with a need for prosecutors. The following list is a non-exhaustive sample of exceptional fellowship opportunities for recent law graduates.

### **UCLA LAW'S SUMMER PUBLIC SERVICE FELLOWSHIP PROGRAM**

Many prosecutorial internships, both for 1Ls and 2Ls, are unpaid. There is, however, funding potentially available through UCLA Law. 1Ls and 2Ls interested in summer stipends should contact the Office of Public Interest Programs. The deadline to apply is usually in early April.

### **UNIVERSITY OF CALIFORNIA PRESIDENT'S PUBLIC SERVICE FELLOWSHIP**

In 2016, Janet Napolitano, president of the University of California school system, established the President's Public Service Fellowship to help University of California law students launch careers serving the public in non-profit organizations or government agencies. Graduating 3Ls with a prosecution office lined up as a "host organization" are eligible to apply. The deadline is usually in late April. Those awarded the fellowship receive a \$45,000 yearly total, distributed in quarterly stipends, along with \$2,500 to help with bar costs.

### **SOROS JUSTICE FELLOWSHIP**

The Open Society Foundation has committed itself to supporting individuals interested in advancing criminal justice reform through Soros Justice Fellowships. The Soros Justice Fellowships Program's Advocacy Fellowship is focused toward law school students approaching graduation. Fellows receive funding for undertaking an 18-month full-time criminal justice reform project. For prosecutors, the focus of the project can include public education, coalition building, grassroots mobilization, and/or policy-driven research. For more information, visit [www.opensocietyfoundations.org/grants/soro-justice-fellowships](http://www.opensocietyfoundations.org/grants/soro-justice-fellowships).

### **CITY ATTORNEY TAP PROGRAM**

For 3L students interested in prosecution work, the City Attorney TAP Program provides a post-bar program that will provide trial experience. TAP is a two-part course designed to place attorneys in prosecutorial agencies as volunteer pro bono prosecutors. The first part of the program is a five-week training course. During the training course, students participate in 3 mock criminal trials and play the role of prosecutor.

Participants who (1) comply with the program's attendance requirements, (2) demonstrate the ability to successfully prosecute criminal cases, and (3) pass a written ethics examination are

referred to prosecutorial agencies for service as volunteer prosecutors. Participating agencies have included the Ventura County District Attorney's Office, the Los Angeles City Attorney's Office, and the Los Angeles County District Attorney's Office, among many others. More information can be found at <https://www.lacba.org/resources/training-with-cle>.

## **UNITED STATES DEPARTMENT OF JUSTICE HONORS PROGRAM**

The United States Department of Justice Honors Program is the only program through which the Department of Justice hires directly out of law school. The Honors Program hires hundreds of graduating law students around the country in a variety of divisions, including Criminal, Drug Enforcement, and Civil Rights. Positions for graduating 3Ls range from one-year fellowships to permanent positions. The needs of each division vary by year, but participating divisions can be found at <https://www.justice.gov/legal-careers/honors-program-participating-components>. The starting salary is Step 11 for the Department of Justice's General Schedule (approximately \$68,000 in 2018), but rises yearly. More information can be found at the Department of Justice's website. The application is usually due in early September.

## **CALIFORNIA ATTORNEY GENERAL HONORS PROGRAM**

The California Attorney General Honors Program, established by former Attorney General Kamala Harris in 2011, awards two-year fellowships to graduating students. Recipients are placed in one of three divisions: Civil Law, Criminal Law, and Public Rights. The location of the program rotates every year through Los Angeles, San Francisco, or Sacramento. The application is usually due in late October, and can be found at the California Attorney General's website.

## **VI. PROSECUTION INTERVIEWS**

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Prosecution interviews are sometimes intense and may be intimidating for first-time applicants who have not yet confronted the prosecution interview process. This section gives a general framework for interviewees to prepare their responses, as well as some sample questions and hypothetical exercises submitted by UCLA School of Law students from their own interview experiences.

### **GENERAL FRAMEWORK**

The three overarching themes for prosecutor interviews are: (1) personal motivation to pursue prosecution work; (2) soundness of judgment; and (3) preparation and dedication.

#### **PERSONAL MOTIVATION**

The criminal justice system puts tremendous responsibility in the hands of prosecutors. Prosecutors decide whether to charge crimes, what type of plea to offer, and how to treat victims and other criminal justice system actors. With this amount of responsibility, it is important to understand why potential prosecutors are motivated to do the work. Prosecutors without sufficient personal motivation to serve the community may fail to fulfill their many responsibilities.

When interviewing a potential prosecutor, interviewers want to know why you want to be a prosecutor. Indeed, the first question in many interviews is “Why do you want to become a prosecutor?” Interviewees with a clear, concise response set a positive tone for the rest of the interview. A complete answer will reveal the applicant’s desire to do justice, protect the community, and help victims. Responses should also include something about the interviewee’s background that drives them to pursue prosecution work. Driving reasons can include inspiration from family members in law enforcement, a desire to be in the courtroom, or even watching Law and Order growing up. Interviewees should think through their own story and motivations for pursuing this line of work.

*“[S]tart early in developing an understanding of what the hiring process is like. . . . [T]hink long and hard about why you want to be a prosecutor, and be prepared to talk about it at length.”*

- Michael Hanover, UCLA School of Law Class of 2017

Interviewers will also expect interviewees to give specific reasons why they are interested in that particular prosecution office. These reasons can include a background in the area, a desire to make an impact on the community, connection(s) with prosecutors in the office, or a unique criminal justice program in the office. For offices in rural areas, interviewers will usually expect fewer personal connections, and will understand if budding prosecutors are looking to serve a community while also gaining valuable courtroom experience.

## SOUNDNESS OF JUDGMENT

As stated in the American Bar Association’s Criminal Justice Standards, “the primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.” In seeking justice, the prosecutor should protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of suspects and defendants. Therefore, potential employers will want to understand how applicants would exercise their own judgment. This will help them to determine whether the interviewee is the type of person who can be placed in the enormous position of trust occupied by prosecutors.

*“Judgment and compassion are indispensable qualities for each prosecutor. Hands down, the most important quality that a prosecutor should have is sound judgment”*

.- Julius Nam, Former Assistant United States Attorney for the Central District of California, UCLA School of Law Class of 2012

In order to test the interviewee’s sensibilities, interviewers will ask the interviewee’s for their course of action in response to hypothetical situations. In these exercises, clear-cut answers are less important than the interviewee’s thought process. Interviewees are encouraged to think out loud. If struggling to come up with a firm answer, interviewees should discuss the sort of information they would look to in making a decision, including police reports, witness statements, and other pieces of evidence. Interviewees should also be prepared to be flexible with their answer—interviewers will often the change the hypothetical slightly to see whether the interviewee is able to respond to new information without getting flustered.

## PREPARATION AND DEDICATION

Any account of an interviewee’s commitment to prosecution work must be supported with tangible elements from the interviewee’s background. Interviewees should familiarize themselves with

their experiences with public speaking, whether it be moot court, mock trial, teaching, or anything else demonstrating a comfort with communicating ideas in a public setting.

Regardless of whether an interviewee is applying for a summer internship or a permanent position, the interviewing office is deciding whether to invest public resources—time, training, and real cases—into that person. Thus, successful interviewees will convince interviewers that they are the right person to invest in, as they are ready for the challenge of the courtroom.

Interviewees with significant experience serving afflicted communities may face questions about their feelings on the relationship between the criminal justice system and those afflicted communities. As different offices have varying approaches to administering justice, answers that show research into the interviewing office's ideals and practices can only aid the interviewee.

## **SAMPLE QUESTIONS**

When interviewing at a prosecutor's office, whether for a summer externship or for a full-time position, applicants should be prepared to address a range of topics.

### **GENERAL INTEREST IN PROSECUTION WORK**

- Why do you want to become a prosecutor?
- What do you think the role of a prosecutor is?
- Why are you interested in criminal work, as opposed to civil work?
- What experience do you have public speaking?
- What mock trial / oral advocacy / moot court experience do you have?
- What are your career goals?
- Where do you see yourself in five years? Ten years?
- Do you intend to become a career prosecutor?
- What does justice mean to you?
- Some subject matter our office handles is disturbing (e.g. domestic violence, sexual violence, child violence, murder), how do you feel about that?
- Are you doing a Fall or Spring externship at a DA's office? Why or why not?

### **SPECIFIC INTEREST IN WORKING AT THE INTERVIEWING OFFICE**

- What are your ties to the area?
- Why are you interested in our office?
- Why are you interested in working in this office and not other (nearby / major) offices?
- Where do you want to practice after law school? Where do you want to practice long term?
- What do you know about the interviewing office (e.g., how many attorneys are there what special programs does it have)?
- What do you know about the geographic area that the office serves (e.g., what issues does the community face, what is the population size, what crime problems are encountered)?

### **INTEREST IN PUBLIC DEFENSE WORK**

- Why are you interested in prosecution, as opposed to public defense?
- Would you ever consider defense work?

## ACADEMIC TRAINING

- What is your favorite class in law school?
- What is your least favorite class in law school?
- What experience do you have in legal writing? What experience do you have writing motions?
- Tell me about your writing sample.
- Describe an interesting assignment you worked on in law school or your legal internships.
- Tell me about your strategy/method/approach to writing from beginning to end.
- Why did you decide to go to law school?

## OVERCOMING CHALLENGES

- Talk about a situation where you failed. Why did you fail and what did you learn?
- Talk about a time you had to work with someone who did things differently from you.
- Tell me about a time when you had to deal with a difficult client or coworker.
- Tell me about a time you had to persuade someone to accept your point of view.
- Talk about a difficult assignment you had in a previous job or internship and how you dealt with it.

## QUESTIONS TO ASK INTERVIEWERS

At some time during an interview, the interviewers will ask applicants if they have any questions about the office. The following questions will help applicants discern and decide between different prosecution offices. In addition to these general questions, applicants can also ask more specific questions based on research done through the office's website or with a career counselor at UCLA Law. Such questions will demonstrate a genuine interest in the position and can only help the applicant.

- What type of training programs are there for interns/new hires at the office?
- What unit(s) do interns/new hires work with?
- What is the hiring process like? Do you hire out of your intern program?
- How much discretion do new prosecutors have over cases?
- How long do new prosecutors usually stay in their first unit?
- How long is the expected commitment to work with this office? (This question may sound awkward, but is a common topic especially for offices in smaller counties. New prosecutors sometimes work at these counties for a shorter period to accrue experience before moving to more populated areas.)

## HYPOTHETICAL QUESTIONS

Prosecutors are not beholden to any client, but to justice. As a result, they are subject to many ethical rules and considerations other attorneys do not deal with. In interviewing for a prosecution position, whether for a summer clerkship or a full-time position, applicants will be given hypothetical situations and asked for their course of action.

While the correct, ethical answer is important, interviewers are especially interested in the applicant's thinking process. Thus, applicants are encouraged to reason out loud, and, if stuck,

state what sort of information they would look for (police report, witness testimony, officer testimony, etc.) to decide on a course of action.

The following hypotheticals have been adopted from prompts given to UCLA School of Law students in prosecution interviews:

- You are prosecuting a case and have offered the defendant a plea deal. They refuse and the case proceeds to trial. The night before trial, you receive a call that your only witness has died of a heart attack. You plan to tell the defendant's attorney at trial, but first the defendant's attorney approaches you and says the defendant wants to accept the plea deal. What do you do?
- You are in the middle of a DUI trial, with one of your witnesses on the stand for direct examination. Everything goes according to plan, but on cross examination, the witness starts saying things you have never heard before. You think he might be embellishing his story to make the defendant seem even more drunk. What do you do?
- You are prosecuting a case where a man has been charged with raping a woman. He was wearing a mask so the victim is unable to identify him. Police found DNA at the scene and have sent it to the crime lab. Initially, the lab finds a match between the defendant and the scene's DNA. On the first day of trial before it begins, you are told by the crime lab technician that there was a mix up at the lab and the defendant's sample was contaminated. What do you do?
- There is a shoplifting incident at a local mall and a nearby person is arrested. The arrested individual closely matches the description of the person on the video, but has an alibi supported by a witness. That witness, however, refuses to testify and has left the country. The arrestee is someone we know to be a habitual shoplifter, but we just have not caught them yet. Fighting shoplifting is of great importance to our community. Should we go ahead and prosecute even though we have reason to believe they are not the guilty party for this particular incident?
- A 911 call comes in for domestic violence. When police arrive at the time, they find the wife and husband both calm, but the wife has a black eye. The wife does not want to press charges. (1) Would you press charges? What information would play a part in your decision? (2) What if statistics showed a high recidivist rate for those accused of domestic violence? How would that affect your answer, if at all? (3) The day before trial, the wife changes her story, says she now ran into a wall. Do you tell the defense about this?
- A middle aged man who works for a hi-tech company, has a family to support, and has no prior criminal history, while feeling stressed because of his work, steals two ties (worth less than \$100) from a department store. Security catches him and he returns the ties, and the department store does not press charges. He is charged with petty theft. What sentencing recommendation would you make to the judge? Why?
- It is Thursday afternoon, and you have a motion you are set to argue on Friday. For the motion, you have a police officer as the prosecution's witness. The police officer calls you and says that because he has a hand injury and will be tired from his midnight shift the night before, he cannot make it. What do you do?

## WRITING AND ORAL ARGUMENT EXERCISES

In addition to answering ethical questions, applicants may also be asked to complete a writing or oral argument exercise, especially when interviewing for a post-bar clerkship or full-time attorney



position. The focus of these exercises is usually narrow and the interviewee may be advised to keep presentations within certain time constraints.

Sometimes interviewees are given such exercises during the interview and asked to put together an argument on the spot. Other times prosecution offices may give interviewees time to complete a more in-depth trial strategy exercise in advance of the interview. This generally occurs after the first round of interviews for attorney positions, and may consist of writing a motion or preparing an oral argument based on a lengthy or complicated fact pattern.

The following sample exercise was used during actual prosecution interviews.

### **Closing Argument Oral Exercise**

**Instructions:** Assume you are appearing as a deputy district attorney before a judge who has heard the evidence summarized below. The judge must decide the issue of guilt and an appropriate sentence. Review the material below and prepare a 10-minute argument in support of a finding of guilt on what you believe to be the most applicable statute (either 191.5 or 192(c)(3)). Your argument should anticipate and counter the expected defenses. Applicable law and definitions are provided at the end of the factual summary.

You will be asked to orally argue before the interview board. This is your opportunity to demonstrate your analytical and advocacy skills. Following your presentation, you will be asked some follow-up questions, including questions on what you believe the appropriate punishment should be and why.

Fact Pattern: People v. Mary Doe

Parties Involved:

Mary Doe:

Mary is a single mother of two young children. Mary works two jobs to support her family, who live in a nice neighborhood in a clean, well-maintained home.

To keep herself going, Mary takes a lot of cold medicine. She has been doing so for the past two years. While legal and acquirable without a prescription, the medicine contains large amounts of ephedrine. Mary does not know that the over-use of substances containing ephedrine creates in the user many of the same symptoms suffered by users of illegal amphetamines, i.e., speed: inattentiveness, inordinate risk taking, feelings of infallibility, poor judgment, and vision impairment. She has noticed that the medicine has “an effect”, but is too busy to really consider the exact effects. Mary has also noticed that as the drug wears off, she feels an extreme drowsiness, followed by an exhausted deep and long sleep.

The bottles containing the cold medicine have labels warning the users of the aforementioned symptoms and advising against extended use without the advice of a physician. In addition, the user is warned against operating heavy machinery and to use caution if driving. Mary has never read the warning labels.

Late Friday afternoon after a full work week, and as Mary was finishing her first job, she began to feel very drowsy. Her co-workers noticed this. They all urged her not to go to her second job, but to go home and rest instead. Ignoring their advice, Mary took a bunch of the pills. She had been increasing her dosage for some weeks, noticing that it took more and more pills to achieve the same boosting effect and to fight off the drowsiness.

Mary finished her shift, changed her clothes in the restroom for her second job, and ran to her car. As she left, a co-worker reminded her to be careful, as there was lots of traffic that Friday night and there were often accidents on the roadways near the workplace.

Mary had not had time to adjust her makeup, figuring she could do so while driving. Since her next job was in public relations for an entertainment company, her supervisor required that she look well made-up. As Mary was driving, she flipped down the car's visor so she could put on her make-up using the mirror.

Joe Boozer:

Joe looks older than his 32 years and has been an alcoholic for the past fifteen years. He drinks whatever fluid containing alcohol that he can find. He is homeless, and stays wherever he can find—under a bridge, in the park, or simply on the street. During the day, people often find him hanging out at freeway entrances asking for money. He has many citations and brief jail stays for public drunkenness.

The Collision:

Just as Mary left work, Joe woke up from a nap in the park. He decided to cross the street to get some beer at a nearby convenience store. Shaking the grogginess from his head, he started to walk toward the intersection. No traffic signals controlled this intersection, though there was a marked but very faded crosswalk. When Joe got to the faded crosswalk, he paused briefly and looked both ways. The only approaching cars seemed a long way off, though his vision was blurry. Joe stepped off the curb and began to slowly amble across the intersection. Despite a little stumbling, Joe stayed within the faded crosswalk.

Meanwhile, Mary was running late. Because traffic had been so busy, she still had not been able to put on her make-up. As she approached the park, traffic eased just a bit. Hoping to make up for lost time, Mary accelerated to 50mph, 10mph above the speed limit. The road was straight, so Mary figured she could put on her makeup even though the car was moving.

As she approached the intersection near the park, Mary was close behind another car. As the two cars approached the intersection, Mary, out of the corner of her eye, noticed the car in front of her switch lanes, but otherwise continue to proceed through the intersection. Because of the car's act, along with the fact there was no stoplight or stop sign at that intersection, Mary assumed there was no reason to stop. Thus, Mary continued through the intersection. She was still looking in the mirror, working on her make-up when she was started by a loud bang from the front of her car. She looked up in time to see a pedestrian fly through the air away from her car. Mary never saw the faded crosswalk.

Just before the crash, Joe was still shuffling at the intersection when he noticed the cars coming closer. He stopped briefly, then continued to walk, figuring the cars would stop for him. It was

summer, so the sun was still out and the intersection was well-lit. Joe redirected his attention in front of him, toward the convenience store. Joe never saw the car in front of Mary change lanes to avoid him, nor did he see when Mary's car struck him in the middle of the crosswalk.

Joe was hurled almost 30 feet by the impact. The impact caused him substantial internal injuries. The paramedics responded and took Joe to the local hospital, where he passed away. The doctors noted that it might have been possible to save Joe's life if not for his weakened condition due to years of alcoholism. An autopsy reported there was .09 blood alcohol content in Joe's bloodstream at the time of the accident. Had he been driving the car, Joe would have legally been under the influence.

Mary was arrested at the scene. She was in tears and was so distraught that the officer did not think any information would be gained from field sobriety tests, and thus did not administer any. Because of this, the arresting officer could not form an opinion as to whether Mary was under the influence of any drug or alcohol. Blood tests, while showing no alcohol in Mary's system, did indicate a much larger than recommended dose of ephedrine. However, due to a lack of controlled studies on ephedrine, no experts will testify that Mary was under the influence of that drug. An expert did, however, testify as to the symptoms expected of over-use of ephedrine as detailed above.

Officers responded to the day care center where Mary's children were to take them to a juvenile facility, where they will remain while Mary stays in custody pending resolution of her case. Social Workers have reported that the children are extremely traumatized as a result of this. If Mary remains in custody, the children will be placed in a foster home.

Applicable Law:

*§ 191.5 Gross Vehicular Manslaughter While Intoxicated*

To prove that the defendant is guilty, the following elements must be proved:

1. The defendant drove under the influence of a drug;
2. While driving that vehicle under the influence of a drug, the defendant also committed an infraction (traffic violation);
3. The defendant committed the infraction with gross negligence; and
4. The defendant's grossly negligent conduct caused the death of another person.

*§ 192 (c)(3) Vehicular Manslaughter While Intoxicated With Ordinary Negligence*

To prove that the defendant is guilty, the following elements must be proved:

1. The defendant drove under the influence of a drug;
2. While driving that vehicle under the influence of a drug, the defendant also committed an infraction (traffic violation);

3. The defendant committed the infraction with ordinary negligence; and
4. The defendant's negligent conduct caused the death of another person.

*§ 23152: Driving Under The Influence*

(a) It is unlawful for any person who is under the influence of any alcoholic beverage or drug to drive a vehicle.

*§ 21950: Right-of-way at crosswalks; Pedestrian's duty of care*

(a) The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.

(b) This section does not relieve a pedestrian from the duty of using due care for his or her safety. No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard. No pedestrian may unnecessarily stop or delay traffic while in a marked or unmarked crosswalk.

(c) The driver of a vehicle approaching a pedestrian within any marked or unmarked crosswalk shall exercise all due care and shall reduce the speed of the vehicle or take any other action relating to the operation of the vehicle as necessary to safeguard the safety of the pedestrian.

(d) Subdivision (b) does not relieve a driver of a vehicle from the duty of exercising due care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.

*§ 22348(a): Speeding*

A person shall not drive a vehicle upon a roadway at a speed greater than that speed limit.

*§ 22350: General Speeding Law*

No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

## **Definitions**

**Causation:** An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes.

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes death.

**Gross Negligence:** Gross negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when: (1) He or she acts in a reckless way that creates a high risk of death or great bodily injury; and (2) A reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with gross negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

**Ordinary negligence:** Ordinary negligence is the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation, or fails to do something that a reasonably careful person would do in the same situation.

**Under the Influence:** A person is under the influence if, as a result of drinking an alcoholic beverage or consuming a drug, his or her mental or physical abilities are so impaired that he or she is no longer able to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances.

## CONCLUSION

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Before 2017, Larry Krasner was a Philadelphia-based civil-rights lawyer and public defender on both the city and federal level. On November 7, 2017, however, Larry Krasner was elected District Attorney of Philadelphia. When asked by Philadelphia Magazine why, after decades on the defense side, Larry Krasner decided to join the prosecution, Krasner replied:

The kilter of the D.A.'s office in Philadelphia is extremely problematic. It has been for a very long time. It is reflective of a national pattern, and that national pattern is that we have far too many people in jail. In fact, it's the most incarcerated nation in the world. We have as many black and brown people in jail, in prison, on probation, or on parole as we had in slavery at the beginning of the Civil War. But none of that has made us safe. The culture of the District Attorney's office has brought us to this situation of having drastic injustice, especially focused on poor people and black and brown people. That culture needs to change.

Larry Krasner decided that the best way to effect that change was from the side of the prosecution. For in the United States criminal justice system, it is prosecutors with the authority to press charges, the authority to dismiss charges, and the authority to recommend sentencing and probation guidelines. In exercising this authority, prosecutors must balance the enforcement of the law, the needs of the community, the needs of the victim, and the needs of the defendant.

This resource provides a guide to pursuing a career in prosecution. Our hope is that through this guide, law students may become interested in this career path, more equipped to apply for positions, and, ultimately, work as prosecutors serving our communities.