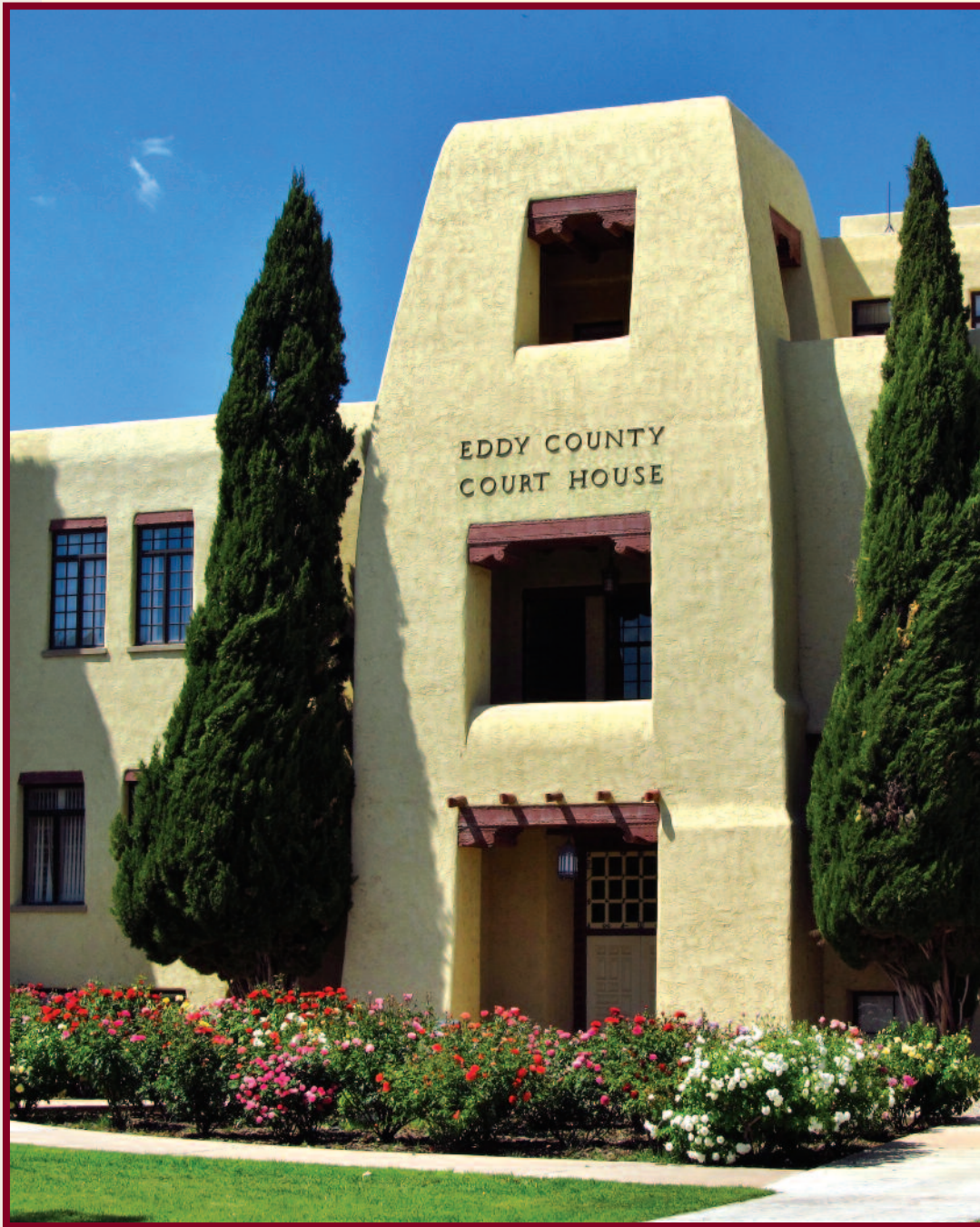


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# *The* PROSECUTOR



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ENHANCING POLICE AND PROSECUTORS RELATIONSHIPS, COORDINATION AND PROCESSES

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THE TRAFFIC SAFETY RESOURCE PROSECUTOR PROGRAM EXCELS IN COLORADO

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### ABOUT THE COVER

Eddy County Courthouse is located in the county's largest city, Carlsbad, New Mexico. The original courthouse, built a few years after the creation of the county in 1891, was a Victorian structure with a steeple and dark colored brick made locally. When New Deal funds became available in 1939, the architecture of the building was changed to an early Spanish style by the Works Progress Administration.

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*The Prosecutor* encourages its readers to submit articles of interest to prosecutors for possible publication in the magazine. Send articles to Nelson Bunn, [nbunn@ndaajustice.org](mailto:nbunn@ndaajustice.org).

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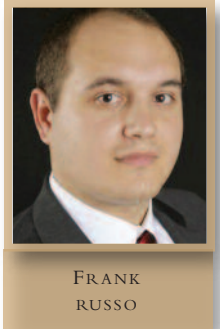
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# VIEW

## *From the Hill*

By Frank Russo  
Director of Government  
and Legislative Affairs



Members of the 116th Congress were sworn in during the first week of January as a busy agenda lies ahead for both chambers of the legislative body. Dealing with the government shutdown is not the only thing on tap for the new session of Congress as the House of Representatives will begin working on Fiscal Year 2020 appropriations bills while the Senate handles confirmation hearings for President Donald Trump's nominee for Attorney General.

Prior to the start of the new session, the 115th Congress ended on a high note as Members passed the first bipartisan reforms of our criminal justice system in decades. *The First Step Act*, signed by the President before Christmas, focused on reducing recidivism rates and making narrow changes to current sentencing laws while investing savings back into law enforcement grant programs.

NDAA members are encouraged to contact Frank Russo, Director of Government and Legislative Affairs, on any policy or legislative issues that arise. He can be reached at [frusso@ndaajustice.org](mailto:frusso@ndaajustice.org) or at 703-519-1655.

Below is a snapshot and update on recent issues:

### COMMUNITY SAFETY

- Prior to the holiday break, Congress passed the Cyber Tipline Modernization Act. NDAA joined a coalition supporting the bill which strengthens capabilities and provides additional resources for the National Center for Missing & Exploited Children's administration of the Cyber Tipline to help missing and exploited children.
- Members of Congress also sent the Victims of Child Abuse Reauthorization Act to the President's desk

Questions or feedback: Please contact Frank Russo at [frusso@ndaajustice.org](mailto:frusso@ndaajustice.org) or at 703-519-1655.

before Christmas. The bill reauthorizes grant funding for training and technical assistance of prosecutors in the field handling child abuse cases.

- NDAA's Opioid Working Group, comprised of 33 prosecutors from 30 states, published its Opioid Epidemic White Paper in October. After eight months of collaboration, the final product reflects the diverse views of prosecutors representing unique jurisdictions across the country. Specifically, the paper focuses on the priorities in enforcement, prevention, treatment, and rehabilitation that can be implemented by law enforcement and policymakers nationwide. Dave Aronberg, chair of the working group, stated, "in response to this unprecedented epidemic, prosecutors from across the country have come together to recommend best practices and policy changes to make our communities safer and save lives."

## **CRIMINAL JUSTICE & SENTENCING REFORM**

- NDAA supported the First Step Act of 2018, which was signed into law before the Christmas holiday. As a reminder, the final version of the bill included the expansion of time credits only for low risk prisoners (excluding those prisoners who committed certain violent, sex, or drug offenses), implementation of the Albarati Correctional Officer Self-Protection Act, a prohibition on restraining pregnant prisoners, and codification of the Bureau of Prison's (BOP) current ban on placing juvenile offenders in solitary confinement.
- The First Step Act also included four narrow sentencing provisions that reduce mandatory minimum offenders. Most importantly, NDAA worked alongside lawmakers to ensure savings generated from the legislation are reinvested into law enforcement grant programs through the Department of Justice.

- Politicians from both sides of the aisle, including outgoing Senate Judiciary Chairman Chuck Grassley (R-IA), Minority Whip Dick Durbin (D-IL), and the White House have allowed NDAA to play a vital role in ensuring the legislation was updated to better reflect a balance between criminal justice reform and public safety. NDAA received gratitude from Senators Grassley (R-IA), Durbin (D-IL), and Leahy (D-VT) during their speeches on the Senate floor prior to the law's passage in December.

## **VIOLENCE AGAINST WOMEN ACT (VAWA)**

- Funding for VAWA continues to be caught up in the fight over the government shutdown, but each chamber has a very different approach to the legislation. As a result, both chambers are working towards releasing a bi-partisan re-authorization bill as a part of opening the government after a tenuous shutdown. NDAA is monitoring the legislative effort to ensure it does not include numerous problematic provisions from the law enforcement perspective, including grant restrictions if jurisdictions use bench warrants for failure to appear situations.

## **2019 NDAA CAPITAL CONFERENCE**

- NDAA invites you to join us at our Annual Capital Conference in Washington, D.C. from January 29-30, 2019. This event provides an opportunity for you to hear from Administration, agency and Capitol Hill speakers, as well as meet and engage with your individual Members of Congress and state delegations. In addition to meeting other prosecutors and making important policy contacts, you will take away valuable information from this conference to share with your office colleagues, professional network and members of your community.

Register at: <https://ndaa.org/event/2019-ndaa-capital-conference/>

## IN MEMORIAM

1957–2018

### RICHARD KENICHI MINATOYA



RICHARD KENICHI MINATOYA, A DEDICATED PUBLIC SERVANT



and an exceptional community leader in Hawai'i, passed away peacefully on November 18, 2018 at the age of 51. He is survived by his loving wife Setsuko, and will be much remembered and greatly missed by his many friends and colleagues.

Born in Kauai, Richard was a proud graduate of the University of Southern California and obtained his law degree from the William S. Richardson School of Law at the University of Hawaii.

A practicing attorney for over twenty-five years, Richard worked as a Deputy

Prosecutor and Deputy Corporation Counsel. Richard also served on the Kauai County Council for two years, and was First Deputy for the County of Kauai Office of the Prosecuting Attorney. Since 2007, Richard served as the supervising attorney for the Appellate and Asset Forfeiture Division for the Department of the Prosecuting Attorney in Maui.

Richard was appointed a board member for the National District Attorneys Association in July of 2017. Always active in the Hawai'i community, Richard also served as a member of the Criminal

Jury Instruction Committee, the Criminal Rules Committee for the Supreme Court, and the Civil Defense Advisory Council. He belonged to several service organizations: he was the Regional President of the Kiwanis Club, Chief Counsel for the Maui Filipino Chamber of Commerce, a member of the University of Southern California Alumni Association, and a member of Maui 442nd Veteran's Club.

Richard is described by other prosecutors as a "shining example of the prosecutor's

*"The memories of Richard include his great laugh and sense of humor... and his enjoyment of having a cocktail and cigar with his comrades. And of course, his USC Trojan spirit. He would always bring us gifts from Hawaii and was very proud to be an associate board member."*

—Mary Ashley, San Bernardino County, CA



mission to seek justice,” and an attorney who “could do it all.” As a prosecutor, Richard served with distinction, working as a legislative liaison to develop and submit proposals on behalf of Hawaiʻi law enforcement, and argued numerous cases before the Intermediate Court of Appeals and the Hawaiʻi Supreme Court. Richard was a firm advocate of the rule of law, a lawyer known to zealously advocate his position, but is also described by his legal opponents as fair, ethical, and professional.

As a supervisor and fellow co-worker, Richard inspired and instilled the discipline of careful work, and emphasized the importance of working together. Interwoven with these guideposts, was his ever abiding concern for the well-being of his colleagues. Richard would always go out of his way to be of assistance, and had a heart of gold.

Richard cared about the community, especially the keiki. Many children’s lives in Maui County were improved through the efforts of Richard. “The kids are counting on us!” was one of his memorable quotes during his many service projects with the Kiwanis Club. As a member of the Maui Filipino Chamber of Commerce, Richard worked tirelessly to raise college scholarship funds. Richard also participated in the Hawaiʻi Judiciary’s Courts in the Community outreach program, completing oral argument for a Hawaiʻi Supreme Court case in front of five hundred Maui high school students.

Finally, Richard was a great friend to many. He loved to share a good cigar and drink over a late-night card game. His friends will miss his opinions, jokes, and laughter.

“We can shed tears that he is gone, or we can smile because he lived. We can close our eyes and pray that he’ll come back, or open our eyes and see what he has left. Love lives on — he may be gone — but he will not be forgotten.”

*“Any meeting of the NDAA Board is an opportunity to meet the best in the country and many collegial associations can be made; a few are true friendships. Richard Minatoya made friends easily. He was committed to justice with a quiet strength and a terrific sense of humor. I want to thank his family and his community for sharing him with us. We lost a true friend.”*

—Lee Polikov, Sarpy County, NE



From left, Lee Polikov, Mary Ashley and Richard Minatoya

# The PROSECUTOR

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## Enhancing Police and Prosecutors Relationships, Coordination and Processes



BY JEFFREY T. WENNAR

---

**THE RELATIONSHIP** between a prosecutor's office and a police department is subtle, nuanced, and depends on various factors including personal relationships. Despite competition and personalities, police and prosecutors must work together to effectively meet the responsibilities of their roles within the criminal justice system.

In general, the registered voters of each county elect the prosecutor. That prosecutor then appoints deputy and/or assistant prosecutors. Those deputies and/or assistants, depending on the state, may be merit employees with full civil service protections or at will employees who serve at the pleasure of the elected prosecutor.

Likewise, the voters of each county elect a sheriff. That sheriff, and the office of sheriff, may have full or limited law enforcement responsibilities depending on the county. Towns, cities and counties may have police departments — the chiefs of which are appointed by mayors, county executives or boards of supervisors. Superintendents of state police are usually appointed by the governor of that state. Not all counties or political subdivisions are structured the same in terms of law enforcement.

The elected prosecutor and elected sheriff are answerable to the voters every election cycle. The issues important to voters may vary depending on the jurisdiction, and elected officials are sensitive to voters' concerns. Police chiefs are also answerable to the voters indirectly but serve at the discretion of the entity that appointed them. Those elected executives are directly answerable to the voters and are held accountable for the actions of the police departments they oversee.

Although prosecutors and police are part of the executive branch of government, they are beholden to the legislative branch which approves the budget for that agency. Relationships can be personality driven, and competition for funding can be problematic.

Police officer's responsibilities include investigating crime, while the prosecutor has the responsibility of charging those responsible for committing the crime, and prosecuting those charged with a crime, while at the same time assuring that the rights guaranteed by the United States Constitution to criminal defendants are strictly adhered to.

Police officers and prosecutors share the public safety mission yet are separate but equal partners in the

---

*Jeffrey Wennar is retired from the Montgomery County Maryland State's Attorneys Office where he was a Senior Assistant State's Attorney.*

American criminal justice system. Within that system they are independent entities yet must rely upon each other to accomplish their respective duties. “Law enforcement functions best when police and prosecutors work in harmony for the public good. Though our spheres of authority in the field of law enforcement are separate and distinct, we still have a common bond: the proper and effective administration of the criminal law.” (Kennedy, 1959) Both the police and prosecutors have a fidelity to the law, and a duty to preserve the laws of the land and protect the system

Prior to becoming a sworn police officer, police recruits attend a training academy. Training in all academies includes defense tactics, driving, weapons proficiency, rules of criminal law and procedure, etc. Although the basic academy courses are consistent throughout the United States, the time spent training those new officers varies from jurisdiction to jurisdiction.

Both police and prosecutors must be trained and educated regarding the functions of the other’s role within the criminal justice system. Learning about

*Each of these two facets of the American criminal justice system must know, understand and appreciate the challenges and obligations the other faces in performing their role.*

within which those laws are applied. In performing their jobs, police and prosecutors see the worst that human beings have to offer. The public does not see what police and prosecutors see on a daily basis, nor does the public see how police and prosecutors respond to their jobs daily.

Each of these two facets of the American criminal justice system must know, understand and appreciate the challenges and obligations the other faces in performing their role. Working together, appreciative of how the other functions, can only enhance, bring transparency, and establish credibility within the criminal justice system.

“In general,...American police officers handle the investigative phase of a case with almost complete autonomy. When they finish the investigation, the police then hand off the case to prosecutors, who bring and pursue charges against defendants in court.” (Harris, 2011) This interaction occurs on a regular basis throughout the United States in state and local courthouses.

each other’s roles in the criminal justice system will only enhance the communication between the entities and improve the function of both. Beginning at the law enforcement academy, officers must be given classroom blocks on criminal law and criminal procedure. These blocks must include discovery rules and the obligations a prosecutor has within the criminal justice system to provide and make available to a criminal defendant both inculpatory and exculpatory evidence. Officers must understand the principles and requirements of *Brady*. They must be made aware that they are part of the prosecution/law enforcement team, and that any failure on their part to disclose evidence to a prosecutor may result in the suppression of that evidence, or the dismissal of certain charges or the entire case against the defendant.

The legal block of training at the academy level and in-service should be taught by a senior prosecutor. At the academy, this may be a cadet’s first interaction with legal precedent and the imparting of that information should be presented by a trained lawyer, not by a

police officer who has read a court opinion. The prosecutor should be able to make the law applicable to the jurisdiction and instruct the cadets on how, when and where it is to be applied. Explaining the practical application of the 4th, 5th and 6th Amendments to the United States Constitution in relation to what an officer will likely encounter on the street is much more

perform tasks in a certain way. It is not a mere bureaucratic demand to write a report in a clear concise manner, but a necessity for the officer who will be called upon to defend every word included or omitted from the report. If the officer understands that precision and completeness will inure to his/her benefit when they are on the stand, in front of a jury, being

*It is not a mere bureaucratic demand to write a report  
in a clear concise manner, but a necessity for the officer who will  
be called upon to defend every word included or omitted from the report.*

poignant than reciting an esoteric concept that has no relationship to the officer's life experience. Making it real for them, explaining how it is applicable to what they do, and showing how doing it correctly will positively affect the prosecution is paramount to successfully training a rookie. Through the legal block of training the cadet must be able to see what is legal and hear what is legal so that the cadet can apply the law legally and fairly when they graduate from the academy and throughout their career. After all, it is quality of training not quantity that will produce a successful law enforcement officer.

The officers must be provided, and satisfactorily complete, classroom blocks on report writing. The officer needs to understand that short, clear sentences give momentum to the narrative of the investigation. The distinction needs to be emphasized between a probable cause statement — paperwork that explains the reason for the charges, and an investigative report — the A to Z of the officer's involvement in the incident. The latter report should take the reader on a detailed journey of the incident. The adage that the devil is in the details is applicable, and officers must be taught to detail the legal authority and the legal purpose within the report that supports the actions taken by the officer during the incident.

Senior law enforcement officers must be engaged to emphasize the reasons why officers are required to

cross examined by a defense attorney, the reasoning may resonate and be readily accepted. Like all humans, officers are more likely to follow direction when the reasons for the directions are made clear to them in advance.

"Because American prosecutors depend on police to bring them evidence and witnesses that are crucial to the successful prosecution of their cases and given the existing tensions that often characterized the relationship between them, American prosecutors often find themselves reluctant to alienate police officers." (Harris) This reluctance can only further public concern that prosecutors are not independent of police.

Prosecutors should never be rubber stamps for the police. Prosecutors must independently, based on facts, evidence and law, make a determination if a case has prosecutorial merit. If it does not, then the charges against the defendant must be dropped regardless of public outcry or opinion. Police need to understand that there are cases that prosecutors may turn down and decline to prosecute. Likewise, if the case is meritorious, the case must be pursued zealously. *The duty of a prosecutor is to seek justice, not merely to convict.* This is a statement that must be clear in the minds of both police officers and prosecutors. An open dialogue between police and prosecutors will hopefully enable the officer to understand why a prosecutor chose not to pursue a case. Prosecutors need to take the time and





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opportunity to explain their decision making in declining a case to the case officer. This conversation will hopefully result in each having a better understanding of how the other approaches a case.

The American court systems function on two levels: federal and state. "Crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively." (Safe Streets Act) In America, the local prosecutor is elected and is the highest law enforcement officer in that jurisdiction. (Harris) Prosecutors are unique in that they have both powers and duties that other lawyers do not. That prosecutor and the office enforce the prosecutorial functions according to state constitution and statutes.

"The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interests, therefore, in a criminal prosecution is not it shall win a case, but that justice shall be done. As such,

he is peculiar and every definite sense the servant of the law, the twofold aim of which is guilty shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." (Berger)

"The qualities of a good prosecutor are as elusive and as impossible to define as those that make a gentleman. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth not victims, who serves the law and not the factional purposes, and who approaches his task with humility." (Jackson)

The role of the prosecutor at trial is to represent the government and prove the defendant is guilty of the crime charged. At trial, the prosecutor strives to persuade the jurors not only that the defendant has committed a crime, but also, to assure that no innocent person is wrongly convicted.

During plea negotiations (pre-trial) or at trial, the prosecutor must be intimately familiar with the case. The prosecutor must have reviewed all of the evidence, spoken with all of the witnesses, including police officers, and prepared those witnesses for trial by reviewing their statements with them. The more familiar a prosecutor is with police procedures, the easier it is for that prosecutor to form the questions that will be asked of the officers during trial.

A general misconception among the public, based on what they see on television and in the movies, is that police just bust into a structure looking for a suspect or for evidence. In reality, police apply to a neutral and detached judge for a search warrant, articulating in the application the probable cause for the warrant. Once the warrant is obtained, a pre-raid briefing occurs, particularly if a special entry team is used. At that pre-raid briefing, everyone's role is assigned and



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confirmed. After entry is made, and the structure rendered safe, officers/detectives will enter to conduct a search for the specific evidence delineated in the search warrant.

It is the prosecutor's role to educate the jury to the process used by the police. The prosecutor does this through the questions asked of the officer and the offi-

to the defense (Trombetta); and, (3) a duty to provide impeachment information, a duty not to knowingly proffer perjured testimony and a duty to correct any perjury of which the prosecutor may become aware (Giglio). Further, the prosecutor has the obligation to turn over all exculpatory evidence, and that obligation extends to evidence that is in possession of the police,

*The qualities of a good prosecutor are as elusive  
and as impossible to define as those that make a gentleman.*

cer's responses before that trier of fact. If the prosecutor is unfamiliar with the process, there is a risk that the proper questions will not be asked and that the jury will be left with their collective misconception rather than the actual facts of the case.

## **TRAINING OF THE PROSECUTOR**

It has been said that law school bears little relationship to the practice of law. Likewise, prosecutors have no special training beyond law school. Depending on the office into which they are hired, new prosecutors may be given a short introduction to their job by a mentor.

The American criminal justice system is an adversary system with rules. A fundamental rule is there will be no trials by ambush. Discovery rules exist to assist the defendant in preparing a defense, and to protect him/her from surprise. In a criminal case, the prosecutor has access to material and information necessary to effectively prosecute the charges against the accused. A prosecutor has three legal obligations pursuant to the Due Process clause of the United States Constitution: (1) disclose all exculpatory evidence in its possession (Brady); (2) preserve and make available to the defense any exculpatory physical evidence which the accused cannot otherwise obtain, and which may be material

including information that the police have not disclosed to the prosecutor. (Bagley)

A special responsibility of the prosecutor is to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense, and, in connection with sentencing disclose to the defense and tribunal all unprivileged mitigating information known to the prosecutor..." This may include: the defendant's statement; co-defendant's statement; witness statements, whether memorialized or not; documents and recordings; expert reports and/or opinions; prior conduct of the defendant; exculpatory information; impeachment information about state's witnesses; evidence of prior conduct of a witness to show the character of a witness; agreements between the state and a witness; prior convictions of a witness; and, medical and psychiatric reports. (Maryland Rule 4-263)

A societal principle is the "...avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when the accused is treated unfairly." (Brady)

Police take statements from witnesses and collect certain evidence which they submit for laboratory analysis. Firearms are submitted for bullet and casing

analysis. Items may be submitted to determine if there is DNA present, and if so, does it match the suspects. Objects may be submitted to determine if they contain fingerprints, and if so, do they match the suspect. The person who conducts the analysis usually generates a report. The examiner is a witness and the report is evidence. Even if the report excludes the suspect or is inconclusive, it must be provided by the police to the prosecutor and turned over by the prosecutor to the

was acting as a complaining witness not as an advocate. (Kalina) Additionally, comments to the media by a prosecutor have no functional tie to the judicial process. (Buckley)

It is imperative that during the training of a prosecutor they are exposed to the different functions of police officers. As observers only, new prosecutors should be compelled to participate in several ride-alongs with a patrol officer to experience the daily

*It is imperative that during the training of a prosecutor they are exposed to the different functions of police officers.*

defense attorney. The failure to provide that report, the name of a witness and/or the statement of that witness may result in a dismissal of the case. It is essential for police officers to understand the discovery obligations of the prosecutor in order to avoid the consequences of not being able to take a case forward to conclusion. Good communication and a trusting relationship between the police and prosecutor can only enhance the adherence to legal requirements.

In *Brady*, the Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

Although police and prosecutors must work together, prosecutors and police must fully understand that in certain situations the prosecutor may offer only general advice. Although there is a special relationship between the prosecutor and the criminal justice system, prosecutors do not have absolute immunity for their conduct when giving legal advice to a police officer regarding investigative tactics. Providing advice to police officers is not a function closely associated with the judicial process. (Burns) There is no absolute immunity for a prosecutor making an allegedly false statement in a certification submitted for a probable cause determination. In that situation, the prosecutor

functions of a patrol officer. Prosecutors should (as observers only) attend a pre-raid briefing and execution of a search warrant. Not only would this educate the prosecutor as to the procedures and mechanics of the execution of a search warrant, but it would help prepare the prosecutor to elicit through the questioning of an officer, before a trier of fact, those answers that would paint a picture for that trier of fact of what occurred prior to, during and post execution of the search warrant.

The presence of a prosecutor observing an officer's daily routine should also solidify the relationship between police and prosecutor. The officer has to become cognizant that the prosecutor is becoming familiar with the role the officer has within the criminal justice system. Knowing that the prosecutor is aware of what the officer is exposed to on a daily basis should establish a trust between the two. This trust should enable the two to communicate throughout their careers, understanding why each has undertaken a certain action, or adopted a particular opinion. Although they may disagree, the trust should result in a professional respect that allows an effective and efficient working relationship.

Together at the police academy, new prosecutors and police candidates should be immersed in a mock trial program where each becomes comfortable in ask-



ing and responding to relevant questions designed to illicit the facts of an incident which can show a trier of fact that a specific crime occurred, and the person charged committed that crime.

Legal updates at in-service are crucial to keep officers aware of changes in law either by statute or court opinion. Changes in the law impact what an officer may do in a particular situation. Being available as a prosecutor for the officer to give general advice can only benefit the relationship. Likewise, prosecutors' offices should designate a senior attorney to monitor and disseminate to the office statutory changes and updated legal opinions that may affect the prosecutorial function of the staff attorneys.

Proactive analysis is a concept in which the old becomes the new. The current working relationship between police and prosecutors must be adjusted to enhance, from each entity, a better understanding and appreciation for what the other's role is within the American criminal justice system. The objective is to forge a fair, efficient and effective working relationship

that enhances the criminal justice system.

Prosecutors and police are independent entities within the American criminal justice system. Yet, they are interdependent upon each other to see that the laws are applied firmly and fairly. In addition, both has the ethical, moral and legal duty to see that the innocent go free, and that the guilty are afforded all of the Constitutional safeguards described in the United States Constitution and in the case law interpreting those rights.

To accomplish these responsibilities, prosecutors and police must learn from each other, learn together, make each other better, and work together as a team. They must be cognizant of the roles and responsibilities each has, from the police officer's initial response to a call for service to a prosecutor's closing argument, this mutual awareness will only strengthen the trust and impartiality between the police and prosecutors. Team work accomplishes more than does working separately. The end result is better for all — victim, witness, or defendant.

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# The PROSECUTOR

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## Summit County Prosecutor's Office Innovative Programs



BY SHERRI BEVAN WALSH

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**AS SUMMIT COUNTY PROSECUTOR**, my mission is to hold criminals accountable, keep our community safe, and fight for victims. By aggressively prosecuting serious crimes, we fight for justice and protect the rights of victims. We are an advocate for crime victims, keeping them informed of their rights, updating victims on their cases, and ensuring victims have a voice. Through our continuous safety and self-defense programs, scam alerts, and our annual senior safety calendar, we strive to make our community a better place to live.

As part of that mission, I have developed over a dozen innovative programs to help victims and minimize a person's chances of becoming a victim.

The easiest way to show that is to focus on my office's favorite employee. He has four legs, is covered in fur, and helps victims. Avery is our facility dog, dedicated to comforting and assisting victims of crime, especially children. Avery has been in my office for over five years, helping more than 200 victims. Until recently, my office was the only prosecutor's office in Ohio which had a facility dog. Avery's ability in helping crime victims and their families navigate the some-

times overwhelming justice system has been immeasurable. He sits with crime victims during meetings and when they testify in court. Avery empowers them to tell their story. I've even heard children ask when can they come back to the office to see Avery. Before we got Avery, I never heard a child ask when they can come back to a prosecutor's office.

My office also works extremely hard in educating the community on how to stay safe. We hold monthly FREE self-defense classes for women where we provide simple, easy to use techniques such as how to get away if someone grabs you or how to escape a choke hold. These classes, as well as safety speeches and events, all help minimize a person's chance of becoming a victim. Each year I declare September as Senior Safety Awareness Month to focus even more attention on protecting seniors. Throughout the entire month of September, Summit County Prosecutor's Office employees are involved in community events, educating as many senior citizens as possible about scams, criminal activity, and how to protect their home.

Each September my office also presents a Victim Rights Conference called "Responding to the Needs

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*Sherri Bevan Walsh is the Prosecuting Attorney for Summit County, OH.*

of Victims”. The conference brings nationally renowned speakers who present various topics, including how trauma impacts victims, understanding trauma in domestic violence and sexual assault cases, and trauma and first responders. So far during the three years of conferences, my office has trained about 1,000 members of the law enforcement community, as well as local victim advocates, nurses, and prosecutors.

I’ve also fought to keep our community safe by lobbying lawmakers to pass tougher laws for people convicted of driving drunk. As part of my mission to keep drunk drivers off the road, my office recently launched a new program called Arrive Alive. Unveiled during the Fourth of July holiday, we worked with local cab companies to provide free rides home within the county (up to \$65) from the evening of July 3rd through the morning of July 5th. 25 people took

advantage of the free service. Arrive Alive successfully re-launched during the Thanksgiving holiday, providing free rides home to about 80 people over the four-day holiday weekend. According to the Summit County Sheriff’s Office, the OVI Task Force did not make any arrests for driving under the influence at two checkpoint locations the Wednesday before Thanksgiving. The Arrive Alive program played a role in keeping Summit County roads safer.

The plan is to continue Arrive Alive in Summit County during several holidays throughout the year, including New Year’s Eve and St. Patrick’s Day.

I am proud of the work my prosecutors, victim advocates, investigators, courtroom secretaries, and other support staff do and am very fortunate they are dedicated to the goals and mission of the office.

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*San Francisco*



# The PROSECUTOR

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## The Traffic Safety Resource Prosecutor Program Excels in Colorado



BY JENNIFER KNUDSEN

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**THE TRAFFIC SAFETY RESOURCE PROSECUTOR** (TSRP) Program has been in existence for more than 20 years. The program was originally created with funding from the National Highway Traffic Safety Administration and distributed through a state's Department of Transportation's Office of Traffic Safety. The TSRP is generally a former prosecutor with an extensive background in traffic crimes prosecution with a focus on impaired driving. While no state is required to have a TSRP, almost every state in the union has at least one.

In Colorado, the TSRPs are employees of the Colorado District Attorneys' Council (CDAC), a semi-governmental organization composed of the 22 elected district attorneys in the state. However, a TSRP is not required to be an employee of such an organization. In New Mexico, the TSRPs are prosecutors within the state's Attorney General's office, whereas in Nevada, the current TSRP is a prosecutor in the local district attorney's office that serves the county that includes Reno. The home agency of a TSRP may affect the balance of activities that the TSRP does, but

a TSRP's duties fall into four broad categories: training, assistance, prosecution and outreach.

### TRAINING

A TSRP conducts trainings for prosecutors, law enforcement officers, other traffic safety professionals, and members of the community. Since impaired driving is a serious problem, and while alcohol has historically been (and continues to be) the most commonly abused substance in this regard, the trend of marijuana commercialization and prescription drug abuse have given rise to new challenges. In Colorado, the TSRPs work with the Colorado State Patrol and have taught classes as part of CSP's mandatory annual in-service training for all troopers. These trainings are offered weekly, and over the course of the year, each state trooper will attend one. Recent topics have included legal updates, as well as more practical topics such as how to improve courtroom testimony. Similarly, Colorado's TSRPs have taught update trainings offered several times a year that officers accredited to adminis-

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*Jennifer Knudsen is a Traffic Safety Resource Prosecutor for the Colorado District Attorneys' Council in Denver, Colorado.*



ter the Standard Field Sobriety Tests and officers who are Drug Recognition Experts are required to undergo biannually to maintain their certifications.

Additionally, Colorado's TSRPs provide training to prosecutors throughout the state. For example, CDAC offers the week-long "Trial Techniques" course three times per year to teach new prosecutors the tools of their trade. Since DUI prosecution makes up a significant portion of the cases for a deputy district attorney assigned to a county court docket, and since most of these dockets are assigned to new prosecutors, the TSRPs teach an almost half-day session during the course focused on DUI prosecution. Moreover, new technology, new substances of abuse, new legislation, and new legal theories put forth by the defense bar

so the TSRPs can research the topic and brief the DDA on the issue when time constraint may prevent the DDA from doing such research himself or herself. Similar questions from law enforcement arise in the course of their duties, and the TSRPs likewise are available to them for assistance.

## PROSECUTION

A TSRP may also be an active prosecutor with his or her own cases. While CDAC attorneys can be sworn in as special DDAs to handle cases in every judicial district (at the request and with the permission of said judicial district's elected DA, of course), Colorado's TSRP do not carry their own caseload. This is largely

*While CDAC attorneys can be sworn in as special DDAs to handle cases in every judicial district (at the request and with the permission of said judicial district's elected DA, of course), Colorado's TSRP do not carry their own caseload.*

make DUI prosecution an ever-changing assignment. Colorado's TSRPs, therefore, teach a class on hot topics or new developments in DUI prosecution at CDAC's annual training conference.

## ASSISTANCE

A TSRP is a resource on numerous traffic safety topics. As mentioned previously, a county court docket is typically the first docket assigned to a new deputy district attorney (DDA), and as a result, the prosecutor may need assistance with understanding the intricacies of DUI laws, other traffic safety laws, or courtroom practice. This might be especially true in a smaller office where there are few other DDAs to whom the new prosecutor can turn. Colorado's TSRPs make themselves available via phone and email to answer those questions. Perhaps those questions require research. County court dockets are very busy dockets,

due to the housing of the position within CDAC rather than a local DA's office. Nevertheless, Colorado's TSRP has in the past taken over particularly serious cases, such as a vehicular homicide, in rural jurisdictions that are strapped for resources and would otherwise be unable to give the case the attention it deserved due to lack of manpower or experience. Alternatively, the TSRPs assist with a particular case in a limited capacity or for a special purpose. When the Colorado Department of Public Health and Environment (CDPHE) switched from certifying the Intoxylizer 5000EN to the Intoxylizer 9000 (the Intoxylizer is a device that uses breath to measure a person's breath alcohol content), the TSRP travelled around the state to handle the challenges filed by the defense bar, although the local offices tried the cases themselves thereafter. This ensured that these hearings were handled by a person familiar with the new instrument and the expert witnesses needed to testify

to its scientific validity and ensured that the results of these hearings would be consistent throughout the state.

The TSRP's prosecution role may be combined with his or her training role. The TSRP may second-chair a new DDA's first DUI trial in a rural jurisdiction

but for the state's DAs. In addition to housing much of the information technology support for the prosecution community, CDAC often acts as the voice of the DAs (when they wish to speak as a group) to Colorado's General Assembly. When legislation or regulations are proposed that implicate the prosecution of

*A significant part of a TSRP's job is to liaison with or partner with individuals and organizations interested in traffic safety or with the authority to regulate the same.*

that lacks the manpower to take another DDA away from another docket to do so. With the addition of a second TSRP in Colorado, it is likely that the state's TSRPs can be involved in more courtroom work moving forward.

## **OUTREACH**

Traffic safety is regulated because it affects society. A significant part of a TSRP's job is to liaison with or partner with individuals and organizations interested in traffic safety or with the authority to regulate the same. To that end, Colorado's TSRPs have joined various groups committed to making the state's roads safer, such as the Colorado Teen Drivers Alliance. The TSRP is therefore in a position of relying the concerns of stakeholders like Mothers Against Drunk Driving to the prosecution community as well as explain the realities of criminal prosecution to organizations that lack expertise in the area. Moreover, the TSRP communicates with state agencies or laboratories such as the Colorado Bureau of Investigation's forensic labs to create and adhere to best practice, for instance. At the same time, the TSRP also communicates with the prosecution community to ensure that their requests to these agencies do not conflict with scientific or practical realities such agencies face.

CDAC is an organization not just of the state's DAs,

traffic safety-related offenses, the TSRP advises CDAC's executive director, who in turn advises the elected DAs, on the implications of such legislation or regulation. Similarly, when new technology that could help or hinder the prosecution of traffic safety-related offenses is introduced to Colorado, the TSRPs liaison with the users or manufactures of such technology to inform the prosecution community of its implications. Colorado's TSRPs also regularly communicate with their counterparts in other states and with the National District Attorneys Association's National Traffic Law Center (NTLC) to learn new developments outside of Colorado that may be coming to the Centennial State and to inform others about new developments in Colorado that might be coming to the rest of the nation. For example, since Colorado was one of the first states to legalize marijuana, many of the TSRPs in other states have reached out to the Colorado TSRPs with questions about our experience so that they can better prepare for the day when marijuana is legalized in their states.

For more information about the Traffic Safety Resource Prosecutor Program or to find the contact information for the TSRP in your state, please contact the National Traffic Law Center Director Joanne Thomka at [jthomka@ndaajustice.org](mailto:jthomka@ndaajustice.org).





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