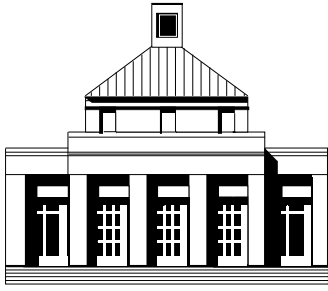


THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

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HOW TO GET A JOB IN A PROSECUTOR'S OFFICE

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580 Massie Road, Charlottesville, VA 22903
434-924-3883/434-924-3945 (FAX)/psc@law.virginia.edu

Preface

This manual is designed to help students decide if they would like a career as a prosecutor. It was also created to assist committed students in successfully getting a job. In preparation for writing this manual, the author conducted interviews with current and past prosecutors and commonwealth attorneys in offices large and small. The individuals interviewed work or worked in New York, Boston, Philadelphia, Washington, D.C., Richmond, Pittsburgh, Los Angeles, Charlottesville, and some smaller offices in Virginia. I wish to express my sincere gratitude to the many dedicated prosecutors who took the time to provide information for this manual.

About the Author

Before his tenure in the Mortimer Caplin Public Service Center at the University of Virginia School of Law from 2000-2002, Richard Armstrong, 87 worked as a public defender with the Legal Aid Society, Criminal Defense Division, for thirteen years, the last three of which were spent as a supervisor. During that span, he participated in the hiring process including reviewing resumes, conducting interviews, and making hiring decisions.

Table of Contents

Introduction	1
Is Being a Prosecutor for You?	1
Choosing the Right Office	3
Training	3
Caseload	3
Resources	3
Institutional Time Commitments	4
Opportunities for Advancement within Office	4
Room for Professional Growth	4
Salary	5
Office Reputation	5
Developing a Prosecution Resume	5
Handling the Interview	6
Conclusion	10

Introduction

Working as a prosecutor is one of the most rewarding jobs an attorney can take after law school. Prosecutors work diligently to represent the interests of the public in the criminal justice system. From working with victims of crime to picking juries to trying to convince defendants to “turn state’s evidence,” prosecutors are exposed to every facet of our society. There is a great deal of courtroom action and most prosecutors can expect to assume responsibility for their own caseload very soon after starting the job, and many try their first cases soon after being hired. People drawn to prosecution include those who enjoy serving the public by fighting crime, those who want to become trial attorneys, and those who hope to use the experience to further other career aspirations.

Most prosecutors are in court practically every day. When not handling their own hearings or trials, prosecutors are often assigned to handle the docket in a particular court room where they are exposed to a wide range of cases as well as several different adversaries. When not in court, prosecutors are often working with witnesses and police officers on their cases, conducting legal research, and responding to defense motions.

Prosecutors exercise a great deal of power within the justice system. In many jurisdictions, plea bargaining is entirely left up to the prosecution. Prosecutors often exercise discretion regarding the decision of what crime to charge and what crimes to target for indictment as well. Because of the authority residing in the prosecutor’s office, our society places higher legal and ethical restrictions on how a prosecutor conducts herself.

Recognizing this, plus the fact that we place a great deal of responsibility in the hands of twenty-five-year-olds just out of law school, many prosecutors and commonwealth attorneys seek mature, responsible individuals for the position. This handbook is designed to help you assess if you want to accept the responsibility of prosecuting those accused of committing crime as well as to show you how to demonstrate your interest to a potential employer.

Is Being a Prosecutor for You?

Students thinking about becoming prosecutors should consider several questions before they begin the application process. Prosecutor’s offices are not all the same but there are enough similarities among the offices to build a profile of the type of individual who succeeds as a prosecutor. Assessing your strengths and weaknesses, as well as evaluating your motives for wanting to become a prosecutor, will go a long way toward helping you decide if this is the career for you. A lot of interviewers are likewise aware of these issues so taking the time to answer them before applying will pay off in your interview.

1. Do you have the maturity and common sense necessary to assume the responsibility of representing the public?

As a prosecutor, you will be called upon to make decisions large and small about the cases you are

prosecuting. Each decision you make has a profound effect on the lives of many people: the victim; the witnesses; the defendant; and the public. While many prosecutors and commonwealth attorneys establish policies to guide these decisions, by and large, they rely on the individual assistants to carry out those policies and make mature, sober judgments about their cases.

Since these offices place a tremendous amount of discretion in the hands of their individual assistants, they also place a high premium on maturity and good judgment when hiring. Consequently, students should be prepared to discuss instances in which they have exercised discretion and good judgment in the past, such as serving as an officer in an organization or representing a live client in some type of administrative proceeding.

2. Can you accept the inevitable compromises in the criminal justice system?

While people have various motives for becoming prosecutors, many do so out of genuine concern for victims and a desire to fight crime. Impassioned by this task, they expect to go into court and use their legal skills to “put bad guys behind bars.”

While there are a many opportunities to help victims and fight crime, several prosecutors interviewed for this manual recounted how they had to modify their attitudes once confronted with the actuality of the criminal justice system. Because there are more cases than can possibly be tried, compromise has become the reality in most courtrooms around the country. Prosecutors are called upon to exercise their judgment on behalf of the public and decide which cases should be plea bargained and which should not.

Whether through principle or necessity, many prosecutors learn quickly that they cannot try every criminals that comes their way. One ex-prosecutor in New York City reported that he quit the D.A.’s office because of his frustration with the need to plea bargain. His caseload was too heavy to try each of his cases, but he couldn’t bear making deals that allowed some defendants to escape the maximum punishment. The feeling that he was compromising his ideals forced him to find another job.

Other cases are compromised because of witness problems. Many times, a prosecutor plea bargains because she feels that a witness will not return to court. Sometimes, a victim or a witness may himself have a criminal record that may make the prosecutor hesitant to rely on him in court.

3. Will you enjoy working with people?

While it is a cliché that prosecutors represent “the people,” the reality is that most prosecutors do work with a wide variety of people on a daily basis. On any given day, prosecutors rely on police officers to make their cases, nurture victims of crime, develop and cultivate witnesses, negotiate with judges and defense counsel, and try to sell their case to a jury. This constant interaction requires significant skill in dealing with people from all walks of life. Further, since victims and witnesses of crime often come from underprivileged sectors of our society, prosecutors also need an ability to deal sensitively with people from all classes.

Students who feel that they will not enjoy working this extensively with people may want to consider working in the appellate office of a prosecutor’s office. Additionally, some larger offices maintain specialized bureaus narrowly focused on one segment of crime such as bank or securities fraud. These positions do not require the same level of personal interaction that a front-line prosecutor’s job does.

Choosing the Right Office

Commonwealth Attorneys and prosecutor's offices exist throughout the country in cities large and small. Students interested in becoming prosecutors have a wide variety of geographic choice. In addition to location, students should consider other criteria when making a selection of where to apply. Listed below are some criteria that may be used to evaluate a particular office.

TRAINING

Coming directly out of law school, prospective prosecutors should be concerned about being trained to do the work. Some offices located in large metropolitan areas have very organized training programs that new hires must go through before being allowed to handle cases on their own. Some states also budget to send their employees to nationally-based prosecutorial training programs.

One the other hand, some localities cannot afford a formal training program and lawyers are trained on the job or not at all. Others use systems of mentoring and constant evaluation to make certain that new hires learn necessary skills.

Another training factor to consider is supervision. One prosecutor in a large metropolitan area noted that his training was adequate but that his supervisors never came to watch him in court once the initial training was complete. While his supervisors constantly monitored whether his plea offers were consistent with office policy, he felt his trial skills never developed because no one ever critiqued his courtroom performance.

CASELOAD

Caseloads vary widely throughout the country. Prosecutorial caseloads can be affected by everything from the crime rate in a particular jurisdiction to the office's policy on plea bargaining and even by political policy. For example, when Rudolph Guiliani was elected mayor of New York City, he implemented a policy of zero tolerance on petty crime. Police officers who used to ignore petty offenses such as drinking in public or driving with a suspended license were forced to make arrests in those cases. Consequently, the misdemeanor caseload in the New York County District Attorney's Office skyrocketed.

Whenever possible, applicants should meet with attorneys in a prospective office and ask about caseload. Related issues include the hours the attorneys work and their job satisfaction.

RESOURCES

While prosecutors' offices are generally better funded than public defenders, they are still public servants and prospective applicants should be not be surprised to find themselves working in cramped space with old, faulty, or nonexistent computer equipment. Of course, this is not universal and many offices are equipped with the latest technology. Another positive is that being linked to law enforcement means that a wide range of investigative resources are available.

INSTITUTIONAL TIME COMMITMENTS

While the hours required per day in prosecutorial work varies, the hours generally compare quite favorably to those required of lawyers in private practice. There are no required billable hours and no competition to “make partner.” Except when on trial, prosecutors working in an office not swamped with a huge caseload (see “Caseload” section) should expect to work reasonable hours and be free most nights and weekends. The only limits on this freedom are assignments to work arraignments, bail hearings, or other off-hour work details.

In New York City, for example, the Criminal Court arraigns defendants from 8:30 a.m. to 1:00 a.m. Sunday through Wednesday, and twenty-four hours a day the rest of the week. This means that prosecutors are often assigned to work off-hour shifts arraigning defendants. In addition to nights and weekends, these shifts sometimes fall on national and religious holidays. While working the 1:00 a.m. to 9:00 a.m. shift can be exciting the first few times, over the course of a career, it can become quite draining, both physically and mentally.

Other offices throughout the country have similar assignments which not only limit an attorney’s professional freedom but also take away from the cherished time to do proper case preparation. Some offices do seek to limit this somewhat by sending newer lawyers to the worst assignments. Thus, once an attorney has “paid her dues,” she can avoid these obligations.

OPPORTUNITIES FOR ADVANCEMENT WITHIN THE OFFICE

New attorneys at most prosecutor’s offices very soon find themselves with a great deal of independence and responsibility over a misdemeanor caseload, and very shortly move to prosecuting felonies. While virtually everyone in the office is granted this opportunity to advance, some offices have specialized units that are very desirable. Sex crimes prosecutions, homicide bureaus, and rackets divisions are popular units in many prosecutor’s offices. Some offices use an open application process to fill slots in these units while others rely solely on recommendations of supervisors. Students should ask how those assignments are made and how and when to express interest in them.

On the other hand, some offices fill slots in undesirable units by involuntarily placing attorneys there. This has come to be regarded as either a punishment or a badge of inferiority. Domestic violence units and special narcotics units are sometimes regarded as undesirable assignments either because of the routinization of the work or the difficulty in keeping witnesses interested in the prosecution. Prospective applicants should also be aware of this practice and ask attorneys within the office about how the office handles these assignments.

ROOM FOR PROFESSIONAL GROWTH

It is important to allow attorneys to branch out and try new things. From time to time, attorneys in litigation, for example, may need a break from the trial routine or may want to handle appeals or special projects. Smaller offices already have attorneys handling a variety of tasks within the office; for instance, many attorneys in these offices already handle their own appeals. But in larger offices, the work tends to become more specialized. Attorneys in one specialized segment of these offices do not get to try work in the other segments unless the office has a policy allowing transfers from one division to another.

SALARY

No one going into the prosecution expects to get rich doing it. Offices handle the salary and benefits issue differently. Some give merit-based raises solely dependent on performance; others, especially those that are unionized, have a set scale where lawyers get a guaranteed raise each year; still others depend on their city or state funders to set their yearly salary.

Whatever the pay scale, many offices offer generous benefits packages to compensate for the relatively low salary. Applicants should keep this in mind when comparing packages. Several weeks of vacation per year, liberal maternity and paternity leaves, shorter hours, and comprehensive health plans are meant to make up for the lack of high pay.

OFFICE REPUTATION

Being on the side of law and order, most prosecutors have a relatively easy time garnering the respect of the general public. Moreover, a conscientious prosecutor who works hard and does a good job will easily earn the respect of both judges and adversaries. However, because many prosecutors throughout the country are elected, those who work under them can be affected by the reputation of the prosecutor for whom they work. This can be especially acute when the head prosecutor is prone to, or forced to, take positions on controversial issues. For example, the reputation of the prosecutor's office in Los Angeles County suffered a great deal after losing the O.J. Simpson case and the Rodney King case. While the majority of prosecutors in the office were diligent, hard-working attorneys, several reported being labeled not on their individual merit but on the office's high-profile losses. They felt this was exacerbated by the often-caustic public statements of their boss.

Since no one can predict whether high profile cases like those mentioned above will take place in their jurisdiction, prospective employees should consider whether they will respect the person for whom they will be working. If you question his or her integrity, or have doubts about his or her competence, perhaps you should consider another office.

Applicants can consider other aspects of the reputation issue as well. Is the office respected within the court system? Does it have a reputation for hard work and zealous advocacy? Do their adversaries think they do a good job? Where do attorneys who leave the office go? Do they go into private practice? Do they become U.S. Attorneys? All of these questions should be considered when making a decision on where to apply.

Developing a Prosecution Resume

In general, prosecutors want to see candidates with good judgment who are able to interact positively with the public. No office wants to be embarrassed by the attorney who bucks office policy and offers a cushy deal to a violent criminal. Similarly, offices expect their attorneys to be able to sell a case to a judge or jury. Consequently, students considering becoming prosecutors should work on developing experience that demonstrates sound judgment as well as trial ability.

Since most law students will not have any actual trial experience, students should focus on activities that demonstrate their ability to speak to the public, handle and explain complicated issues, and think on their feet. Working in clinics, taking courses in trial advocacy, and participating in moot court are traditional means of demonstrating experience with oral advocacy. Clinics, trial advocacy courses, and, to a lesser degree, moot court have become so traditional that many prosecutors actually question the commitment of students who do not have them on their resumes. Thus, applicants who did not participate in these programs should be prepared to explain why.

The fact that these traditional methods of demonstrating public advocacy have become tests for judging commitment to the work should not deter students from emphasizing other experiences which show the same skills. Since most prosecutors will teach you how to try a case, they are not as concerned with your knowledge of trial procedure as they are with your ability to “sell” yourself in front of a group of people. Political organizing and campaigning can be very valuable experiences—especially if the work involved public speaking or debate. Advocacy in administrative hearings, school disciplinary proceedings, or employment hearings is another way of showing an ability to work on your feet. Law students at the University of Virginia have an excellent opportunity to gain experience through proceedings in the Honor System and the Judiciary System as they can volunteer to prosecute or defend students charged with honor or judiciary offenses. These trials provide an excellent opportunity to practice as a trial lawyer and can provide an employer with real insight into a student’s commitment to trial advocacy.

One question frequently asked is whether an individual’s politics plays a role in getting hired. The answer to this may depend on the locality. Political connections in the area in which one is applying certainly help. Again, since prosecutors are elected, political concerns do play a role. But connections aside, prosecutors publicly deny that being a Democrat or a Republican matters in terms of hiring decisions. (Indeed, they point out that it would be illegal in some states to take party affiliation into account.) However, a student whose resume exudes liberal politics should be prepared to explain how that may be consistent with a desire to prosecute criminals.

Handling the Interview

Because prosecutors are charged with implementing public policy, much of the interview will concentrate on your willingness to follow office policy and use sound judgment. Questions about use of discretion and ethical issues are frequent. Interview styles can run the gamut from traditional question-and-answer to hypothetical questions to role playing. Another area of concern is how well the applicant interacts with people. Candidates who are open and affable have an advantage. Because prosecutor’s offices are trial offices, some offices will ask applicants to deliver an opening statement or a summation. The following sections summarize some typical interview situations and how to deal with them.

The “Why” Question

Students should be prepared to answer what draws them to prosecution. Since this is often the first question asked in the interview, good preparation can give your interview a great start. Remember that concrete answers referring to specific instances in your life experience are the best. For example:

- “Once I took criminal law in law school, I was hooked. Prosecution is the only job I could see myself doing.”
- “I grew up in a community that was besieged by crime. I realized then that I would dedicate myself to doing all I could to make sure that no other kid had to grow up like that.”

Hypotheticals

Interviewers will frequently present applicants with hypothetical situations designed to test the applicant’s ability to think quickly and to test judgment. For example, one prosecutor asks a question like this:

You are assigned to prosecute defendant X, who is accused by his girlfriend of rape. You speak to the girlfriend, present the case to the grand jury, and the grand jury indicts the defendant for rape. Soon after the indictment is filed, you begin to feel that the defendant may not have done it. Perhaps his attorney has presented you with impressive background material showing that he is an upstanding citizen, or perhaps you begin to have doubts about the girlfriend’s veracity. What do you do?

This question is designed to get at your willingness to seek supervision, follow ethical rules, and generally forego substituting your *feelings* for the decisions of democratically established institutions. The interviewer wants you to acknowledge that this is a very difficult issue and that while you would certainly talk it over with your supervisor, absent any concrete evidence leading you to the conclusion that the grand jury process was tainted, your duty is to respect the decisions of the grand jury and any doubts about the defendant’s guilt can be resolved by a jury. An appropriate answer will also discuss a prosecutor’s duty not to withhold exculpatory evidence.

Other hypotheticals may include situations asking you about whether you would stand up to a judge who refuses to accept your office’s policy on plea bargaining or how you would proceed if you discovered a police officer was lying.

Role Playing

In addition to hypotheticals, interviews often include role-playing exercises and mock court proceedings. Applicants will be presented with a set of facts and then be asked to interview a witness or victim or prepare a bail hearing or summation. Some offices give the exercise to the applicant sometime in advance of the interview; other offices present the exercise during the interview.

While the exercises may appear to be a test of the candidate’s knowledge of criminal law or procedure, more often than not a candidate’s knowledge is not the issue. What the exercise is designed to expose is the candidate’s ability to think quickly, speak clearly, and relate to witnesses and judges. In situations where the applicant is unsure of the relevant law underlying a particular exercise, it is perfectly okay to say so; “I’m not sure what the criteria is for setting bail in New York, so I am going to do my bail application based on the federal standard.” But even if you are unsure of the law, you should nonetheless try to do your best on the exercise. Candidates who enthusiastically join the exercise gain points for flexibility and quick thinking. Some tips on handling the role playing:

–if you are meeting the victim or witness for the first time:

- be sure to shake his/her hand;
- be respectful and polite;
- clearly explain who you are and what your role is;
- frequently check with the witness to see if they understand what you are saying;

–if you are asked to make an application to the “judge”:

- stand up (if it seems appropriate);
- be respectful but not obsequious;
- speak clearly and explicitly outline your argument and what relief you are seeking;
- if the judge interrupts you or asks you questions designed to frustrate you or throw you off track, be respectful but firm—often the interviewer is trying to see if you are intimidated by authority.

–if you are asked to examine a “witness”:

- ask questions in a manner that paints a dramatic picture;
- carefully review the paperwork you are given—often there are glaring issues which the problem makers expect you to focus on;

–if you are given something to prepare in advance like a summation or an opening statement, try to memorize at least the opening paragraph. Being able to make eye contact and flow easily through your introduction will greatly impress the interviewers.

The Panel Interview

Many offices use a panel format for subsequent interviews. This will consist of the applicant sitting in front of a panel of attorneys and fielding questions. Once again, this is designed to test your ability to think quickly, speak effectively, and handle pressure.

One difficulty of the panel interview is staying focused while being hit with questions from all corners. Often, panelists will deliberately ask a question off the topic before you have had an adequate opportunity to fully answer the previous question. Respond by saying that you will deal with the new topic as soon as you have finished responding to the preceding question. You should then quickly wrap up your answer to the previous question and then answer the new question. Remaining calm, on topic, and respectful is key to handling this type of interview. Additionally, remember to make eye contact with the entire panel, not just the

person who asked the question. And if there are non-lawyers on the panel, be very careful not to act disrespectfully to them or respond apathetically to their questions – panelists are evaluating you on your ability to interact with all types of people.

Another key to a successful panel interview is to remain calm in the face of negative comments or facial expressions from some panelists. These panels often will have a designated “bad guy” who will challenge your answers or take you on in some way to see how you handle difficult judges or tough questioning. Sometimes a panelist may just be a difficult person who does not reflect the feelings of the other panelists. In either case, do not be discouraged if you encounter a person like this. Do not allow yourself to be drawn into an argument. As long as you stand by your beliefs and are not dissuaded by the naysayer, you will gain points with the other panelists.

Philosophical Questions

Many offices will seek to uncover any misgivings you may have about prosecuting certain crimes. For example, many offices will question potential hires on the “War on Drugs” and whether they feel that drug crimes (and other “victimless” crimes) should be prosecuted. Whatever your feelings, this is not the time to open a discussion on libertarianism or any other philosophies. An appropriate answer is that if you are hired, you will be sworn to uphold *all* the laws and that includes drugs/victimless crimes and that you would do just that regardless of your personal feelings.

A related topic refers to a candidate’s willingness to enforce laws and policies with which they may personally disagree. The death penalty is a prime example. A candidate applying in a jurisdiction that has the death penalty may be asked if they would seek death despite personal feelings. Again, the answer is that if hired, your duty will be to uphold all the laws and you wouldn’t be applying to be a prosecutor if you felt you could not do so.¹

Other areas that may be explored are feelings about race and class in the criminal justice system. Candidates may be asked if they feel that there are disparities in the administration of justice based on wealth or race, and how they would account for that in their work as a prosecutor. Again, this is not the time to discuss your personal philosophy. A good answer may acknowledge that some studies have found some disparity in some areas of the justice system but that, again, your role as an individual prosecutor is not to make policy, only to carry it out. Therefore, you would treat every defendant the same, regardless of race, class, or financial situation.

The Candidate’s Questions

Virtually any of the sections listed in “Choosing the Right Office for You” are appropriate areas to

¹ Those who oppose capital punishment will have to reconcile their individual beliefs with this issue. Several prosecutors spoken to for the purpose of this handbook oppose the death penalty. Some reported that they never had to confront the issue because their offices set up a voluntary, self-selecting unit to prosecute capital cases. Thus, they never had to work on these cases. Prosecutors in smaller offices may have a more difficult time avoiding the clash of personal beliefs and office policy.

explore when you are given an opportunity to ask questions. Training and supervision are important areas to raise. Related topics include how quickly lawyers assume their own caseload and how the office evaluates attorneys. Candidates who have researched the office and know its structure and philosophy are at an advantage since interviewers will be impressed with questions tailored to account for an office's particular style.

Conclusion

Based on the responses of individual prosecutors interviewed for this manual, prosecutors find a high degree of job satisfaction. Putting aside issues of pay, they universally enjoy their work and feel that the job presents an excellent opportunity for newer attorneys to quickly get courtroom experience. If you would like to represent the public in a fast-paced, challenging environment, then prosecution may be for you.