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Good Prosecutor and Good Person? The Conflict of Humanness and the Prosecutorial Field

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Zaiya Dillon

ABSTRACT

Lawyers are considered to be the pioneers of social engineering and advocates for justice in society. They fight for the rights granted to us as citizens through the U.S. Constitution while also protecting us from the government. Outside of the limelight, being a practicing attorney does come with its own issues. Attorneys that work within the criminal justice system are very much under scrutiny especially because the system is structured to be in favor of the government. Prosecutors are the gateway to the criminal justice system and have the power to alter the direction of a case, but when does this power become dangerous? This essay explores the hidden levels in the roles of prosecutors both in and out of the courtroom, prosecutorial environments, and numerous problems that contribute to the weak structure of the criminal justice system.

Everything in life is prone to human error: healthcare, science, and for the most part, the law. The core of the instability of the criminal justice system is human error; emotions, thought processes, and preconceived notions alter the ways that people approach different situations and individuals they encounter. When looking at the roles in the criminal justice system, prosecutors are the “administrators of justice” or, for lack of a better term, “advocates for the state”, however, the actions taken by prosecutors before and during criminal trials tend to counter the validity of these labels and can place their ethical character into question. Striking a balance between being a good prosecutor and a good person is difficult since prosecutors commit unintentional and dishonorable actions that are usually praised in that field.

Abbe Smith is a criminal defense attorney as well as a professor of law at Georgetown University Law Center. In 2012, she published “Are Prosecutors Born or Made?” recounting her experiences as a criminal prosecutor and the transition to becoming a defense attorney. Upon reflection, she noticed that prosecutors possessed particular unattractive characteristics that, in actuality, positioned them as stellar attorneys. Being

“bloodthirsty” and “zealous” are often affiliated with the character of a prosecutor. One of the first things that Smith draws attention to is the power of prosecutors. They have autonomy in the charging function of cases; because of this “the power to... prosecute is the power to destroy” (Smith, “Are Prosecutors Born or Made?” 945). Through a range of stories that she shares, she identifies a common element of smugness from each prosecutor and the difficulty to “break through the complacency, certainty, and self-satisfaction” (949). Each of them has a heightened sense of self-righteousness. Smith clarifies that she is not labeling all prosecutors bad since a respectful amount of them are aware that the system they are working under is deeply flawed. However she still believes that prosecutors are the gatekeepers to much of the mass incarceration and injustice in the American court system. *Blind Injustice*, by Mark Godsey, and *Prosecution Complex*, by Daniel S. Medwed, aid each other in delivering the reality of prosecutorial environments and the events of criminal trials that happen behind closed doors.

When working in the prosecutorial field, new prosecutors become vulnerable to the

“hunt mentality of an aggressive institutional culture and pursue justice,” writes Medwed. The thinking processes and attitudes of prosecutors create a significant problem that lies in all areas of the criminal justice system: tunnel vision. Confirmation bias and cognitive dissonance fall under the realm of tunnel vision. Godsey notes that the inner structure of the criminal justice system causes good people to engage in “administrative evil” in criminal court trials. The evil refers to surrounds the morality in the workplace. Referring back to the notion of goodness, he writes that “good people will typically act with goodness when acting alone” because one’s internal compass is their own guide (34). The problem that disturbs that compass is working under a large bureaucracy where members must adhere to particular policies and procedures. A person’s conscience “is very weak relative to that of legitimized authority in modern organizations,” meaning that the interests of the organization as a whole must be placed first (37). In the case that something goes awry, blame is shifted to the entire system and not the people operating in it. With the confirmed belief of following the functions of the bureaucracy, cognitive dissonance is unfolded. Godsey explains this as a “psychological phenomenon that can cause us to push aside or deny information that conflicts with our most deeply held beliefs” (18). Human beings are unable to have conflicting ideologies due to causing “internal discomfort.” The occurrence of dissonance leads people to strongly oppose competing judgements and convince themselves that the theory they have planted in their minds is the sole theory. Confirmation bias follows after cognitive dissonance; once people have engraved their view about a matter into their minds, they will actively seek information that supports those preset opinions.

Prosecutors are very much vulnerable to these human psychological issues; however it becomes a dangerous aspect in that line of work. The track record (conviction rates) of a prosecutor is the dividing line between receiving praise and promotion and being scrutinized by peers’ doubt of competence. Prosecutors desire to appear tough on crime in hopes of being re-elected to continue working in the field. This “winner takes all mentality” boosts the natural need of approval from members of the office, so much so that “peer pressure would often trump common sense” (Godsey, 82). In the case of failed plea deals, the concept of “conviction psychology” comes into play. Because the performance of a prosecutor is heavily based on convictions, “a host of institutional, political, and psychological forces converge to pressure prosecutors to strive for convictions at trial” (Medwed, 77). This winning attitude is already instilled in the nature of prosecutors, but the source of the developed tunnel vision comes from a lower part of the chain.

The relationship between police officers and prosecutors is the breeding ground for tunnel vision in criminal investigations. Police officers and prosecutors have a reciprocal relationship: police “investigate cases, arrest perpetrators and track down witnesses. Police depend on prosecutors to validate those arrests by securing convictions” (Medwed, 24). In a criminal investigation, the evidence gathered that is given to the prosecutor on the case is at the discretion of the officer. As explained in *Prosecution Complex*, the prosecutor only receives evidence pinpointing one culprit rather than an array of suspects, so that suspect becomes a focus. Prosecutors have little contact with the defendant during the early stages of a criminal case, so there lies the inability to become acquainted with the defendant. The prosecutor begins to overrate the inculpatory evidence (proof of guilt)

while downplaying exculpatory evidence (proof of innocence). Cognitive dissonance starts to have a larger role in the production of tunnel vision since prosecutors tend to cancel out the possibilities of other suspects by honing in on the suspect identified by the police officer. This higher presumption of guilt begins to cause more problems during the trial process.

After convening with the police, prosecutors get to decide what charges to bring on the basis of four things, according to Medwed:

- Background and criminal history of the defendant
- The role in the crime
- The impact on the victim in charging determination
- The availability of non-criminal dispositions

Much autonomy is granted to attorneys, so they are exempt from judicial review. Prosecutors do everything in their power to choose the right charges in order to get the highest penalty possible. For fresh lawyers, charging can be more impulsive considering that they are often more emotionally attached to the case and victims rather than veterans who know how to keep their emotions intact. 95% of criminal trials end in plea bargains and these are considered wins in the eyes of a prosecutors as well as a savior in weak cases.

One of the reasons that such generous pleas are offered is the need for closure. Caseloads of prosecutors are relatively high, so they take “mental shortcuts in processing information, quickly conclude that a defendant is guilty, and offer a plea bargain without much reflection” (Medwed, 57). The motivation that human beings have to start something new is phenomenal, but tunnel vision spirals that into a significant problem. Quick decision making and

avoiding distractions has become highly favored in human evolution and the most obvious option in human functioning; coined as “heuristics” people cut corners in their decision-making by jumping to conclusions and ignoring small details that take away from the bigger picture. Passion is another rationale for pushing for plea deals. If an individual is not passionate about working on a particular project or presentation, it will not be completed with as much zeal and attentiveness and the same pattern works for prosecutors as well.

The next problem that surfaces in the life course of a trial is the exchange of evidence between the prosecution and defense. The Brady doctrine is a pretrial discovery rule, requiring that prosecutors release all exculpatory evidence to the defendant in a criminal case. When this rule is violated, gross injustice can occur.

For 25 years, Michael Morton was wrongfully convicted and imprisoned for the murder of his wife Christine Morton on the account that she fell asleep before they were supposed to have sex on the night of his birthday. The Brady violation began with the police not disclosing that they were told by neighbors that a man was often seen parking a green van on the street behind the Morton residence. He would walk off into a nearby wooded area and police records showed that Christine Morton’s credit card was recovered in San Antonio, Texas with a woman attempting to use the card. The ground-breaking discovery that led to exoneration was a bloody bandana found at a nearby construction site that did not match Michael Morton’s blood in DNA testing. All of these findings were withheld from the defense until it was brought to the attention of the trial judge who then demanded that exculpatory evidence be distributed. The objective for any attorney is to present the best case possible in order to win at trial and

some may even say that the lead prosecutor for Morton's case, Ken Anderson, was pushing to accomplish. It can be argued that there was no malignant intent on the part of Anderson, but this is just an example of the type of behavior that the system encourages. This behavior is encouraged by the system overall.

The structural and procedural patterns of the system, especially with criminal cases, needs to be altered to ensure that justice is being properly administered to citizens. Medwed suggests a variety of ways of altering the processes in a criminal court trial: better enforcement of *Brady*, open file discovery, judicial oversight, and order of summations.

All of these structural changes can be made, but the mindset of the system must be tackled first. As it can be noticed, tunnel vision with the support of confirmation bias and cognitive dissonance exists in all human beings, but it can become viperous in occupational fields that provide a substantial amount of freedom of discretion. Godsey believes in the power in acknowledgement. Before any structural changes can be made, he demands that we need to "embrace our humanity and not be afraid to acknowledge

and mitigate human error... we need humility and the ability to accept our human limitations" (213). He recommends that specifically for prosecutors and police officers, there needs to be some form of formal training on the pernicious effects of tunnel vision and other psychological flaws that people suffer from. Following this acceptance, the attitudes of those current police officers, prosecutors, and judges must be lightly commuted so that a small adjustment can established before tackling the rest of the system.

The system needs to compensate for human imperfection. From 1989 to 2016, exonerated prisoners have served 18,350 years of time, with the longest serving time being 40 years before exoneration. People who work in the criminal justice system must recognize this as a problem and have their eyes opened to the behavior and structure of this bureaucracy as a whole.

Abbe Smith's question about being a good person and prosecutor possesses a massive gray area for discussion, but multiple things need to be considered before providing a definitive answer to her question. Being an attorney at times means doing what is ethically wrong yet morally right.

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