

# The Criminal Hypothetical and Other Unique Aspects of the Criminal Law Interview Process

by Nicole Vikan and Jory H. Fisher

Criminal law is a unique practice area with a distinctive interview process. Whether students choose to pursue prosecution, defense, or both during their job search, they will no doubt encounter challenging interview questions that are quite different from those faced during other public sector interviews. A small investment in preparation can make for a much more successful meeting and a future offer. So how can a student train for these interviews?

## From the Perspective of a Former Prosecutor

First and foremost, students must know about the offices they are seeking to join. Each prosecutor's office will be known as a District, State, Commonwealth, or County Attorney's Office,<sup>1</sup> with one elected District Attorney and a staff of Assistant District Attorneys who prosecute all of the criminal cases in the region. Students should know the name of the District Attorney, which party he or she represents, and how long the District Attorney has been in office. This information should be available online and in local newspapers.

Students should also research the size of the staff and how the office handles its caseload: Some offices prosecute vertically, with an Assistant District Attorney (ADA) handling a case from arrest through trial, and possibly through appeals as

well. Other offices may prosecute horizontally, with different ADAs staffing intake, arraignment, grand juries, hearing and trial parts, and appeals — thus passing a case along to be handled by a number of Assistants.

In contrast to summer associate hiring at large law firms, interviews for summer internships with District Attorneys' (DAs') Offices are shorter, one-meeting processes. Summer jobs do not lead directly to offers for permanent positions, though gaining knowledge of an Office and making a positive impression will no doubt assist an applicant during the interview process.

When a student applies for a permanent position at a DA's Office,<sup>2</sup> typically she or he will have three to four interviews: an initial meeting, which takes place with one interviewer and is perhaps half an hour; a panel interview, which consists of three or more interviewers and criminal hypothetical questions (discussed below); perhaps a third-round interview with a Director of Hiring or other Executive ADA, which may last up to two hours; and a final interview with the District Attorney, which is often short but during which the student must remain completely professional and poised.

What questions should a student expect?

Throughout the process, each student must be able to answer the critical question: "Why do you want to be a prosecutor?" The student should articulate

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<sup>1</sup> In this article these offices will all be referred to as District Attorneys' Offices, though some may be known as State or County Attorneys' Offices and the attorneys as Assistant State or County Attorneys.

<sup>2</sup> When students choose where to apply for post-graduate positions with DAs' Offices, they must determine whether a given office will hire law graduates who have not yet taken or passed the state bar examination. The policies regarding bar exams vary, so students face tough choices as to whether they will wait for possible offers from offices that do not make hiring decisions until the bar exam results are released.

why his or her experiences and education led to the decision to prosecute. A record of criminal law-related classes (Criminal Law, Criminal Procedure, Constitutional Law, Evidence, Trial Advocacy) and clinics displays interest. Public sector employment and volunteer work demonstrate a commitment to public service. Many interviewers will appreciate prior clinical or internship work with public defenders' offices, as long as the student can explain why she or he chose those experiences and is committed to prosecuting. Even a student with a demonstrated record of public interest work must verbalize why she or he has selected prosecution instead of another form of public service work.

The candidate must also address the question: "Why do you want to prosecute in this office?" Students who are dedicated to prosecutorial work should apply to as many offices as possible, although they should research the District Attorneys and their policies because offices can vary significantly in terms of which crimes receive more attention and resources. In New York City, each of the five boroughs (the Bronx, Brooklyn, Manhattan, Queens, Staten Island) hires separately, and students are often questioned about where they would choose to go if given multiple offers. A suggested answer could be as follows: "If I am fortunate enough to have such options, I would consider where I would start off in each office and think about the people I met during the interview process. From my research thus far, I am particularly interested in your office because. . . ." The respondent could continue by praising a unique program for victims of domestic violence, a novel drug treatment approach, a vertical prosecution system, or even the respondent's childhood in the area and desire to make an impact on her hometown.

Students must also be prepared to tackle the economic and practical day-to-day realities of being an ADA. A student interested in becoming an ADA should consider his or her financial situation before an interview and be candid about his or her ability to handle the salary offered. The candidate must recognize that he or she will not have a per-

sonal secretary and will be answering his/her own phone, making his/her own photocopies, and paying for his/her own dinners on late nights. (When I was an ADA, we paid \$60 each for the annual Holiday Party.) Students may be asked about their awareness of these aspects of government work, and acknowledging that they know of these challenges and are positive nonetheless will make a good impression.

The Criminal Hypothetical is the most unique and often dreaded aspect of interviewing with District Attorneys' Offices. Hypotheticals often do not have clear legal answers; the interviewer is assessing the student's ability to issue-spot and address legal and ethical concerns. Candidates should address opposing viewpoints to show that they understand the multiple issues, but they must make decisions when asked to do so, and demonstrate that they can stand up for their choices when challenged. Below are a few recurring hypotheticals. **Keep in mind that the "responses" are merely suggestions of issues to discuss.**

## Hypothetical #1:

*Question:* "You are prepared to try a case in which the defendant is accused of driving while intoxicated and injuring a blind man. Your only witness to the alleged crime is an elderly woman, but you are confident that she has identified the defendant accurately and that he is guilty of the crimes charged. The defendant repeatedly turns down your offer of one to three years of jail and he faces up to seven years if convicted after trial. On the morning of the trial, you learn that your witness has died. As you are walking up the courthouse steps, the defense attorney races toward you and says, 'My client has changed his mind and wants the one to three year offer!' What do you do?"

*Response:* "How did the woman die? In a suspicious manner?"

*Question:* "No, she had a heart attack. That's not an issue."

*Response:* “There is no legal obligation to reveal her death. The *facts* of the case haven’t changed, just the *strength* of your case — because you have no witness. The woman’s death does not affect the defendant’s culpability.”

## Hypothetical #2:

*Question:* “You are about to start a gun possession trial. The defendant was arrested after he was pulled over for running a red light. The arresting officer testified in the grand jury that he saw the gun lying on the passenger’s seat as soon as the he approached the defendant’s vehicle. At 9:00 am on the morning of the trial, the arresting officer says he needs to talk to you. He explains that the arrest happened as he explained in the grand jury, except that he came on the scene after the actual seizure of the gun. The officer who saw the running of the red light and found the gun was at the end of her shift and asked this officer to cover the case. What do you do?”

*Response:* “The officer has committed perjury. I would definitely speak with a supervisor about this, because there could be ramifications for other cases as well as for the officer’s job. For this case, the defense attorney needs to be told, I need to speak with the officer who actually found the gun, and the case should be reassessed.”

## Hypothetical #3:

*Question:* “You have been asked to handle another ADA’s hearing concerning the search and seizure of a pound of cocaine. The notes you have about the case indicate that the arresting police officer saw the defendant driving erratically and so he pulled the defendant’s car over. When the officer asked the defendant for his license and registration, the defendant said he didn’t have them. The officer arrested the defendant and searched the car. He found a pound of cocaine in a gym bag in the trunk. What questions do you have for the officer before you analyze how to argue for admission of the cocaine in front of the hearing judge?”

*Response:* “I would want to know what is meant by ‘erratically’ — what exactly did the defendant do while driving? Did the defendant stop when ordered to do so? Was he alone in the car? Did the officer question the defendant about why he lacked a license and registration? Did the officer run the license plate and VIN [vehicle identification number] and find out to whom the car was registered or if it had been reported stolen? When was the vehicle searched — at the scene of the arrest or back at the precinct? Was the trunk searched at the same time? Was the gym bag searched at the same time? Was an Inventory Report completed? Did anyone ask for a search warrant? Was the gym bag visible as soon as the trunk was opened? How was the cocaine packaged in the gym bag? Was the bag open and the drugs in plain view, or was the cocaine sealed within the bag? Did the defendant make any statements about the drugs?”

## Hypothetical #4:

*Question:* “A police officer comes to your office with an arrest. She tells you that she heard about a robbery on her police radio; during the robbery, three guys knocked down an old lady and grabbed her purse. The officer started driving to the scene of the crime and she saw two men running down the sidewalk. One man was holding something bulky under his coat. She ordered them to stop. She searched them and the one with the bulky coat had a purse under his jacket, so she arrested them both for robbery. Would you write up the case?”

*Response:* “I would have some questions for the officer. How far from the alleged crime was the officer when she received the radio call? How far from the scene did she see the men? Did she have a description at all? Did she speak with the men at all before searching them? Was there any identification procedure? If so, how soon after the robbery, and what were the circumstances of the ID? Was the purse identified as the victim’s? When and under what circumstances? Did the man who was not carrying the purse have any incriminating evidence on him? What did the men say?”

All hypothetical criminal questions raise a variety of issues that may be handled in many different ways. Candidates should remind themselves that their thought processes and ethical awareness will be valued more than a “correct” legal answer. If students engage in conscientious thinking about their own interests, skills, and understanding of the law, they will be well prepared to tackle the distinct challenges of an interview with a prosecutor’s office.

## From the Perspective of a Former Public Defender

Students aspiring to work in a public defender office would be wise to follow many of the suggestions offered above. Interview preparation, for example, is vital to students’ success whether they wish to prosecute or defend.

As a first step, students need to research applicable statutes regarding the establishment of public defender offices in the states in which they wish to work. To illustrate: Does Colorado have a state-wide public defender system? If so, the interested student will want to find out if he or she will interview in a main office but be assigned to an office elsewhere in the state. The student will also want to find out if he or she has a choice of locations or must accept whatever assignment is received.

Additionally, attorneys in public defender offices have specific and varying job titles. Students should check office websites to be sure they use the correct titles during their interviews and to be sure they know the professional backgrounds of the interviewing attorneys. Students should also come to interviews equipped with previously prepared questions. It would be appropriate to ask the interviewer about the jurisdictions and dockets for which the attorneys are responsible, caseload size, training and support, office camaraderie, and the long-term opportunities for advancement.

Based on a canvassing of offices in the Commonwealth of Virginia, hypotheticals do not seem to be used as frequently during interviews in public

defender offices as they are during interviews for prosecutorial positions. Nonetheless, students would be wise to research the Fourth Amendment. In defense work, it is the most commonly used portion of the Constitution and could easily lend itself to an interview question.

One example of a hypothetical used frequently in a public defender office in Virginia concerns professional responsibility: “What would you do if you appeared for Court and saw the Commonwealth’s witness in the wrong courtroom? Would you notify the judge or Commonwealth’s Attorney when the witness failed to show in the correct courtroom?” The answer the public defender was seeking was, “No! You cannot help the prosecution to the detriment of your client.” Such hypotheticals are hard to predict. Students can help prepare themselves, however, by researching the state’s Code of Professional Responsibility to determine what conduct is expected of criminal defense lawyers — and what conduct would be deemed in violation.

Be sure to advise students that, for attorneys who work in public defender offices, the pay is low and the caseloads are heavy. Nonetheless, the training is excellent, bar none. Because many recent law school graduates seek government trial attorney positions solely to develop their litigation skills (with no intention of remaining in the public sector), students should be prepared for the ultimate question, “Where do you see yourself in five years?” Each student needs to be able to articulate a reasonable plan for his or her future that reflects a strong, genuine commitment to public service. Public defenders consider training new attorneys an honorable part of their responsibilities; understandably, however, they prefer to hire attorneys whom they believe will remain dedicated to the cause.

When interviewing applicants, public defenders, perhaps even more than other employers, look for the “intangibles.” With low pay, heavy caseloads, and an abundance of difficult clients, it is imperative that highly stressed attorneys work with colleagues they enjoy! Students need to project upbeat, friendly personalities during their inter-

views. Students should look for common ground with their interviewers to help the conversations move in positive directions. Students should not answer questions as if they were being cross-examined. Rather, they should expand creatively upon their answers using confident, positive, conversational tones. To persuade interviewers that they would fit well in the office environments, students should consider revealing the “lighter side” of their personalities. (When stress is high, and life and liberty are at stake, working with colleagues who possess appropriate senses of humor is essential to job satisfaction. Law students who seem humorless and arrogant need not apply.)

Public defenders can train newly hired attorneys in the finer points of criminal law and courtroom strategy. It is manifest interview preparation, a demonstrated commitment to public service, and a pleasant personality that will catapult a student to the top.

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