

Proposal for URC Research Grant

I. Objectives

A. Goals of this project: A grant from the University Research Committee will enable me (and my co-author, Professor Ron Wright of Wake Forest University Law School) to conduct an empirical study of prosecutorial culture in two locations, DeKalb County, GA and Mecklenberg County, NC. Our objective is to illuminate the ways in which prosecutorial culture is developed and transmitted, the processes by which prosecutors become socialized into their roles, and the influence of office culture on the socialization process. For this study we will explore three aspects of the prosecutor's role: the prosecutor's understanding of what makes a good prosecutor, her perception of the value of defense work, and the degree to which her decision-making is influenced by new software that categorizes and tracks case management decisions. By conducting this study, we intend to contribute to three on-going discourses in the social sciences: the sociological literature about professional socialization processes (a literature that currently focuses on medical personnel and students but has never explored practicing attorneys), the sociological literature about organizations and the influence of leadership (which has never included the prosecutor's office), and the legal academic work about prosecutorial decision-making (which has never accounted for office culture as an influence on decision-making). By the time our research is complete, we expect to have sufficient material to produce several articles and one monograph; we will also be prepared to discuss our findings at academic and professional conferences.

B. Suitability of Researcher for this Project: I am well-positioned to conduct this study, based on my professional and empirical background. I served as a prosecutor for several years before joining the academy and regularly research and teach in the area of prosecutorial behavior.¹ [My co-author, Professor Ron Wright at the Wake Forest University School of Law, served as a federal prosecutor for several years before becoming an academic; he also regularly teaches and writes in the field of prosecutorial decision-making.] I gained empirical knowledge as a graduate student in the department of Jurisprudence and Social Policy at UC Berkeley. My doctoral work at Berkeley examined the role of discretion in the work of statutory rape prosecutors in California, a project that involved extensive surveys and interviews with prosecutors across the state. That data needed to be coded and analyzed in much the same way as the project described herein. As the study that I propose will investigate the interplay between the laws of criminal procedure and the day-to-day functioning of the prosecutor's office, I believe it can only be undertaken by a scholar trained in law who possesses both an empirical background and a professional prosecutorial background.

¹I refer interested readers to my 2 page CV, which reflects my writings in the area of prosecutorial behavior, and to my co-author's CV, which does the same for his work.

II. Background and Significance

Along with Ron Wright, a Professor of Law at Wake Forest University, I hope to conduct research that explores the development of the prosecutor's professional self-image and the influence of that self-image on the prosecutor's job performance. This study will therefore be situated within three distinct fields: the legal academic work on prosecutorial decision-making, the sociological literature about the socialization of professionals, and the sociological literature about organizations and the influence of leadership on employee performance.

A. Gaps in Legal Academic Scholarship: While past legal scholarship has examined prosecutorial decision-making at various points in the process (see, e.g., Davis 1969; Cole 1969; Remington 1993; Stuntz 2002), no one has examined how prosecutors become who they are professionally, how a prosecutor's office transmits its "culture" to new attorneys, and how that culture affects individual job performance. Our own work in this area (see, e.g., Levine 2005, 2006 & 2008; Wright 2002 & 2008) has helped to introduce the idea that individual prosecutors are components of a larger culture for decision-making purposes. However, that idea has remained theoretically underdeveloped and merits sustained attention in light of the increasing tension between "crime control" and "due process" values (Packer 1968) that characterizes the environment in which the prosecutor works. This tension is particularly important in light of some recent high-profile cases involving bad judgment by prosecutors (the Duke lacrosse player rape prosecution, for example), cases that have a tendency to foreground the impression of a few people as "bad apples" and to consequently downplay the structural features of the institution that can influence an actor's decisions. Our study emphasizes the salience of these institutional features in the day-to-day life of the prosecutor.

B. Gaps in Socialization Scholarship: The socialization of professionals literature, which does emphasize institutional norms and culture as influences on individuals, has largely ignored the legal profession. While the socialization of newcomers to firms and roles has long interested organizational scholars (e.g., Becker and Carper 1956; Louis 1980; Goffman 1959), most academic knowledge about the socialization process has been developed through studies of medical professionals (e.g., Light 1980; Apesoa-Varano 2007; Beagan 2001; Bloom 1979) and for-profit business executives (e.g., Ibarra 1999). While the law as a profession has not been entirely ignored, the socialization of lawyers studies have been conducted with law students (e.g., Granfield 1992; Guinier, Fine and Balin 1997; Hubka 1975; Winfree et al 1984), rather than with experienced professionals. As a result of this focus, legal socialization accounts have been limited to assessing the mental transformation from law student to lawyer. We think socialization continues throughout one's career, particularly as one joins new offices with new informal rules for ethics and behavior, and thus expanding the study of socialization to professional settings is critical for gaining a complete understanding of the legal professional's adaptation to his or her role.

C. Gaps in Organizations Scholarship: The sociology of organizations literature has tended to focus mainly on the functioning of, and role of leaders in, for-profit firms, administrative agencies, or voluntary associations (Etzioni 1975 & 1964, Yukl 1989; Chandler 2003; Kanter 2003; Perrow 1986; Lipsky 2003; Selznick 1953). While these actors and organizations may share some traits with prosecutors (in terms of how they respond to incentives or criticism), we

believe that the prosecutor's office, as a government agency responsible to the community through the electoral process, is likely to exhibit different characteristics than the for-profit firm or voluntary association. Moreover, because the prosecutor's office must simultaneously serve crime control interests and respect due process imperatives, a challenge not facing other types of government agencies, it is likely to differ from other agencies in significant ways. Studying the role of organizational leadership under those competing commands will significantly enhance our understanding of organizational behavior overall.

Secondly, we are drawn to the sociological portrayal of courts as organizations (Eisenstein and Jacob 1977; Nardulli, Eisenstein and Flemming 1988), a view that regards the courtroom community as comprised of a working group of actors who see each other on a regular basis and who prioritize the maintenance of their relationships over individual goals. However, these works tend to treat the prosecutor's office as simply a "sponsoring organization" that influences individual prosecutor's participation in the working group. Our research, by shifting the spotlight away from the courtroom and onto the prosecutor's office, recognizes the more formative role the office plays in case management and distinguishes it from other influences on community behavior in the courts. Given the long-term trends in sentencing rules and case dispositions, the view from inside the prosecutor's office is worth exploring independently, now more than ever.

D. Filling The Gaps: The Three Themes of Our Proposed Research: Building on these strands of scholarship, we have designed a project that will empirically investigate how prosecutors think of themselves and their jobs, given the institutional setting in which they work.

Theme 1: The first theme of our research project will be the development of office culture among new prosecutors. We are particularly interested in how prosecutors form their understandings of what it means to be a good prosecutor. Which aspects of the professional self-image do prosecutors bring with them to the job, and which are transmitted to newcomers from others in the office? Is this self-image dominated by the image of the trial attorney, or does it encompass a range of "community prosecutor" roles?

Theme 2: The second theme of our research will involve the relationship between the prosecutor's role and the defense attorney's role. Do prosecutors believe they would be able to switch sides someday? The answer to this question may depend on the importance one places on an adversary posture in the courtroom. Do prosecutors envision their role in a way that makes it difficult to imagine a true prosecutor ever becoming a defense attorney? We would also like to ascertain, in each of the three offices, the actual amount of turnover and career movement that takes place between prosecution and defense work.

Theme 3: Our third research theme examines the impact of technology and electronic accountability on filing practices. When an office transitions from informal paper-based filing procedures to computer information systems, the recording of electronic data presents questions about accountability. Will the database lead managers to establish a system of precedent, allowing comparisons of filing decisions from one person or one unit with filing decisions from some other relevant comparison point? What are the implications for promotion and discipline?

By the time our research is complete, we expect to have sufficient material to produce several articles and one monograph; we will also be prepared to discuss our findings at academic and professional conferences. Yet the significance of the project goes well beyond the number of pages we intend to draft. By investigating the development of prosecutorial culture in two research locations, we will offer to lawyers and social scientists a comprehensive look at the complexity of modern prosecutorial practice in mid-size, urban areas in the United States. We will be better able to explain why prosecutors act the way they do in particular cases, thus improving legal academics' understanding of prosecutorial case management decisions and the relationship between crime control and due process values in the prosecutor's approach to her work. Our work will also fill gaps in the socialization and organizations literature, which have largely ignored the professional legal office as a relevant study site. Lastly, our project will become an information-sharing tool: chief prosecutors can learn about successful ways to navigate the challenges of the courtroom and the office. Access to this research might help prosecutors elsewhere design new programs or avoid costly mistakes.

III. Research Plan & Explanation of Funding Requests

Our research plan involves five stages: acquisition of background knowledge in the relevant fields, acquisition of approvals, empirical data collection, data analysis, and write-up of the results for scholarly publication. *I am requesting funding to support stages three and four (empirical data collection and data analysis), and I have placed an asterisk (*) next to those subsections below, to direct the eye of the busy reader to the most important part of the research plan for funding purposes. As these stages will occur during 2010, receiving funding during this cycle is critical to timely completion of the overall project.*

A. Stage One: For the past eight months we have been engaged in stage one, building on our prior knowledge of the functioning of prosecutors' offices by gathering and digesting relevant works in the appropriate disciplines, particularly the sociological literature about organizations and professional socialization. Of course literature review will continue throughout the project, but we believe we have at present collected the vast amount of the secondary sources we require to get started with data collection.

B. Stage Two: Stage two, acquisition of permissions, is likewise nearly complete. We have already received permission from the respective heads of our three research locations (the Mecklenberg County District Attorney, the DeKalb County District Attorney, and the DeKalb County Solicitor) to conduct interviews with employees on-site. We have also received IRB approval from Wake Forest and our IRB application at Emory is pending.

C. Stage Three*: I am requesting funding to assist with stage three – empirical data collection – in two locations, DeKalb County, GA and Mecklenberg County, NC. Stage three will last approximately one academic year, and the site permissions grant us approval through August 2010. In stage three we will schedule and conduct structured interviews with prosecutors in three locations: the Mecklenberg County District Attorney's Office, the DeKalb County District Attorney, and the DeKalb County Solicitor's Office. Each county employs approximately 60-65 full-time prosecutors. [In Mecklenberg, all prosecutors are in the District Attorney's Office; in DeKalb the prosecutors are split between the DA's office (felony cases) and the Solicitor's Office (misdemeanor cases).] While we will request to interview all members of all three offices,

we expect to conduct interviews with approximately two-thirds of that population, given time and consent limitations.

Each interview is expected to last approximately 60-75 minutes, although some subjects might choose to speak with us for a longer period. During the interview, the subject will be asked about his or her professional background, current assignment, role models, and office messages regarding appropriate professional and ethical behavior. The subject will also be asked to comment on his perception of the ability of prosecutors to move into defense work, and to assess the likelihood that he or she would choose that path in the future. Lastly, each subject will be asked to comment on the ways in which new software that structures and tracks case management decisions (filing, bargains, sentences) has affected his or her job. With the subject's consent, the interview will be audio-recorded; the data will then be sent off-site for transcription. As the cost per hour of transcription time is \$2.05,² *the bulk of my funding request will be used to cover the cost of these transcriptions. I am also requesting funds to cover the cost of an inexpensive digital voice recorder and a supply of batteries for the year.* (Note: as we plan to begin interviewing before the grant award announcements are made, I likely will have purchased this equipment with funds from my personal faculty development account, and I would use grant funds to reimburse that account.)

I will be primarily responsible for arranging and conducting the DeKalb County interviews; my co-author will be primarily responsible for the Mecklenberg County interviews. Whenever two researchers are conducting interviews, it is essential that they mirror each other in tone and format as much as possible. To achieve this level of symmetry, we need to coordinate interviews in each location early on in the process. While my co-author will fund his own trip to DeKalb County for this purpose, *I am requesting funds to support a short trip to North Carolina (plane flight and one night hotel) so that I can participate in several Mecklenberg interviews early in the data collection process.*

D. Stage Four*: In stage four we will be analyzing the interview transcripts to assess common themes and patterns in the subjects' responses. We will be using a grounded theory approach, which entails reading over one's data to identify patterns that emerge, and then re-reading the material to assess the prevalence of these patterns. In other words, while we begin this research with several questions we'd like to investigate, the actual themes we identify as relevant will be derived from the data, rather than imposed from the top down. To aid in this analysis we will use Nvivo 8 software, a qualitative data analysis program. This software is a costly upgrade of software I previously used for my doctoral work. Hence, *I am requesting funds to cover the cost of this software upgrade purchase.* (Note: I have already purchased this software with my personal faculty development account and would use the grant funds to reimburse my faculty account.)

E. Stage Five: In stage five, we intend to publish our results in a series of articles and as a scholarly book. We are also open to writing aspects of the research for magazines, blogs, and other formats that are likely to reach an audience of working prosecutors, defense attorneys, and

²This price quote was obtained from Production Transcripts, <http://www.productiontranscripts.com/transcripts/services/audio-transcription-interview>.

judges. If the leadership at the American Prosecutors Research Institute were to become interested in our work, we would be delighted to speak with them (or with similar groups) about conferences, publications, and other ways to distribute our research.

While stage five would normally require course release time, this application does not request release time. By the 2010-2011 academic year, I will have earned a one semester sabbatical. I intend to take that leave in the spring of 2011, which means I will have the spring and summer of 2011 to devote full-time to writing up the results of my research.

In sum, I am requesting URC grant funds to support stages three and four of this research plan: empirical data collection and data analysis. The funds would be used to cover the cost of interview equipment, interview transcriptions, qualitative analysis software, and one overnight trip to Charlotte, NC.

IV. Specific Goals for One Year Time Frame

Within a one year time frame from the release of funds, we will have all of our interview data transcribed and in analyzable format. We will have completed most, if not all, of the content analysis of the transcripts using both the Nvivo 8 software and our own read of the data. We will have in place a production plan for the first article to be derived from this research, and likely will have posted preliminary findings on the Social Science Research Network. In sum, within one year from the receipt of funding we will have completed the first four stages of our research and will be starting the final stage; the publication of the first article should follow within a year from that time.

V. Summary

A grant from the University Research Committee will fund the data collection and analysis stage of a groundbreaking in-depth empirical study of the prosecutor's office. The study will be conducted by two legal academics who possess a unique combination of traits: extensive research backgrounds in the field of prosecutorial behavior, prior professional experience as prosecutors, and experience with empirical research. Our data, stemming from semi-structured interviews with prosecutors in DeKalb County, GA and Mecklenberg County, NC, will illuminate the ways in which prosecutorial culture is developed and transmitted, the processes by which prosecutors become socialized into their roles, and the influence of office culture on the socialization process. This project will contribute to and bring together three on-going discourses in the social sciences: the sociological literature about professional socialization processes, the sociological literature about organizations and the influence of leadership, and the legal academic work about prosecutorial decision-making. We expect to distribute our findings in a number of formats, including several articles, a monograph, professional literature, and conference presentations.