



Trial and Error

Why It Is So Important to Mentor Young Prosecutors and Teach Them About Professionalism, Ethics, and Integrity

BY PATSY LOPEZ

YOU WENT TO LAW SCHOOL WITH ONE INTENTION: TO BECOME A COMMUNITY ADVOCATE. You volunteered as much as possible, completed every clinic you could, and spent countless hours speaking with like-minded colleagues about what an impact you all would make in the real world. Every year as those on-campus firm interviews were going on, you stopped to ask yourself if you were doing the right thing. It was so hard to watch all those law firm job offers being accepted by your friends while you were still waiting for interviews to be scheduled. You kept repeating to yourself what your counselor explained, “Government employers hire on a different timeline; everything will be okay.”

It was true; those summer clerkships did come in. So even when the bar exam study course started and you didn’t have a job, you stuck it out, telling yourself that this too would pass, and it did. That government agency made you the job offer you had been anticipating.

Of course you tell them you can start right away; this is your dream job, and well, frankly, those school loans are coming due.

Excited, you walk in on your first day and are greeted by your chief. You go in front of a judge and are sworn in. Yes, this oath you are taking says exactly what you feel: you

will uphold the laws of this country, state, and municipality; you will uphold justice. You do not yet know exactly how you will uphold justice, but surely all of that will be explained to you in training. This is where you were meant to be.

You meet your secretary, get a tour of your unit, and are shown where the files are placed. You walk into your office—a windowless room, an empty desk, a pile of files, a docket several pages long, a trial calendar, and you are one of the lucky ones who got directions to the courtroom you will be reporting to tomorrow morning. Upon further inspection, you see that the files are all for tomorrow. Your trial calendar says you have jury trials next month, but those files are not in your office and you’ve never had a real jury trial before! After the initial panic, you walk sheepishly out of your office, slowly up the hall, and look for someone who can give you some direction. One of the attorneys recognizes that expression on your face, and as he walks out the door to court, he reassures you, “It is sink or swim around here, but don’t worry, we have all done it, you’ll be just fine.”

“Sink or swim” and “trial by fire” are terms all too familiar to government attorneys. We know that means you are going to learn by trial and error, and the reason this kind of training is used is meritorious. The bottom line is that government dock-

ets are big but funding is small. Unfortunately, this means we are forced to make accommodations.

We bring CLE into the office instead of sending attorneys out for training. We reduce the need for supplies by implementing paperless file systems. We have fewer attorneys handling larger caseloads. We focus our resources where they need to be and we cut out the fluff.

While some offices have a structured mentoring program through which young prosecutors are assigned mentors, the vast majority of prosecutors find mentors on their own, if they find one at all. Ultimately that means there is no way to assure they are being trained adequately or learning through the best example.

Take the case of your typical young, overwhelmed prosecutor. If he happens to have a trial partner who has learned every shortcut possible to cut back on time or avoid trial without fully preparing his

cases, it will be tempting for the young prosecutor to take on those same traits. And who will be there to tell him not to? What about the trial partner who is excellent in trial and at getting all of his trial preparation done timely, but does not have the patience or know-how to teach those skills to his young partner? Where does that leave the young prosecutor? Who is he supposed to turn to? Does the office dynamic make him feel free to turn to other prosecutors in the office for explanations and feedback?

These are all questions we should ask when considering whether young prosecutors are being mentored in our offices. Despite all of these preliminary questions, we still have not even touched on the issue of professionalism. An attorney can learn trial techniques by trial and error, but we should keep in mind that trial skills do not necessarily translate to ethical and professional behavior. We all know basic ethics. We wouldn't be licensed to practice if we had not proved this to the bar examiners. But professionalism goes beyond ethics. Young prosecutors need to know what professionalism is in the office and outside the office. The message that a young prosecutor sends will be widespread, as it is he interacting with the community through victims, courts, staff, defendants, and attorneys on a daily basis.

The truth is that if a young prosecutor is only given the

option to sink or swim, he is going to try to keep afloat by whatever means necessary. Without a mentor, professionalism may never be addressed, which can be detrimental. Professionalism is dealing in all matters with honesty and integrity—from the mundane daily pre-trialing and negotiation of cases to Brady evidence evaluations in the middle of trial. We have all seen those attorneys who lack professional courtesy. What do we do about it?

In a profession where the standard of practice is “to uphold justice,” I submit that we are all responsible for pulling that young prosecutor aside and reminding him that his standard of practice is different than that of any other attorney. That upholding justice means knowing his case, taking the time to call victims, and being honest with defense counsel and the court about a pending case. If young prosecutors do not get this feedback early in their career, they are unlikely to change their habits later. It is just as difficult to change the professional characteristics of attorneys later in life as it is to change their trial strategy.

So how do we keep professionalism in our profession? It is through mentoring. Remember the Lawyer's Creed? When was the last time you read it or even saw it? When was the last time you spoke to any colleague about the courtesy that should be freely given to opposing counsel? It is difficult to do this with the heavy workloads prosecutors carry, but not impossible.

We talk to colleagues about case strategy regularly. We can easily include professionalism in these conversations with young prosecutors, and I believe we should. It does not take hours of scheduled events to be a mentor. While every mentor I have ever had has trained me on the technical aspects of my job, they have all also talked to me about the importance of honesty and integrity in my practice. I have also been fortunate to attend several of the Texas District and County Attorneys Association's CLE programs, which do an excellent job of addressing professionalism in prosecution—I highly recommend them for all prosecutors.

Every time a judge puts trust in my judgment, I am thankful that someone took the time to impress upon me the importance of maintaining a professional demeanor. The vast majority of experienced prosecutors are held in high regard for their trial skills and professionalism. Prosecutors can only keep this reputation by continuing to mentor young attorneys about all aspects of the practice. **TBJ**



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