

Prosecutorial Independence

Safeguarding Justice Through
Autonomy & Integrity



The Role of the Prosecutor

“The prosecutor is the representative not of an ordinary party to controversy, but of a sovereignty...whose interest...in a criminal prosecution is not that it shall win a case, but that justice shall be done.”

Berger v. United States | 1935

Prosecutors' Statutory Duties



Rule 3.8 of ABA's Model Rules of Professional Conduct

1. Shall not prosecute without probable cause.
2. Ensure the accused knows he/she has a right to counsel and can exercise it.
3. Shall not seek waivers of key pretrial rights from unrepresented defendants.
4. Must disclose evidence that may negate guilt or reduce the severity of the offense.
5. May subpoena defense lawyers when:
 1. The information isn't privileged, and
 2. It's essential to the case.
6. Must prevent improper public statements by staff or associates.



Prosecutorial independence makes it possible for a prosecutor to fulfill their ethical duties:

- Disclose exculpatory evidence (Brady obligations);
- Decline to prosecute when evidence is insufficient (even when it's politically inconvenient);
- Use discretion to divert, rehabilitate, or charge as appropriate (not punitively).



Prosecutorial Independence & Elections: *An American Tradition*



45 out of 50 states elect their local prosecutors rather than appointing them. This process is rooted in the American value of democratic accountability.

- Ensuring prosecutors are **directly answerable** to the communities they serve.
- Embodies the principal that justice should be **shaped by the will of the people**, reinforcing transparency and independence.

This model is unique compared to other countries, underscoring the distinctive American commitment to prosecutorial independence and public trust.



Difference Between City, County, State, & Federal Attorneys

Level	Title	Scope of Work
City	City Attorney	Misdemeanors, traffic offenses, city ordinance violations
County	County Attorney District Attorney State's Attorney	Felonies, juvenile cases, civil actions for the county
State	State Attorney General	Statewide legal issues, consumer protection, specific criminal prosecution jurisdictions, appeals, advice to state agencies
Federal	U.S. Attorney	Federal crimes, prosecutes in federal court

Each level works in its own jurisdiction but may collaborate on complex or overlapping cases.

Prosecutorial Discretion

Prosecutors wield an enormous amount of discretion. They decide:

1. Whether to charge someone with a crime.
2. What charges to file.
3. What cases to prioritize
4. Whether to offer plea deals.
5. Whether to seek diversion.
6. Whether to dismiss a case altogether.

This discretion has the possibility to shape people's lives, so it must be exercised without fear OR favor.



What is Prosecutorial Independence?

Prosecutorial independence means that prosecutors can make decisions, especially about charging and dismissing cases, free from improper influence.



Ensures a separation between political and the criminal legal system.



Examples of Improper Influence

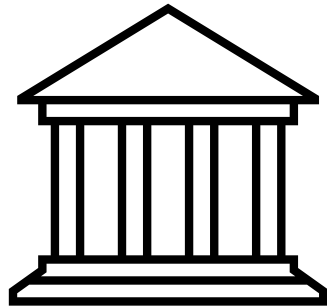
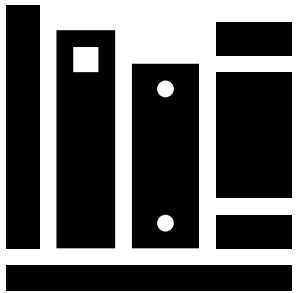
<i>Political Pressure</i>	<i>Interference from Law Enforcement</i>	<i>Personal Interest</i>
<i>Interference from Elected Officials</i>	<i>Public Opinion</i>	<i>Interference from the Judiciary</i>

Why Does Prosecutorial Independence Matter?

Protection Against Corruption

Public Trust & Confidence

Fair Trials



A black and white illustration of a balance scale. Two hands, one on the left and one on the right, are shown holding the pans of the scale. The scale is perfectly balanced. The background is a solid dark gray.

Protection Against Corruption



History proves
the importance
of prosecutorial
independence.

When
prosecutors are
controlled by
political figures,
criminal charges
become
weaponized.





Public Trust & Confidence



People have natural confidence that the law will be applied fairly.

If they think a case was charged or dismissed for a political reasons, that public trust is at risk.

Fair Trials

An illustration of a courtroom scene. In the center, a judge with a white beard and balding head sits in a yellow chair behind a large wooden bench. He is wearing a dark suit and a red tie, and is gesturing with his right hand. To the left of the judge, a woman with long brown hair, wearing a dark blue dress, stands and holds a white folder. To the right of the judge, a man with brown hair, wearing a dark suit and a red tie, sits at a desk, smiling and looking at a laptop. The background features a large, light brown, irregular shape. In the center of this shape is a circular emblem containing a pair of scales. Two flags are visible: a red flag on the left and a blue flag on the right. The overall style is a flat, modern illustration.



Denial of Fair Process

Without prosecutorial independence, prosecutors can be pressured to:

- Undercharge
- Overcharge
- Ignore Exculpatory Evidence

Still don't believe me?

Present Day Examples



In Re: Prosecuting Attorneys Qualifications Commission Rules and Code of Conduct



Georgia | November 2023

Georgia enacted Senate Bill 92 establishing the *Prosecuting Attorneys' Qualifications Commission* to oversee elected prosecutors.

The commission now **has authority to discipline and remove prosecutors** for decisions about which cases to bring and how to pursue them, and even for prosecutors' speech about the job.

The commission may also **base disciplinary action on a district attorney's stated policies** which demonstrate that the district attorney "categorically refuses" to prosecute certain offenses.

Worrell v. DeSantis

Florida | June 2024



Monique Worrell was suspended from her position as state attorney by Governor Ron DeSantis, which she argued was a **politically motivated action**.

DeSantis accused Worrell of “**neglect of duty**” and “**incompetence**” due to political disagreements about her office’s charging decisions. He relied on a provision of the Florida Constitution that permits the governor to suspend “any state officer not subject to impeachment.”

At the time of the suspension, Worrell was the **only Black woman serving out of 20 state attorneys** in Florida. She was subsequently re-elected.



Warren v. DeSantis



Florida | August 2022

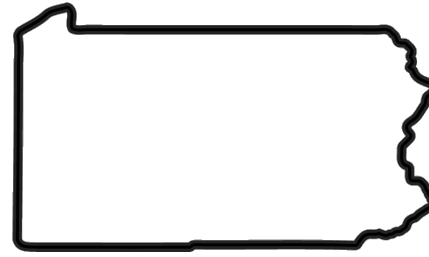
Andrew Warren was suspended and removed from his position by Governor Ron DeSantis, who accused Warren of “**neglect of duty**” and “**incompetence.**”

Ultimately, Warren was suspended because he signed two pledges:

1. Vowed not to enforce Florida’s abortion laws
2. Vowed to not prosecute those providing gender-affirming care to transgender patients

During his unsuccessful presidential campaign, DeSantis frequently cited Warren and Worrell’s suspensions as an example of him going after progressive prosecutors.

Krasner v. Ward



Pennsylvania | December 2022

Elected in 2017, Larry Krasner implemented various policies in hopes to reform Philadelphia's criminal justice system.

Examples:

- No money bails for certain low-level offenses
- Directed prosecutors to seek shorter prison terms based on the taxpayer cost of incarceration.

After being reelected in 2021, the GOP-controlled lower house passed articles of impeachment alleging that Krasner's policies has caused crime to rise, amounting to “**misbehavior in office**” and a “**declaration of duty and refusal to enforce the law.**”



ADDA v. Gascón

California | September 2024



Elected in 2020, George Gascón ran on a progressive reform platform. Soon after taking office, he introduced a series of directives aimed at reducing what he saw as overly punitive sentencing practices. For example:

- Barred deputy district attorneys from seeking sentencing enhancements
- Prohibited the filing of certain charges

In response, the Association of Deputy District Attorneys (ADDA) sued, arguing Gascón's directives violated state law. ADDA raised an important question about prosecutorial independence not just from outside forces, but within a DA's office.

Legislative Overreach in Shelby County



Tennessee | February 2025

State Senator Brent Taylor attempted to remove Shelby County District Attorney Steve Mulroy through a formal *ouster resolution*, citing policy disagreements over Mulroy's diversion proposal for nonviolent gun offenses. Mulroy ultimately withdrew the diversion plan, but Taylor proposed a joint legislative investigation, wielding subpoena power to prove claims of **“mismanagement”** and **“policy overreach.”**

Lieutenant Governor Randy McNally publicly endorsed Mulroy's removal and argued that Mulroy's policies **“undermined constitutional law enforcement.”**

Mulroy's case shows how political interference can erode prosecutorial independence by replacing justice with partisan agendas, overall threatening public trust in the rule of law.



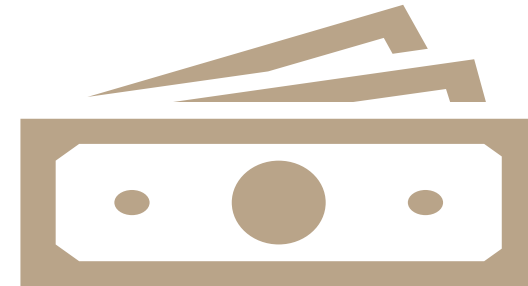
Risks to Prosecutorial Independence



Political
Interference



Media & Public
Opinion



Financial &
Structural
Constraints

Political Interference

It is no secret prosecutors face pressure from politicians in both elected and appointed systems.

- Turn their back towards cases involving donors or allies.
- Follow policy directives that conflict with a prosecutor's professional ethics.
- File charges to “make a statement.”



Financial & Structural Constraints

Even when prosecutors act with integrity and independence, they can be constrained to *punish or pressure* them:

- Budget Cuts
- Case Removal
- Staffing Pressure

These tools are often invisible to the public. Without adequate resources, independence is difficult.





Finding Balance



Independence $\neq$ Immunity

Prosecutorial independence doesn't mean being above scrutiny. It is freedom from politics, not freedom from responsibility.



Accountability tools must include:

- Transparent Policies
- Community Engagement
- Ethical Review Boards

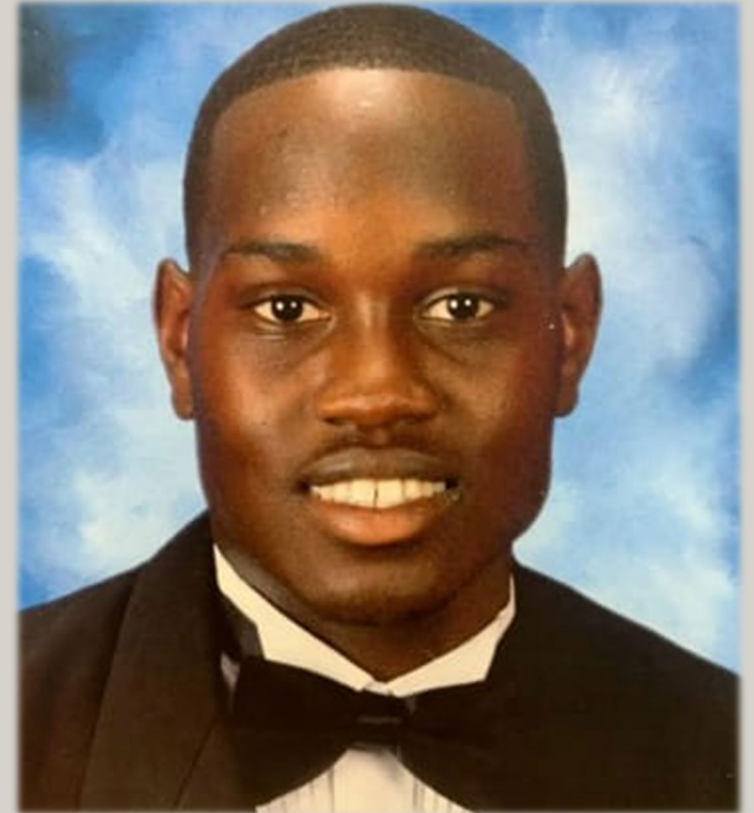
Ex-Prosecutor on Trial for Hindering Ahmaud Arbery's Murder Investigation

Georgia | January 2025

Former Brunswick Judicial Circuit District Attorney, Jackie Johnson, is charged with violating her oath of office and hindering a police officer.

Independence is not a shield for unethical behavior. Abuse of discretion hurts the legitimacy of true independence.

Johnson's actions illustrates what happens when prosecutorial discretion is abused, not protected.



[NPR](#)

District Attorney Disbarred for Misconduct in Duke Lacrosse Case

North Carolina | March 2006

Mike Nifong, former Durham County District Attorney, was disbarred after his mishandling of the 2006 Duke University Men's Lacrosse case, where he pursued charges despite the lack of credible evidence, concealed exculpatory DNA results, and made inflammatory public statements.

Nifong's case serves as a cautionary example:

❖ When a prosecutor prioritizes political pressure or media attention over fairness and truth, prosecutorial independence becomes a liability instead of a safeguard.



Prosecutorial Independence Task Force

Goal: **Preserve and strengthen** prosecutorial independence and **enhance the American public's understanding** of the prosecutor's role in maintaining the integrity of the criminal justice system.







Role of Communities, Law Schools, & Office Cultures



The Role of Communities

Prosecutors serve “the people,” not political parties.

A prosecutor’s engagement with the community can:

- Build Trust
- Counter Political Narratives
- Support Reform

With public understanding, prosecutorial independence can become stronger.





The Role of Law Schools

Law schools have the power to prepare future prosecutors from external pressures by:

- Teaching ethics alongside law
- Normalizing integrity over conviction rates
- Exploring real-world pressures on prosecutorial discretion

Law students want to learn from you. If you are asked to speak to a class of future lawyers, take it. It is extremely important that we train them in independent and value-driven leadership.

The Role of Internal Office Culture

Staff attorneys need to feel safe making ethical calls. A positive and open office culture allows for an internal safeguard for independence.

Leading attorneys must:

- Set Clear Values
- Encourage Thoughtful Discretion
- Protect from Outside Influence



Protecting justice starts
with protecting those who
deliver it.

**Independence isn't
optional.**



Call to Action

It is our job to ensure that the justice system remains fair, independent, and ethical. We must:

- Support colleagues who act with integrity, even when it's hard.
- Refuse to compromise our ethics for the sake of political approval.
- Advocate for policies and structures that safeguard autonomy.

Prosecutorial independence is not a concept; it's a path to fairness.



“The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a [person]. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen’s safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.”

Justice Robert H. Jackson

Published December 1, 1940



THANK YOU

ABA Taskforce on Prosecutorial
Independence

Co-Chairs: John Choi | Ellen Podgor | Ellen Yaroshefsky | Sara Alpert Lawson