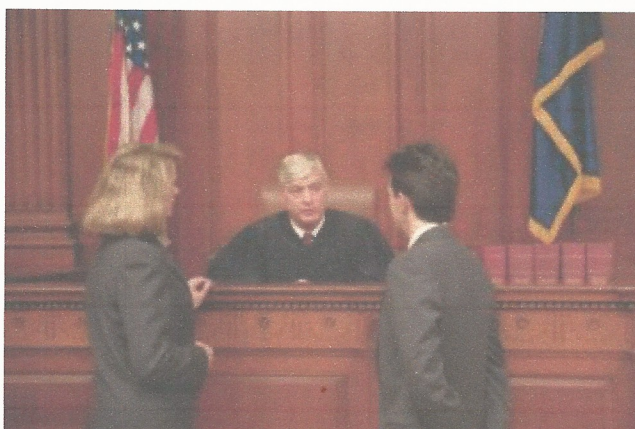


A Prosecutor's Response

By TONI MESSINA

Jan 3, 2017 at 2:31 PM

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I've been writing a weekly column on criminal justice for close to two years now, and while I try to be accurate and fair, my articles naturally reflect *my* experience as a criminal defense attorney and not that of a prosecutor. A prosecutor's on-the-job challenges and goals are different than those of a defense attorney. In some ways, their job is tougher. They've got to mete out justice, not just win a case. I recently received a letter from a man who's been a prosecutor for as long as I've been a defense attorney. His viewpoint (commenting about an article I wrote) is worth a read. It is reprinted in full, below.



Miss Messina – I read your article entitled [“What Makes a Good D.A.”](#) a few weeks

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are constantly coming across Brady issues that are always resolved by full disclosure to defense counsel. As recently as last week, I sent newly obtained Brady information to an appellate attorney on a murder case that I tried over three years ago. In court last week, a defense attorney made an admission on behalf of his client on the first appearance on a probation violation. I immediately halted the proceeding, asked to approach the bench, and informed the defense attorney that the probation department was seeking prison for his

client. He had no idea, although it was contained in the paperwork for the violation. I told him, out of the presence of his client, that he should move to withdraw her admission and seek an adjournment to have discussions with my office. The judge agreed and consented to the withdrawal of defendant's admission. I suppose there are possibly some prosecutors who would have simply let the admission stand and then make a recommendation that the defendant go off to prison. But I couldn't do that.

In my nearly 20 years as D.A., I have had hundreds of these incidents whereby I stood up for the defendant and did what I considered to be the right thing. I believe that most prosecutors have many similar experiences. I believe that most prosecutors do the right thing on a daily basis. There are most certainly exceptions, and it is those prosecutors who give us a bad name. I always go back to the concept that when judges screw up, it is "error," and when defense counsel screws up, she is "ineffective," but when a prosecutor screws up, it is "misconduct." We all screw up once in a while. It is those screw-ups that tend to define us in the media and ultimately in the eyes of the public. It is very rare that the media praises the prosecutor who gets it right by helping a victim or putting away a bad guy. Thus, we are consistently looked upon as the almighty government picking on the small-time defendant. That's not what I am about and I am sure that most of my colleagues are not about that either. I come to work every day with the idea that I am trying to make my County, my State, and my Country a safer place. I do that by doing the right thing, even if it means a bad guy gets off.

So, I write, not to complain, but simply to let you know that there are so many good things that prosecutors do around this state and this country. It is not just D.A. Thompson who got it right. It is not just D.A. Clark who got it right. Many of us have been getting it right for a long time.

Thanks for listening.

Joseph G. Fazzary
Schuyler County District Attorney