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Cook's Field Guide to Prosecution in Georgia

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Cook's *Field Guide to Prosecution in Georgia*®

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2001-Present

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1990-2000

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I.

PREFACE

Professor Alan Cook has trained hundreds of Georgia prosecutors. I had the pleasure of participating in Professor Cook's Prosecutorial Justice Program at the University of Georgia School of Law and have relied on him over the years as a colleague and mentor. Professor Cook, having served as an elected district attorney, brings both his personal knowledge and his deep understanding of Georgia criminal procedure to his training. With this handbook, we'll now have Professor Cook's wisdom and advice at our fingertips. It is a wonderful resource, written to be utilized both in and out of court.

--- Shannon Wallace, District Attorney, Blue Ridge Judicial Circuit

I, along with many other prosecutors in Georgia, had the privilege of taking Professor Cook's Prosecutor training course at UGA Law. His course enabled me to competently walk into a courtroom on my first day as a prosecutor. As an elected Solicitor-General, the ultimate praise that I can give Professor Cook is that when I hire a new prosecutor, I look for people that have taken his course, knowing that they too will be prepared from day one. All prosecutors would be well-served to have a copy of this book.

--- Joseph Cushner, Solicitor-General of Bulloch County

II.

ACKNOWLEDGMENTS

One might say that this “Field Guide” had its origins over 30 years ago when I first became interested in politics at Rockdale County High School. That interest led me to a deep appreciation of our Constitution and its elevation of the rule of law over the rule of man.

My awakening to the importance of individual rights and liberties was heavily influenced by the writings of the 19th Century English philosopher John Stuart Mill whose *On Liberty* remains one of my favorite books. My desire to protect the individual freedoms guaranteed to each of us by our Constitution was further inspired by Atlanta radio personality Neal Boortz, an outspoken Libertarian. My love for U.S. history and our Constitution was heightened at Oxford College by my history professor, Dr. Neil Penn, who was renowned for his entertaining anecdotes (Pennisms). And as a Political Science major at UGA, Professor Robert Grafstein helped me complete my political and philosophical journey by introducing me to competing schools of political thought.

At UGA Law, my legal career aspirations quickly gravitated toward criminal prosecution and its mission to protect the property rights and bodily safety of individuals while at the same time protecting the Constitutional rights of those accused of committing crimes. Professors like Eugene Wilkes instilled in me the importance of ensuring that police and prosecutors exercise their powers wisely and consistent with the demands of our Constitution. With these principles in mind, I set my sights on becoming a criminal prosecutor. After two brief stints in private practice and a judicial clerkship with the Honorable Thomas Ridgway in Monroe, Georgia, I finally achieved my goal when I was hired as the lone Assistant District Attorney for Walton County – a small, rural county east of Atlanta.

My fledgling prosecution career, however, led me to an unexpected place. After less than three full years as an ADA, I was elected as District Attorney for the Alcovy Judicial Circuit. At the time, at age 31, I was the youngest DA in the state. Re-elected twice thereafter and serving from 1990-2000, I was not only able to pursue justice in individual cases, I was able to make and implement public policy. I created our office’s first plea negotiation manual – the Blue Book – to ensure that my ADA’s plea offers were consistent and non-discriminatory – yet flexible enough to account for differences between ostensibly similar crimes and the individuals who committed them. One of my proudest accomplishments was in prioritizing the trial of child sexual abuse cases and in becoming my office’s special victims prosecutor.

My DA years were very difficult years. Our caseload was staggering. I and my ADA’s were young and inexperienced – but dedicated and hard-working. I will be forever grateful for the friendship, encouragement, and able assistance provided to me by my staff including Ken Wynne (my chief assistant); Donna Fambrough and Brenda Hitchcock (my senior administrative secretaries); Herman Bradford, Mike Burke, Otis Harper, and Joe Rickman (my investigators); Jan McGaughey, Kathy Kitchens, Cindi Malcom, and Melanie Simms (my secretarial staff); my ADA’s Anne Templeton LaMalva, Jennifer Greene Ammons, Jeff Foster, Chris Brasher, Jeff Blandford, Jay Jackson, Brian Deutsch, Gene Hatcher, Vanessa Webber, Brian Max, Layla Zon, and too many others to mention here. I also want to thank Judge Marvin Sorrells for his wise counsel and abiding wit, and Judge Samuel Ozburn who became for me, the prototype for fairness and civility on the bench.

Speaking of unexpected places, in 2001 after deciding not to seek a fourth term as DA, I was hired to run the Prosecutorial Justice Program (PJP) at the University of Georgia School of Law. In all honesty, I never pictured myself in academia. But during my DA years, I genuinely enjoyed training the new ADA's in my office and mentoring the UGA Law interns who worked there over the years. So for the past 17 years, I have served as the PJP's Director attaining the rank of Clinical Professor of Law. I am extremely grateful to Dean David Shipley who placed his trust in me to reinvigorate this unique, three-semester prosecutor training program.

My years at UGA Law have been both personally and professionally rewarding. For that, I want to thank Robin Jennings (my administrative secretary) and my law students – great, great students like Shannon Glover Wallace ('02); Buck Levins ('05); Jay Hughes ('06), Kimberly Burroughs Debrow ('07), Brian McGee ('07), Ashley Agnew ('10); Steven Lee ('10), Sherwin Figueroa ('11), Teresa Garmon Stolz ('11), Jacqueline Payne ('13), Michael Parrish ('17), and many, many others.

This position has given me the extraordinary privilege of helping to train the next generation of Georgia prosecutors – with over 150 of my PJP grads having secured prosecutor jobs in Georgia and elsewhere since 2001. It has also allowed me the luxury of time – something few practitioners get – to further my study and writing on the subject of criminal law and procedure – leading to the creation of the CMBrief© - *A Comprehensive Trial Brief for Prosecuting Child Sexual Abuse Cases in Georgia*¹ and this Field Guide.

And in 2004, I was honored to be invited to join the *Finding Words, Georgia* faculty. This nationally recognized 5-day interdisciplinary training course, now known as *ChildFirst, Georgia*, trains Child Advocacy Center personnel, law enforcement investigators, prosecutors, and other child abuse professionals in the science of child forensic interviewing. I want to thank Chris Newlin, Executive Director of the National Children's Advocacy Center in Huntsville, Alabama, for getting me involved in this extraordinary course. I also want to thank my amazing *ChildFirst* colleagues and friends who I have had the privilege of working with over the past 13 years: Amy Economopoulos, Peter Boehm, K. B. Ayer, Curt Holmes, Anique Whitmore, Mary Beth Nelson, Ben Dickerson, Danielle Levy, Lori Brown, Greg McConnell, Kelley Vincent, Tammy Mills, Sherry Bryant, and Dee Simms.

Finally, I want to thank my UGA Law research assistant Alexis "Lexi" Trumble (JD '19) for her assistance in editing and formatting this Field Guide.

I hope that you will find *Cook's Field Guide to Prosecution in Georgia*© helpful in your pursuit of justice for individuals as a Georgia prosecutor.

¹ I provide this treatise on the prosecution of child sexual abuse cases to Georgia prosecutors free of charge. To be added to my CMBrief© listserv and receive twice-annual updates, email me at acook@uga.edu.

III.

DEDICATION

I dedicate this book to my wife of 34 years, Debra. She is my best friend, a talented dentist, a dedicated and innovative science teacher, an amazing mother and grandmother, and a wonderful wife.

IV.

INTRODUCTION

Like most lawyers who graduate from law school, I was taught how to “think like a lawyer,” but I had no idea how “to practice law.” Oh, sure, I took Criminal Law, Criminal Procedure, and Evidence, but when I was hired to become the lone assistant district attorney in a rural county of 60,000 people, I had no idea what an ADA was expected to know and do on a weekly basis.

If only there had been, a “field guide to prosecution in Georgia.”

When after 13 years as a Georgia prosecutor, I assumed the directorship of UGA Law’s Prosecutorial Justice Program (PJP), my goal was to create a practical course of study to provide law students with the knowledge they would need upon securing their first legal job as a prosecutor. After 16 years of preparing weekly lectures on criminal law and procedure, I decided to put my accumulated research and knowledge into an easy-to-use topical notebook for the benefit of Georgia prosecutors.

This Field Guide is divided into 31 Chapters. Each Chapter is divided into three parts: an *Introduction*, a *Quick Reference* section, and a *Detailed Reference* section.

The *Introduction* provides a quick description of each Chapter’s topic and its importance to prosecutors. It also previews the subtopics to be discussed in that Chapter.

The *Quick Reference* section is a summary of the most important information contained that Chapter. This section is designed to give a prosecutor a quick overview of the topic and may serve as a good review just prior to conducting a hearing or trial involving that Chapter’s topic.

The *Detailed Reference* section is designed to provide a prosecutor with an in-depth look into that Chapter’s topic and its many related subtopics and may be particularly helpful in drafting responses to motions and appellate briefs.

Finally, many Chapters point the reader to the existence of a “Practice Guide” related to that Chapter’s topic which can be found in the Appendices. These practice guides provide step-by-step guides on how to perform various prosecutorial tasks, e.g., how to take a guilty plea.

AUTHOR’S NOTE: If this Field Guide is well-received by the prosecution community in Georgia, and if Copyright laws² are respected making it financially sustainable, the author intends to issue periodic supplements, new chapters, new Practice Guides, and new editions.

² This Field Guide represents 30 years of research, study, and writing. If anyone were to distribute this work to their colleagues via the Xerox machine, not only would such act represent a theft of my intellectual property under 17 U.S.C.A. §106, it would undermine my faith in the integrity of the members of our profession for whom I have the greatest admiration and respect.

