



AGONY COLUMN

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“But Officer, It Was Like This....”

Tips for Getting Better Reports from Law Enforcement

How many times have you received an arrest or offense report and wished that the reporting police officer had identified all the witnesses? Or given their addresses and telephone numbers? Or had given some clue as to the probable cause underlying the arrest? Or had taken statements from the witnesses? We all have war stories about police investigations that were, prosecutorially speaking, DOA.

However, this underscores the thought that, if a prosecutor is going to do his or her job efficiently, there exists a very critical training function on our part to assist the police in doing better investigations and preparing better reports. Ah, but if it was only that easy.

While there are always notable exceptions, it has been my experience that many police officers view prosecutors with a jaundiced eye: a necessary part of the criminal justice process who treat the officers' hard work in rather cavalier fashion, willing to plea bargain away real justice instead of holding a defendant's feet to the fire for the punishment he really deserved. And perhaps there is a grain of truth there. And I have seen some prosecutors who treat

police officers in a condescending fashion, smugly and disdainfully dismissing their contributions as trivial or incompetent for the slightest of reasons. If the public is to be truly well served, the answer, of course, is a commitment to positive teamwork, and the prosecutor must take the lead.

First of all, the prosecutor has to appreciate that, trite as it may sound, police officers really do have to make split-second legal decisions regarding the handling of a crime. And sometimes all of the facts may not be just right in order to make the case perfectly prosecutable. Over the years, the emphasis on police training has improved dramatically, as has the level of individual education within law enforcement ranks, and pay levels are beginning to creep upward to attract the better qualified. The result has been generally a steadily higher caliber of dedicated, professional police officer. While it has been said that the prosecutor wields the most discretion in the criminal justice system, I think there is a good argument that what the indi-

vidual police officer brings to a criminal investigation has greater influence. While in the excitement of pursuing an ongoing criminal investigation, the officer must continually keep in mind all of the things that might jeopardize successful prosecution: *Miranda*, probable cause, articulable suspicion, *etc.* Tain't a piece of cake, folks, and many experienced prosecutors would not be able to react to changing situations as competently as experienced police officers.

At the same time, many police officers fail to connect their investigative efforts with trial preparation, which ideally begins when the investigation begins. The time to prepare for trial is not when the officer is notified to appear in court, by hastily reading the offense report. The officer is more often than not only interested in putting the bad guy behind bars — once that is done and a report is made, the officer goes on to deal with some other episode. The fact that the defendant may choose to plead not guilty and demand that the State prove he committed a crime is seldom a foremost thought with a police officer. In forgetting about the needs of a trial, shortcuts may be taken and important information omitted. Unfortunately, that oversight can have a significant influence on what the prosecutor will do with that case. If the case is weak or non-salvageable as a result, the prosecutor has little choice but to dump it in the most expedient manner.

How does the prosecutor take the lead in building an effective team? At the outset, there must be a first-name, on-going relationship with the head of each law enforcement agency in the prosecutor's jurisdiction. There should be such mutual respect that either would be comfortable in picking up the phone and relating a problem that he or she is having with the other's entity, and working together constructively to re-



solve the problem. In my county, there is a chiefs and sheriff's organization that meets monthly, and I am a dues-paying member. It gives me a chance to lunch with friends and enjoy fellowship, as well as to hear their problems, both major and minor, and to share ideas and news from my office. I try to make myself as informally accessible as possible to the law enforcement officers in my county, just to keep the lines open; it may very well be that I am the problem that needs to be discussed.



Secondly, while a prosecutor may sadly shake his or her legal brain over some example of poor police work that affects the proper disposition of a case, that accomplishes nothing absent some affirmative, positive action to remedy the matter. At a minimum, there should be an opportunity to constructively go over the investigation with the reporting officer, even if the prosecution cannot be salvaged. In such circumstances, treat it not as a tragedy but as a training opportunity. If the matter is more widespread among police agencies, perhaps the prosecutor can hold some classes for officers on how to make topnotch investigations and/or write proper reports. If there is an individual officer who is consistently unable to make a proper investigation, then, after appropriate training efforts, it is probably time to do the police agency a favor and contact the head of that agency... but be armed with sufficient specific, documented examples so that the chief can justify whatever actions he or she may take.

The harshest response would be for the prosecutor to reject a case outright,

without a supplemental investigation or explanation, which, of course, would do nothing to engender a positive relationship with the officer and the agency.

There may have been an excellent investigation, but perhaps the report unfortunately failed to reflect that. Also, there is likely a victim somewhere in that dispute, and a knee-jerk reaction would hardly be fair. At a minimum, if a case must finally be rejected or dismissed, especially because of a poor police investigation, there should be a full constructive explanation. Then the prosecutor must take the lead to work with that agency to remedy the problem. That calls for a good relationship between you and the agency.

Third, before doing any training, the prosecutor might consider developing realistic standards for filing a case, which would need to be communicated to the police agencies. As this is written, we are still struggling with the implementation of Senate Bill 7, and the apparent result is to add even more paperwork and procedures to the police officer's burden in preparing a case for prosecution. I would suggest that police agencies be fully involved with the prosecutor's office in drawing up these standards so that they have some input as to tactical and administrative problems that the prosecutor might never consider. TDCAA publishes the *Guide to Report Writing* (\$5) that could be used as a starting point for a jurisdiction-wide policy among all agencies. Such involvement would very likely establish more interest and commitment on the part of the agency for better po-

lice investigations and more professional police reports.

The same approach might even help in providing for better courtroom testimony by police officers, which has a critical link with effective report writing. We all know some officers whom we prefer for testimony than others; the trick is to provide what assistance we can to improve the courtroom demeanor and ability of the other officers. Maybe it involves more vigorous "wood-shedding;" perhaps a more complex approach, such as classroom exercises, might be necessary — a little role-playing to help officers to present a more positive image.

While I discourage my prosecutors from taking on police functions, or considering themselves as peace officers, they are certainly not discouraged from occasionally "riding along" with a police officer to get a feel for what the officer actually does. They accompany the officer as bystanders only, and don't get involved, but they come away, I think, with a better image of what constitutes "police work." Merely sitting at one's desk reading an offense report is not the same thing as seeing how things function when the adrenalin is flowing. And the police officer learns that prosecutors are flesh-and-blood folks who also

care about what they do.

An effective police-prosecutor team is based on mutual respect and a willingness to work together to produce the most professional result possible. After all, we are both after the same goal — to put the bad guy away. So, the next time you see a patrol car cruising your neighborhood, do what I do: Wave. You really need them more than they need you.

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