

Investigating Violent Crime: The Prosecutor's Role



Lessons Learned From the Field
June 2018



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Introduction

In October 2017, seasoned violent crime prosecutors spent a day and a half sharing their ideas about how to improve the investigation of violent crimes. Much of the focus was on the pre-arrest involvement of the prosecutor, particularly with regard to homicides. The prosecutors represented jurisdictions large and small and came from cities spanning the nation, from the Bronx to Los Angeles (see [Appendix A](#) for list of attendees). For ease of identification, the prosecutor's office will be referred to by the most commonly known city or county in each jurisdiction.

Violent crime prosecutors do difficult and important work. Though the group had much in common, it was quickly apparent that there are a variety of approaches to the job. Some of the differences are rooted in statutory obligations, while others are based on resource limitations. The meeting provided a forum to compare notes and strategies and to debate the merits of each.

Following the meeting structure, this paper tracks the various phases of an investigation and provides an overview of the issues discussed, along with representative descriptions of the approaches used and challenges faced by the participating jurisdictions. The examples are illustrative; they can vary with the circumstances and do not necessarily include the approach of each participant's office. The goal is to prompt further thought and discussion in the field on best practice solutions.

Initial Investigation

Absolute vs. Qualified Immunity

Though it is well known that absolute immunity does not always extend to a prosecutor's work during the investigative stage, many prosecutors are involved in violent crime investigations well before the arrest. This is particularly true for homicides. Given the ability to enhance a case, provide legal advice to the police, and judge the strength of the evidence, most prosecutors in the group participated in the investigation of the most serious cases in their jurisdictions. The prosecutors agreed that early involvement of a prosecutor will enhance the ultimate outcome of a case, whether it is to charge and convict the guilty or to free the incorrectly accused.

Vertical Prosecution

General

There was consensus among the prosecutors that having one prosecutor assigned to a case from investigation through disposition has tremendous benefits.

This is commonly called "vertical prosecution." Though many offices do not have the staff or resources to be vertical on all cases, most have vertical prosecution for their most serious cases. The advantages of vertical prosecution include:

- ◆ Maintaining relationships with police and witnesses throughout the case.
- ◆ Giving victims and witnesses one constant presence and source of information.
- ◆ Thoroughly understanding the facts and issues in the case.
- ◆ Being alert to changes in testimony or other evidence.
- ◆ Having a stake in the case, because the outcome of the case will be the sole responsibility of the assigned prosecutor.
- ◆ Ensuring consistency in approach to the case.

Examples

Fully Vertical in All Cases: The Bronx District Attorney's Office (Bronx) has moved to a fully vertical system for all cases – misdemeanors and felonies. This required a significant increase in resources and a major restructuring of the large, metropolitan prosecutor's office. Many logistical issues had to be resolved, along with the morale issues that inevitably result from a major change in approach.

Vertical After Charging: The Philadelphia District Attorney's Office (Philadelphia) and the Milwaukee County District Attorney's Office (Milwaukee) are vertical on most violent felonies after charging, which is usually a day or two after the arrest. In Philadelphia homicide cases, a senior prosecutor reviews the evidence and, if sufficient, charges the offender; thereafter the case will be assigned to another prosecutor for its duration. Nonfatal shootings, armed robberies, and officer-involved shootings are handled similarly. In Milwaukee, homicides, gang cases, and officer-involved shooting cases are prosecuted vertically from the investigative stage; other felonies are prosecuted vertically from charging.

Vertical on Designated Cases: The Los Angeles District Attorney's Office (Los Angeles) and the Shelby County District Attorney General's Office (Memphis) vertically prosecute certain categories of cases, such as homicides, sex crimes, child abuse, and most domestic violence cases. The offices do not have the resources to be vertical on all cases. The Camden

County Prosecutor’s Office (Camden) is vertical only for the most serious and complex cases; all other less complex cases are not vertical. The Orleans Parish District Attorney’s Office (New Orleans) is only vertical for a few long-term investigations of violent crime, but for the most part, the office does not follow a vertical system.

Nonvertical: The Pulaski County Prosecuting Attorney’s Office (Little Rock) is nonvertical. To address the most serious cases, particularly homicides, they have a team of the office’s most senior attorneys who review and approve all affidavits of arrest in these cases, but they do not necessarily keep the cases. New Orleans has a similar homicide screening division that reviews homicide cases at the charging stage only. The case is then reassigned to other attorneys.

Prosecutors and the Crime Scene

General

For prosecutors to have input during the investigative stage of a homicide or other serious case, they must be notified by the police that a crime has occurred and when a suspect is in custody. This process varies from jurisdiction to jurisdiction and may often hinge on the nature of the relationship between the prosecutor and the police. Some prosecutors are not given timely notice of a serious case and therefore cannot provide early input. The group generally agreed that it is valuable for prosecutors to go to the crime scene of major incidents, such as homicides and officer-involved shootings.

Police, not prosecutors, are in charge of the crime scene and the initial investigation. Thus, if a prosecutor goes to a crime scene, the prosecutor must follow the instructions of the police. Some police investigators welcome the help of the prosecutor, while others resist prosecutor input as being intrusive and “out of their lane.” Once there is an arrest, control of the case generally moves to the prosecutor.

There were a variety of approaches to whether and when a prosecutor should go to a crime scene. Some prosecutors go to every homicide scene, even before there is an arrest; other prosecutors only go to the scene if there has been an arrest. Still other prosecutors never go to a crime scene.

The benefits of going to a crime scene include:

- ◆ Gaining a better understanding of the physical layout of the scene.
- ◆ Learning details about the investigation.
- ◆ Meeting witnesses.
- ◆ Understanding the neighborhood.
- ◆ Assisting with the collection and triage of evidence.
- ◆ Being available to provide legal advice as issues occur.
- ◆ Forming a relationship with the investigating officers.

It was clear, however, that more work can be done on clarifying the role of prosecutors who do go to crime scenes and their relationship with police investigators, crime scene technicians, and laboratory personnel.

To avoid conflict and misunderstandings at the crime scene, it is useful for prosecutors, police, and lab personnel to continue to resolve a number of issues, including:

- ◆ *How and when to notify the prosecutor of the existence of a crime scene.*
- ◆ *How to record the prosecutor’s presence at the scene.*
- ◆ *Specifying where the prosecutor can or cannot go within the crime scene.*
- ◆ *Identifying who will or will not talk to the media, and when.*
- ◆ *Establishing protocols for interviewing witnesses.*
- ◆ *Developing evidence recovery protocols between the police and the laboratory.*

Examples

Prosecutors Who Go to the Crime Scene Before Arrest: Unless they are told the scene is unsafe, prosecutors in the Jackson County Missouri Prosecuting Attorney's Office (Kansas City) and the St. Louis Circuit Attorney's Office (St. Louis) go to all homicide crime scenes, even if no arrest has been made. In St. Louis, prosecutors wear a bulletproof vest when asked to do so by law enforcement.

In Kansas City, prosecutors are on crime scene duty for two weeks, coinciding with the police homicide squad two-week assignment, and attend every homicide crime scene during that period. They have a checklist to help them with their responsibilities and are mindful of staying in the outer ring of the crime scene area.¹ The prosecutor prepares any investigative subpoenas or search warrants and, if appropriate, files charges on cases investigated while on duty. Less experienced attorneys strive to be put on the crime scene duty rotation as it is seen as a vote of confidence from the office.

Prosecutors Who Go to the Crime Scene After Arrest: In the Bronx, the prosecutor has an informal agreement with the New York Police Department (NYPD) that they are to be notified within two hours of a homicide or when a suspect is taken into custody for a homicide or other serious case. An on-call prosecutor responds to the scene and keeps the case through ultimate disposition. After visiting the crime scene, the prosecutor usually goes to the police precinct to continue work on the investigation, including interviewing witnesses, drafting search warrants, issuing subpoenas, authorizing the arrest, preparing charges, and providing other legal advice.

The Denver District Attorney (Denver) is gradually moving toward a vertical prosecution system. As part of the process of going vertical and promoting professional development, senior prosecutors are required to go to the Denver Police Department Homicide Unit to observe witness and suspect interviews, assist with legal advice, and, when appropriate, go to homicide crime scenes. Prosecutors with less experience are paired with senior prosecutors and are also encouraged to assist with legal advice during the investigative stage of a case. The Denver Police Crime Laboratory responds to homicide crime scenes and provides additional expertise that improves the recovery of evidence.

Prosecutors Who Occasionally Go to Crime Scenes: Prosecutors from Philadelphia and the City of Richmond Commonwealth Attorney's Office (Richmond) go to the crime scene of serious homicides, for example, if there are multiple fatalities. Philadelphia, Richmond, Little Rock, and Milwaukee send a prosecutor to the scene of an officer-involved shooting.

Prosecutors Who Do Not Go to the Crime Scene: Except for an officer-involved shooting, Little Rock does not send prosecutors to a homicide crime scene. The concerns are that the prosecutor may not have absolute immunity at this stage and that the prosecutor may become a witness in the case. Milwaukee also does not send prosecutors to most homicide crime scenes; this is largely due to resource constraints.



¹ See [Appendix B](#) for Kansas City checklist.

Prosecutor Crime Scene Training for Police

General

Because prosecutors are tasked with introducing crime scene evidence at trial, they are aware of the issues that can prevent the admission of evidence. To share their insights, some prosecutors participate in training law enforcement on matters relating to crime scenes.

Examples

Los Angeles: Like most jurisdictions, the Los Angeles crime scene unit is part of the police department and is independent of prosecutors. However, the Los Angeles prosecutors help to teach the Los Angeles Sheriff Department's Homicide Law College with classes that include "Homicide Law" and "Best Practices in Investigating and Prosecuting Homicide Cases." Prosecutors also provide instruction on how cognitive bias, or tunnel vision, can affect an officer's interpretation of a crime scene.

Camden: In Camden, New Jersey, homicide detectives and the county's crime scene unit work for the Camden County Prosecutor's Office. Thus, it is natural that prosecutors train their own staff on legal and court-related issues.

Legal Advice During the Investigative Stage

General

Whether or not a prosecutor goes to the crime scene, it is a common practice for prosecutors to provide legal advice to law enforcement during the investigative stage.

Typically, a senior prosecutor will be on duty to receive calls from the police at any time. Frequent questions involve search issues relating to the gathering of evidence, review of search warrants, priorities for evidence collection, matters relating to witnesses, and the sufficiency of evidence to establish probable cause.

Examples

Denver: The assignment to provide legal advice was reserved for the most senior prosecutors. Recently, younger attorneys have been added to the rotation to foster professional development and to encourage prosecutors to be involved in the early stages of an investigation.

Milwaukee: Four homicide prosecutors are on-call one week at a time to provide support to law enforcement on homicide case investigations. This is in addition to prosecutors who are on-call for general legal support to law enforcement.

Statements From Suspects – Prosecutor Involvement

General

Shortly after an arrest for a violent crime, a detective usually attempts to take a statement from the suspect. Increasingly, these statements are video- or audio-recorded. As police interrogations of suspects are more routinely recorded, prosecutors are able to observe the officer's style and techniques. Some prosecutors provide feedback to law enforcement regarding the evidentiary value of the statements taken and the pros and cons of the techniques used to obtain the statements.

Examples

Prosecutors in the Police Facility: In serious cases, the prosecutor may be present at the law enforcement facility while the detective conducts the interrogation and may suggest questions to pose to the suspect and provide additional advice. In serious cases, prosecutors in Kansas City and the Prince George’s County State’s Attorney’s Office (Prince George’s) go to the law enforcement facility to watch an interrogation and provide advice.²

In St. Louis, statements taken by the police in the intake area of the prosecutor’s office can be watched by the prosecutor remotely through a video feed to the prosecutor’s office.

Prosecutors Taking Statements: Prosecutors can also take statements from a defendant following their arrest. In the Bronx, following an earlier interrogation by a detective, prosecutors interview the suspect and obtain a summary statement. This interview is almost always videotaped. New York prosecutors are particularly encouraged to interview domestic violence defendants, as useful information is frequently obtained. The Bronx allows junior prosecutors, who are assisting a senior prosecutor with a homicide, to take the statement as part of their professional development.

Prosecutor Training: In Milwaukee, prosecutors provide training to police on legal issues related to interrogations, for example, the right to remain silent and the right to counsel.

Witness Cooperation and Intimidation

General

Almost every successful prosecution of violent crime requires the testimony of civilian witnesses. Many witnesses are not cooperative. Some are distrustful of law enforcement, some are aligned with alleged perpetrators, and many are afraid. The fear may stem from direct threats, implied threats, or actual or perceived knowledge of the possibility of retaliation.

Prosecutors often work with law enforcement to reduce the opportunity for witness intimidation during the investigation. A witness may be interviewed away from the scene – at police headquarters, for example – to minimize being labeled as a “snitch” in the neighborhood. A witness, with consent, may even be transported from the scene in handcuffs to dispel any perception of voluntary cooperation.

Prosecutors and allied professionals, especially victim services staff, must be aware of the likelihood of intimidation and the various forms it can take.

A witness may be reluctant to talk about being intimidated, instead citing other reasons for not wanting to cooperate. A witness may refuse to return phone calls, acknowledge receipt of a subpoena, or appear in court. It is essential for the prosecutor to acknowledge the possibility of intimidation and to explain the importance of cooperation and the services available for cooperative witnesses.

Victim Services: Most offices have victim services staff who work to meet the needs of victims and witnesses, especially in cases of violence. Those needs may include courtroom support, mental health services, social service referrals, reimburse-

² In Prince George’s County recently, a senior prosecutor was present for the interrogation of a murder suspect. After the suspect confessed, the prosecutor suggested that he be asked to write an apology letter and draw a map, both of which the suspect provided. Both were used to convict the suspect of two counts of first degree murder.

ment for financial losses, and in very serious cases, relocation. Witnesses must know what is and is not offered. Resources for relocating witnesses are limited in all offices and are only used in the most extreme cases.

Legal Remedies: Various steps can be taken in the context of a criminal prosecution to prevent intimidation of witnesses. Prosecutors use several tools to prevent or delay the disclosure of the identity of a witness. Initials or an alias (e.g., “witness whose identity is known to the affiant and who will be available for trial”) may be used in lieu of a name in a publicly available document, such as a criminal complaint or affidavit for an arrest or search warrant. Attention to this issue is essential as more state courts make case documents available online. State law may allow the prosecutor to seek a court order to seal such documents or to otherwise insulate them from public view. Similarly, state law may allow for a court order to delay the production of discovery until closer to the time of trial or to prohibit defense counsel from disseminating discovery materials to anyone, including the defendant. In other instances, the court order may bar copying of the materials and only allow counsel to show the information to the defendant for the sole purpose of preparing a defense.

Another strategy is for the prosecutor to present the case to a grand jury, shielding the identity of the witness until a later time in the prosecution.

Safety in the Courtroom: Prosecutors have worked with court personnel to prevent intimidation in the court building or courtroom. Some courthouses have cameras in the public areas and in courtrooms. Courtroom cameras aimed on the gallery can prevent intimidation, record attempted intimidation, and provide evidence for any subsequent prosecution.

Cellphones and other devices that record and/or transmit video and audio pose a specific threat to the security of court proceedings. Some jurisdictions ban possession of phones and similar instruments in high-profile courtrooms or cases.

In a case in which there may be witness intimidation, the court may, with good cause noted on the record, order that government-issued identification be presented as a requirement for entry into the courtroom. The court may also give warnings to the audience to prevent witness intimidation. Of course, the court always has the power to expel or otherwise sanction anyone who disrupts the operation of the court, including by attempting to intimidate a witness.

A prosecutor who believes that intimidation may be attempted in court may request additional security from court or law enforcement personnel, including the placement of undercover officers in the courtroom.

Finally, the prosecutor may seek to sensitize court personnel and judges to the existence, motives, and methods of intimidating witnesses through in limine motions or sealed applications to the court.

Community Outreach:

Many prosecutor offices actively seek to build and maintain relationships with the communities they serve. Regularly scheduled meetings with members of the neighborhoods most affected by crime can help to explain the role of the prosecutor and the importance of providing information to the police. Community outreach by a prosecutor that builds mutual trust and respect can be a powerful step toward encouraging witness cooperation.

Examples

Philadelphia – An Array of Strategies: Philadelphia has a robust set of procedures to deal with witness intimidation.

To combat the posting of witness statements in “snitch” posters on telephone poles or “rat” websites, Philadelphia watermarks all documents and videos as “defense copy.” This has virtually stopped such dissemination.

If a witness needs to be relocated, Philadelphia victim advocates require the witness to sign a 15-page agreement setting forth the terms of the relocation.³ One of the provisions requires that the witness, once relocated, never return to the agreed-upon “danger zone.”

Philadelphia Police Department Investigation Report A - Approved Page 1 of 3

DC Number: 2015-02-010496
 Report No: 2015-02-010496.1
 Report Date: 3/3/2015 6:09:47 PM
 Report Type: Investigation Report (75-49)

Unit Control#: 2015-002-02102-2

Client Name: 9815 - ASSAULT DOMESTIC ABUSE - SIMPLE
 Perpetrator: 9815 - ASSAULT DOMESTIC ABUSE - SIMPLE
 Location of Occurrence: 9815 - ASSAULT DOMESTIC ABUSE - SIMPLE
 Date of Occurrence: 03/02/2015
 Reporting Officer: P/O THOMAS QUINN (PR 215653 / #1194)
 Assigned By: [Redacted]
 Incident Date: [Redacted]

Report Approval
 Approved: 3/3/2015 6:09:47 PM
 Approved: 3/3/2015 6:09:47 PM

Report Summary
 On 3/2/2015 the offender was arrested for assault on [Redacted].
 Initial report by arresting officers P/O Quinn #1194
 Assigned: Det. Kachyniec #878
 NEDD Case# 915-2102

Classification Detail: 9815 - ASSAULT DOMESTIC ABUSE - SIMPLE

Level: 02B - Private Residence
 Other Category: YES
 Domestic Violence: YES

Victim / Complainant V1: Metzger, Samantha

Address: [Redacted]
 Age: [Redacted]
 Sex: [Redacted]
 Race: [Redacted]
 Hair: [Redacted]
 Eyes: [Redacted]
 Height: [Redacted]
 Weight: [Redacted]
 Build: [Redacted]
 Complexion: [Redacted]
 Hair Color: [Redacted]
 Eye Color: [Redacted]
 Birth Date: [Redacted]
 Birth Place: [Redacted]
 Marital Status: [Redacted]
 Religion: [Redacted]
 Ethnicity: [Redacted]
 Nationality: [Redacted]
 Place Born: [Redacted]

On 3/2/2015 approx. 5:00pm the complainant stated while inside their residence of [Redacted] the offender was still seated over the coffee table. The offender grabbed the complainant by the neck and checked her for signs of injury. Complainant further stated she went for the phone to call police, the offender got up and pushed the complainant away and went to the front of the house. Complainant had no phone on her back.

Interview Section
 Interview Date: [Redacted]
 Interview Location: [Redacted]
 Interview Summary: [Redacted]

Property
 Description: [Redacted]
 Reported Value: \$0
 Recovered Value: \$0

Witness: P/O QUINN, THOMAS (PR 215653 / #1194)
 Address: [Redacted]
 Age: [Redacted]
 Sex: [Redacted]
 Race: [Redacted]
 Hair: [Redacted]
 Eyes: [Redacted]
 Height: [Redacted]
 Weight: [Redacted]
 Build: [Redacted]
 Complexion: [Redacted]
 Hair Color: [Redacted]
 Eye Color: [Redacted]
 Birth Date: [Redacted]
 Birth Place: [Redacted]
 Marital Status: [Redacted]
 Religion: [Redacted]
 Ethnicity: [Redacted]
 Nationality: [Redacted]
 Place Born: [Redacted]

The Philadelphia court system has a number of initiatives to prevent witness intimidation in the courtroom.⁴ The court requires each nonauthorized person (i.e., those who are not attorneys, law enforcement, or court personnel) to place any cellphone into a pouch, which is locked and held by security personnel and returned to the person upon leaving the courthouse. The pouch prevents use of the phone, including for recording, sending, or receiving any messages.

In courtrooms where there is no ban on the use of phones, court personnel give warnings about usage several times during the court day. The warning states: “Ladies and gentlemen, use of cellphones and other electronic devices is not permitted in the courtroom. Please power off and put away all such devices. Any cellphone or other electronic device that is not powered off and out of sight may be confiscated and result in criminal contempt or your expulsion from the courtroom – unless you have express permission from the presiding judge to use the device. Thank you.” Signs with a similar

message are posted in and near the courtroom.

To assist judges, Pennsylvania has published a judicial bench book, addressing these topics and citing to legal authority for the steps the judge may take to prevent and address intimidation.⁵

New Orleans – Courtroom Safety: In high-profile or gang cases in which threats have been made against witnesses, the presiding judge can approve the recording of the names of people entering the courtroom and the checking of their criminal history. The information is retained by law enforcement in the event it is needed in a witness intimidation investigation.



- 3** See Appendix C for Pennsylvania Attorney General’s Memorandum of Understanding for the Witness Relocation Program.
- 4** See Appendix D for First Judicial District of Pennsylvania Criminal Trial Division – Order Banning Use of Cellular Telephones and Audio Devices, March 2017.
- 5** Free to Tell the Truth – Preventing and Combating Intimidation in the Court: A Bench Book for Pennsylvania Judges, Second Edition (2014), <http://www.pccd.pa.gov/AboutUs/Documents/Bench%20book%20published%202014-05-20.pdf> (visited 4/23/18). The third edition is in development.

Milwaukee – Restricted Devices: The Milwaukee County Circuit Court has rules restricting the use of electronic devices and photography in courtrooms.⁶

Los Angeles – Witness Assistance: An office policy manual describes how staff is to work with victims and witnesses, including complying with the California constitutional provision that entitles victims “to be reasonably protected from the defendant and persons acting on behalf of the defendant.”⁷ The state also funds the California Witness Relocation and Assistance Program.⁸

Confidential Informants

General

A confidential informant (CI) can be a valuable asset in the investigation and prosecution of violent crime. A variety of issues and procedures should be addressed before the aid of a CI is enlisted.

- ◆ *Designate a specified law enforcement officer or prosecutor to be primarily responsible for contact and communication with the CI.*
- ◆ *Memorialize any agreement between the CI and the person primarily responsible for handling the CI. This agreement should include any promises regarding past or pending cases against the CI, or other benefits given to the CI.*
- ◆ *Consider how to memorialize the CI’s statements.*
- ◆ *Consider if and when to disclose the CI’s statements to the defense. This may require guidance from the court.*
- ◆ *Evaluate the safety needs of the CI, both in custody and in the community.*
- ◆ *Track the use of the CI.*

Examples

New Orleans: The prosecutor registers the CI with the FBI or DEA, depending on the information provided by the CI. The District Attorney’s Office (DA) is a clearinghouse of intelligence as the CIs are more inclined to talk to prosecutors than to local or federal law enforcement officers. Using a seven-page memorandum of understanding (MOU), which specifies all benefits to be realized by the CI, the DA has the CI swear to the MOU and testify in the grand jury to memorialize the agreement and information provided. The MOU is put under seal through a protective order. When the MOU and statement are unsealed and disclosed before trial, any additional benefits conferred upon the CI will also be disclosed.

St. Louis: A prosecutor, such as a member of the Crime Strategy Unit, may interview a defendant to assess his or her value as a cooperator and to obtain intelligence in connection with other crimes or cases.

Los Angeles: Numerous law enforcement agencies

in Los Angeles County use another type of undercover, monitored-environment investigation technique that is based on *Illinois v Perkins*, 496 U.S. 292 (1990).⁹ In a Perkins operation, an undercover officer, or “Perkins agent,” engages a target in conversation at the request of law enforcement in an attempt to gain information regarding criminal activity. The conversation is surreptitiously recorded. A Perkins operation differs from a jailhouse informant or a “listening post” situation, where an agent simply listens to what is said but does not attempt to engage the target in a conversation to gain information. Different rules apply to Perkins

⁶ See Appendix E for Milwaukee County Circuit Court rules.

⁷ CA Const., Art. 1, Sec. 28 (b) (2).

⁸ The most recent annual report can be seen at <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/fy-16-17-calwrap-ar.pdf>.

⁹ <https://supreme.justia.com/cases/federal/us/496/292/case.html>.

operations, “listening post” situations, and jailhouse informants. Throughout the Perkins operation, the case investigator listens in real time to the conversation from a nearby location and provides the entire recording to the DA. The recording, authenticated by the investigator, can be introduced into evidence. In most cases, the Perkins agent will not testify, and their identity is not revealed. Use of a Perkins agent requires careful consideration of significant legal issues. Further information about Perkins operations can be obtained from the Los Angeles County District Attorney’s Office.

Jail Calls

General

Jail inmates can make calls while they are incarcerated. Inmates are made aware that these calls are recorded. Despite knowing that the calls are recorded, inmates often discuss information that can be used as intelligence or evidence about criminal activity or witness intimidation. Prosecutors access this information in a variety of ways. The use of interns and college students has provided an inexpensive way to monitor jail calls. Recently in Kansas City, an inmate was charged with murder after he admitted committing the crime to his mother while detained for an unrelated murder.



Examples

Prince George’s County: The County Department of Corrections operates the jail and has a Jail Intelligence Unit whose staff listens to most of the jail calls. The department provides the prosecutor’s office with access to the call logs and the calls, when completed, from any location. This enables a prosecutor or detective to access and listen to jail calls from his or her desk and on his or her laptop. Prosecutors also have access to inmate mail, visitor logs, phone numbers, inmate location, and identity of cellmates. Dates of calls and phone numbers can be searched to identify an inmate using someone else’s account when making the calls.

Los Angeles: Investigators and prosecutors can request recordings of calls from investigating officers. The state prisons, county jail, and local jails use different vendors to monitor inmate calls. Thus, there are different procedures for obtaining the recordings and laying the foundation for introducing them into evidence. Absent exigent circumstances, the time for a prosecutor to obtain a recording ranges from several days to several weeks. County Sheriff’s Department detectives are able to access county jail phone calls from their computers.

Services for Families of Violent Crime and Homicides

General

While most prosecutor offices have in-house victim advocates who provide assistance to victims and witnesses, some prosecutors reach out to the families of homicide victims. Family members may not be directly involved as witnesses in the prosecution of the case, but they are the most directly affected by the tragedy. Prosecutors are increasingly mindful of their needs and the importance of keeping them informed and involved in the process.

Examples

Little Rock: Once there is an arrest and the police file is received by the prosecutor, the prosecutor's victim advocate contacts the family of a violent crime victim. The prosecutor and the advocate have an initial meeting with the family to explain how the case is progressing and next steps. The prosecutor's office stays in touch with the family throughout the case, including the appeal. The victim advocate is the main point of contact with the family, but the assigned prosecutor stays in touch as well. Occasionally, when there is a special need, the prosecutor's office reaches out to the family of a homicide victim prior to arrest. If there is a question about which family member to include in the outreach, the office begins by contacting the next of kin. In Arkansas, because the jury decides the sentence, the prosecutor seeks input from the family in the presence of the victim advocate about plea negotiations and sentence recommendations.

Bronx: The Bronx was recently awarded a grant to place a prosecutor's victim advocate in the police precinct to assist families of homicide victims, whether or not there is an arrest. The advocate keeps the family apprised of any developments in the investigation, and when there is an arrest, the advocate continues to support the family throughout the pendency of the case.

Post-Arrest Investigation

Charging Decisions

General

Probable Cause vs. Beyond a Reasonable Doubt: Police make arrests based on probable cause, but when a case goes to trial it must be proven beyond a reasonable doubt. The difference in the standard of proof and the amount of evidence needed to charge a case is a common point of friction between police and prosecutors. Because prosecutors must prove their cases beyond a reasonable doubt, they frequently push the police for more evidence in order to meet their higher burden of proof. If that evidence is not forthcoming, the prosecutor may refuse to charge the case, or will reduce it to a lower provable charge.

In order to resolve charging issues in advance, some police will notify the prosecutor when they intend to arrest a suspect on a homicide or other serious crime to discuss the case and the evidence needed for charging. For these complex cases, most prosecutors assign an on-call prosecutor to help assess whether there is sufficient probable cause for an arrest and approve charges.

After the arrest is made, cases move from the police to the prosecutor in a variety of ways. In some jurisdictions prosecutors draft the initial charges within hours of an arrest, while in others the police write up the charges and send the case to the prosecutor days or weeks later.

Feedback to Law Enforcement: A point of frustration for police is when the prosecutor refuses to charge a case. It is particularly acute when officers have someone in custody who was arrested summarily on the street. A typical example is an armed robbery case with only one identifying witness and no corroborating evidence. Here the police believe that they know who has committed the crime, but the prosecutor refuses the case because it cannot be proven without additional evidence to validate the witness's identification.

Continued and improved collaboration, communication, and feedback between the prosecutor and the police will give the police a better understanding of what is needed to develop a case that will be accepted by the prosecutor and will sensitize the prosecutor to the barriers police face in gathering evidence.

Examples

Richmond: In the Richmond Commonwealth Attorney's Office, the police bring most arrests to a magistrate for the initial charging decision and the prosecutor is not involved. However, in shootings and homicides, the prosecutor is notified when police believe they have probable cause to obtain a warrant and the prosecutor is consulted about what initial charges to seek from a magistrate.

Little Rock: When a homicide arrest is made, the most senior prosecutors in Little Rock are notified and they work as a team to review the police file and affidavit to assess whether there is sufficient probable cause. If the case is ultimately filed in court, then the case is assigned to another prosecutor.

St. Louis: Prosecutors review an arrest shortly after the suspect is taken into custody and the prosecutors draft the charges. On average, the prosecutor accepts for charging about 75% of the murder arrests, about 40% of the nonfatal shooting arrests,

and 45% of the robbery arrests. Prosecutors send a semi-annual report to the captains of police districts to summarize the charging rates, to describe the major reasons why they have declined cases, and to identify possible trends. At the police department's regular CompStat meetings, prosecutors also provide an update on what cases were charged and which ones were not.

Milwaukee: In felonies, a court commissioner conducts a probable cause review based on an affidavit sworn by an officer, within 48 hours of arrest. No attorneys are involved in this proceeding. After the commissioner's assessment, the prosecutor has three days to issue criminal charges on a felony case. The total time from arrest to charging of a felony is less than five days. In 2016, approximately half of the felony arrests made by the police were charged as felonies by prosecutors.

New Orleans: The prosecutor has two to four months, depending on the level of felony, from receipt of the arrest information to draft the charges.

Philadelphia: A case is reviewed by a prosecutor within several hours of an arrest. Any declination of charges is explained in writing. Prosecutors have periodic meetings with the police detective leadership to discuss how to improve investigations and other issues of mutual concern.

Los Angeles: The time from arrest to charging is 48 hours. If the judge rules that there is probable cause and the suspect is held, then there must be a preliminary hearing within 10 days from the date of the probable cause finding. If a prosecutor declines to file charges, the prosecutor completes a "reject form," explaining the reasons why the case was not filed or what additional follow-up is needed in order to obtain a filing. The form is provided to the law enforcement agency and a copy is kept with the DA's Office.

Little Rock: If the defendant is in custody, the prosecutor has 60 days from arrest to file felony charges. About one of every five felony arrests do not result in felony charges being filed by the prosecutor. If requested by the police, the prosecutor provides feedback to the police to explain why a case was not filed as a felony.

Denver: Prosecutors evaluate an arrest and file charges generally within 72 hours of the arrest. Police reports are submitted to prosecutors through an electronic charging database called eTriage, and the prosecutor's case evaluation is done by phone. Exceptions to the telephone evaluation include homicide, domestic violence, and sex assault cases.

Prince George's County: For felony cases, the police have 72 hours after charging to schedule a screening appointment with the prosecutor, who decides whether the case will be indicted. At this meeting, the prosecutor evaluates the evidence, determines the charges, and requests any additional necessary investigation.

Triage of Forensic Evidence

General

Prosecutors can provide valuable input regarding what forensic evidence should be collected and tested. Occasionally, this input is given prior to an arrest, but typically a prosecutor becomes involved with evidence triage after an arrest is made and a prosecutor is assigned to the case.

Crime scenes are processed and forensic evidence is collected in a variety of ways. Though the police are always involved, some departments have trained crime scene personnel. On occasion, personnel from the laboratory may be at the scene. This can be an asset, as laboratory staff have the expertise to know how best to collect evidence and what evidence is amenable to testing. However, distance from the scene and limited resources often make it impossible for the lab to respond.

Regardless of who is at the scene, the amount of evidence that is capable of being collected and tested is growing at a rate that exceeds the capacity of most forensic laboratories. Testing for biological evidence is becoming ever more sensitive, digital evidence is exploding, and technologies for processing a crime scene are rapidly evolving. Because it may be impractical to recover and test all evidence, it is essential to develop a system of triaging for testing the evidence.

Some public forensic laboratories fall within the command structure of the police department, while others report to non-law enforcement agencies, commonly the local health department. Though it may be beneficial, few prosecutors have protocols with their laboratories outlining the process for triaging the testing of evidence. Testing of evidence is often prioritized based on requests from the trial prosecutor and the timing of an upcoming trial.

After an arrest is made, it is essential the prosecutor, police, and laboratory work together to determine what evidence should be tested and in what order.

Most likely this analysis will have to be revisited throughout the case as issues in the case become more apparent. Due to time and resource constraints, forensic triage meetings are usually only done on homicide cases. Currently, most triage meetings – when they do occur – are between prosecutors and the police, and do not include the forensic laboratory.

Examples

Richmond and Camden: Prosecutor offices such as Richmond and Camden have forensic triage meetings with law enforcement soon after an arrest, but do not initially involve the laboratory. In Richmond, the prosecutor benefits from access to law enforcement’s case management system, so they can view from their computer all photos, evidence collection lists, investigative summaries, surveillance videos, and other evidence within 24 to 48 hours after a shooting. Soon after the violent crime incident, and with the benefit of reviewing most of the law enforcement investigative materials, the prosecutor meets with the law enforcement investigative team. This team includes a forensic investigator who works for the police department and is in charge of crime scene documentation, collecting evidence, swabbing for blood or DNA, and the like. Decisions are then made regarding what items should be sent to the state forensic lab and what forensic analyses will be requested of the laboratory. The state forensic lab is independent and is not part of the police department.

Bronx: New York City has an informal evidence triage process between the NYPD and the independent DNA laboratory. The case detective sends biological evidence to the NYPD evidence liaison team and that team decides what evidence is sent to the laboratory for testing. Though there is no formal process for the prosecutor to be involved at this stage, the assigned prosecutor usually conveys their wishes to both the case detective and the laboratory. Laboratory personnel keep notes of their conversations with police and prosecutors regarding the evidence so a record of what was said is made available to the defense. This is designed to alleviate concerns about possible biasing of a lab technician with irrelevant, but prejudicial evidence.

Homicide Meetings

General

Many prosecutors have roundtable meetings to discuss and evaluate the evidence in a homicide case. Typically, the assigned prosecutor presents the facts of the case to a group of senior prosecutors, who provide advice and suggestions for further investigation.

Examples

Kansas City: Every two weeks the Jackson County Homicide Committee meets, bringing together prosecutors in the violent crime unit and the Kansas City Police Department. The prosecutor and lead detective present the case. Topics addressed include the initial charging decision, possible additional or upgraded charges, other areas to investigate, or further evidence to be sought. A case can be presented before or after charges are filed. The presenting prosecutor writes a memo to be reviewed, as necessary, as the case proceeds through the judicial system.

Memphis: A small group of prosecutors meets daily with law enforcement and takes after-hours calls as well. They review and advise law enforcement on pending homicide investigations. Once the investigation is complete, the same prosecutor approves charges and determines how the case proceeds to court for a preliminary hearing or whether it goes to the grand jury.

Investigative Use of Social Media and Digital Evidence

General

Increasingly, digital evidence and social media are invaluable sources of evidence in violent crime cases.

Some suspects post photographs of themselves with guns, create videos with songs about their intentions, and some even record the crime itself.

Finding, preserving, and authenticating this evidence is time consuming and requires skills that are rapidly evolving and changing.

Some prosecutors have paralegals who can obtain this evidence, while other prosecutors rely on law enforcement. The prosecutor's paralegals usually work with police detectives and sometimes participate in undercover work through social media. Six of the prosecutor offices represented at the meeting had such in-house staff. In some offices, the paralegal who is specifically assigned to collect social media and other evidence from the internet is called a "crime analyst." This position is different from analysts who gather and analyze data to identify crime trends.

There are many useful resources that can assist prosecutors with understanding and obtaining this growing source of valuable evidence. The [National White-Collar Crime Center \(NW3C\)](#), the U.S. Secret Service's [National Computer Forensics Institute](#), and the FBI's [National Domestic Communication Assistance Center](#) are among the groups that can provide assistance to prosecutors with training and support regarding digital evidence.

Examples

Richmond: Prosecutors do not have their own social media paralegal, but they do have a productive working relationship with the police analyst. For example, the police analyst uses sophisticated tools to track cell tower information that can provide helpful information about the location of a suspect at times that are relevant to a case. Local police department detectives are also trained on social media and digital evidence recovery and its use in violent crime investigations. Grand jury subpoenas are typically used to obtain the data and information.

Philadelphia: In addition to several in-house paralegals who are skilled in social media, prosecutors avail themselves of the assistance offered by the [Delaware Valley Intelligence Center](#).

Organizing Violent Crime Prosecutor Files

General

The amount of physical and digital evidence is exploding. In a typical homicide case, it is not uncommon to have surveillance videos, body-worn camera footage, downloads from cellphones and computers, social media posts, and a wide variety of forensic evidence including DNA, ballistics, fingerprints, trace evidence, and pattern marks. In addition, parts of a crime scene, such as a car or parts of a room, may be preserved as evidence. This evidence can generate thousands of pages of reports and gigabytes of downloaded information. Organizing and storing evidence has become a challenge for prosecutors.

Examples

Los Angeles: A standard filing format was created to handle paperwork in cases. This helps prosecutors to stay organized and allows for an easy review of what information is available and what is needed. The office also developed a series of checklists for prosecutors on serious cases such as homicides, attempted murders, domestic violence, and sex crimes. These checklists assist prosecutors with handling cases and gathering needed materials.¹⁰ As a case approaches trial, Los Angeles creates a standardized trial notebook to organize the file.¹¹

Memphis: A high-profile kidnapping and homicide case from Memphis provides a good example of a case with voluminous evidence. In this case, the prosecutor had to manage evidence that consisted of four terabytes of data, thousands of photos, 2,000 pieces of collected evidence, 150 recordings, 4 cars, and a boat. During the pendency of the case, 200 people worked on the case in some way. To manage the evidence, Memphis hired a paralegal who organized the mountain of evidence. Ideally, in cases like this, a point of contact for the tracking and organization of evidence would be designated at the beginning of the case. That person can identify evidence that has already been gathered and track all new evidence that is collected as the case progresses.



Collaboration With Police to Increase Clearance Rates and Reduce Violent Crime

General

Violent crime cases are difficult to solve. The percentage of crimes that are solved is called a “clearance rate”; however, the definition of a clearance can be fluid. For some departments it simply means that a suspect has been identified though not arrested; for other departments it means that a suspect has been arrested and charged. Either way, low clearance rates where violent crime is not solved impacts community trust as community members lose faith in law enforcement’s ability to keep them safe.

¹⁰ See [Appendix F](#) for LADA Hard-Core Gang Checklist and sample of a case folder.

¹¹ See <https://policefoundation.box.com/s/4t91fi9g1grnsigz881nfjrjv6w3hsqq>

Examples

St. Louis GunStat: Some years ago, St. Louis had a low clearance rate at the same time as violent crime was on the rise. To address this issue, the St. Louis prosecutor began a “GunStat” program, modeled on work in Philadelphia, to track the progression of gun cases through the criminal justice system to identify trends, strengths, and weaknesses in the process. They reviewed their own data on homicides and nonfatal shootings (NFS) to determine the cases charged, the case dispositions, and the correlation between the prosecutor’s data and the police department’s data. The analysis led to improved protocols with law enforcement. St. Louis cautions that it is essential to memorialize new protocols and collaborations in a written MOU to allow the work to continue, even when critical personnel leave or retire. Some of the initiatives that flowed from the GunStat review included:

- ◆ Formation of a Nonfatal Working Group.
- ◆ Creation of a Crime Strategy Unit, modeled on the program in the New York County DA’s Office.
- ◆ Hospital-based support for the victim’s family.
- ◆ Partnership with the U.S. Attorney, which includes the tracking of cases accepted by the U.S. Attorney’s Office.
- ◆ Hiring of a crime analyst for the prosecutor’s office.

Camden County Crime Collaboration: To enhance their approach to violent crime, Camden prosecutors joined the Camden County Crime Collaboration, or C4 Program. A major boost to the program was the availability of common space where all the law enforcement agencies could be co-located. This allows homicide investigators who work for the prosecutor to sit in the same space as the Camden County Metro Police, FBI Violent Crime Task Force, DEA, New Jersey Parole, Camden County Probation, Rutgers University Police Department, New Jersey State Police, and others. There are daily meetings with the homicide, narcotics, and intelligence units; the Camden prosecutor; and the U.S. Attorney’s Office. After a homicide, the group meets for a briefing. This process has encouraged collaboration, improved the exchange of information, and enhanced outcomes.

Unfortunately, there are not enough resources to apply this collaborative model to NFS. Instead, Camden has assigned one prosecutor to be a legal advisor to the Camden County MetroPolice team that handles NFS.

Milwaukee Crime Gun Intelligence Center: Milwaukee has a Crime Gun Intelligence Center (CGIC) that resides at the Milwaukee Police Department. This is a collaborative venture sponsored by a cooperative agreement with the Bureau of Justice Assistance and the ATF, where the ATF works with local police, the police laboratory, probation, parole, and local and federal prosecutors to solve and prevent gun crime through prompt analysis of ballistic evidence from a crime scene. The Milwaukee prosecutor meets with the CGIC team on a monthly basis and is available for legal advice as cases are developed. This collaboration focuses on the most prolific shooters and has become an effective method to maximize the use of resources to reduce crime.

Bronx Crime Strategy Unit: The Bronx Crime Strategy Unit (CSU) was established in 2016. A prosecutor is in charge of the unit, which is staffed by crime analysts who also provide information to support cases and investigations being conducted by the rest of the office. Based on the model started in the New York County District Attorney’s Office, prosecutor offices around the country are developing CSUs. The mission of a CSU is to reduce crime by gathering and analyzing data from the police department, the prosecutor’s office, and other sources to anticipate crime patterns, so they can be addressed proactively.

Conclusion

The role of the prosecutor in the investigation of violent crime has received little study and attention. The Prosecutor Convening, which forms the basis for this paper, gave experienced violent crime prosecutors the opportunity to share strategies, ask questions, and learn from one another. They were united in their belief that enhancing the investigation of violent crime through the work of and in collaboration with the prosecutor is an essential component in ensuring that a prosecution is accurate and timely in the first instance. The prosecutors agreed that improved investigation and prosecution of violent crime can lead to enhanced public safety, which in turn is a critical step in allowing communities to thrive and grow.

The prosecutors at the meeting expressed a desire to continue the conversation and endorsed the need for additional meetings and study in the future. Each participant also agreed to be available for questions or comments. Their contact information is included in [Appendix A](#).

Appendix A

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Denver District Attorney's Office, Colorado

Alex Calenda

Orleans Parish District Attorney's Office, Louisiana

Bryan Covinsky

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John Delaney

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Mike Holloman

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Jennifer Nichols

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Christine Shah

Camden County Prosecutor's Office, New Jersey

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Bronx County District Attorney's Office, New York)

Rachel Smith

St. Louis Circuit Attorney's Office, Missouri

Kristin Trutanich

Los Angeles County District Attorney's Office, California

Appendices B-F

To access and download Appendices B-F, visit the following link:

<https://policefoundation.box.com/s/a7ilfyhlqjji3kgqapdjgucdvna2oxl0>



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