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Police-Prosecutor Teams: Innovations in Several Jurisdictions

by John Buchanan

More than half a century ago, in 1931, the National Commission on Law Observation and Enforcement found that there was "frequent and characteristic want of cooperation between the investigating and prosecuting agencies in the same locality."¹ Despite subsequent efforts over the years to understand and rectify the problem, difficulties in the police-prosecutor relationship persist to this day.²

In the last several years, however, some jurisdictions have broken new ground. They have cleared the way for investigators and prosecutors to work closely together every step of the way, focusing on the same goal—conviction.

Consider the State of Maine. In 1937, the legislature created an entirely new agency, the Bureau of Intergovernmental Drug Enforcement, which has reshaped the narcotics investigation-prosecution process. The agency is responsible for "the integration and coordination of investigative and prosecutorial functions in the State with respect to drug law enforcement." This specific language is unprecedented. For the first time, a State law mandates that investigators and prosecutors team up to create a more efficient and effective drug law enforcement strategy.

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Maine's experience and that of three municipal and county jurisdictions in other States is recounted in this article, using information gathered from site visits.

The police-prosecutor problem

Researchers have identified many factors that contribute to the cooperation gap between police investigators and prosecutors.³ One is that lawyers and police officers have different vantage points and thus different perspectives on crime. Differences between police and prosecution policies and priorities can make coordination difficult.⁴ Case attrition (where an arrest is made but no charge is ever filed) is one result of poor coordination.⁵

Prosecutors need a great deal of information to build a case but usually lack person-to-person contact with the officer most knowledgeable about the case.⁶ A prosecutor is likely to work normal business hours but an officer's hours may vary considerably. For example, an officer may be on duty from 10 p.m. to 6 a.m. with Tuesday and Wednesday off. This can make even simple telephone contact difficult.

The problems created by the cooperation gap may surface in many ways. In an extreme example, to circumvent a negative police-prosecutor relationship, police officers may engineer a case so that an arrest is made in another jurisdiction. It is only then, these

officers contend, that the case receives reasonable consideration when charges are requested and plea bargains made.

More common are disagreements (usually after the fact) about the quality of certain types of evidence or investigations, the amount of evidence needed to file charges or go to trial, the point at which an arrest should take place, and the kind of plea bargain that should be made.

Poor communication between the police officer and the prosecutor, for whatever reason, makes the defense attorney's job easier and the prosecutor's job harder.⁷ If the officer and the prosecutor do not discuss potential weaknesses in their case, the defense may be able to outmaneuver them at trial. The unprepared prosecution can then find itself on the defensive as it scrambles to counter the defendant's arguments.

Despite a long history of difficulties, some agencies are bridging the gap. In jurisdictions across the country, a variety of activities are under way to increase cooperation between agencies and ultimately convict more criminals.

In Indianapolis, for example, the prosecutor has funded a computer message system that allows attorneys in his office to transmit notes, case dispositions, and subpoenas directly to police officers at their work locations. In Alameda County, California, and Montgomery County, Maryland, "street jump" narcotics officers and prosecu-

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tors consult frequently both in person and over the telephone to build cases that meet the requirements of the search and seizure law. In Seattle, sex crime investigators and prosecutors interview child victims together so they can better understand the case and make decisions that will lead to success in court.

A few agencies, however, have gone further. They have institutionalized teamwork and made communication between investigators and prosecutors a top priority.

Maine develops joint unit

Traditionally, trial tactics are not considered by a prosecutor until after charges are filed and much of the investigation has been done. However, through a process that First Assistant U.S. Attorney for Maine John Gleason labels "cross pollination," Maine prosecutors and officers focus on tactics to prove guilt from the beginning. "It's not an investigation and then a trial; it's a unitary process, a case throughout," he says.

This approach is carried out by Maine's Bureau of Intergovernmental Drug Enforcement (BIDE), in operation since March 1988. It is staffed by 40 agents working with 8 attorneys, and there are plans to expand every year through 1992.

The new unit's operation grew out of a 2-year test program implemented by the current U.S. Attorney for the District of Maine, Richard S. Cohen. The task force units of the test program built such an impressive record of successful prosecutions that local, State, and Federal law enforcement officials recommended that the concept be expanded. The result was the Maine statute that created BIDE as part of the Maine Department of Public Safety, integrating investigation and prosecution of narcotics offenses.

BIDE investigators and prosecutors communicate closely, discussing development of ongoing cases and drawing up plans for new cases. A prosecutor is informed of a new case as soon as possible, and through vertical prosecution (one prosecutor responsible for the case from filing through appeal) is able to develop a continuous relationship with the investigating agents.

The agents benefit from this close relationship with prosecutors. Says BIDE Agent Supervisor Dan Ross, "We have had to change some of our ideas because the attorney's perspective is that of the courtroom. Officers may not be concerned with how things appear in court because they tend to concentrate on just the facts. But the attorney has to care because appearances in court are so important in getting a conviction."

A typical case will illustrate this difference in perspective. To obtain evidence, investigators must sometimes use informants or a suspect's criminal associates. However, the prosecution may be reluctant to call these people as witnesses because they make poor impressions in court. Although their testimony may be quite persuasive to the officer who has verified the information through his own investigation, the prosecutor may believe that such a witness will give the jury a negative impression of the government's case.

In other words, a witness who helps prove guilt from the investigator's perspective may in fact impede successful prosecution. To avoid calling such a witness, the prosecutor will ask the investigator to gather additional evidence. One positive consequence is that the investigator's perspective is now broader and takes account of the investigation's impact on the ultimate outcome of the case.

The prosecutor also benefits from working with the investigator. Assistant U.S. Attorney William Browder notes, "The insights that I have gained into

case investigation translate into better courtroom performance."

Browder cites search and seizure issues as an example. As prosecutors work closely with investigators, they come to understand that officers must frequently make quick decisions based on very limited information. Prosecutors are thus "better able to argue the legal principles as they apply to the good faith exception to the search warrant rule," Browder says. "That has been an area where prosecutors are sometimes weak."

Multnomah County, Oregon, task force seeks drug convictions

Cooperative efforts to concentrate on convictions are going forward in Oregon as well. In Multnomah County, the Organized Crime/Narcotics Task Force has brought together 12 investigators from several area agencies and two prosecutors from Multnomah County. District Attorney Michael Schunk obtained the funding for the unit and persuaded other law enforcement agencies to contribute investigators.

The task force was created in February 1988 to take on major narcotics organizations and seize traffickers' assets. While traditional narcotics enforcement units still operate in the county, task force offices house investigators and prosecutors at a site several miles from both police and prosecutor facilities. This arrangement reinforces the idea that all members of the unit are part of the team and that cooperation is the goal. There is day-to-day, informal contact between the investigators and the prosecutors about the progress of pending cases.

The prosecutors act as consultants to the police during the investigative phase. Investigators can get answers to difficult legal questions in a few minutes just by

walking down the hall. The legal opinion comes not from an attorney who happens to have liaison duty that day but from the attorney who will take the case to trial. This arrangement "allows case strategy to be constructed so that we have the most advantage possible in court," explains Detective Jeremy Pritchard, unit member and Multnomah County Sheriff's Deputy.

Thus decisions about which cases to pursue are made early in the investigation. Unit members agree it is unlikely that a case not meeting the filing criteria would be selected by the team. As a result, detectives do not work on cases that have little chance of being filed, and prosecutors do not spend time reviewing and then returning to police cases that do not meet charging criteria.

Prosecutors benefit in other ways from the close relationship with investigators. Up-to-date, in-depth information from a knowledgeable detective can help the prosecutor's case. For example, the complexion of a minor case can change substantially when an investigator tells the prosecutor that the suspect has an extensive narcotics background. Such information is not normally included in the case file that is passed from the police to the prosecutor when charges are requested.

In addition, police input during plea bargain discussions is "invaluable" to prosecutors considering offers of cooperation from suspects or making recommendations for jail time or other penalties, according to Multnomah County Assistant District Attorney Alexander Gordon.

New York City's target: gang crime

Police-prosecutor cooperation in New York City has helped in combating gang crime. The New York Police

Department and the New York County District Attorney's Office operate one unit that investigates and prosecutes narcotics gang-related homicides, and another unit that deals with gang crime among Asian groups.

Homicide Investigation Unit. This unit has existed since 1984 and until recently was staffed by four investigators (two from the district attorney's office and two from the police department), two prosecutors, and support personnel. In 1988, four investigators (one from the district attorney's office and three from the police department) and one prosecutor were added to the unit to help deal with a growing number of homicides related to drugs and gangs. Investigators and prosecutors work in the same office and communicate every day about the progress of pending cases.

The unit's reputation for effective prosecution has spread, and precinct detectives sometimes bring especially difficult or serious cases to the team for followup and prosecution, even though the case may not be within the unit's normal responsibilities.

Such an incident occurred in 1985 when a detective in New York's 28th precinct was assigned to a death investigation. The victim was an 8-year-old girl who had died from an overdose of a prescription drug. Her father was present when she died but denied any involvement. The investigator began to probe the circumstances and discovered that the father had been investigated but never charged in the 1984 death of his 10-month-old stepdaughter. Further investigation revealed that he had obtained insurance on both victims shortly before they died.

The detective recognized that the suspect was probably guilty of two child killings in a scheme to collect insurance money, but he also realized that there was little direct evidence. Proving the case would be difficult. The detective brought the case to the

homicide unit because he felt the unit had the investigative and prosecutorial resources needed to obtain a conviction.

The homicide unit arranged for an undercover officer to pose as an insurance executive so that a lengthy statement could be surreptitiously recorded from the suspect. The recording revealed conflicting details in the suspect's story and was instrumental in his conviction for both murders. In 1987, he was sentenced to 59 years to life.

Both prosecutor and investigators had used their expertise to build a case that investigators considered feasible and attorneys considered presentable in court. Unit prosecutor Bill Hoyt cites this as a good example of how joint "ownership" of cases makes it possible for "investigative and prosecution strategy to work together."

Of the 24 murder convictions the unit has succeeded in bringing about since its inception, probably fewer than 5 would have been obtained without the team approach.

Oriental Gang Unit. This unit has been in formal operation since 1981 and includes five New York City Police Department detectives and six New York County prosecutors who maintain offices in the county court building. Like the homicide unit, the gang squad has been successful in obtaining convictions in very difficult cases. "We have been successful in doing things that have never been done before," says Detective Sergeant Jim McVeety.

McVeety describes a 1982 Chinatown case in which a 21-year-old woman was kidnapped, sexually assaulted, and murdered. Information from an informant led the unit to center its investigation on a particular gang. The unit,

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interviewed for this article recommended that the team idea be applied to other kinds of criminal investigations beyond those discussed in this study.

Police-prosecutor teams are a creative response to the challenges facing law enforcement. They offer the hope that by joining forces, police and prosecutors can be more effective in bringing criminals to justice. Further study of this approach will help many jurisdictions as they search for promising, innovative ways to reduce crime. **NIJ**

Notes

1. National Commission on Law Observance and Enforcement. *Report No. 4, Prosecution*, Washington, D.C. U.S. Government Printing Office, 1931. Montclair, New Jersey. Reprint by Patterson Smith. 1968, p. 17.

2. For examples, see: Davis, Carolyn, and Mathless, Paul, eds. *Managing Criminal Investigation Manual*, University Research Corporation, Washington, D.C. 1976, pp. 167-170. Feeley, Malcolm M., and Lazerson, Mark H. "Police-Prosecutor Relationships: An Interorganizational

Perspective," Chapter Nine, *Empirical Theories About Courts*, Boyum, Keith O., and Mather, Lynn, eds. Longman Inc., New York. 1983, pp. 229-232. Stanko, Elizabeth A. "The Arrest Versus the Case," *Urban Life*, Vol. 9, No. 4. January 1981, pp. 295-414.

3. Feeney, Floyd. *Case Processing and Police-Prosecutor Coordination*, Center on Administration of Criminal Justice, University of California, Davis. 1981, Chapter 25, pp. 4-6. Forst, Brian. *Improving Police-Prosecutor Coordination: A Research Agenda*, Institute for Law and Social Research, Washington, D.C. 1981, pp. 1-3.

4. Jacoby, Joan E. *Working Paper on Police-Prosecutor Relations*, prepared for the National Institute of Justice. November 1981, p. 6.

5. Feeley et al., pp. 222-223.

6. McDonald, William F. *Police-Prosecutor Relations in the United States*, Executive Summary, Washington, D.C., National Institute of Justice. July 1982, pp. 8-10.

7. Based on interviews with defense attorneys who are familiar with the

process of investigation and prosecution.

8. Goldstein, Herman. *Policing a Free Society*, Cambridge, Massachusetts. Ballinger Publishing Co. 1977, p. 24.

9. McClees, Hugh C., Decker, Andrew J., and Carpenter, Daniel J. *Managing Arson Control Systems: A Study of Arson and Anti-Arson Efforts in a Selected Sample of Jurisdictions*, prepared for the National Institute of Justice, Washington, D.C. November 1982, Section 4-89.

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attorneys should make the prosecution decisions.

The removal of barriers to close working relationships has made possible a blend of police and prosecution skills in the pursuit of the same goals—making strong cases and convicting criminals.

While the task force approach to law enforcement is not new, the programs discussed here have some distinguishing features. They do not go out of existence when one crime is solved or one group of criminals is convicted. The police and the prosecutor work in physical proximity and have daily access to one another. The same

investigators work with the same prosecutors, and vertical prosecution is the general rule.

Commitment to cooperation by law enforcement executives and individual officers and prosecutors has yielded some impressive beginnings. And, significantly, many unit members

Figure 1.

Characteristics of Police-Prosecutor Teams

	State of Maine	Multnomah County, Oregon	New York City		Laconia, New Hampshire
			Homicide Unit	Gang Unit	
Agencies involved	Federal State county city	county city	county city	county city	city
Number of personnel	40 detectives 8 attorneys	12 detectives 2 attorneys 1 accountant	8 detectives (3 D.A., 5 NYPD) 3 attorneys	5 detectives 6 attorneys	35 officers/detectives (entire force) 1 attorney
Crime	narcotics	narcotics	drug/gang homicide	Oriental gang crime	all misdemeanors
Years in operation	1	1	6	7	10
Shared offices	in some locations	yes	yes	no, but in same building	no, but in same building
Proximity to police and D.A. HQ	N/A separate organization	remote location	in county court/ D.A. building	in county court/ D.A. building	police HQ
Vertical investigation	yes*	yes*	yes*	yes*	yes, some exceptions
Vertical prosecution	yes	yes	yes	yes	yes
Same officers and prosecutors working together	yes	yes	yes	yes	yes
Frequency of informal contacts	daily, as needed	daily, as needed	daily, as needed	daily, as needed	as needed
Funding	Federal grant with matching State funds**	Federal grant with partial local matching funds**	shared budget city-county	shared budget city-county	police budget
Prosecutor handles nonunit cases	State attorneys— BIDE cases only Asst. U.S. Attorneys— Unit and nonunit cases	no, some exceptions	no	yes	no

* Some cases are referred by other units after some investigation has already taken place.

** Bureau of Justice Assistance grants

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including a prosecutor, put together a case plan.

Since Oriental gangs are difficult to penetrate and notorious for intimidating witnesses, members of the police-prosecutor unit decided together on a strategy that would make the best possible use of the informant. They arranged to surreptitiously tape his conversations with suspects; the taping took place on 25 occasions. "We knew we were on solid (legal) ground in doing this," said McVeety, "because the prosecutor was in on the plan." The prosecutor attended many of the sessions in which the police debriefed the informant after his contacts with suspects.

All seven gang defendants either pled guilty or were convicted. Sentences ranged from a minimum of 8 years to 25 years to life based on each defendant's degree of involvement in the crime.

Cases involving gangs often require the cooperation of people who do not want to testify. Witnesses may fear reprisal, but in an extreme case an attorney may encourage testimony by invoking the power to hold material witnesses in custody. Since gang unit detectives have immediate access to prosecutors who are familiar with unit cases, such arrangements for cooperation—as well as plea bargaining—may take place on the spot.

Thus prosecutor involvement in the Oriental Gang Unit makes it possible for the initiative and momentum so vital in such cases not to be dissipated by tracking down a prosecutor who understands Oriental gangs and who also has the authority to plea bargain and grant immunity. "Teamwork is very important because of complex issues relating to reluctant witnesses," says New York County Assistant District Attorney Nancy Ryan.

The exact degree to which improved police-prosecutor cooperation has contributed to the success of the two

New York City units has not been measured, and the unit's handpicked membership and smaller caseloads make comparison with regular investigative units difficult. However, members of both units agree that their teamwork has been a major factor in their ability to convict dangerous criminals. The recent decision by the New York County District Attorney's Office and the New York Police Department to expand the Homicide Investigation Unit indicates that policymakers are also convinced of the value of police-prosecutor teams.

Laconia, New Hampshire, cooperation extends to misdemeanor cases

In Laconia, New Hampshire, police-prosecutor cooperation is testing whether law enforcement can apply this approach to misdemeanors—to order-maintenance problems that rarely receive publicity but account for the largest expenditure of police resources.⁸

Laconia police are committed to applying the police-prosecutor concept to just such problems. Laconia has adopted a variation of the practice common in some New England States whereby police officers perform as prosecutors in misdemeanor cases. In Laconia, an attorney with an office in the police department prosecutes all misdemeanor arrests. Under the program, developed by Police Chief Bruce Cheney, the 35-officer department has had its own prosecutor since 1977.

Officers consult with the prosecutor about filing criteria and investigative practices, and the prosecutor provides timely information on case dispositions. This information is not filtered through several layers of administration, a liaison person, or a legal adviser. It comes directly from the attorney responsible for the prosecution of the case, often in an informal manner.

In Laconia, police decisions on the street reflect officers' knowledge of filing criteria and previous dispositions. These informed decisions leave fewer legal loopholes in DWI, disorderly conduct, theft, and assault cases.

The police chief sees additional benefits. "The department is not currently the defendant in any lawsuits," says Chief Cheney. "I think this can be partially attributed to the constant contact between officers and the prosecutor. A higher degree of legal awareness has developed and it is reflected in the officers' actions on the street."

The Laconia police say many order maintenance problems at the neighborhood level have been solved because of the close police-prosecutor relationship. For instance, in a recent case, police officers were confronted with a chronic noise ordinance violator who was the source of many citizen complaints. Police and prosecutor together developed a plan to obtain a search warrant and seize the offending stereo as evidence, if necessary. Armed with the knowledge that the prosecutor would support this lawful, if somewhat unusual action, the police convinced the violator that a stereo at lower volume was better than no stereo at all.

Cooperation reduces conflict

A recent study of arson investigation in several cities found that the city with the closest working relationship between investigators and prosecutors exhibited high arrest and conviction rates when compared to other cities in the sample. The city with the least investigator-prosecutor communication had the lowest conviction rate.⁹

In Laconia and in the other locations cited, police and prosecutors have not always agreed, but occasional disagreement has not affected the long-term relationship. Indeed, a clear understanding has emerged that the police should make the investigation decisions and the