

The Prosecuting Attorney

Criminal law is perhaps one of the most exciting areas of the law; cases move at a fast pace and involve interesting fact patterns. Being a prosecuting attorney requires not only a passion for advocacy but an understanding that your position requires you to seek the truth; prosecutors are held to higher standards because of this. A prosecutor does not have clients in the normal sense of the word; our client is the community that we serve. The community includes the victims, uninvolved civilians and the criminal suspects.

The United States Supreme Court has explored and explained the role of a prosecutor in several cases indicating that:

“Law enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent. They must be dedicated to making the criminal trial a procedure for the ascertainment of the true facts surrounding the commission of the crime. To this extent, our so-called adversary system is not adversary at all; nor should it be. But defense counsel has no comparable obligation to ascertain and present the truth.” *United States v. Wade*, 388 U.S. 218, 256 (1967) (*Justice White, concurring and dissenting*).

“The (prosecutor) is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” *Berger v. United States*, 295 US 78, 88-89 (1935)

In Baltimore City, homicide cases (and several other types) are assigned to a prosecutor when they occur. This is commonly known as vertical prosecution, meaning that a prosecutor is involved from the moment of the incident until the close of the case. Under our system, a prosecutor is available to detectives 24/7 if there are witnesses who need to be interviewed or legal questions about how to proceed. In addition, the prosecutor can suggest avenues for investigation as each twist in the case occurs. At the conclusion of an investigation, the prosecutor determines what charges to file in the case and presents the case to the grand jury.

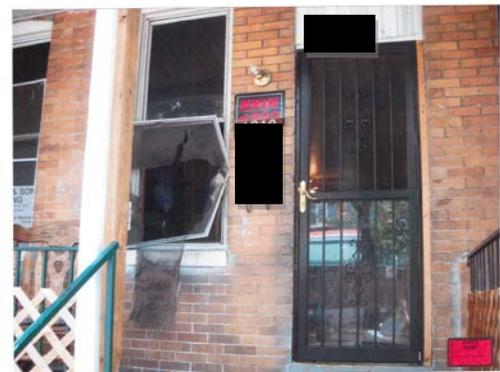
Once a case has been charged and trial preparation begins, the prosecutor is responsible for determining their own case strategy for trial and for making a decision as to an appropriate plea offer. In order to be successful, the prosecutor may have to educate themselves about an area of science or a profession that is unfamiliar. All criminal attorneys have to learn at least a little bit about a lot of specialized topics. For a prosecutor the list includes: DNA, blood spatter, forensic pathology, firearms examination, tool comparison, fingerprints, computer forensics, cell phone technology, wiretap law, and mental health issues on a seemingly endless list of subjects that may

have to be explained to a jury. If the prosecutor doesn't understand what an expert witness is talking about from the witness stand, they cannot expect that a jury will.

As you review the information below, PUT YOURSELF IN THE PLACE OF THE PROSECUTOR and think about how the case could be further investigated or developed for trial. How can you use the information that you have to develop a case against the suspect? What specialized topics (above) may be useful?

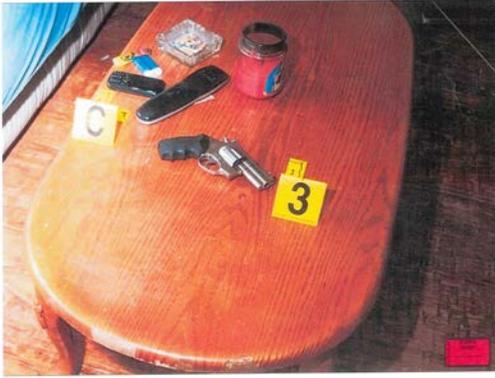
Fact Pattern

At 6:30am, you are called into work and advised to report to homicide because of an ongoing situation. Upon arriving at the police department you learn that a multiple fatality "home invasion" case has just occurred. Your primary detective advises you that at 5:40am, a male suspect armed with a gun broke in through a window of the home and began shooting.



You learn that there were 6 people home at the time of the incident. There were 3 women barricaded in an upstairs bedroom; 2 were shot. In the upstairs hallway, officers located a deceased female and a male with multiple gunshot wounds. A child was found next to the deceased female and was unharmed. The 3 surviving victims are being transported from the scene to area hospitals (the male victim died on the way to the hospital, the two female victims survived their injuries). 6 witnesses are on their way to you for interviews. You have access to the following people (locations on above map by witness number): **(1)** the 911 caller who was inside of the house where the incident happened, **(2)** a next door neighbor who was at home during the incident, **(3)** a friend of the suspect who was with him before the incident occurred, **(4)** the suspect's wife, **(5)** a man who watched the events from across the street, **(6)** a woman walking past the house.

When the suspect arrives at the police department, you learn that he was observed by officers attempting to leave the house (with a gun in his hand) and surrendered to police after finding no other way out of the home. A revolver is located in the living room, loaded with 1 .38 caliber cartridge. The suspect yelled to officers that "somebody had to lose and somebody had to win" and that "it was either him or me."



Patrol officers advise that they recovered a 9mm magazine and multiple .38 caliber cartridge casings from the suspect's pants pocket. You learn that he has an extensive record of narcotics offenses (4) and several assault convictions (5). He does not make a statement.

You continue your investigation by listening to the phone calls that the suspect makes from jail. All of these calls are recorded under an inmate's identification number as well as by the phone number dialed. These calls can be used in court because they are statements of the suspect. This suspect uses other inmate's id numbers to place calls. During those calls, he speaks with a family member and asks her to buy 150 extra-large blue and white jackets and 50 orange car parts for him. He tells her who to buy them from and how much she should pay. He tells her who she is buying them for and how to deliver them, he reminds her to charge "gas money".

Think about additional information or evidence you want or need and about what is missing.

What do you want from the detectives at the crime scene?

What, if anything, do you do as a result of the jail calls that you heard?

What types of scientific evidence do you think might be obtained and from where?

Are there any other resources or records you want located?

What do you ask each of the witnesses?

One of the witnesses has a history of narcotics convictions and a pending possession of narcotics case. Do you consider making a deal with them on that case in order to obtain a statement in this case? Why or why not?

What charge(s) should the suspect face?

Do you, as the prosecutor, believe that the case warrants an enhanced penalty of life without the possibility of parole? Why?

Do you enter into plea negotiations on this case?

What is an appropriate plea offer?