



The Time is Always Right . . .

Ethical Issues for Prosecutors in Child Abuse Cases

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TRAUMA-INFORMED
PROSECUTOR PROJECT



a program of

abuse PROJECT

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“The time is always right to do right”

- Dr. Martin Luther King, Jr.

What's on the Agenda?

- Brief Model Rule Review
- Scenarios: Ethical Quandaries for Special Victims Prosecutors
- “Prosecutorial Misconduct:” Lessons from Recent Caselaw



Disclaimer

- The following is not intended to constitute legal advice.
- Always consult supervisors, state prosecutor's association, or your disciplinary commission for guidance.

Advisory Opinions (Ethics Hotline)

- Does your state have an Ethics Hotline?
 - <https://www.wsba.org/for-legal-professionals/ethics>
 - Provides guidance on compliance with state ethics rules.
- Does your state prosecutor's association have an ethics specialist who is available to offer guidance?

Model Rules of Professional Responsibility

State Rules / Model Rules

- State rules of professional conduct closely mirror the Model Rules of Professional Conduct
- Rules that specifically apply to prosecution:
 - Rule 3.8: Special Responsibilities of a Prosecutor

Responsibility of ALL Attorneys

- **Competence**
 - Knowledge, skill, thoroughness and preparation....
- **Diligence**
- **Candor Toward the Tribunal**
 - Must disclose adverse legal authority
 - Shall not knowingly offer false evidence
 - Must take remedial measures, if necessary

Responsibility of ALL Attorneys

- **Fairness to Opposing Party and Counsel – Shall Not:**
 - obstruct access to evidence
 - alter, destroy or conceal evidence
 - falsify evidence

Responsibility of ALL Attorneys

- **In trial,**
 - may not allude to any matter that the lawyer does not reasonably believe is relevant
 - or that will not be supported by admissible evidence,
 - may not assert personal knowledge of facts in issue except when testifying as a witness,
 - or state a personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of an accused; or

Responsibility of ALL Attorneys

- **Impartiality and Decorum of the Tribunal**
 - Shall not seek to influence a judge, juror, prospective juror by means prohibited by law,
 - communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order,
 - engage in conduct intended to disrupt a tribunal.

Responsibility of ALL Attorneys

- **Dealing with Unrepresented Person**
 - Shall not state or imply that the lawyer is disinterested.
 - The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel.

Responsibility of ALL Attorneys

- **Communication with Person Represented by Counsel**

- Shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter,
- unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Responsibilities of Prosecutors

- Primary:
 - To see that JUSTICE is accomplished
- Note: Unlike Defense Counsel
 - “The defense attorney is the only person in the room whose obligation is not to do justice”
 - Lawrence Vogelmann, NACDL Board Member, ABA Journal February 2003

Responsibilities of a Prosecutor

- “The prosecutor should conduct himself with a high level of dignity” – NPS 6.1
- Zealous in protecting rights of individual
- But, must place rights of society in paramount position in exercising prosecutorial discretion

Responsibilities of a Prosecutor

- From Comments to Washington R.P.C.
 - A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.
 - This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice
 - and that guilt is decided upon the basis of sufficient evidence.

The Prosecutor Shall:

- Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- Make reasonable efforts to assure that the accused has been
 - advised of the right to, and
 - the procedure for obtaining, counsel and
 - has been given reasonable opportunity to obtain counsel;

The Prosecutor Shall:

- Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

Conflict of Interest

- Avoid interests and activities which
 - Appear to, or in fact....
 - Conflict with the duties and responsibilities of the office.
- Private practice representation
- Privileged information
- Family conflict

Applying Ethical Standards

Part One: *Case Analysis* & *Charging Decisions*

The Investigation

- Case Analysis Begins During Investigation
- Early Prosecutor Involvement
“Prosecutors must exercise the greatest control and discretion in this area.” -NPS § 39.2
- Assess Facts and Circumstances
- Assess Legal Issues



The Investigation

- Give Input to Police Investigators
 - Warrant or other investigative advice
- Consult with Experienced Prosecutors
 - Remember... high tech crime, low brow motivation

The Investigation

- **The Detective brings you:**
 - Report from woman that her ex-husband used to spend hours on the computer while she and their children went to bed.
 - She recently found a flash drive in his old desk that contains child sexual images.

The Investigation

- **The Detective brings you:**
 - Ex-husband moved out more than a year ago and no longer has access to the house.
 - But it's Friday afternoon and ex-husband is scheduled to have his children for the weekend.

From the comments of 39.2

- “..Situations may arise in which the police, either due to neglect or the constraints of time, fail to investigate.
- Then it is not only the prosecutor’s right, but also his duty to take the initiative and to act independent of citizen complaints or police activity.”

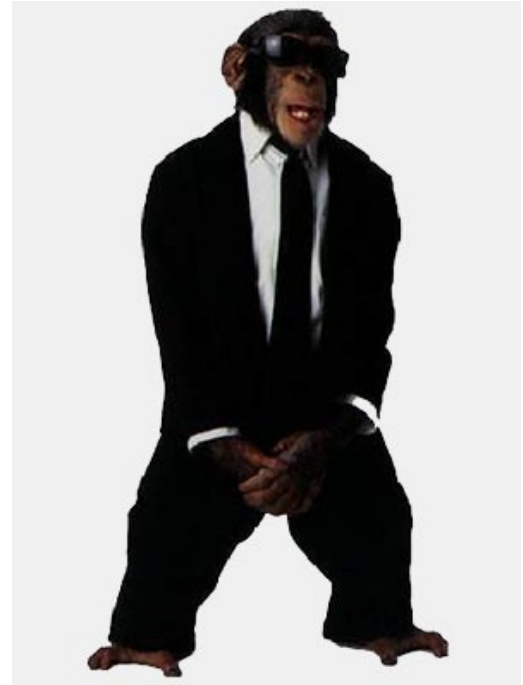


Analyze the Case

- Develop a **Theme** and **Theory** of your Case
- **Theme**: A Psychological Anchor for the Case
- **Theory**: A Logical and Persuasive Explanation for the Facts that is Consistent with the Admissible Evidence and Perceptions of the Average Juror

Think Like a Defense Attorney

- Be Objective
 - What kind of case do you have?
- Be Critical
 - Review the warrant and any potential forensic issues.
- Anticipate potential defenses and weaknesses in your case.



Keep an Ethical Perspective in Follow-Up Investigation

- Consultation with experts
- Request for forensic analysis of computers
- Using subpoenas and/or warrants
- Interview other witnesses with relevant information (huh? I thought these were *computer* crimes).

Keep an Ethical Perspective in Follow-Up Investigation

- Defendant's criminal history
- Locating, interviewing and obtaining statements or testimony from other potential witnesses (or sources)
- Carefully review all statements

Deciding Whether or Not To File Criminal Charges

- Assess Defendant's Factual Guilt
 - Are there witnesses to the incident?
 - Did the defendant give a statement
 - What part do forensics play?



Exercising Discretion

National Prosecution Standards Sections 42.1 & 43.1

- Experience is helpful
- Advice from experienced colleagues
- Ask two basic questions:
 - Is criminal prosecution justified?
 - What factors should be considered?

Primary Charging Question

- **A complainant tells you:**
 - Several fourteen-year-olds sent nude images of themselves to others as part of a “dare”
 - Several other students sent images of themselves posed in underwear or bikinis
 - The public demands that you do something to “teach these kids a lesson”
 - Some of the parents refuse to allow their children to attend an “education” program

Primary Charging Question

- What possible charges accurately reflect the defendant's conduct,
- fit your theory of the case, and
- best serve the interests of justice?
- Not an exact science
- Initial charging decision may have to be modified and reduced as you gain information regarding offense and offender

Charging Decision

- Know your Office Policies & Apply Those Standards *Consistently*
- Be Familiar with the *National Prosecution Standards*:
 - Section 42.3, Screening Factors to Consider
 - Section 42.4, Screening Factors Not to Consider
 - Section 43.6, Charging Factors to Consider
- Always Consider Ethical & Professional Responsibilities

Factors to Consider

- **The Detective tells you:**
 - The ex-husband is leaving for a business trip on Monday.
 - He'll probably take his laptop with him, but leave his desktop in his apartment.
 - The woman can get the key to her ex-husband's apartment from their twelve-year-old son's backpack.

Factors to Consider

- Doubt as to guilt of the accused
- Insufficiency of admissible evidence
- Reluctance of victim to cooperate
- Possible improper motives of victim/witness
- Availability of adequate civil remedies
- Availability of diversion/rehab programs

Factors to Consider

- Provisions for restitution
- Likelihood of prosecution by another criminal justice authority
- Aid to other prosecution goals through non-prosecution
- Age of case

Factors to Consider

- Probability of conviction
- Nature of the offense
- Attitude and mental status of accused
 - Proven and unproven criminal history
 - Age of accused
- Cooperation of accused
- Deterrent value

Factors to Consider

- Interests of the victim
 - Age of child-victim
 - Mental capacity of child-victim
- Extent of manipulation, opportunism and exploitation-methodology
- Excessive cost of prosecution

Factors to Consider

- Undue hardship to accused
- History of non-enforcement
- Failure of law enforcement in investigation
- Defendant's release of potential civil claims
- Any mitigating circumstances

Factors to Consider

- During a valid consent search, the Detective discovers:
 - Movies containing adult pornography
 - Computer images and videos depicting sexual activity among adults
 - Eight images depicting naked pre-school aged children playing on a beach.

Other factors...

- In child pornography cases:
 - Quantity of images
 - Ages of the children
 - Lewd exhibition or BDSM-pain or rape themes?
 - Consider consulting an expert regarding the defendant's interests.

Factors to Consider

- **The Detective reminds you:**
 - Your boss is up for re-election
 - Your ICAC grant is up for renewal
 - The newspaper reporter is running a series entitled “Perverts in our Midst.”
 - The suspect has written letters to the editor critical of the DA’s Office
 - Worse.....he’s a member of the Opposition Party.

Factors not to Consider

- Conviction rate
- Personal advantages (benefits)
- Political advantages (benefits)
- Factors of the accused deemed invidious discrimination
 - differentiation scale to people who belong or who appear to belong to certain groups
 - Not pertinent to the elements of the crime.

Identify Potential Defenses

- Impossibility
- “Virtual children”
- SODDI
- Age of the children in the images

Identify Potential Defenses

- Innocent explanation
 - “Trojan Horse”
 - Virus
 - Someone else sent it to me
 - Spam (Accidentally clicked on to a link –
Incidental vs. *intentional* acts)
- Age of the children in the images

Additional Factors

- **The Forensic Examiner reports that:**
 - He found more explicit images of children in unallocated space.
 - The web history not recoverable.
 - The ex-husband had at least one roommate who shared the computer, which was not password-protected.
 - The suspect is willing to forfeit the computer.

Reasons to Decline Prosecution

- Bad Facts
- Incomplete (or sloppy) Investigation
- Constitutional Issues
- Very few images on temp files & no evidence of cruising or surfing
- Other, more appropriate remedies
- Your credibility as a prosecutor is at stake

Reasons to Decline Prosecution

- Dost Factors
 - Focal point of depiction on genitalia or pubic area
 - Setting or pose sexually suggestive
 - Unnatural pose, or inappropriate attire for age
 - Full or partial nudity
 - Suggestion of sexual coyness or willingness to engage in sexual activity
 - Intended or designed to elicit a sexual response in the viewer.
- Determination based on the overall content of the visual depiction
- **U.S. v. Dost**, 636 F. Supp 828 (S.D. Cal.1986), affd., **U.S. v. Wiegand**, 812 F.2d 1239 (9th Cir.1987), cert. denied 484 U.S. 856 (1987)

Reasons to Decline Prosecution

- Proof Problems – real child?
- **Ashcroft v. Free Speech Coalition**, 535 U.S. 234 (2002)).
- NCMEC Crime Victim Identification Program (CVIP) database.
- Medical or digital expert

Reasons to Decline Prosecution

- Possession vs. Downloading: viewing alone is enough
- See: **U.S. v. Tucker**, 150 F.Supp.2d 1263 (D. Utah 2001), aff'd., 305 F.3d 1193 (10th Cir. 2002), cert denied 537 U.S. 1223 (2003); **U.S. v. Stulock**, 308 F.3d 922 (8th Cir. 2002); but see: **Minnesota v. Myrland**, 681 NW 2d 415(Minn.2004)
- Don't Cache Out Your Case: Prosecuting Child Pornography Possession Laws Based on Images Located in Temporary Internet Files,
- (Ty E. Howard) 19 Berkeley Tech. L.J. 1227, (2004)

Child Pornography Cases

- Number of Counts—Duplicity Issues?
 - Know your state's standards
 - Impact on Judge/Jury
 - Victim impact—displaying **more** images than necessary
- Display on monitors or in print?
- Courtroom considerations?
- Don't forget that the images are of a **crime scene**

Evidence of Other Bad Acts

- Can you ethically draft charges or include other conduct by the defendant that demonstrates his/her propensity to sexually exploit or abuse children?
- May be admissible for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident
- F.R.E. 404(b)

Evidence of Other Bad Acts

- Review the Statutes
- Review the Jury Instructions (or try to draft some).
- Case law or Rules of evidence addressing “Other Acts Evidence”
- Studies/articles regarding the use of child pornography and “grooming”

Determine If Case Necessitates an Immediate Arrest

- Danger or threat the Defendant Poses to Community and/or Other Children
- Consider Safety of Victim and/or Witnesses



Applying Ethical Standards

Part Two: *Ethical Dealings with the Media and Releasing Information*

Public Statements

- A neighbor comes forward and reports that the ex-husband sexually abused and photographed her child. You charge the defendant, and:
 - You're concerned that other children may have been victimized
 - You are unable to locate the defendant
 - The defendant owns a cabin in a remote area upstate.

Responsibilities of Prosecutors

- A prosecutor may state:
 - the identity, residence, occupation and family status of the accused;
 - That an investigation of a matter is in progress;
 - The identity of investigating and arresting officers or agencies and the length of the investigation.

Responsibilities of Prosecutors

- A prosecutor may state:
 - If the accused has not been apprehended, information necessary to aid in the apprehension of that person;
 - The fact, time and place of arrest; and
 - The scheduling or result of any step in litigation;

Responsibilities of Prosecutors

- A prosecutor may state:
 - a request for assistance in obtaining evidence and information necessary thereto;
 - a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest;
 - matters of public record or that will serve the public interest

Public Statements

- Your detective prepared a press-release stating that:
 - The accusing neighbor is well-known and considered an honest person.
 - The defendant was offered a polygraph during the investigation and declined
 - This case is “airtight” and the defendant will be convicted.
 - The defendant is a “sick pervert” who deserves to be in jail for a long time.

Responsibilities of Prosecutors

- Only when necessary:
 - Statements of character or reputation of accused or prospective witness
 - Admissions, confessions or contents of statement or alibi of accused
 - Results of tests or accused refusal to take test

Responsibilities of Prosecutors

- Only when necessary:
 - Statements of credibility or anticipated testimony of witnesses
 - Possibility of plea or other disposition
 - Tactics, strategies or arguments that will be used at trial

The Prosecutor Shall:

- Except where necessary to inform the public of the nature and extent of the prosecutor's action and serve a legitimate law enforcement purpose,
- refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused
- Applies to partners in investigation

-
- This includes public criticism of judges
 - Absolute immunity for (most) statements made in the courtroom
 - Qualified immunity for other public statements within the scope of their duties
 - NO immunity for statements not within the scope of duties, or for incorrect out-of-court statements motivated by bad faith or malice.

Dealing With the Media

- **Trial Publicity**

- A lawyer shall not make an extrajudicial statement that the lawyer knows or reasonably should know
- will be disseminated by means of public communication and
- will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Dealing With the Media

- “Fair Trial” vs. “Free Press”
 - Rights of the defendant
 - Right of the public to know
 - Facilitate the *appropriate* flow of information *necessary* to educate the public
- National Prosecution Standards, 33.1, 33.2 & 34.1

Dealing with the Media

- Consider the reporter and/or the media outlet
 - do you trust him/her/it
 - is there a hidden or not-so-hidden agenda
 - set ground rules and stick to them!

Determine Information To Be Released

- Other Professionals
- Victim's Family
- News Media

Applying Ethical Standards

Part Three: *Discovery* & *Trial Issues*

Don't Forget the Big One



- Discovery of Potentially Exculpatory Evidence
 - Not just you: the entire prosecution team
 - How do you ensure you have it all and disclosed it all?

Child Abuse Specific

- What do we encounter that is potentially exculpatory?
 - Contradictory statements by victim / witnesses
 - Online / digital communications about offense
 - Recantation by victim
 - Different medical opinion
 - Forensic test results

*“I need to talk
to you . . . ”*

Child Abuse: Disclosure

- Speed of Disclosure by Prosecutor:
 - Do you now have evidence that shows
 - Suspect did not commit crime charged?
 - Other potential suspects identified?
 - Recantation of allegation?

Child Abuse: Disclosure Digital Evidence

Drowning in data: Attorneys grappling with increase in digital evidence

August 30, 2023 | Tyler Fenwick

There's been a learning curve, Tompkins said, adding that he doesn't think prosecutors are trying to hide things in discovery. For instance, he may get a report, but what he wants is the actual data that went into making the report.

Former prosecutor faces discovery sanction

A case involving a man who was accused of child molesting demonstrates a more extreme example of the challenges presented by massive amounts of digital discovery.

Gregory Whitmore was charged in Hamilton County in 2020 with three counts of Level 1 child molesting, two counts of Level 4 child molesting, five counts of Level 4 sexual misconduct with a minor and one count of Level 5 sexual misconduct with a minor.

The state seized electronic devices, including a phone, from Whitmore, whose counsel made multiple requests for a copy of the state's full data extraction.

The case, Hughes wrote in the order, was "one of egregious failure" to produce evidence in excess of 10 terabytes for defense counsel to review. The volume was estimated to be the equivalent of 64 million pages of information, Hughes wrote.

Whitmore's attorney at trial, Russ Cate, said he doesn't believe issues like this are in bad faith.

Many times, the people he's working with on a case are friends, Cate said. But he added that "you do start to scratch your head a little bit" when an issue that's repeatedly brought up isn't addressed.

Discovery Spreadsheets

Item	Rec'd From	Disclosed on
Victim interview	CAC Director	11/5/2022
Rape Kit	in lab	11/15/2022
Clothing (taken at hospital)	in lab	11/15/2022
Crime Scene Pics	Det. Peters	11/5/2022
Sister interview	Det. Peters	11/7/2022
9-1-1 call	MECA	11/7/2022
Police Report: 20221002_2A	Det. Peters	11/5/2022
Body Cam Video: first on scene	Computer upload - screened by Abby	11/23/2022
Serology report on rape kit	J. Macechko	2/15/2023
DNA report on Rape kit	Dr. Evans	8/10/2023

Digital Evidence

- Ensure you have a property inventory of everything collected / examined
- Document evidence reviews with defense
- Confirm discovery receipt / offer additional reviews if needed

FD-886 (Rev. 4-13-15) **EVIDENCE COLLECTED ITEM LOG** Page ____ of ____
 Print Legibly. More than one line may be used for each item, if necessary.

Date: 2/27/18 Case ID: 305 D-18-258 4137
 Location: 171 W. Fairway Lane
Bloomington, IN 47403
 Preparer/Assistants: _____

Personnel (full names and initials): _____

Item #	Description (e.g., One black Samsung flip phone; Serial #)	Location (e.g., Room)	Specific Location (e.g., Specific area w/in room)	Collected by/ Observed by (First Name and Last Name)	Packaging Method	Comments (if needed)
	Apple Cell phone with Discover Insurance	B	Dining Room/ Brown Cabinet	Cuff, Tamera		
	Sony Tablet		Kitchen/ Counter top	Cuff, Tamera		
	Verizon 4G LTE XPERIA	C	Master Bed room	Deckard		
	Apple iPad Tablet	I	End Table Bedroom	Deckard		Returned
	Apple iPhone	F		Deckard		
	Black Otter box	F		Deckard		
	Samsung Tablet		Living Room	Deckard		
	Orange Samsung Case	A				Returned
	Apple iPad	G	Top Drawer	Wardick		Returned
	Black Hard case	G				Returned
	Dell Computer Gray/Red	G	Computer Room	Conner		Returned
	Samsung Tablet	G	Under Desk Computer Room	Conner		Returned
	Green Hard case	G	Next to desk			Returned
	Dell Dimension Gray	M	Garage	Wardick		Returned

EXHIBIT 1

Prosecutorial Misconduct

- Generally, when do prosecutors get into ethical hot water?
 - **When we don't talk**
 - Failure to disclosure potentially exculpatory evidence
 - **When we do talk** (unscripted moments)
 - Cross-examination
 - Closing argument
 - **When we talk with jurors**
 - Jury selection and *Batson*



Game of Thrones

Discovery Issues

- **The defense attorney files a motion for:**
 - A copy of the hard drive to send to his expert in another state
 - Disclosure of evidence from other, similar cases.
 - A copy of the victim's mental health records
 - That you have?
 - That you do not have?

The Prosecutor Shall:

- Make timely disclosure of all evidence or information known to the prosecutor
- that tends to negate the guilt of the accused or mitigates the offense, and,
- in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor

-
- Note that "mitigating" evidence must be disclosed as well.
 - The evidence need not establish innocence to be "exculpatory".
 - Brady v. Maryland, 373 U.S. 73 (1963).

Discovery Issues

- **As trial is about to begin, the Detective:**
 - Brings you more images that were found on the hard drive.
 - Discovers that the defendant has a prior record under an alias.
 - Discovers that at least two other users had access to the computer during the relevant period.
 - Discovers that the ex-wife has a recent conviction for theft of cable television.

Displaying Images at Trial & Protecting the Victim

- Be familiar with any victim-rights legislation in your jurisdiction;
- Make sure all images submitted to the Court are sealed;
- Fight to keep images of CSE from being displayed to the gallery or media
 - But: “Public Trial” considerations, be aware of the implications, if the defense does not consent or the Judge is insistent.

Alternatives to Closing the Courtroom

- Preventing certain people (juveniles) from being in the courtroom when pornography displayed (but, any blanket removal grounds for appeal);
- Preventing attendees from having any recording/photographic device;
- Cautionary instructions, as necessary;
- Put everything—findings, prejudice, alternatives—on the record!

Another Argument to Prevent Public Display of Child Pornography

- Is it a violation of state and/or Federal law for you to display the child pornography to anyone except as necessary in the discovery process or during the trial of the case itself?

Preventing Dissemination through Discovery

- Do not mail or provide any sexual images of a child to defense attorney
- Offer to have images available for review and inspection
- Defense should provide a good argument as to why it needs its own copy of the material
- Provide only with a court order

“Adam Walsh Law” - 18 U.S.C.A. §3509(m)

- Prohibits court from ordering copying of materials to defense as long as it is “reasonably available” to defense
- “*Reasonably available*” = ample opportunity for inspection, viewing and examination at a government facility or property.

Applying Ethical Standards

Part Four: *Plea Negotiations & Successful Plea Dispositions*

National Prosecution Standards for Plea Negotiations & Plea Agreements

- Section 66.1
- Section 66.3
- Section 68.1
- Section 68.2
- Section 68.3
- Section 68.4
- Section 72.1
- Commentary on Plea Bargaining

Plea Negotiations

- Prosecutor has no obligation to negotiate
- But may in the interest of effective administration of criminal justice
- Types of disposition
 - Sentencing recommendations
 - Dismissal of other charges
 - Refrain from filing additional charges
 - In exchange for civil release by defendant

Ethical Considerations in Plea Negotiations & Plea Agreements

- Each case is unique and all decisions regarding disposition should be made on an individual case-by-case basis (**§ 68.2**)
- Ethical and professional conduct :
 1. Consider the possibility of the defendant's innocence (**§ 68.4**)
 2. Be reasonable, consistent & fair (**§ 66.3**)
 3. Know your legal limitations & office policy

Factors to Consider

National Prosecution Standards, Section 68.1

- nature of the offense(s)
- degree of offense(s) charged
- any mitigating circumstances
- defendant's age, background and criminal history
- attitude and mental state of the defendant at the time of crime, arrest & plea discussion
- sufficiency of admissible evidence to support a verdict

Factors to Consider (continued)

- willingness to waive right to appeal
- willingness to release potential civil causes
- availability and willingness of witness to testify
- any physical/mental impairment of witness
- certainty of identification
- credibility of witness
- witness relationship with defendant

Factors to Consider (continued)

- improper motive of witness
- age of witness
- undue hardship of witness caused by testifying
- existence and extent of physical injury and emotional trauma suffered by victim
- economic loss suffered by victim

Factors to Consider (continued)

- undue hardship caused to the defendant
- deterrent value of prosecution
- aid to other prosecution goals through non-prosecution
- history of non-enforcement
- age of case
- likelihood of prosecution by another jurisdiction
- provisions for restitution

Other Factors to Consider in Plea Negotiations

- Consider input from police agency involved **(§ 68.3)**
- Know your forum (judge) & your adversary
- Make the offer in writing
- Set a deadline and stick to it! **(§ 72.1)**
- Public Perception of “Plea bargains” **(§ 66.1 & Commentary)**
- Forfeiture of computer, hardware, software (by statute or via conditions of plea negotiation)

MRPC vs. State Rules

- Always check state rules for areas of distinction with federal rules.
- Consult supervisory chain when a conflict exists.

Final Notes

**Preparation + knowledge =
CONFIDENCE**

- Be confident
- Be proactive & creative
- Be professional & ethical

Training Opportunities



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