

Traffic Safety Standard

Providing relevant information to Montana's prosecutors, law enforcement and judges

ISSUE 3

JULY 2010

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STRATEGIES IN PLAYING "COPS & PROSECUTORS"

By Jared Olson, Idaho Traffic Safety Resource Prosecutor, Idaho Prosecuting Attorneys Association

Less than a week into my new position as a Traffic Safety Resource Prosecutor (TSRP) I was invited at the last minute to attend a multi-agency law enforcement meeting. The agencies were trying to reach an understanding of how to work together in injury/fatality crashes. Glaringly absent from the meeting were local prosecutors. Upon introductions and an explanation of the role of a TSRP, the response I received was, "Fantastic, if you could just train our prosecutors on how to handle an impaired driving crash that would be great."

Later in the week, I met with prosecutors representing these agencies. After introductions and another explanation of my role as a TSRP, the prosecutors said, "Fantastic, if you could just train our cops on how to investigate an impaired driving case that would be great."

Upon discussing this with my colleagues in other states, I found these responses are all too common. Successfully investigating and prosecuting impaired driving and other traffic crimes requires a team approach. A good working relationship between cops and prosecutors lightens the workload and increases convictions. Having worked on both sides of the fence, as a law enforcement officer and as a prosecutor, I offer the following strategies in developing a multidisciplinary approach.

Five Strategies for Prosecutors

Work with the Officer in the Field. An officer once approached me and asked that I ride-a-long with him. "Until I have worked with you," he said, "I don't trust you."

Working in the field with officers goes a long way in establishing credibility. This is your chance to understand how your cases develop on the street before hitting your desk. Road patrol and/or task force shifts are excellent opportunities to ride-a-long with officers. Go with a student mentality and learn as much as you can from that officer. Don't hesitate to ask questions and engage in conversation. By doing this, you will both learn something.

Be observant and see if you can find indicators of impairment or traffic violations before the officer does. Not likely – but you will make a good impression by showing interest in their work. Ask them to describe what they are observing to you. Discussing the elements now may ease the officer's anxiety later when preparing for trial. Ride-a-longs are also a non-threatening time to check the relationship temperature between your office and their department.

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Montana's Traffic Safety Resource Prosecutor (TSRP) position is funded by the Montana Department of Transportation as part of a comprehensive effort to reduce the number and severity of traffic crashes, injuries, and fatalities on Montana highways.

Strategies in Playing “Cops & Prosecutors”

Invite Officers To Be Your Shadow. Even though your desk is not equipped with disco lights and a siren, you can still invite officers for a courthouse ride-a-long. After shadowing you for a day, officers will have a newfound respect for the caseloads and pressures you deal with as a prosecutor. Do not bring them in on a slow day. Just as you desire to see the real action on the streets, they need to see the real action in the courthouse. If a courthouse ride-a-long is impossible due to the officers' shift work, then look for impromptu opportunities for them to watch you work. Many times they are subpoenaed only to wait outside the courtroom, on a bench, without ever taking the stand. Instead, let them experience your interactions with defense counsel, judges, victims and pro se defendants.

After an officer testifies, take a few moments to find out if they have any questions or concerns. Ask them, “How did this go for you?” “What can I do better?” They will inevitably respond by asking you the same questions. Be ready to tell them specific things they did well. If there happens to be an area needing improvement, share it with them, but only after first explaining their strengths.

Invite Officers to Observe a Jury Trial From Start to Finish. If the officer has never been a witness before, invite them to observe a hearing or trial before their event is scheduled. This will give them an opportunity to watch a direct and cross examination, the judge's rulings and interactions with lawyers and witnesses and even observe the layout of the courtroom itself. Find moments to explain what is happening and share the strategies being employed. Do not assume they understand the trial process. I was once surprised when a sergeant with twelve years experience told me this was his first jury trial.

True, most cases resolve long before trial. This creates a misperception that prosecutors are not pushing hard enough. Viewing an actual trial will reveal the procedural hoops and potential pitfalls that must be overcome for a judge or jury to convict. Upon recognizing this, officers will begin to collect their evidence with the judge and jury in mind.

Give Credit When Credit is Due. After your officer testifies at trial, take a moment to write a letter to their supervising officer. Include in the letter a description of the case, the specific strengths in the investigation and how well the officer did on the witness stand. These letters will be placed in the officer's permanent file, and I guarantee they will be appreciated. This simple act tends to foster a relationship wherein the officer will put forth extra effort into bringing you good cases.

Communicate When Reducing Charges. Make it a personal habit to notify officers before you reduce or dismiss an impaired driving charge as part of a plea agreement. While you don't need to ask permission to negotiate a plea, a simple e-mail explaining your actions will foster a great deal of goodwill. Impaired driving cases require a great deal of investigation time and lots of paperwork. Because of this, officers become invested in these cases, more so than many others. Your e-mail may save your reputation as their prosecutor. Officers will also begin calling you when they recognize potential problems in their cases, which will save you time.

Five Strategies for Officers

Testifying in court was not something I envisioned when I chose to become a police officer. Yet, within a

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Strategies in Playing “Cops & Prosecutors”

month of being sworn in, I found myself in the witness box. I had met with the prosecutor beforehand and told him it was my first time testifying. “You will do fine,” he said. “This is just a routine preliminary hearing.”

I spent three years in the box, that afternoon, being grilled by a defense lawyer. This was not the adrenaline rush I signed up for. What was routine for the prosecutor, was very much foreign to me. For my first time on the witness stand, I felt very much used, lied to and taken advantage of, despite the judge ruling in my favor. I was upset with the prosecutor for not having warned or prepared me for that dreadful experience.

Shadow Your Prosecutor for a Day. The key to avoiding the courtroom, or at least making it less traumatic, is developing a good working relationship with your prosecutor. As mentioned above, take time to shadow your prosecutor for a day. Watching your prosecutor work will give great insight into how to investigate and develop your own cases with an eye for trial. You will see the prosecutor negotiate with defense counsel, advocate cases in front of a judge and meet with victims. It will become crystal clear on how much your prosecutor relies on well-written police reports.

Come Prepared With Questions. Whether it is a courtroom ride-a-long, or your turn to testify in court, come prepared with lots of questions. Ask the prosecutor such things as: “Where do you think defense counsel will attack? What are the weak points in the case? The strengths? What could have been done better?” If you make this a habit, your prosecutor will likely develop a habit of having the answers before you arrive. Both of you will then be prepared for courtroom battle.

Invite Your Prosecutor to the Crime Scene. During your investigation, contact your prosecutor with any questions you may have. Be cognizant of opportunities to invite prosecutors to the crime scene. Good prosecutors will roll out of bed at 3 AM to come to the scene of an alcohol-related crash. They realize how much better they will present the case in court, having seen it firsthand. They will watch you work and translate it into better questions when you become the state’s witness.

Share Your Concerns. For various reasons, there are certain cases you become attached to, and are concerned with the outcome. When this happens, remember that your prosecutor is reviewing hundreds of cases from various officers. Therefore, be sure to contact your prosecutor early in the process and give your input in to how you would like the case to be resolved. Your input is important and usually will be given great consideration. It will certainly generate an explanation if the resolution is different from your expectations.

Give Credit When Credit is Due. Finally, when your prosecutor is doing a good job, take the time to approach their supervisor to express your approval. This will eventually get back to that prosecutor and from then on your name will jump off your reports. Greater attention and special care will likely be given to your cases. The end result is better investigation on your part and better prosecution on their part.

The invitation is to try at least one of these strategies. See if it works. Playing cops & prosecutors takes a coordinated effort to successfully reduce impaired driving and other traffic crimes.

“PROSECUTING THE DUI” TRAINING HELD IN HELENA

Twenty-three prosecutors and eleven law enforcement officers gathered in Helena at the Montana Law Enforcement Academy April 20-22 to improve their ability to investigate and prosecute DUI cases. Participants travelled from across the state to attend *Prosecuting the DUI*; Glasgow, Thompson Falls, Bozeman, and many other areas were represented. The trainers included Crime Lab personnel, MHP trainers, MT TSRP, county prosecutors, as well as the Director of the National Traffic Law Center.



Participants and instructors of Prosecuting the DUI

Shortly after the training Deputy Lake County Attorney, Jessica Cole-Hodgkinson, prosecuted her first refusal case. Refusal cases are amongst the most challenging DUI cases prosecutors bring before a jury. She was confident the defendant had been under the influence in violation of Montana’s laws, but faced the test of persuading a jury to agree with her. She incorporated what she had learned at the training into her trial work and ultimately achieved a conviction from the jury. She attributes the successful prosecution to the training in Helena. “It was all thanks to the training,” said Cole-Hodgkinson.

Trial skills were not the only issues addressed. Instruction focused on the whys and wherefores of a DUI investigation and stressed the importance of teamwork and communication between the investigators and their prosecutors. As a result Powell County Deputy Sheriff Kim Micu and Deputy County Attorney Jeanine Badanes identified areas for improvement in their jurisdiction. Since returning home, they have worked cooperatively to not only improve enforcement and prosecution of DUIs, but also to step-up preventative efforts.

Prosecuting the DUI will be presented again in the spring of 2011 at the Montana Law Enforcement Academy. The class is tentatively scheduled to take place in the new training center, which will accommodate a larger class.

In the next issue:

East Helena man sentenced in death of Helena couple

Nebulizers and Alcohol: What Really Happens

Traffic Safety Case Highlights

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State v. Stanczak, 2010 MT 106. Field sobriety tests are not custodial interrogation, so defendant had no right to counsel prior to performing tests. Jury instruction regarding inference of guilt when defendant refused to perform field sobriety tests was proper in accordance with Mont. Code Ann. § 61-8-4040(2) (2009).

State v. Roberts, 2010 MT 110. Mont. Code Ann. § 46-18-203(7) (2009) governs sanctions to be imposed after revocation of probation for DUI and criminal endangerment sentences. Mont. Code Ann. § 46-18-201 (2009) does not govern.

State v. Sirles, 2010 MT 88. Sufficient evidence existed to determine defendant drove on a way of the state open to the public when he was found in a vehicle on private property slumped over the steering wheel.

State v. Bustle, 2010 MT 68. District court's imposition of lower court costs in sentence is unlawful.

Training Dates

Course Title	Date	Location	Registration Information
Lethal Weapon (vehicular homicide) Course	August 23- 27	National Advocacy Center - Columbia, SC	Visit www.ndaa.org/education/ndaa/traffic_law_training_schedule.html for additional information and registration.
Prosecuting the Drugged Driver	October 26-28	West Yellowstone	Contact Erin Inman for additional information

For information about more trainings and conferences, please go to <http://www.mdt.mt.gov/tsrp/> and click on "Training"

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call (406) 444-3423, TTY (800) 335-7592, or the Montana Relay at 711.