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Report Writing

Summary

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Other material was adapted from:

• "Criminal sexual assault investigation for first responders and investigators." Course outline handout (10/98). Developed by Commander Joseph Kocek, Tinley Park (IL) Police Department.

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Introduction

This entire manual has focused on preparing law enforcement to investigate sexual assault cases with an eye toward successful prosecution. Yet we know that many cases nonetheless result in acquittal. Why? In television dramas, the prosecution loses its case because the defense produces evidence or a witness that was missed by the police investigation. In real life, however, defense attorneys rarely uncover evidence or witnesses that police miss. Rather, defense attorneys win cases because they attack the credibility of the investigation with ammunition that comes from the investigator's own reports.

Clearly, report writing is not the most interesting or glamorous part of the investigation, but it is arguably the most important. The written report serves a number of key purposes, including:

• recording and transmitting information regarding the case

• providing a written narrative of the facts and findings from an investigation

• providing the foundation upon which a prosecutor will build a case, and
• becoming the official memory of the department for use in trials, appeals, and civil suits.

No matter how good an investigation is -- how thoroughly the scene was processed, how well the victim was interviewed, or what kind of statement was given by the suspect - the case will be lost at trial if the reports summarizing the investigation are poorly written.

After a few trials, investigators learn that a good report is more than an accurate summary of the facts. Instead, a good report anticipates potential defense strategies and provides the information necessary to undermine them. For example, one of the most common defense trial tactics is to try to impeach witness testimony. There are two types of impeachment, impeachment by omission and impeachment by contradiction

**Defense Strategy #1: Impeachment by Omission**

Every rookie police officer knows that writing the wrong information in a report will have a negative effect on the outcome of the case. It takes a while for officers to understand, however, *that what they don’t record in a report can also hurt the case at trial.* Impeachment by omission is achieved when the defense can undermine the credibility of the prosecution by pointing out that some fact was provided in witness testimony but not documented in a report.

How damaging is impeachment by omission? In some ways it is not at all damaging, because omissions are committed in every single report. That is, virtually every trial will involve testimony by the investigator to some facts not included in a report. This is because it is impossible to anticipate every question that both the prosecutor and the defense attorney may ask, and the investigator's testimony will therefore likely include some information not included in the report. Judges and juries generally understand this and are willing to overlook the occasional fact that has not been written in an investigative report. However there are two situations in which impeachment by omission can be damaging.

• The first is when the fact to which an investigator is testifying is central to the prosecution's case, and

• the second is when the investigator's testimony includes numerous undocumented facts.

For example, investigators have actually testified that they forgot to write in their report that the offender admitted to committing the crime. It is easy to imagine that these investigators are seen by the judge or jury as less credible than if this important information had been documented. As a general rule, testimony to facts that are not documented in a report is viewed as less reliable than testimony to facts that are substantiated by a report.

Other key information to include in a report is conclusions regarding all other investigative leads. If any other suspects or leads are mentioned in the report, it will also need to include information about how and why they were eliminated from consideration. This prevents the defense from placing blame on the police for inappropriately targeting the defendant, and it reduces the likelihood that any other leads will be used to raise doubt in the minds of jurors.
Investigators also sometimes write short, vague reports and then provide detailed testimony in court about a complex investigation. Defense attorneys are likely to attack this kind of testimony by showing the investigator the report and asking him or her to locate the information to which they have testified. When the investigator admits that the information is not included in the report, the defense can then depict the investigator as untruthful or incompetent. While a single occasion of impeachment by omission may not be fatal to a case, repeated occurrences will undermine prosecution.

**How to undermine this strategy**

How can you avoid the problem of impeachment by omission? Ask yourself the following questions.

- First, what are the elements of the offense that you are trying to prove?
- Second, which defense will likely be raised at trial?

Then make sure that your reports include all of the facts and evidence that are required to prove the elements and refute the likely defenses. However, this does not mean that your reports should always be long and include every minute detail -- because long, detailed reports increase the risk of impeachment by contradiction.

**Defense Strategy #2: Impeachment by Contradiction**

Impeachment by contradiction occurs when a witness testifies to facts at the trial that are different than those recorded in their witness statement or in the case reports. This kind of impeachment is generally more damaging than impeachment by omission, because it gives the defense attorney an opportunity to characterize the testimony as a lie.

Sometimes a contradiction between testimony and recorded facts can be excused due to a memory problem. Judges and juries typically understand that very few people relate their account of an event in exactly the same way every time. Nonetheless, investigators must do what they can to avoid the problem.

**How to undermine this strategy**

The most important thing that an investigator can do to prevent this type of impeachment is to listen carefully during all interviews and accurately record the statement of any witnesses. There are, however, other techniques that investigators can use to minimize the risk of contradiction. If more than one person conducts an interview, only one report should be written to record the witness statement. Of course, there are times when task forces or multidisciplinary teams are created to investigate crimes. In these cases, the team should produce one report that is used by all of the agencies, rather than having each member of the group produce a report.

Another strategy for reducing the risk of contradiction is to avoid repeated detailed recording of a witness statement. Many times witnesses need to be interviewed more than once because they have remembered additional facts or because the investigator has additional questions. Rather than re-
cording the witness statement completely every time, however, the investigator should broadly summarize the repeated facts then record in detail the new information. For example:

On 15 Jan the reporting investigator re-interviewed Mr. John Dayton, the witness in the listed homicide. Mr. Dayton repeated the account of the incident that has been previously recorded in the report dated 7 Jan. He then provided the following new information.

In addition, it is important to record any changes that the witnesses make in their account of the event. This technique is used to prevent errors in recording the witness’ account, not to conceal unfavorable information.

Finally, avoid writing a detailed report for any witness who has provided his or her own detailed summary of events. Instead get a copy of the written statement provided by the witness and make it part of your file. Then summarize the statement broadly in your report. This situation is most frequently encountered with medical witnesses. For example, an investigator may interview a doctor about the results of a forensic examination and then write a detailed report summarizing what the doctor said. However, the doctor will also write his/her own report and any differences between the two will likely be used by the defense attorney to impeach the testimony of the doctor, investigator, or both.

Defense Strategy #3: Motions to Suppress

Besides impeachment, the reports produced by an investigator must also be prepared to refute other defense strategies such as motions to suppress. Motion hearings set the stage for the trial and many cases are lost because an arrest or a confession was suppressed. Therefore it is important that reports be written with preparation for potential motion hearings.

While motion procedures differ from state to state, the motions themselves are the same. This section will discuss the two most common motions heard: motions to suppress an arrest and motions to suppress a confession.

Motions to suppress an arrest

To win a motion to suppress an arrest, an investigator must show that there was probable cause to make the arrest and that the defendant’s constitutional rights were not violated in the process. Investigators must ensure that the exact basis for probable cause is spelled out in the report.

There are several possible attacks to probable cause, but the most common is questioning what led the police to believe that the defendant committed the crime. In anticipation of this challenge, investigators should clearly state what factors were considered. For example: Was the defendant identified by witnesses? Is there physical evidence that links him to the scene (fingerprints/DNA)? Did the defendant admit committing the crime?

The second issue is whether the defendant’s constitutional rights were violated. For example, if the defendant was arrested at 3:00am in his home the investigator will have to explain at trial why this was lawful. Was there a warrant for his arrest? If not, the arrest may still be legal if the invest-
igator can explain the exigent circumstances that made an arrest necessary. To illustrate, the investiga-
tigator should answer questions such as the following: Was the arrest made to prevent flight? Was it
done to prevent further violence? Was the arrest accomplished without violence? What was the
seriousness of the offense? Whatever factors were used to make the decision to arrest should be
carefully detailed in a report.

**Motions to suppress a confession**

The two issues that are most commonly raised in a motion to suppress a confession involve the
defendant's Miranda rights and the voluntariness of his confession. Each of these issues is very
complex, and it is impossible to describe all of the potential problems. In general, however, invest-
gigators should address the Miranda issue by stating the following:

- who gave the defendant his rights
- the date and time the rights were given
- whether they were read aloud or dictated from memory, and
- the location of the interview.

Just giving the defendant his rights is not enough, however, if he didn't understand them. If there
is a potential problem with the defendant's ability to understand his rights, due to language, mental
capacity, or intoxication the report should explain how the investigator knew that the defendant
understood his rights.

What kind of information would help the prosecutor to defend against an attack that a statement
was not given voluntarily? Besides physical intimidation, the most commonly raised issue regarding
voluntariness is the length of interview. When interviews are short, people tend to view them as
less coerced. However, defendants will sometimes do things to slow the interview process, like
giving a false alibi that needs to be checked out. In this case, the investigator should record that the
defendant said he was somewhere else when the crime occurred, and that it was necessary to spend
three hours checking out the alibi only to discover that it was untrue. By recording these details,
the prosecutor is able to argue at trial that it was not the police but rather the defendant who pro-
longed the interview.

Other questions to be answered in the investigator's report are: Was the defendant fed? Was he al-
lowed to make a phone call? Was he allowed to sleep? Was he handcuffed during the interview?
These are just some of the details that can show that the interview was not coercive and any resulting
statement was voluntary.

**Conclusion**

Experienced investigators know how important reports are in obtaining a conviction for sexual as-
sault. In addition, investigators must always keep in mind how many people will be reviewing the
report and for what possible purposes. For example, police reports might be used:
• by prosecutors to determine which charges to file,
• by defense attorneys to strategize a defense
• by victims, defendants, or other parties in civil proceedings,
• by attorneys handling an appeal, perhaps as far as the Supreme Court.

The report should therefore be written with the idea in mind that it may end up being used by any of these people for any of these purposes.

In order to be successful at trial, an investigator's reports need to be more than just an accurate summary of the investigation. The reports need to be carefully written to prepare for the issues likely to be raised at trial. As one experienced prosecutor summarized, "a well-written report can make a jury trial into a bench trial and a bench trial into a guilty plea."