

## The Role of the Prosecuting Attorney

By: Bethany Durand, Assistant State's Attorney

In my opinion, criminal law is perhaps one of the most interesting areas of practice for a lawyer. It moves at a fast pace and involves exciting 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. 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 are assigned to a prosecutor when they occur. We call it “vertical prosecution”, meaning that a prosecutor is involved from the moment of the incident until the close of the case. We are available to detectives if there are witnesses who need to be interviewed or legal questions about how to proceed. The prosecutor is able to make suggestions regarding avenues for investigation as each twist in the case occurs. The prosecutor determines what charges to file in the case, what the sentencing range should be (based on a set of State guidelines), whether a plea offer should be extended and under what terms. The prosecutor also has to explain all of this to the victim's family.

Once a case has been charged and trial preparation begins, the prosecutor may have to educate themselves about an area of science or a profession that is unfamiliar. Prosecutors have to learn at least a little bit about a lot of things – DNA evidence, accident reconstruction, forensic pathology, firearms examination, fingerprints, computer forensics, cell phone technology, wiretap law and an endless list of knowledge that may have to be explained to a jury in order for the case to be proven. If the prosecutor doesn't understand what an expert witness is talking about from the witness stand, they cannot expect that a jury will. But it is part of what makes the job interesting.

The case that I present below is by no means a complicated or questionable case. Sometimes, it is the less complex case that poses the most interesting questions and preparation. Witnesses change stories, forget things or can refuse to cooperate at all. Scientific evidence takes time to develop and is never as clean as what television would have you believe. Sometimes, suspects are their worst enemy and provide you with the information that you need in order to prove your case.

As you read the news excerpts and facts below, think about how the case could be further investigated and developed for trial. It might help to consider the following questions: What crime was committed? Should a plea offer be made? What other sources for investigation exist? What areas are subject to attack? Is there a defense to the crime? What effect could incorrect information from the night of the incident have on the trial? What scientific evidence could be available and is it needed for trial?

### **1/1/2009 – Homicide by Shooting**

***Baltimore City*** - Less than an hour into 2009, a man lay bleeding on the cold ground in East Baltimore. Police took 2 men into custody. "I thought somebody was shooting for the New Year," said one resident. Stunned neighbors peaked outside to see the chaos. Police said the victim of Baltimore County, who just turned 31 years old on Christmas Day, got into an argument with a drunk bar manager inside the bar in East Baltimore. When the fight spilled outside, Police said someone in the crowd pulled out a gun and shot him. A local businessman said though the bar is a trouble spot, he's owned his candy shop on the street for 3 years now with no issues. "I think most the problem when people come from outside not people in the neighborhood." As of this posting, the victim was on life support at Johns Hopkins Hospital. Police say they have good leads into a possible shooter.  
(ABC News, 1/1/2009) [all names been omitted]

**FACTS:** The victim in this case was co-owner of the bar where the incident occurred. On 12/31/2009, he held a New Year's Eve Celebration with family, friends and patrons invited. At approximately 12:55am on 1/1/2009, a patron complained that one of the victim's cousin's was acting badly on the dance floor. The cousin was said to be drunk. The victim and a security guard approached the cousin and asked him to leave. The cousin threw a punch at the victim, striking him in the face. The security guard and other people in the bar became involved and the group pushed the cousin out the side door of the bar. Once outside, there was a lot of pushing and shoving between the cousin and the group. The cousin was pushed away from the door to the bar and his brother convinced him to leave. As the remaining members of the group turned to re-enter the bar, a single gunshot rang out. The victim clutched his head and fell to the ground. The outdoor portion of the fight as well as the victim being shot was captured on police cameras. The shooter is not visible. The 50+ patrons of the bar were interviewed and their names were recorded. Only one witness indicated that he saw the shooting, he is seen administering CPR to the victim on the video. The victim died at 8pm that day when efforts to save his life proved unsuccessful.



The side door of the bar is the second one from you in this photograph. The roof area is above the first door in the picture where you can see the black fencing material.

Located outside of the bar's side door by crime scene technicians was a baseball cap (A), a button (B) as well as a shirt and the victim's blood (C).



Recovered from inside the bar was a Jimenez Arms 9mm semi-automatic handgun (not pictured). It was fully loaded. Recovered from the roof area of the bar was a Lorcin .380 caliber semi-automatic handgun, that gun was loaded with 7 live rounds but is capable of carrying 8.

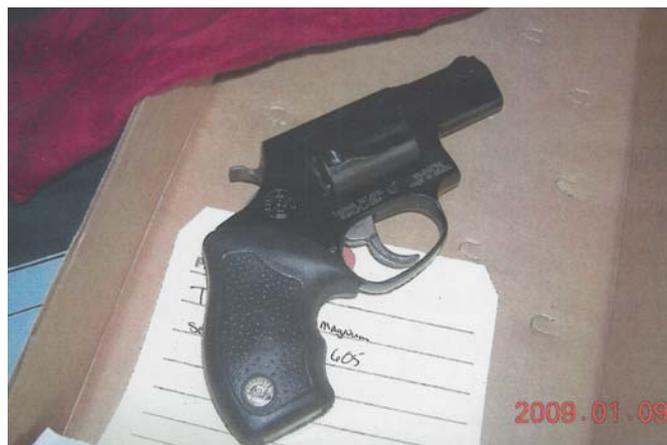
Also recovered that night from the cousin's room in a family home was a Ruger 9mm semi-automatic handgun and ammunition as well as numerous "jugs" of marijuana (the green topped containers seen in the gold box on the bed).



Several witnesses came forward the night of the incident and were interviewed by police. One was located several days later and was able to advise police that on 1/1/2009 she spoke with the cousin over the phone and he asked her for a ride. She drove the cousin to the bar and there was an ambulance and police cars outside. He ducked down in the car and asked her to take him to the Bus Station. He kept saying "they tried to kill me".

**Memphis** – The U. S. Marshal's Service Mid-South Fugitive Task Force, assisted by the Memphis Police Department, Project Safe Neighborhood' Unit and the Shelby County Sheriff's Street Crimes Unit arrested the suspect in a Hickory Hill apartment complex on Friday morning. Allegedly, the suspect rang in the New Year in a violent fashion as he got into an altercation with his cousin in a Baltimore bar. The cousin, the victim, was shot right outside of the bar that he owned, and expired a few hours later. The suspect fled the scene and went into hiding. (Shelby County Sheriff's Office, Press Release 1/9/2009) [all names have been omitted]

**FACTS:** The suspect arrested by Memphis police was the victim's cousin. When he was arrested, he was asked if he had any weapons in his possession. He turned a Taurus .357 magnum revolver over to the arresting officers. The weapon was not loaded. He was extradited to Maryland and made a statement to police that he had no recollection of New Year's Eve beyond having a fight with the victim.



***Baltimore City*** - On February 12, 2009, the cousin was indicted for the First Degree Murder of the victim. Plea negotiations were conducted but the State's offer was rejected. The case went to trial in Baltimore City Circuit Court on June 14, 2010. On the morning of June 18, 2010, the jury received the case for their consideration.