

The Bill Blackwood
Law Enforcement Management Institute of Texas

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On Duty in Court: Can law enforcement officers and lawyers
communicate effectively to increase the dispositions of criminal
court cases?

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Command College

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Abstract

Law enforcement and lawyers, two professions that often share a common goal yet regularly meet in an arena of adversity. Much of the friction occurs because law enforcement is not considered a part of the court system that draws the two together. They are guests in a world entered only by attending law school and passing a bar exam. How ironic that law enforcement is directed to enforce the laws, yet is not part of the court system that restores justice. Creating a better working relationship between police and prosecutors will benefit both professions. Determining what will improve this relationship was the focus of this research.

A combination of research methods was used. Surveys requesting information about the method, means and manner of communication between police officers and the prosecutors they serve, were distributed. Each profession was given a survey designed to elicit information from their professional perspective. In addition to the survey, personal interviews were conducted as a supplement to the survey questions. Interaction between officers and prosecutors was observed in and around the courtroom setting.

The findings of this limited research indicated that communication is the foundation to increasing productivity and effectiveness in prosecuting criminal cases. Both professions viewed fostering open and frequent communication as the key to reaching their common goal of convicting criminals. Communication was also the key to minimizing the frequent opinion of law enforcement that much time is wasted in the court process. In conclusion, implementation of an active dialogue between prosecutors and police officers will be mutually beneficial and may result in higher conviction rates for criminals in their shared jurisdiction.

Introduction

The wheels of justice turn slowly and often appear to be at a stand still. Whether you are a small cog in the mechanism called due process or an integral part of this lumbering machine, it is easy to become frustrated with the progression. Criminal courts are comprised of three separate systems, judicial, prosecution and defense agencies. According to Davis (1982), each pursues the same objective of justice, yet operates independently with a different goal to attain. Law enforcement is not considered a part of this legal system and they are not officers of the court (Tierney, 1970). This has led to an ambiguous relationship with members of the legal system. It is this relationship that often leads to the slowing of the wheels of justice.

Part of the difficulty lies in the continual friction between the prosecuting attorney's office and the local law enforcement agencies submitting criminal cases. Police departments operate to restore peace in their community. Prosecutors operate to restore justice. McDonald (1985) describes police as guardians of the street and the engine that drives the justice system. He called prosecutors the guardians of the court's resources and legal order. While these two goals appear to be similar, they can be mutually exclusive. Given this somewhat adversarial relationship, it is to be expected that miscommunication often occurs during the prosecution process.

This project seeks to study the adverse effect miscommunication between law enforcement and lawyers have on the shared long-term goal of securing convictions. Essentially, would better communication result in higher mutually satisfactory dispositions of criminal cases? The project will also examine the efficiency of current methods used to secure police officers as witnesses in a criminal court trial. It seeks to determine if both sides, prosecution and law enforcement, are utilizing the most efficient means of scheduling officers for court appearances.

Are there viable improvements available that serve the goals of law enforcement and prosecution?

Using a survey written toward the individual professions, data about the method used to notify an officer of an impending court date will be gathered. The law enforcement survey will focus on the departmental policies surrounding court appearances and whether those appearances impact the overtime budget. The prosecution survey will center on the method and whether officer availability impacts the disposition of criminal cases. Each survey will contain a section on the subject of communication between the two professions. Communication will be defined for this project as any contact, whether verbal or written, between law enforcement and prosecuting attorneys. It is anticipated that each series of the survey will reveal a decided lack of communication contributing to the continued frustration felt by both parties.

In addition to the surveys, personal observation of officers in court and their exchanges with prosecutors will be studied. Individual interviews of a select sampling of both police officers and prosecutors will also be conducted. The combination of observation and interview results will be compared to the written results of the survey. It is hypothesized that misinterpretation of expressed goals and perceived blurring of their respective roles contributes to the communication breakdown. In 1985, McDonald described police as information suppliers and prosecutors as information consumers.

Examination of the interaction between law enforcement and lawyers will prove beneficial to both systems. Striving for open, regular communication will assist in deflating misconceptions by law enforcement about 'wasting time in court'. If it can be determined that efficiency in scheduling officers to appear in court decreases some of the inherent antagonism, successful criminal case dispositions will naturally increase.

Review of Literature

The criminal justice system has a beginning, middle and end. Law enforcement is often viewed as the beginning of the system, the first -line of defense against criminal behavior and the first contact a criminal has with the criminal justice system. Corrections, described as probation and prison, are the end of the system. Prosecution and the courts are in the middle, with the power to make decisions that have a direct effect on both the beginning and the end.

Tierney (1970) wrote about this when he described the disassociation of police officers from the judicial (middle) part of the criminal justice system. Police are not officers of the court and therefore have an ambiguous relationship with it. Prosecutors are fed information through the police and rely on that information to determine the procedure a case should follow. Police can have a great deal of influence because they control the information given to the decision maker. Yet, the policeman is just another citizen in the eyes of the law with no special consideration for his official actions.

There are generally two considerations in deciding to proceed with prosecution. First, is the suspect guilty? and can a conviction be made? (Petersen, 1975) The ability to obtain a conviction relies on the quality of the police investigation. Even if the police do a first-rate job, the prosecutor will usually interview witnesses and follow up on their investigative efforts.

In 1985, Whitaker reiterated this concept when he determined that the effectiveness of an officer in the court system is tied to his perception of his role in that system. He must understand that the prosecutor has the sole responsibility for deciding who is prosecuted. The prosecutor will ultimately answer for that decision. This is not for the officer to decide. It is up to the officer to learn what the prosecutor requires for case processing regardless of his opinion of that decision. Although communication is not mentioned specifically, Whitaker advises officers to inform the

prosecutor of both the strengths and weaknesses of their case. He emphasizes the unpleasant reaction of a prosecutor who is surprised in the courtroom with information the officer should have known and shared.

Problems with prosecutor's offices are considered a serious police administration issue according to McDonald in 1985. He lists many aspects of police administration that are affected by the policies of the local prosecution office, including budgets, morale, and scheduling. This can lead to resentment when combined with an insularity of the roles played by each. Police often view their responsibility for a case as ending with an arrest and referral to the prosecutor. They may view strengthening the case for a criminal trial as the job of the prosecutor. As a result, follow up investigations may not be complete and information is not always forwarded to the prosecutor. This initial lack of communication sets the scene for a self-perpetuating circle of misunderstandings.

Alschuler (1985) described the relationship between police departments and prosecutors as a marriage. He held that 'pouting and snarling' about the relationship would not be constructive; that both parties should learn to communicate openly. Each side owes the other straightforward statements of their grievances, not gripes and mutterings.

Baker wrote from the prosecution side in 1999. He describes the continual surprise he has when officers don't want to come to court. Time and again he found that officers wanted to make the arrest and pursue prosecution but complained when asked to testify in court. He began writing attaboy letters when an officer did an exceptional job in the courtroom as a means of creating a better working atmosphere. He acknowledged that both police and prosecutors see the ugly side of the human condition and this will ultimately skew the view each has of humanity.

That is why prosecutors are supposed to be a check and balance for police power and should have the ultimate decision on whether to prosecute a case.

Misdemeanor prosecutors are often challenged with a huge volume of cases that must be managed. Recent statistics report approximately 436,000 local sworn police officers in the United States (Bureau of Justice, 1999) and only 71,000 prosecutors (Bureau of Justice, 1996). Due to the magnitude, they are at the mercy of the officers who submitted the cases to begin with. Good police work at the beginning is essential. By the time a prosecutor is ready for court, it is too late to ask the officer for further information or investigation. Prosecutors can't just dismiss cases every time one is less than standard, thereby destroying the relational bridges between them. This requires the prosecutor to act as a trainer and set standards that the officers can strive for (Miller, 2001 a). In addition, prosecutors must train officers how to testify once they get to court. Both Miller and Baker stress the importance of officers reviewing their reports and evidence before reaching the courtroom. Miller (2001, b) illustrates the many difficulties prosecutors have with officers who testify using police jargon that must be translated to a jury.

Many articles have been written describing the historical frustration between police and prosecutors. Some ascribe this antagonism to the organization of the legal system itself (Tierney, 1970). Some view the system as separate entities, each with their own goals (Davis, 1982). Some believe it stems from the lack of understanding of each component by the other. McDonald reminds us that the police process people and prosecutors process information. Others still, have focused on the arena that draws these entities together. It is the courtroom and the scheduling of a trial that most often brings about contact with each other.

Officer scheduling for court appears to be a long accepted burden for both prosecutors and police administration. Court appearances, trial delays and acquittals of an offender are some

of the least stressful events for a law enforcement officer (Sewell, 1981). Yet, it seems to be a leading cause of frustration for both sides. Two aspects of court scheduling have been studied. The effects on manpower and overtime for the police departments and the inefficiency of the court process itself.

In 1979, Fry and Miller attempted to study the feasibility of managing police witnesses to reduce the waste of manpower. They noted in their research that witness coordination had been viewed as a court issue, not a police issue. The study implemented a cooperative agreement between the prosecution and the police that included allowing officers to remain at their assigned duty while on 'standby' for court. The study had limited success due to the researcher's lack of communication with law enforcement officials. However, the initial results indicated that witness coordination and management could reduce unnecessary court appearances and thereby decrease the need for overtime.

Overtime for police officers is of concern to both the officer and the police administrator. The 1985 U.S. Supreme court decision in *Garcia v. San Antonio Metropolitan Transit Authority* mandated overtime benefits for police officers that worked in excess of 171 hours in a 28-day period (Bureau of National Affairs, 1985). The court specifically cited court time as part of the 171 hours worked and defined 'unrestricted' on call status versus being confined to one location while on call. By 1998, Bayley reports that many police departments have contractual stipulations requiring any court appearance outside regular work hours earn a minimum amount of overtime, often 3 to 4 hours. Even officers on call, at home, are allowed a fixed amount of overtime on the belief that they may- be forfeiting part time employment. The implications for police witnesses are clear. On duty, in court could be a budgetary nightmare for police administrators.

Attempts to study what can be done to streamline the court process have been met with skepticism by all those involved. Davis wrote in 1982 that the court system (prosecution, defense and judicial) generally tries to avoid unnecessary delays in due process. However, circumstances beyond their control often occur and cause a delay. One such circumstance studied by Davis was the unavailability of witnesses, including police officers. Efforts were made to schedule trials when police witnesses were on duty by supplying the court coordinator with a police department's work schedule. The results of the study supported Davis' theory that intelligent scheduling could reduce unnecessary delays in due process. However, no data was collected regarding the effectiveness of this method for multiple law enforcement jurisdictions reporting to one prosecution office.

Years later, Ostrom studied the factors effecting the timeliness and quality of felony processing in several State criminal court systems. The comparison of these systems found that the pace of due process was dictated by the local legal culture, including the expectations and way of thinking of the judges, prosecutors and defense attorneys. The attorneys involved in the 'fastest' courts indicated a significant level of satisfaction in the communication between attorneys and the judge. (Ostrom, 2000)

The Torrance Police Department, California chose to take a proactive approach to police witness coordination in 1995. They created a court liaison position within the department assigned to manage the subpoenas for officers to appear in court. This was similar to the Dallas Police Department model of a Subpoena Unit designated to manage the department's large number of officer subpoenas (McClain, 1984). The department found that they could positively impact their overtime expenditures by training officers and supervisors to minimize the number of officers involved in an investigation. In addition, case investigators were encouraged to

communicate with prosecutors and identify which officers were actually necessary for testimony and prosecutors were asked to respect this by subpoenaing only those officers. (Kammerer, 2000) Statistics were gathered for four years, 1995 through 1999. The results were impressive. Overtime expenditures for court were reduced by 45%, the number of officers subpoenaed fell by 34% and the amount of time an officer actually spent in court dropped by 33%.

The Los Angeles Countywide Criminal Justice Coordination Committee (CCJCC) formed as a criminal justice planning committee in 1981, has recognized that efficiency in the local criminal justice system is dependant on a stable and balanced relationship among all those involved (Bureau of Justice Assistance, 1998). The committee went so far as to establish an interactive CD-ROM to provide information access to the courts, prosecutors and law enforcement agencies. The Delaware Criminal Justice Council (CJC) has initiated a statewide videoconferencing system that expedites the many court hearings required by the judicial process. Local police departments utilizing the technology can reduce the amount of time an officer spends commuting to court (Bureau of Justice Assistance, 1998).

Methodology

It has been stated that police supply the information and prosecutors consume it (McDonald, 1985). What happens if there is a breakdown in this supply and demand of information? Does miscommunication between lawyers and law enforcement lead to a negative outcome in securing a conviction in a criminal case? On the other hand, would better communication lead to dispositions agreeable to both?

When lawyers and law enforcement meet, it is usually in the arena of the courtroom. This research will also study the methods used to secure the attendance of police officers in court for the purpose of prosecuting a criminal case. Do the methods utilized lead to an efficient use of police manpower and a successful courtroom presentation of the case?

When there is a misinterpretation of responsibility for specific duties during trial preparation, a breakdown in communication often occurs. Without placing blame, it is believed that a lack of effective communication leads to frustration by both the prosecutor and police officer. Each profession carries its own jargon and is often criticized for speaking a 'foreign language'. It is this lack of communication, or miscommunication that will hinder the probability of securing a conviction. Combining communication problems with the perceived inefficiency of court schedules that often require an officer to hurry to court only to wait for hours cannot have a positive effect on case dispositions. It is speculated that communication is the key to smoothing the relationship between these two professions who must coexist in the criminal justice system.

A two-page survey was designed to collect data from both prosecutors and police officers. Each survey was purposefully written to elicit results from the unique perspective of each profession. The survey itself consisted of a combination of questions with multiple choice

answers and subjective written responses (Appendices 1 and 2). The survey for law enforcement was delivered to some officers while they waited for court appearances in Denton County, Texas between May and August 2001. -Other officers were surveyed arbitrarily through the Tarrant County District Attorney's office and personal contact. Prosecutors in Denton Criminal District Attorney's office were also surveyed. A total of sixty surveys were distributed to law enforcement officers, fifty three were completed and returned to the researcher. Fifteen surveys were delivered to prosecutors, all were completed and returned. The completed surveys represented twenty-one different counties in Texas.

In addition to the survey, a series of personal interviews were conducted with prosecutors, police officers and investigators from prosecution offices. Interview questions were formulated to extract additional information and opinions from those professionals appointed to the task of securing police witnesses for court and the officers who must appear. Prosecutors from Denton County, Texas were interviewed for comparison with the responses elicited from the surveys and personal interviews of law enforcement of that county.

Personal examination of court proceedings took place in Denton County, Texas courtrooms. Between April 23, 2001 and August 31, 2001 a succession of criminal trials were observed, with particular attention paid to police witnesses as they testified and as they waited to testify. Consideration was given to the location of their wait and whether they had communicated with the prosecutor prior to start of their wait.

An effort was made to attain additional information on systems used by other prosecution offices to communicate with their local law enforcement officers. The Texas District and County Attorney's Association sponsors a public website with links to a message board available

to members of the organization. A message was posted (Appendix 3) on September 9, 2001. Two responses were received as of this writing.

The analysis of this data included comparisons of the responses from officers and prosecutors. The researcher was interested in the perceptual differences of communication barriers between each of the professions. In addition, factual information concerning the methods used to notify officers of court hearings requiring their presence was gathered to determine if efficiency was a factor in the friction.

Findings

Communication is clearly an important component to the relationship between law enforcement and lawyers. Communication presented itself in many formats. It was found that these two groups utilize many forms of both formal and informal means to communicate. Any perceived lack of communication was not due to a lack of means. Both groups used a combination of written requests, formal legal documents, telephone calls, fax machines and email to communicate. The breakdown seemed to occur due to a lack of motivation or time on the part of one group. The common description by both groups deemed communication as - informative, last minute and needing more. (Figure 1)



Figure 1. Communication Descriptions Between Lawyers and Law Enforcement

The results of the survey sent to prosecutors in the Denton County District Attorney's office indicated that officers not appearing for court was rarely a problem, but most had been forced to dismiss a case due to the unavailability of an officer to testify. As for communication, a clear majority indicated that they conducted pre-trial interviews with police officers but rarely communicated the dispositions of a case, unless specifically requested. (Figure 2) This finding sustained Ostrom (2000) who suggests that effective communication of a court system's goals is essential to moving cases through the system efficiently.

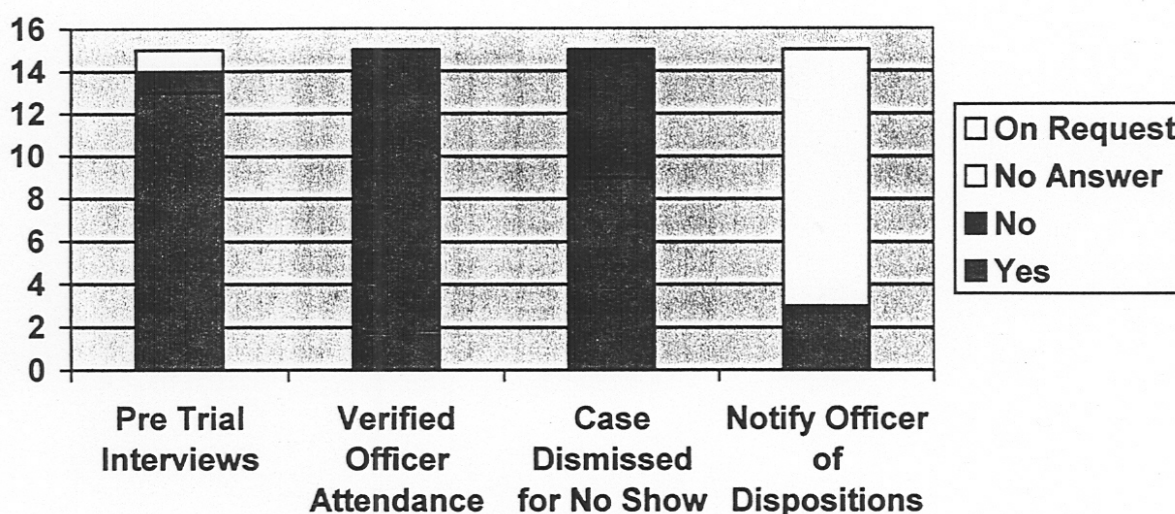


Figure 2. Routine Communication Between Lawyers and Law Enforcement

Observation of the interaction between prosecutors and police in the courthouse revealed that officers often withhold information from the prosecution. When a prosecutor requested additional work on a case, I observed officers express exasperation and become defensive. It was apparent that the request was viewed as a critical judgment. This supports McDonald (1985)

who stated that police are inexperienced in estimating the information needed for prosecutors to properly evaluate a case. One Denton County prosecutor described a veteran officer's testimony as hostile, evasive and cocky. At a break she tried to counsel the officer on his demeanor, explaining that the jury may be offended. The officer seemed surprised at her request but did change. The prosecutor asked, "What are these officers taught about testifying? Don't they realize I'm not their enemy?"

The survey results from law enforcement revealed that nearly 100% of all departments had mandatory court attendance policies in their general orders and discipline was expected if the officer missed court. Mandatory court attendance also caused both a budgetary and manpower problem for most departments. (Figure 3) Both written and oral comments from officers indicated that they would prefer not to waste a trip to court. This supports Kammerer (2000) in stressing the importance of a close working relationship with prosecutors to maximize court case management efficiency. It also corroborates Bayley (1998) who emphasizes the agreement to only subpoena necessary officers as a means of improving the overtime usage.

Miller (2001, a) described his attempt to communicate case dispositions to police agencies to let them know what occurred. Miller was specifically speaking to the method as a way to train officers when a case is dismissed due to insufficient evidence. Ironically, a strong majority of officers surveyed would like to be notified of the disposition of their cases.

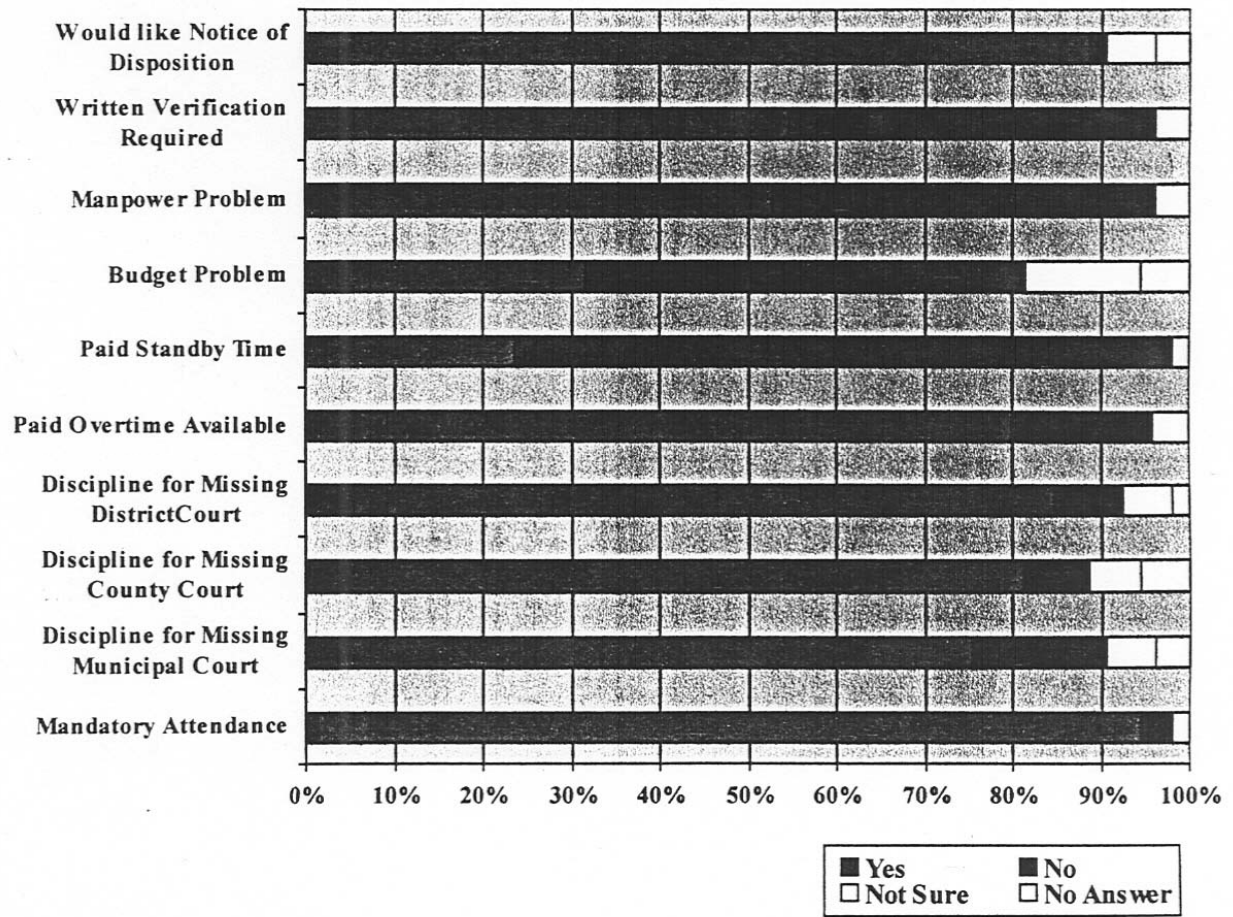


Figure 3. Law Enforcement Policies on Court Attendance

Conclusions

Lawyers and law enforcement have a built in animosity due to their placement within the criminal justice system. Law enforcement officers are at the beginning of the system's continuum and they have a vested interest in the end result. Lawyers, prosecutors specifically, are in the middle of the system and often stand between officers and what they perceive as justice. Ironically, prosecutors would have little to do if police officers failed to initiate an investigation into criminal activity. This mutual dependence has led to frustration and misunderstandings, often hampering the one goal they share.

The project sought to determine what causes this adversarial reaction to the roles played in the criminal justice system. If there were misunderstandings, would communication result in better dispositions? In view of the fact that prosecutors and police seek their goal in the arena of the courtroom, the efficiency of securing officers for court was also examined. It was hypothesized that miscommunication and inefficiency had a direct correlation with the number of criminals convicted of crime, thereby adversely affecting their mutually shared goal.

It was determined that law enforcement often misinterprets the many requests made by prosecutors for additional investigation as a critical judgment on their work. Because officers often think their job ends when the criminal is arrested, they do not understand why a prosecutor needs more to win a trial. In addition, because officers do not share the same system, they do not understand the mechanics of the court process. Officers who are notified to attend a court hearing are forced to disregard any activities they had planned and sit waiting to be called for trial testimony. This removes an officer from protecting his community if he is on duty and may cause a manpower shortage for the duration of his absence. If he is off duty, it slices into his

personal time and may cause a budget problem when he requests overtime payment for his time in court.

Prosecutors, on the other hand, also indicate an existing frustration with officers.

Prosecutors rely on the police reports submitted to pursue prosecution. Due to their practiced proficiency in the application of the law, they know that events occur in the courtroom that police could not foresee. Several prosecutors interviewed reiterated this by describing incidents of officers withholding information and reports from them. Many decisions concerning the setting of court hearings are made by the judge, this provides frustration to both prosecutors and police. Prosecutors must scramble to get a case ready for trial and officers must be notified of their need for court.

This study clearly indicated that the communication problem does not exist for lack of means. Each side indicated the use of telephone, fax, email and mail to contact an officer for court. The failure occurs in notifying officers of a cancellation for court prior to their arrival. This simple task is the cause of much frustration for law enforcement. Saving an unnecessary trip to court should be a key goal for prosecution offices. Striving to communicate that an officer is not needed will do many things. (Appendix 3) It will let the individual officer know that his time is important and worthy of respect. It will decrease the overtime budget if an officer does not have to drive to the courthouse to be told he is not needed. It will increase the manpower availability of any police agency subject to rescheduling officers to cover those notified for court. It is recognized that it is not possible to notify all officers to disregard a court notice but sincere efforts should be made.

In addition to communicating trial status, officers would like to know the dispositions of the cases they are called to court for. Dispositions are often forwarded to police agencies but the

individual officers rarely see the results. It is recommended that prosecution offices send a disposition notice to the officers who were notified of court. This can be done for continued trials, plea bargains or trials where an officer left prior to the verdict. (Appendix 4)

Communication is the key to improving the working relationship. A good relationship between prosecutors and police will ultimately lead to an increase in the successful outcomes of criminal cases. The hypothesis was held to be true.

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Appendix 1

This survey is part of a research project conducted as a requirement for the completion of the Bill Blackwood Law Enforcement Management Institute of Texas. Data will be used for this purpose and for making recommendations to improve the effectiveness of managing an officer's time spent in court related activities. Please answer the following questions, to the best of your knowledge.

1. How are police officers usually notified that they are **needed** for a court hearing?

(check all that apply)

Personally served subpoena	_____	Non-judicial subpoena	_____
Officer routing notice	_____	Telephone call	_____
Regular mail	_____	Fax	_____

How are they usually notified they are **no longer needed** for a court hearing? (Check all that apply)

When they arrive at court	_____	Phone call from prosecutor	_____
Officer cancellation notice	_____	Phone call from agency	_____
Regular mail	_____	Fax	_____

2. How much notice do you normally give for a court hearing? (Days, weeks, month etc.)

Municipal Court?_____ County Court?_____ District Court?_____

3. Do you regularly have pre-trial interviews with the police officers before court?_____

4. Describe the communication between you and the police witnesses? (Check all that apply)

Informative _____ Critical _____ Egotistical _____ Misleading _____ One way

Sporadic _____ Non-existent _____ Last Minute _____ Helpful _____ Open _____