When a crime is committed, the police must determine who was responsible so that the criminal can be prosecuted and brought to justice. The investigation process begins the moment when a crime is reported and only ends after a suspect has been convicted or discharged by a court of law. The successful completion of this process is a mammoth task which requires cooperation between various role-players, such as investigating officers and prosecutors.

The cornerstone of the criminal justice system rests on the relationship between investigating officers, courts and prosecutors of the National Prosecution Authority (NPA). This relationship is vital to ensuring that critical information regarding the investigation is timeously communicated between the various role-players in the investigation process. The mutual respect between these role-players fosters communication and assists in the trial and pre-trial processes. In addition, investigating officers and prosecutors are the most visible members of any criminal investigation team (Becker and Dutelle, 2013).

Investigating officers have one of the most important roles to play in the prosecution process, but sometimes they do not fulfil their responsibilities. Nkashe (2015) found that, occasionally, the prosecution part of the process is kept apart from the investigation part, in order for prosecutors to be able to assess the adequacy of evidence dispassionately and objectively. This separation of roles means that investigating officers do not consult with prosecutors and/or are not available to discuss important issues regarding any case. Becker and Dutelle (2013) stress that this becomes problematic, since investigators need to be able to work as team players with prosecutors and need to be able to communicate and testify objectively and professionally.

The prosecutor

The prosecutor is an appointed or elected member of the practising bar who is responsible for bringing the State’s case against the accused. The prosecutor’s primary function is to assist the court in arriving at a fair verdict. It is vital that s/he must act impartially and in good faith.

According to Bugliosi (2000), a prosecutor must have certain characteristics to be able to master the art of prosecution, which include the following:

- credibility - the most important attribute of a good prosecutor;
- self-sufficiency - including the ability to manage stress and pressure in an extremely stressful environment;
- intelligence;
- diligence; and
- the ability to convict.

The NPA derives its mandate from section 179 of the Constitution of South Africa, 1996. Section 179(2) empowers the prosecuting authority to institute criminal proceedings on behalf of the State and to carry out any necessary function incidental to instituting criminal proceedings (NPA, 2011). According to the NPA’s Prosecuting Policy (2013), the prosecutor has the discretion to make decisions that affect the criminal justice process. This discretion can be exercised at specific stages of the process and includes making the following decisions:

- whether or not to institute criminal proceedings against an accused;
- whether or not to withdraw charges or stop a prosecution;
- whether or not to oppose an application for bail or release of an accused who is in custody following arrest;
- the crimes with which to charge an accused and the court in which the trial should proceed;
- whether or not to accept a plea of guilt tendered by an accused;
- which evidence to present during the trial;
There is no doubt that the successful prosecution of an accused person depends not only strongly on evidence, but also on a good working relationship between the investigating officer and the prosecutor, which will contribute to building a strong case. If an investigator has the confidence to liaise regularly with the prosecutor during the investigation process, the chances of addressing any issues before the case goes to court improve significantly.

- which evidence to present during sentencing proceedings, in the event of a conviction; and
- whether or not to appeal to a higher court in connection with a question of law, an inappropriate sentence or the improper granting of bail, or to seek a review of the proceedings.

The importance of working together as a team
Prosecution must be a team effort and the investigating officer’s assistance is important in the process. The reason is simple: the investigating officer has background knowledge about the investigation and ought to know what needs to be done to ensure a fair and successful prosecution (Nkashe, 2015). The investigating officer must gather all the relevant facts and evidence related to the case in question and present it all to the prosecutor. Based on these facts and evidence, the prosecutor must determine, from a legal point of view, whether or not there is a prima facie case against the suspect, and thus whether to proceed with the criminal prosecution. Becker and Dutelle (2013) add that prosecutors prosecute cases in which they have confidence and that this confidence is based on the quantity and quality of evidence, the quality of documentation supporting an investigation and the ability of investigative witnesses to communicate from the witness stand. Prosecutors and investigating officers should work closely together, but it is important to remember that the final responsibility for the decision of whether or not to prosecute rests with the Director of Public Prosecutions (DPP).

The reason is that prosecutors are held to a much higher standard of proof in the courtroom than counsel in a civil trial, namely that of proof beyond a reasonable doubt (Hess and Orthmann, 2013). However, any decision as to whether or not to prosecute must be taken with the utmost care, since such decisions may have profound consequences for victims, witnesses, the accused and the families of all of these parties. Making a wrong decision may also undermine the community’s confidence in both the police and the prosecution. (Refer to related information published in the Smart Cop series in Servamus: October and November 2014.)

Ensuring a successful prosecution
Effective cooperation between the prosecutor, the police and other role-players during the process, for example during the forensics investigation, is essential for the efficacy of the prosecution process. A successful prosecution, which secures a conviction, is the fruit of a productive, meticulous and intensive investigation and is based on good evidence and thorough investigations (Nkashe, 2015). According to Becker and Dutelle (2013), a successful investigation is one in which:

- all available physical evidence is completely handled;
- all witnesses are intelligently interviewed;
- all suspects are effectively interrogated;
- all leads are developed; and
- all documentation is comprehensively, clearly and accurately completed.

The prosecutor’s role in the investigation process
Throughout all the major steps of the prosecution process, the prosecutor has a variety of important roles to play. During the investigation phase, the prosecutor assists with the preparation of search and arrest warrants and works with law enforcement officers, ensuring that their investigative reports are complete. During the arrest phase, prosecutors screen cases to determine which should be prosecuted and which should not (Territo and Glover, 2014).

Prosecutors are able to provide legal advice to investigating officers about statements, confessions, evidence, searches and the necessary legal papers, and may be able to provide new perspectives on the facts in the case (Hess and Orthmann, 2010). They can further review investigative reports and evidence relating to the offence, give advice regarding whether there is sufficient proof to proceed and assist in further case preparation. Prosecutors can also give general instructions to the investigating officer regarding how a particular case is to be handled and can set areas of priority of investigation. One could almost say that the prosecutor is the investigating officer’s legal advisor throughout the process, which includes the investigation, the pre-trial conference and the court presentation. When there is a need for search and seizure, pre-trial detention, telephone tapping, or the deployment an undercover agent, a court has to authorise these actions and, therefore, prosecutors must serve as an interface in terms of filing a corresponding motion (Kyprianou, 2010).

Hess and Orthmann (2010) further suggest that, when investigating officers have concluded their investigation, they should seek the advice of the prosecutor’s office. At this point, the case may be prosecuted, new leads may be developed or the case may be set aside, with both the investigating officer and the prosecutor’s office agreeing that it would be inefficient to pursue it further.

The investigating officer’s role during the prosecution process
Investigating officers should make every effort to find evidence that reflects on the past crimes and misconduct of the accused and to make this evidence known to the prosecutor, who may then be able to use it during the prosecution process. Before the prosecution process, the investigating officer should review their evidence and

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Good witness preparation ensures that witnesses tell their story accurately, relevantly and truthfully, both in writing and orally, in a way that can withstand cross-examination. To assist because the prosecutor and the investigating officer needs to be addressed. Regular contact between the prosecutor and the investigating officer will help to minimise the potential for problems. It is essential for an investigating officer to assist the prosecutor during the prosecution’s case, since s/he can frequently provide eyewitness information or information supportive to the testimony of other witnesses. In his research, however, Nkashe (2015) found that some investigating officers claim that some prosecutors do not allow them to assist because the prosecutors believe that investigating officers have nothing to offer.

Giving evidence in a court of law is usually the culmination of the whole investigative process. As mentioned earlier, the presence of the investigating officer during court proceedings is required since s/he has the necessary background knowledge about the case, which can be of great value to the prosecutor. To present evidence in court, the investigating officer should prove the chain of custody from the time when evidence was collected until the time when it is presented in court. Furthermore, the investigating officer should also consider the transport of evidence to court and determine who will have the responsibility of maintaining possession of such evidence once the court proceedings are under way (Nkashe, 2015).

Preparing to testify in court
A witness is defined as a person giving sworn testimony to a court of law or the police (www.oxford-dictionaries.com). Arguably, the most important part of being a successful and confident witness in court is preparation before testifying. Proper preparation can make a great difference to the testimony that a witness provides. We tend to think that only witnesses from the community need court preparation. However, Nkashe (2015) reminds us that, as a witness, the investigating officer should also undergo pre-trial preparation. The first step in this preparation is for the investigating officer to realise that s/he may be called to testify on any official act that s/he performed as an investigating officer. Preparation for giving evidence actually begins at the scene of a crime or when conducting the initial investigation. Preparation should continue with reading and reviewing the case report and any activities that were conducted in furtherance of the investigation. Members of the SAPS often do not read through their own statements before signing them. This becomes problematic once the trial starts, as courts are less tolerant towards incomplete or wrong statements made by police officials. Investigating officers must therefore exercise extreme care when compiling their final statements. (Refer to related information published in the Smart Cop series in Servamus: February 2014.) The amount of preparation that an investigating officer needs will depend on the complexity of the case, the seriousness of the event investigated and the investigator’s comfort level in testifying in court (McMahon, 2014). It is important that the investigating officer familiarises him-/herself with all material pertaining to the case. While waiting to testify and after having testified, s/he should avoid conversations with any other witness.

Proper presentation of the investigating officer’s testimony can be the deciding factor in a case. While in the witness stand, the investigating officer should behave professionally. It is not only the credentials of an investigating officer who appears in court that are important. His/her physical appearance is also important - this includes the way the investigating officer is dressed while in court. A person’s appearance tends to influence the opinion that other people form about his/her ability and competence. This important aspect may even be considered by a judicial officer when forming an opinion about the demeanour of a witness. When an investigating officer appears in the witness stand, they become the focal point of interest and observation by the public. The investigating officer on the witness stand must be well-groomed, calm and confident. The importance of a good presentation by the investigator on the witness stand cannot be overemphasised. Testimony should be presented in a well-organised, logical and orderly fashion. While testifying, the investigating officer should be serious, yet relaxed enough in order to show that s/he is in command of the situation. During cross-examination, the investigating officer must remain professional and not become impatient or lose his/her temper. The prosecutor should protect the investigating officer from unfair/provocative questioning from the defence. If that does not happen, the investigating officer may address the court and request protection from such questioning. (Refer to related information published in the Smart Cop series in Servamus: March 2014.)

The proper preparation of the investigating officer has a number of primary goals, namely:

- enabling counsel to assess the investigating officer’s capacity to be an effective witness and helping the investigator to control any personality traits that may interfere with effective testimony;
- identifying and resolving potential conflict issues and giving the investigating officer the necessary admonitions and guidance about the testimony process;
- determining the extent of the investigating officer’s knowledge about relevant facts and the availability of documents that might refresh the investigator’s recollection; and
- ensuring that s/he understands the general guidelines on how to answer a question (Baker, Kirkpatrick and Lockhart Preston Gates Ellis LLP, 2007).
According to Van den Berg (2011), there are three stages to effective witness preparation. These involve familiarising the witness with the issues in dispute and the relevant documents; familiarising the witness with the examination process; and subjecting the witness to mock examinations. Good witness preparation ensures that witnesses tell their story accurately, relevantly and truthfully, both in writing and orally, in a way that can withstand cross-examination.

The investigating officer, together with the prosecutor, must also ensure that proper court preparation is offered to the other witnesses. The person who assists and guides the preparation of a witness should ensure that the witness reviews the documents thoroughly and considers the points that may arise from questions. The Centre for Child Law (2008) suggests that court preparation involves the process of familiarising witnesses with the court environment, as well as the legal process and legal terms at the appropriate level so as to address their fears and concerns about having to testify.

Relationship between the investigating officer and the prosecutor

A positive relationship between the prosecutor and the investigating officer is beneficial to both, as they seek to achieve the same purpose (Nkashe, 2015). The most successful prosecutors, according to Reydams, Wouters and Ryngaert (2012), are those who have a good relationship with the investigating officers. The relationship between the investigating officer and the prosecutor should be like the explanation found in paragraph 7 of the NPA Prosecution Policy, in terms of section 21(1)(a) of the National Prosecution Authority Act 32 of 1998, which states that: “With regard to the investigation and prosecution of crime, the relationship between prosecutors and investigating officials should be one of efficient and close cooperation, with mutual respect for the distinct functions and operational independence of each profession.”

Hess and Orthmann (2010) indicate that cooperation between investigating officers and the prosecutor’s staff depends on:

- the personalities involved;
- the time available;
- a willingness to work together.
- an acceptance of everyone’s investigative roles and responsibilities; and
- a recognition by all concerned that it is in everyone’s best interest to work together.

In order for the prosecutor to have complete insight into the investigating officer’s work, there must be a legal obligation or agreement at the highest level, in terms of which the investigating officer is obliged to inform the prosecutor about every new enquiry, the execution of certain measures and actions, and the execution of urgent investigative actions.

Factors influencing the relationship

When the investigating officer misses important evidence or witnesses, or improperly seizes, marks or stores the evidence that has been gathered, prosecutors find themselves without sufficient evidence to prosecute a case successfully (Neubauer, 2011). Issues like these often put strain on the relationship between the investigating officer and the prosecutor. A prosecutor who has serious misgivings about a case or about an investigating officer is less likely to (successfully) prosecute the case in question and future cases handled by that investigator (Becker and Dutelle, 2013).

Cases struck from the court roll

Nkashe (2015) argues that there are numerous consequences that occur if investigating officers do not do a proper investigation and fulfil their role in the prosecution process. One of the main consequences is for the case to be struck from the roll. It is a fact that many cases are withdrawn or struck from the roll simply because certain crucial information was unavailable and could not be accessed immediately, or because witnesses were absent and investigating officers were not available to provide feedback. In some circumstances, courts have granted dangerous criminals bail because the investigating officer concerned had not provided the prosecutors with the necessary information relating to the case before court. The reasons for the withdrawal of cases in South Africa include a high number of postponements because of the need for further investigation (Nkashe, 2015). Problems like these come to the fore when investigating officers do not fulfil their role in the prosecution process and prosecutors are forced to take decisions without the proper support and availability of the investigating officers. The withdrawal of cases results in a drop in prosecution rates which is a matter of serious concern. Open communication between investigating officers and prosecutors is important; it will enhance the prosecution process as quality evidence will be available at the time required before the courts. This can lead to an increase in conviction rates.

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The role of the investigating officer does not stop once an arrest has been made, evidence has been collected and the case docket is presented to court. S/he is responsible for assisting the prosecutor during the prosecution process through until the end of the trial. If a case is not efficiently prepared initially, it will be less likely to lead to a prosecution or result in a conviction. No prosecution will succeed without a thorough investigation and a thorough analysis of the evidence by a competent prosecutor. It is important that both the investigating officer and the prosecutor have a better understanding of their respective roles in the prosecution process, and that they fulfil them. The best teams in court consist of a passionate and dedicated investigator and a well-prepared and articulate prosecutor (Shameem and Tuiketei, 2012).

Editor’s note

The list of references is published from pp 73-74.