

## Examining the Police and the Courts

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IN 2002, *THE DETROIT NEWS* LEARNED that the Detroit police department had a poor record of capturing fugitives. The reason for this was that the department wasn't trying very hard. The reporters who were wondering about this—Melvin Claxton, Ronald Hansen and Norman Sinclair—were able to find the fugitives merely by looking in the phone book, at voter records or by going to their homes.<sup>1</sup> One felonious fugitive was at home at the address on the warrant for his arrest for attempted murder, but there was no indication that police had ever come looking for him. He went about working at his landscaping business, which was listed in the phone book; and one time his home alarm sounded and police came to see whether he was okay.

After a diligent six-month investigation, the reporters wrote:

"Some fugitives have used their ill-gotten freedom as a license to kill. They represent the ultimate danger posed by fugitives. And they demonstrate how criminals graduate to far deadlier crime when police fail to catch them. In the past three years, at least 50 people have been charged or convicted of murders committed while they were fugitives. In just about every case, there is little indication that police went hunting for them before the killings."

The police, courts and prisons are the agencies that guarantee justice, and each has spawned many an investigative story.

In this chapter you'll learn how to keep a check on the fast-moving, vital and yet often flawed justice system.

## **The Police**

The first encounter a citizen has with the justice system may be with the individual police officer who makes immediate decisions under pressure and with danger present. The investigative reporter wants to know whether the right persons have been selected for the job. The police officer must be honest, fair, capable and psychologically prepared. The investigative reporter will expose conduct that indicates otherwise. The reporter will also evaluate police department budgets, crime statistics and investigations. Additional questions often seek investigative answers:

How political is the police department?

Are promotions based on political or family ties?

If the department has a test for promotions, is it fair?

Is there a fund-raising arm that runs a club for police officers?

Does the police organization outside the department give breaks such as overlooking minor violations for those citizens and merchants who kick in donations?

Are police officers adequately trained or are they only given a badge and a gun and sent out on the street?

Do police officers have second jobs that might interfere with their performance?

Are crime statistics doctored by the police chief to make the department look more productive?

The trick of doctoring local crime statistics is achieved by understating unsolved crimes and overstating those that have been solved. One game the police play on the statisticians goes like this: The police tow a car off the street. When the owner comes in to the police station to retrieve it, the owner's request goes on the record as a stolen car. Then, when the police find it in their lot, it is recorded as a stolen car recovered. Crime reported and crime solved!

Investigations from within most police departments are thin on documents. Any investigator needs guidance from sources inside the department to know where to find any telling documents, and much rests on the testimony of witnesses. The reporter is likely to face the obstacle of a challenge when filing an FOIA but will try anyway, exercising the philosophy that all government records are open records until proven otherwise.

## **Evaluating Police Action and Investigations**

Traffic enforcement is vulnerable to ongoing police corruption. If residents routinely clip a \$20 bill to their driver's licenses in case of a traffic



stop, it is obvious the police are regarded with little respect. Such an assumption is difficult to report because a reporter should never commit the crime of bribery by attempting to bribe a public official, even for the purpose of writing about it. However, if it is known that there is a notorious speed trap where police officers are routinely shaking down motorists, a news organization might have a reporter stopped in such a speed zone to see whether a bribe is solicited.

The transaction could be filmed or taped, depending on provisions of local law. In some states it is illegal to record a conversation without the consent of all persons involved. A news organization might choose to confer with a state or federal enforcement agency to get its permission or at least provide the agency with knowledge of the purpose before launching such an elaborate plan.

Perhaps the police are not taking payoffs but are bending the law to favor some people over others. If a leading citizen—a banker, for example—has much too much to drink and is weaving his way home in his car, he might be escorted home by a local police officer, who has his mortgage with the bank, and then taken to his door where his wife is asked to put him to bed. The same police officer viewing another driver—a young person, a member of a minority, or an out-of-towner—apparently under the influence of intoxicants might take that person directly to jail without “passing go.”

Such misconduct is ingrained in local law enforcement and also has a high scale of difficulty in the proof. If no arrest takes place, no documentation exists other than police radio calls. A check of the log of police calls might be revealing, but even more revealing would be a statistical approach in which all arrests in a particular period are compared with other departments or the national average.

In university towns, students believe they are treated unfairly compared with permanent residents. The police also have been found to use profiling, including racial and ethnic identification, in the belief that matching common characteristics or a particular composite profile of persons committing certain crimes against other people could then be used to predict who might be more likely to commit a crime. In the past, police might refer to such a profile to cast suspicion on a person with similar characteristics. Profiling has been discredited and discouraged throughout the country because of the vigilance of reporters and civil rights groups.

### **Using Police Crime Investigative Documents**

Investigative reporters complain that police give out little information. There is general agreement that the incident report that tells when a call came in to the 9-1-1 system and what was found when police arrived—like

where the body lay—is a public record. The reporter might be able to get those incident reports, but any follow-up investigative reports prior to an arrest will not be made public. Such reports may be opened later in the court file, but that doesn't happen until the documents are filed with the court.

When a reporter gets such a report, care must be taken to not accept everything as fact that is reported to the police. People who are interviewed want to be helpful in most cases, and with little or no evidence they will speculate about who might have committed a crime. Wild charges by neighbors and witnesses are found in local police and FBI reports. Traffic accident reports are usually available to all who request them, but in some locations even those reports are withheld. Reporters have learned to live with such customs by getting information from the county prosecutor or from court records.

While there is a high level of difficulty in getting reports on crimes investigated by the police, there is even a greater level of difficulty in getting information from the police about their own problems. Law enforcement officials are very protective of internal memos that might show errors or improper conduct by their own officers.

### **Assessing Police on the Street**

The first step in the criminal process is the act of stopping a person. The stop and subsequent arrest is signaled when police read the legal rights to the detained person. The police-citizen encounter can be routine or can turn ugly. If it turns for the worst, police are put to the test of using some force short of unnecessary violence. At times, they flunk the test.

The 1991 videotape of the arrest and beating of Rodney King gave television news the pivotal story that awakened the public to the reality of police brutality. Before that, investigative reporters wrote about brutality, but those stories were sometimes read with skepticism by the citizenry.

One way to tell of the prevalence of brutality in a law enforcement group is to circumvent the police department and go to outside for documents. That way, any attempt by the police department to hide the facts is thwarted. The *Chicago Tribune* in a 1991 story did not wait to get official police reports, which might have contained numerous deletions.

Instead, *Tribune* reporters David Jackson and William Gaines, the author of this text, took refuge in the court system when they were denied Chicago police reports of complaints records and disciplinary actions against police officers. The victims of the alleged police attacks sued, and the names of certain police officers came up again and again on the civil court dockets in the local and federal courts. The reporters found in the



court files additional reports of other incidents involving the same officers; these reports had been turned over to attorneys during the legal discovery process. The reporters found that the city had made multimillion-dollar settlements to the complainants over police behavior, but the police officers were still on the job.

Much of the information in the *Tribune* story was attributed to the internal memos the attorneys had been able to get from the police files. Competing reporters who failed to get the reports asked Jackson and Gaines whether they had a source in the police department. Jackson and Gaines had no comment.

## Working with the Police

Reporters will, at times, find it proper to work with police officials, such as when they arrange the surrender of a felon, find witnesses, or locate clues that would be helpful in investigations. But such an arrangement does not always work well.

A metropolitan suburban newspaper once undertook an ambitious investigation by working with the police departments in its area, but this unusual arrangement meant trouble. (It would be unfair to name the newspaper or the reporters here because the ownership and staff have changed.)

The project started when a reporter learned of an impending roundup of alleged gang members on drug charges. The police were planning to make undercover buys of street drugs, then later make simultaneous arrests. The reporter suggested that the reporters might ride along with the police and view the preparations for the arrests and be able to write about it in advance, with colorful, first-person accounts. The story would be published only after the arrests. The fact that gang activities were prevalent in the suburbs, not only in the inner city, seemed to be an important story worthy of special coverage and front-page display.

Reporters went with the police but actually were kept far away from the undercover drug buys the officers were making. But the reporters did have one advantage: they had been given the names of those targeted for arrest, with the provision that they would not publish any names until arrests were made. The reporters quietly went about gathering background information on those to be arrested and awaited the arrests.

They were surprised to find on the list the name of a well-known high school football star of the graduating class of two years before. The thought of a football hero who was also a popular class officer turning to crime was an unexpected twist that the reporters expected to highlight or emphasize in their story. The reporters gathered all the background they could but were not able to contact the football player, who was out of town at college,

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because of their promise of silence to the police. But they were able to get a picture from the high school yearbook.

The raid took place, and the reporters and editors, under pressure of competition from metropolitan newspapers and local television news, rushed the story into the paper. They filed a story about young people gone wrong, and the reporters named the football player as a prime example.

But to the reporter's shock and dismay, they had named the wrong person. The person arrested had the same name as the football player, who was away at college when the buy and arrest took place. The newspaper ran an immediate correction.

The reporters said their picture of the football player was the same as the one the police had, and that meant that they had confirmation from a public agency that their identification was correct. A libel suit resulted.

How did the reporters go wrong? Did they libel the student?

The reporters meant no wrong. They were fair and open-minded. A libel suit should not be won by the football player because of an inadvertent error.

The investigation was ill-conceived from the start. Reporters crossed the line between police reporting and their own investigation when they gathered information from the yearbook. They then were ethically obligated to go to the subject of their investigation for his rebuttal, but they had already given away that necessary step when they entered into the agreement with the police.

The reporters also wrote that the football player and all the others arrested in the sting operation had "gone wrong," in other words, were guilty of a crime, when in fact they had only been charged and not convicted.

### **The Courts**

Daily newspapers usually have a reporter or two who specialize in the judiciary and have the courthouse as their beats. These reporters produce a sizable portion of the local news that appears each day in the paper. In addition, a senior reporter is often assigned to cover a high-profile trial from start to finish. Even within this traditional structure, there is room enough left for investigative stories.

The justice system, established in the U.S. Constitution, entitles everyone to a fair trial. From the conduct of the arresting officer to a decision of the U.S. Supreme Court, measures are taken to ensure that the entitlement is guaranteed. When it does not take place as it should, an investigative



reporter can become the last hope of the wrongfully accused, the victim of brutality or the unjustly treated minority.

The road to justice can be bumpy.

In the legal process, proper bond may not be immediately set, denying an innocent person freedom. The arrested person may be kept overnight in a cold and filthy jail cell for a minor violation—even though innocent of a crime—without a opportunity to enter a plea before a judge. Known felons may be housed with persons accused of minor offenses, or misdemeanors.

A jail is a local facility run by the county and used to temporarily house persons who are charged with a crime and awaiting bond hearings. Also, jails can provide confinement for persons sentenced to short periods. The county is expected to run a safe, clean and secure jail. The reporter could inspect the jail and report on conditions. In some jurisdictions, the county board or grand jury periodically inspects the jail, and the reporter can get the results of those inspections and then observe whether the reports are no more than a cover-up.

The judge may be inexperienced in the law, inattentive, overworked, opinionated, biased or speak abusively to those who appear in court. A reporter or a team of reporters needs only sit in on court sessions to get a handle on a story about a judge, and this story would have the backup of the court reporter who transcribes every word of the proceeding. An unprofessional attitude leads to miscarriages of justice.

Reporters have revealed wrongful imprisonment, even of prisoners sentenced to death. They have taken long looks at prosecutors run amok and judges indifferent to prosecutorial excesses. But the defendant is not always the injured party in a flawed justice system. Criminals may be wrongfully exonerated by poor police work or loose court procedures. So much court procedure is open to the public that it is surprising to learn how much is hidden. But deals are made at the coffee shop across the street, and judges and attorneys have unspoken agreements. Judges are mainly elected or appointed from the ranks of the criminal prosecutors, and they seem to favor their former colleagues. Attorneys may have social or political ties among themselves.

### Investigating the Selection of Jurors

Investigative reporters in Dallas and Pittsburgh are among those who have examined the racial makeup of juries. In 2002, Mark Houser of one of the Pittsburgh newspapers wrote: "The system that picks people for jury duty in Allegheny County consistently overlooks blacks and favors whites, a *Pittsburgh Tribune-Review* investigation has found."<sup>2</sup>



Although every ninth person in Allegheny County is black, only one in 20 is selected for juries, he reported.

How did the reporter know from court records that the jurors were black or white, as such information is not recorded on public documents? The key is in the second paragraph of the story: "People living in white neighborhoods are more than twice as likely to be called for jury service as residents of black neighborhoods. . . ." The reporter had noted the jurors' addresses and was able to chart them as living in a racially separated community. The reporter did not actually know the color of each individual's skin.

Steve McGonigle, veteran award-winning reporter for the *Dallas Morning News*, reported on two of his jury investigations, which were 20 years apart. In 1985, racial inequality in Dallas juries was rampant, and reform was undertaken because of his work. Returning to the subject in 2005, McGonigle found racial imbalance still prevalent.

McGonigle said the 2005 story took a year to research and write because the courts, which are not covered under the Freedom of Information Act, had tightened control of the information and caused a series of court appearances by the newspaper's attorneys.

The reporter's key findings were printed in a box on the front page on the first day of the series of stories: "Dallas County prosecutors excluded black jurors at more than twice the rate they rejected whites."

Sound familiar? Two newspapers, three years, more than 1,000 miles apart and using different research methods had come to the same basic conclusion.

In Dallas, McGonigle and his reporting team—Holly Becka, Jennifer LaFluer, and Tim Wyatt—uncovered a secret database known only to the prosecutors. It rated prospective jurors.

## **Judging Judges**

One of the earlier milestones in the investigation of courts was the 1986 Pulitzer Prize-winning *Philadelphia Inquirer* report of the close association of judges and attorneys. The reporters, Fredric Tulsy, H. G. Bissinger and Daniel R. Biddle, used a computer database to match times and places in order to show that attorneys who made campaign contributions and even managed the judge's reelection campaign were appearing in court before those very same judges. The reporters were able to write: "The records show the candidates for judgeships in Philadelphia routinely accept donations from lawyers and then allow those lawyers to try cases in front of them a short time later." Tulsy had done a story about overbilling by court-appointed lawyers and found that one lawyer who had charged the county for more than \$200,000 in one year must have worked 32-hour days.

## Using Court Files, Records and Documentation

If one person sues another, the case enters the court system as a civil case and is assigned a civil case number. But if state law enforcement officials go to court and file a suit against a person for violating a specific law and endangering the public, it is designated a criminal case. Separate branches of the courts are established to deal with criminal cases and civil cases; an exception to having separate courts sometimes occurs in small counties, but even then the civil and criminal procedures are different. Access to court information—whether civil or criminal—is handled in the same office: the clerk of the courts. The clerk of the courts is usually elected and is not to be confused with the county clerk or the judge's court clerk. The clerk of the courts is mandated by law to provide information about court cases.

Some newspapers may print the criminal court docket every day, irritating a resident who is charged with drunkenness or taking part in a family fight. The resident must understand that, for the benefit of the public, there can be no secret arrests. Criminal charges are open and defendants' names are indexed to be searchable. An investigative reporter always checks the criminal court files to see whether any persons connected with a current investigative story has an arrest record. Sometimes, criminal court files of one person will contain what police call "a rap sheet"—a list of previous arrests and convictions. Rap sheets are not meant for public dissemination because they may not be correct, may be missing some crucial information or confuse two people with the same name. But a rap sheet gives the reporter clues about where to find other possible criminal case files.

Most criminal matters are handled in the county courts, but some criminal cases—for violations of federal laws like tax fraud and racketeering—are the responsibility of the federal court clerk's office.

Facts and not-so-facts are found in court case files. A wealth of charges and countercharges are written up, stuffed into folders, and are sitting on shelves in the county court clerk's office. They are there to facilitate the judicial process, and they also have an important role to play for an investigative reporter. Important stories that would otherwise not be known by the public lie in the civil court case files, awaiting discovery and interpretation by an investigative reporter. But the facts must be separated from the not-so-facts.

Not-so-facts may or may not be true. They are the allegations of a person who feels aggrieved and goes to the courts for satisfaction. In writing up the complaint, the lawyers pile it on. But the sworn statement of an individual found in a case file is the highest level of truth. If only reporters could demand such truths from people they interview, with the penalty for

lying to a reporter as serious as perjury. That will never happen, but next best is for a reporter to get a sworn statement out of a public file.

A reporter enters the awesome legal world by arriving at the courthouse with a name or names of persons or businesses to be investigated. Somehow, by asking directions or looking at the directory on the wall, the reporter finds the office of the clerk of the courts. In this office, computer terminals will be available to the public. In small jurisdictions, an employee of the office often wants to operate the terminal, but in most places members of the public can use the computers independently. No one (neither a reporter nor anyone else) needs to show identification in order to get a case file. The clerk's office will be busy with many legal researchers and litigants requesting files, and reporters fit in among them.

State laws require the office to keep an index of all court cases, filed by both plaintiff and defendant. In the past, the offices kept index books, but with the advent of the computer age, the clerk offers a search engine with designations for plaintiff or defendant.

The reporter fills in the names of entities to be investigated and receives a list of all the court cases involving that name. Case numbers are also included. In most computerized court clerk systems, that number can then be placed into a search engine to call up the complaint and other important documents involving the case. If that convenience is not available, the reporter can take the case number to a clerk and get the file.

The file has no order or index. The reporter will have to figure out the sequence of filing and read the more important aspects of the case. First the reporter will shuffle through the documents and find the complaint that started the lawsuit.

The following example works us through the paperwork and records in a case, in this instance it is the case of Cat v. Aspidistras.

**Complaint.** A citizen has gone to the courts claiming to have been wronged by another person or a business. In this instance, a neighbor's cat ran into the yard of the complainant and destroyed a patch of rare aspidistras.

**Answer to the complaint.** The neighbor makes a written response, denies wrongdoing and states that she is not the owner of the cat. It is a stray cat that she often feeds. She makes a countercomplaint, alleging that the plaintiff has left a fence unrepaired and that caused animals to enter her property.

**Interrogatories.** This is lawyer jargon. This fifteen-letter word is simply a way of saying "questions." The parties in a suit send each other a list of



questions. When did the owner acquire the cat? How large is the cat? What is the breed of the cat?

**Answers to interrogatories.** The parties answer the questions in written form, or they object to the question and set it aside for future argument. The questions for the most part are routine; for example, the injured party in a lawsuit is asked the extent of the injuries, what medical care has been required and the number of days of work missed. It is helpful for a reporter to read this because it may also contain the full name, address and date of birth of the questioned person. If so, the reporter can make sure this person is identical with the person of interest and is not a same name that the computer found. In the cat case, the civil defendant has denied ownership of the cat and, therefore, states that she has no information about the breed of the cat. The defendant fires off additional questions, asking the value of the bed of aspidistras and requesting a list of all people or animals with access to the flower bed.

**Motions.** Attorneys for the defendant may move to have the case dismissed, arguing that cats are unlicensed by the city and that no ownership can be attributed to the client merely because she feeds the cat. The attorney will probably cite some court decisions in favor of this argument and file a written request that a judge can use when ruling. The judge may or may not dismiss the case at this point; if it is not dismissed, it is set for trial.

Up to this point the case has been debated on paper, and the paper is in the file. The problems of defining the ownership of the cat are not what the reporter came for. That is a side issue. The reporter is interested in the lady who feeds the cat because the reporter believes she is one of many "ghost payrollers" in the city sewer department. A city hall source told the reporter that she is a political worker who appears on the public payroll as a health department inspector, but she never comes to work—an allegation of "ghost payrolling," when a person draws a salary without performing a service. Reporters have even found persons ghost payrolling on more than one payroll at the same time. The reporter sifting through the cat lawsuit file is hoping to find some information in that file that will help to determine whether it is true. After setting aside the arguments about the ownership of the cat, the reporter comes upon the most valuable documentation in the discovery.

**Discovery.** Each side asks the other for certain documents and may arrange for a deposition. The idea of a deposition is to obtain testimony under oath in advance of a trial. The opposite parties in the litigation can then know what their chances are if they go to trial. This encourages

an out-of-court settlement, which makes the judge very happy. The deposition, meanwhile, given in the presence of attorneys for both sides, can make the search worthwhile for a reporter. Perhaps the suspected ghost payroller describes her occupation as a full-time restaurant manager and shows no government job. The reporter has a clue that she is hiding such employment. That will not be enough proof to go with a story. It will be necessary to confront her and her government supervisor with the allegation.

**Disposition.** The spelling of "disposition" is so similar to "deposition" that it could be confusing. The disposition is how the original case was closed off and removed from the court docket. It may be that the two litigants have settled their dispute and informed the judge. The judge breathes a sigh of relief. The case is then closed with no further debate or written record other than it was dismissed by agreement. The cat owner has agreed to replace the flower bed and mend the fence without admitting responsibility, and the plaintiff has agreed to take no further action against her. But if no settlement is reached, the case will go to trial, a judge or jury will reach a decision and the appeals process will begin.

**Appeals.** If a reporter is looking for information from a case that has gone to trial, there may be a transcript of the trial or portions of it that the reporter can get. If the cat case goes to trial, all the parties involved will have a chance to testify, they will be cross-examined and their testimony will be recorded by a court stenographer. Afterward, the losing party is going to be unhappy and may file an appeal with a higher court. When the losing party files an appeal, the appeal court will require a transcript of the testimony, to be provided by the appealing party. It will be in a public file and the reporter will have another opportunity to try to resolve the ghost-payroll accusation by looking for further evidence in the file. If the information the reporter has obliquely sought is in sworn testimony, the reporter will have information from the highest level of reliability.

What of the cat case? If it goes to appeals court, it could be a landmark case about ownership of a cat. If the case has not been covered by the press, the investigative reporter will want to alert the newspaper's editors, who might assign a reporter to work up an interesting feature.

**Off limits.** Little is held back in a court case, and everything introduced in evidence is most certainly public. But the list of exclusions of court records is actually quite imposing. We sought the help of the Vermont Supreme Court for a summary list of items that are excluded from the public record: