A PROSECUTOR'S GUIDE FOR CALIFORNIA PEACE OFFICERS

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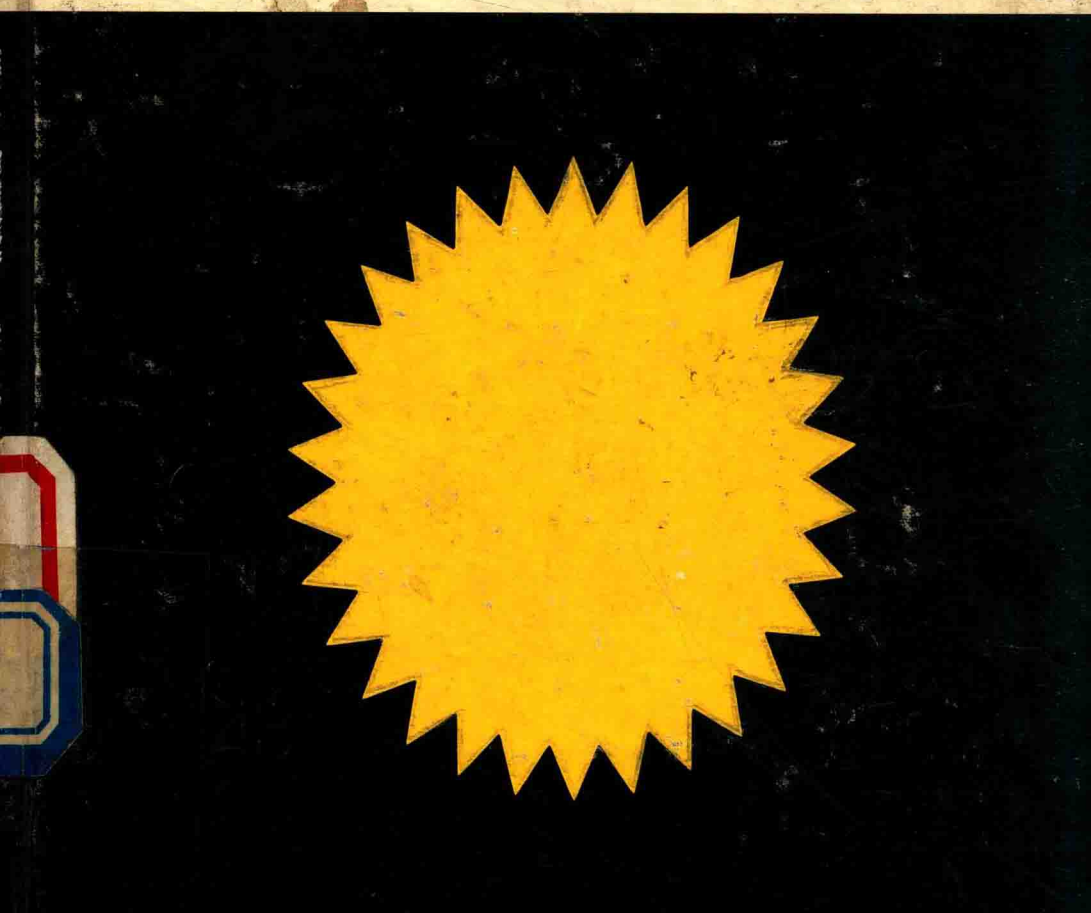

A Prosecutor's Guide for California Peace Officers

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Preface

This book is a summary of the practical aspects of California criminal prosecutions, written from a prosecutor's point of view. It is intended for in-service peace officers, students in administration-of-justice programs, and cadets in police academies. It explains the substantive laws with which all peace officers must be familiar and discusses how peace officers can aid prosecutors in preparing cases for court.

Laws addressing rules of evidence; search and seizure; stop and frisk; arrest, identification, and questioning of suspects; entrapment; assault and battery on a peace officer; and self-defense are thoroughly discussed. In the chapter on criminal procedure, the role of the peace officer in the criminal justice system is discussed at length. Also reviewed is the importance of report writing and testifying in court.

This work is a practical guide, written in nonlegalistic language. Extensive footnotes make it an ideal reference source for those who wish to read the actual statutes and judicial decisions that make up the law. The realization of a need for such a book and its actual creation stem from my daily exposure to peace officers, my experience as consultant to the Chiefs' Committee on Criminal Justice, and from teaching substantive law courses at the Basic Police Academy at San Jose City College and Lincoln University School of Law.

Credit, appreciation, and thanks go to the many peace officers and students who, through their friendship, questions, interest, and advice, helped shape the organization and content of this book. I hope that other students, cadets, and peace officers will find the book helpful in answering the perplexing questions involved in police work, and that they will not hesitate to suggest improvements for future editions.

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Chapter 1

Criminal Procedure

1.1 Functions of the District Attorney

Like other attorneys, district attorneys represent a client, viz., the people of the state of California.[1] Generally speaking, district attorneys are elected county officials, attorneys, members of the state bar, and officers of the court.[2] They are the county prosecuting attorneys in that they and their staff are responsible for the prosecution of all criminal offenses committed within that county.[3]

District attorneys have complete discretion in prosecuting a given criminal offense. They cannot be forced by any legal procedure to prosecute a given criminal case,[4] and there is no provision in the law for appointment of a special prosecutor should the district attorney refuse to prosecute.[5] District attorneys are subject only to the supervision of the attorney general of the state of California. The only recourse against district attorneys for failure to prosecute is at the ballot box at election time or for malfeasance in office, should that be the case.[6]

The function of district attorneys is said to be quasi-judicial in nature. They must evaluate the evidence and the law, and decide whether they can prove the case to a jury beyond a reasonable doubt and to a moral certainty. This is a judicial decision, but it does not have the same binding effect as when made by a judge. Hence, the quasi-judicial nature of the office.

In dealing with the district attorney, a peace officer should always keep two important realities in mind:

1. The peace officer is not the district attorney's client. To the district attorney, the peace officer is just another witness in the case.

2. The district attorney, not the peace officer, makes the final decision as to whether a given case will be prosecuted.

By the very nature of the office, the district attorney stands as a screen between the peace officer and the courts. He or she not only evaluates the witnesses and the evidence, but must make legal judgments concerning their sufficiency. The district attorney must disregard the opinions of the officer and the emotions of the victim, and judge the case by the law and the practical realities surrounding it. The district attorney must assure that justice is accomplished for all parties.

A district attorney's office is primarily prosecutorial, but it does conduct some limited investigations. The district attorney is empowered by law to act as legal counsel for dependent children to secure their support. To fulfill this function, the district attorney employs investigators to determine whether parents can support their dependent children and, if necessary, to institute the appropriate criminal or civil proceedings to enforce that right of the dependent child.[7] The investigators aid the deputy district attorney in the courtroom; they help the police departments investigate the more serious crimes; and they perform an intelligence function in cooperation with other law enforcement agencies.

In addition, the district attorney presents the evidence in juvenile courts, sometimes acting as counsel for the juvenile. The district attorney investigates and prosecutes civil actions for fraud and to abate public nuisances,[8] and serves as adviser to the grand jury, preparing and presenting criminal cases for its consideration.[9]

1.2 Prosecuting the Accused

The bulk of the district attorney's workload comes from the various police agencies throughout a county and to a lesser extent from other state or local agencies empowered to enforce penal provisions of the law. As a result, the district attorney and the staff develop a close working relationship with police departments and peace officers in general.

Most crimes committed are of the misdemeanor variety. A misdemeanor is a crime that is generally not punishable by imprisonment in a state prison. In presenting these misdemeanor cases to the district attorney, law enforcement agencies commonly utilize a liaison officer. This man or woman, usually an experienced officer, reads all the offense reports written by the field officers on the previous day, and presents them to the district attorney's office. There the officer consults with a deputy who will review these offense reports and make the appropriate prosecutorial decision.

When the deputy district attorney determines that a case is worthy of prosecution, he or she has a criminal complaint prepared. The liaison officer takes this complaint to the appropriate municipal court (or justice court) and "swears it out," i.e., swears under oath to the truth of the complaint and signs the complaint in the presence of the clerk. When this has been done, the prosecution is underway and the control of the case is thereafter exclusively with the district attorney.[10]

As soon as possible after the complaint has been filed (usually the same day), the court arraigns the accused. During arraignment, the accused, now called the defendant, is informed of the crime(s) with which he or she is charged, and is asked to enter a plea. In addition, the defendant is informed of the right to an attorney, the right to a trial by jury, the right to have reasonable bail fixed, the right to confront the witnesses, and the right to utilize the court's subpoena power to compel witnesses to testify.[11]

With but few exceptions, criminal defendants are entitled to bail as a matter of right.[12] Most courts publish a bail schedule listing the monetary amount of bail for all misdemeanors and most felonies. The schedule is kept by the sheriff, and arrestees are allowed to put up the money or an equivalent surety bond and secure their release before arraignment.[13] The purpose of bail is to insure the presence of defendants at their future court appearances. If they fail to appear, their bail is forfeited.

After defendants have entered their plea (at this point usually not guilty), the court sets a date for trial. Prior to the trial date, there will usually be at least one informal conference between

the deputy district attorney, defense counsel, and the court to attempt a settlement of the case through plea bargaining (see discussion on pages 7–10). If this conference does not dispose of the case, then it goes to trial on the given date.

A felony is a crime that is generally punishable by death or imprisonment in a state prison. Because of their seriousness and complexity, felony cases are handled somewhat differently from misdemeanor cases. These cases are usually brought to the district attorney by an officer who has been specifically assigned to the case. By the time the case is submitted to the district attorney for prosecution, the officer will have read the offense reports, completed additional investigation, interviewed witnesses, accumulated physical evidence, and done whatever is necessary to prepare the case for prosecution. An experienced officer becomes extremely astute in evaluating the prosecutability of a case. Because an officer is constantly dealing with deputy district attorneys, he or she develops an accurate feel for the prosecutor's requirements and the courtroom problems inherent in a particular case. As a result, very few felonies are refused prosecution.

In a felony case, there are two methods of starting the prosecution. The first method, and the less popular, is through the grand jury. The use of a grand jury enables the district attorney to take a felony case directly to the county superior court,[14] which has the exclusive jurisdiction of all felony cases.

The grand jury is a statutory body composed of twenty-three persons in counties having a population exceeding 4 million, and nineteen persons in all other counties.[15] Depending upon his or her seniority, each judge of the superior court is given the opportunity to nominate one or more prospective grand jurors. The nominations are then placed in a box, and, depending on the size of the county, nineteen or twenty-three names are drawn[16] to become the grand jury for the county. The jury will serve for one year, or until discharged by the court, or until a new grand jury is impanelled.[17]

In addition to numerous other statutory duties,[18] the grand jury listens to evidence presented by the district attorney and determines if it should return an indictment.[19] A grand jury

indictment is a paper filed with the superior court charging a person with a felony offense.[20]

The district attorney who selects the grand jury method of commencing a prosecution convenes the grand jury[21] and presents evidence that he or she believes will induce the grand jury to return its indictment. The grand jurors, the district attorney, a court reporter, and each witness, as he or she testifies, are the only persons present.[22] The defendant does not attend and is not represented by an attorney at the hearing.[23]

After hearing the evidence, the grand jury deliberates. If at least twelve grand jurors vote for an indictment, they then return the indictment, signed by the foreman, and file it in superior court.[24]

The number of criminal cases commenced via grand jury is probably less than 2 percent. Those cases selected for grand jury presentation usually involve:

1. An informant whose identity must remain secret;
2. Testimony extremely humiliating to the victim, such as that offered in cases of rape or child molesting;
3. Complex and numerous issues or counts that will consume too much courtroom time if the preliminary examination method is used; or
4. Homicides.

There are several reasons why only a small percentage of criminal cases are commenced via grand jury:

1. The heavy workload of a typical grand jury limits the number of cases it has time to hear.
2. Prosecutors prefer to observe their witnesses under cross-examination in order to assess their credibility should the case go to trial.
3. Defense attorneys are likely to reveal their defenses in their questions on cross-examination.
4. Grand jury indictments do not appear to be judicially preferred.

The more popular way to commence a felony prosecution is through the use of a preliminary examination. This procedure begins exactly as a misdemeanor prosecution except that the complaint alleges a felony.[25] The defendant is arraigned, exactly as in a misdemeanor case. At this point, however, the similarity ends. Instead of setting a date for trial, the court gives a date for a preliminary examination.

A preliminary examination is a hearing conducted before a judge of the municipal or justice court in which the district attorney presents sufficient evidence to convince the magistrate (the judge) that a strong and honest suspicion exists that the crime was committed and that the defendant is the one who committed it. If convinced, the magistrate then holds the defendant to answer to the felony charge and certifies him or her to superior court. Within fifteen days of that date, the district attorney files an information—a paper charging the defendant with a felony—in the superior court. Once in superior court (either by indictment or information), the defendant is again arraigned, and the procedure is practically identical to that followed in the misdemeanor case in the lower court.[26]

It should be noted that at the preliminary examination or the grand jury hearing the district attorney seldom presents the entire case. This is because the law does not require, as prerequisite to obtaining the indictment or the information, that the guilt of the accused be proven beyond a reasonable doubt. The only requirement is that the district attorney convince at least twelve members of the grand jury, or the magistrate hearing the preliminary examination, that, based upon the evidence submitted, a reasonable person would entertain a strong and honest suspicion that the crime has been committed and that the defendant committed it. This is known as probable cause, and it must be established, regardless of which way a felony case is started, before the case can commence in superior court.

1.3 Special Proceedings

In addition to the various functions mentioned above, the district attorney is required to appear in court and represent the people

of the state of California in a variety of pretrial and postconviction proceedings.

Whenever evidence has been seized pursuant to a search warrant, or for that matter, without a warrant, the defendant usually makes a motion to suppress the evidence. (This is commonly called a 1538.5 motion because it is made under the authority of that section of the Penal Code.) The motion to suppress is an attempt to persuade the court that the search and seizure was illegal and, therefore, that the evidence seized should not be admitted into court to incriminate the accused.

In felony cases, motions to dismiss the indictment or information, authorized under Section 995 of the Penal Code, are quite common. The 995 motion is an attempt by the defendant to have the court dismiss the indictment or the information on the ground that the evidence taken at the grand jury hearing or the preliminary examination is insufficient to satisfy the probable-cause criterion.

The district attorney also handles diversion cases, deciding whether a particular defendant is eligible to be diverted out of the criminal procedure and into a rehabilitative program.[27] In addition, the district attorney is responsible for writs, such as habeas corpus, mandamus, prohibition, and coram nobis. The district attorney is also required to participate in proceedings and, if necessary, bring to trial cases involving narcotics addiction or any mental disorder of sex offenders.[28]

Finally, the district attorney is present at, and participates in, the sentencing procedures and gives the court an opinion as to the extent of punishment to be given to a particular defendant.[29]

1.4 Plea Bargaining

Actually, the term "plea bargaining" is a misnomer. To both law enforcement officers and the public, the term connotes back room or dark alley deals. Nothing could be further from the truth. To the prosecutor, it is a most important phase of the criminal process. Perhaps the process would be better understood if it were called plea negotiations, for that is exactly what it is.