

CRIMINAL DEFENSE INVESTIGATION
HOW TO HELP YOUR CLIENT & ATTORNEY

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Criminal Defense Investigation is the most rewarding area an investigator can be involved in. It's important work. There are a number of civil cases that we work, and they are important, but most of them have to do with money. Criminal defense cases involve something much more important than money. They involve liberty.

A carefully planned and proper defense investigation in a criminal case can lead to a number of favorable results. The best result, of course, is proof that the client is innocent of the charge. That is the ultimate goal. The next best result is evidence. The criminal defense investigator must look at developing evidence, which may create reasonable doubt among the jurors as to the client's guilt. The evidence may show that the client is guilty, but of a lesser degree of the crime charged. The defense investigation may also show that the client's constitutional rights were violated.

When conducting a criminal defense investigation, the investigator must be knowledgeable of police procedures, interview techniques, and, most of all, the investigator must be prompt. In most cases it is important that the investigator start the case as soon as possible after the charges are brought against the client. Things change in criminal cases and they can change quickly. The crime scene changes, physical facts change, the site of pertinent events change, or moves is replaced. An object of importance may be discarded or destroyed. Witness may move or forget.

I've been involved in criminal defense investigation for many years and still find them to be interesting, challenging and certainly personally rewarding. I once worked as an investigator for the prosecutor's office and it was challenging work, but nothing like criminal defense. Our system of justice demands that the government acting for the people prove that a person committed a crime. That same system applies to the defense. It is our duty to work as hard as we possibly can to prove our client's innocence.

The investigator who is not a former law enforcement officer can certainly still be quite effective in defense investigations, although he/she will have to spend some time studying police procedures. There is knowledge that an investigator just must have in order to do the work properly.

For example, when first meeting the client/defendant, you must know the proper way to interview a person. It's completely different from interviewing someone who might be coming to you for help in an accident case.

There are two basic methods for the first interview with a criminal defendant/client:

- 1) Establish rapport
- 2) Get all of the details from the defendant/client.

When you first meet the defendant, he's scared and suspicious, especially if he's incarcerated. You want to get all of the details from the defendant concerning all of the charges against him and the details of the arrest.

Explain to the client what your function is. Let him know that your job is to help him by assisting the attorney to build a strong defense case. Do your best to put the client at ease before talking about the case.

The investigator's role is not to counsel the client. The attorney would have advised him of his rights with regard to trial and the legal methods. The investigator must be very careful not to undermine what the attorney has said, and not to promise things which the attorney may not be able to deliver. That's why it is so important for the attorney and the investigator to work closely together so those prospective roles are clearly identified. The investigator must know what to say to the client and what not to say.

After the investigator has gotten acquainted with the client, it's time to get the client's story. It's a good practice to let the client tell the story in his own way the first time around. Sometime it's good not to write anything down while he's telling his story the first time. After the story is told, the investigator should get it down on paper by having the client go over everything again slowly. The investigator will take notes and ask questions. The investigator wants a full chronology of the client's involvement in the case, including all police activities known to him. When questioning the client the investigator must be sure to try to determine whether all the legal elements of the charge against the client are made out in the client's version. The client should be asked to tell in chronological order what he did and what the authorities think he did. The investigator must cover the Who, What, When, Where, Why and How of the case with the client. The investigator should ask the client what happened to him, who was involved, when, and how he was arrested and everything that the police have done with him since his arrest. If the client denies involvement, details should be obtained about where the client was and what he was doing and alibi witnesses identified.

With regard to arrest, particular attention should be given to getting all possible information from the client as to the arrest procedure and anything said by the client at any time prior to the arrest, during the arrest and after the arrest. The investigator wants to know if the client made any kind of statement to the police, and whether he signed anything. Was the client advised of his rights? What did the police ask him? And, if he was advised of his rights, did he waive them. Did the client sign a waiver form? As a final point, before the investigator leaves the client at the first interview, he should reinforce no doubt what the attorney already told the client, and that it not to talk to anyone including fellow inmates about the case.

The investigator will need to obtain all of the police reports. Examine the crime scene and take photographs. Examine the prosecution evidence to determine its validity. In addition, the investigator should examine every police report or document no matter how insignificant it may appear to be. Those examinations will give the investigator the total picture of the case from the police viewpoint, and will enable him to more easily identify inconsistencies, which can then be pointed out to the attorney. The investigator will next have a meeting with the attorney. Often this meeting will occur before the investigator first sees the client and sometimes not until after. This meeting will focus on theory of defense and case strategy.

The investigator as he works through the case must be alert to recognizing which facts suggest a preferable theory. He must go to the sources of information relevant to the defense theory. Tracking down those sources are important and he must gather all information potentially important to the case.

The possible theories of defense depending on the case are: alibi, entrapment, self-defense, someone else did it, incompetent (insanity, mental defect, intoxication).

The facts of the case and the strengths and weaknesses of the prosecution's position will generally dictate the theory of defense. It will normally be based on the innocence of the defendant or the violation of one or more constitutional guarantees which are due the defendant.

After the investigator and attorney have developed a working theory of defense and have discussed case development strategy, the investigator should move toward gathering defense evidence.

You'll want to interview all witnesses who may have information about the case, including prosecution witnesses.

Witnesses play an important part in criminal cases. Some people don't know that it's all right for you to talk to someone from the other side, like a defense investigator. Once they've been interviewed by the police, or perhaps an assistant state attorney, they're left feeling that they aren't supposed to talk with anyone from the other side. In fact, witnesses do not belong to one party in any civil or criminal case.

The defense attorney through his investigator has a right to interview any witness or potential witness who may have information relative to his client's case. The defense investigator must be aware of the possibility that a reluctant witness may be refusing to talk to anyone from the defense side because he was advised not to do so by a police officer. Sometimes what happens is a police officer will have a witness believe he should get the officer's or state attorney's consent before talking to a defense representative. That, of course, is not the case.

If a witness is reluctant to talk to a defense investigator because of his own feelings in the case, sometimes that witness will allow an interview if it is courteously pointed out to him that the duty of every citizen in this country under our system of fairness and justice is to be as fair and objective as possible, and that includes telling what he knows to the defense as well as the prosecution. Quite often the personality of the investigator will help gain that cooperation from witnesses.

Whenever possible, the investigator should get a signed statement from the adverse witness who has some information to help the defense. It's not always possible to do that, of course, but the attempt should be made.

Defense witnesses will usually be identified either by the defendant (the client) or by police reports. And, of course, it will be left to the talents of the investigators to find, identify and locate witnesses that will be helpful to the defense.

The defense investigator must be very thorough and careful when investigating cases which rely on alibi witnesses. Be certain that you and your attorney are not being set up by false witnesses whose story will fall apart in court to the embarrassment of your attorney, not to mention the sure conviction of your client. Some clients will lie to you. Some will make up an alibi story with false witnesses in the belief that it's the only way out of the charges. Find out. Investigate. You certainly have a very high duty to your client to help provide the best possible defense. But you also have a duty to your attorney

to provide him with the results of intelligent and honest work. And part of that responsibility is to not let him unknowingly become involved in some illegal scheme or maneuver.

If the areas discussed - - defendant, police report, and witnesses - - prove fruitless or inadequate for good witness leads, the investigator must visit the scene as quickly as possible and attempt to contact any person who might be remotely connected to the incident or have information which may be helpful to the defense. This canvassing work is time consuming and often frustrating, but it's important. No stone can be left unturned when it comes to providing a good defense for your client. Any person in this country must be given every legitimate opportunity to defend himself against charges which could take away his liberty.

Remember that you owe an extremely high duty to your attorney and your client. If the investigator makes the effort to build and develop the expertise in determining what is important in criminal defense investigations and what really will help the defense effort, he can be an extremely valuable asset to attorneys practicing criminal law.

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