

Topic: When there is a serious crime, should the prosecutor go out to the scene?

Visiting the scene of a crime, whether for investigative or trial preparation purposes, presents ethical considerations for prosecutors. Whether or not the prosecutor goes to the scene of the crime turns in part on absolute vs qualified immunity. When a prosecutor participates in the investigation, he loses absolute immunity and has only qualified immunity. He may also be called as a witness. They can go to the scene of the crime but must only observe.

At the 2024 Winter Idaho Prosecuting Attorneys Association conference, a very experienced career prosecutor named Jim Dickinson of Ada County gave a presentation on the ethical concerns with visiting the scene of the crime. He taught that a pre-charging ethical concern arises when a prosecutor visits the scene of a crime before charges are formally filed against a suspect. This action can potentially compromise the prosecutor's objectivity and impartiality in the case. By involving themselves in the investigation process before charges are laid, prosecutors risk being perceived as biased or prejudiced, which may undermine public confidence in the fairness of the legal process. Additionally, visiting the scene of a crime can create a perception of impropriety or conflict of interest, especially if the prosecutor's presence influences the direction of the investigation or the decision to press charges. Therefore, prosecutors must exercise caution and adhere to ethical guidelines to avoid any appearance of impropriety or bias when considering whether to visit a crime scene before charges are filed.

Prosecutors have absolute immunity for their prosecutorial functions, including making charging decisions and presenting cases in court. However, when prosecutors engage in investigative activities, such as visiting crime scenes or directing investigations, they may be entitled only to qualified immunity. If a prosecutor only has qualified immunity from directing or being involved in the investigation at a crime scene, they are exposed to greater legal liability and accountability for their actions. Unlike absolute immunity, which provides prosecutors with broad protection from civil lawsuits arising from their official duties, qualified immunity offers a more limited shield.

With qualified immunity, prosecutors may still face legal challenges and potential lawsuits if their actions are found to violate clearly established statutory or constitutional rights. If a prosecutor exceeds their authority or engages in misconduct during an investigation at a crime scene, they could be held personally liable for damages resulting from their actions.

Additionally, prosecutors with only qualified immunity may be subject to disciplinary action, professional sanctions, or reputational harm if their conduct is deemed unethical or inappropriate. Their involvement in the investigation may also raise questions about impartiality and fairness, potentially undermining public trust in the criminal justice system.

Even visiting the scene later for trial preparation must guard against confirmation bias and selective presentation of evidence. There's a risk of inadvertently influencing witness perceptions or testimony and disturbing or contaminating evidence, potentially compromising the fairness of the trial.

Furthermore, prosecutors have a duty to disclose all material evidence to the defense, including any discovered during scene visits, to ensure a fair trial. Even if no impropriety occurs, the mere appearance of a prosecutor at the scene may raise suspicions and undermine public confidence in the legal process.

In considering their actions, prosecutors should be mindful of the potential implications of their actions on the rights of individuals involved in the criminal justice system. They must ensure that their actions at the scene do not unduly influence the course of the investigation or trial, maintaining transparency and fairness throughout the legal proceedings.

Although I have visited many of the scenes of most serious crimes, as a prosecutor, I must exercise caution, transparency, and impartiality when visiting crime scenes for any purpose, maintaining the highest ethical standards to uphold justice and fairness while preserving the integrity of the legal process.