

The Prosecutor

An inquiry
into the exercise of
discretion

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When I think an accused should be treated in a lenient way, especially teenage defendants, I say something. Or I get charges withdrawn in the back room. So a kid comes and steals a few hubcaps or Coke bottles, I don't think that he should be convicted of a criminal offence. I get the parents, the police, and the lawyer (if he has one) in the back room and tell the kid that he has one strike against him and I really put the fear of God into him and then I withdraw the charge. If the police object, I try to use diplomacy. This is why I have the police there when I'm talking to the kid and I have the kid apologize to the police. The idea of justice comes in the back room. I try to frighten him. Some of the kids cry and really I guess I'm kind of holding court in my own office. I might withdraw the case quicker because of the family background. But if he has a bad background, his father isn't working and he's been hanging around on the streetcorners, I might go into the case deeper before I withdraw it. I may even remand the case for a month, to see if he behaves, and then maybe withdraw the charge after a month or two. I let the charge hang over his head ... So I try to teach him a lesson in the back room ... I don't think I'm doing wrong, at least I haven't had any complaints so far.

Prosecutors feel free to reduce or withdraw charges on their own initiative. In this way they exercise some belated control over the decision-making processes of the police. The majority of withdrawals are made on the independent initiative of the prosecutor handling the case.

➤ There are, however, circumstances in which a prosecutor will seek the approval of the senior prosecutor before agreeing to a reduction or withdrawal. In serious charges, such as murder, or in cases which have gained public notoriety, the prosecutor will normally seek senior approval before exercising his discretion. Senior approval is also sought in most cases of police requests for the withdrawal of charges on the grounds of a proposed exchange of information by the accused. In order to minimize the purchase of immunity by known criminals, the police request is usually directed to the senior prosecutor.

Prosecutors are particularly reluctant to consent to the withdrawal of charges against informants. One prosecutor reacted strongly: "I don't like a crook buying immunity because he knows other crooks and can turn them in to save his own skin." Another reacted similarly: "The more I am pressed to withdraw, the more I push it. If the police want to protect an informer, then they shouldn't charge him." A third said: "The police attempt to withdraw charges because they say that the accused man is going to do something for the police like find some stolen goods or return some stolen bonds. But as far as I am concerned,

in these cases all an accused is doing is purchasing his freedom by giving the police a payoff in a minor way." A fourth prosecutor said: "I've only been approached by the police to withdraw charges about a dozen times. Police come to you and have a girl charged with vagrancy and they ask you if you can withdraw the charge because she is going to recover something for them. These deals are usually horseshit. The officer is conned or is green enough." Another echoed the general reaction to the police requests to withdraw charges against an informer: "Hoods will steal bonds and hold them for a rainy day and then when they are charged with something they'll try to make a deal with the police to give them the bonds if the police will withdraw the charge." On the other hand a young prosecutor admitted: "I take into consideration the background of the accused and whether or not he is an informer."

The emotional attachment of the police to a particular case or their desire to protect informers for future usefulness restricts prosecutorial freedom to compromise pleas. "There may be a saw-off for an informer. You give him a little bit of a rap, but you don't put him out of circulation. So that he now knows that he can't get away with it and yet you will have his services in the future."

In charges arising out of private complaints, such as marital disputes or charges of fraud, it is the practice to address the complainant's request that the charge be withdrawn to the judge in open court. "If you are going to withdraw, you try to put it on the record why you are withdrawing the charge." This practice is followed in order to minimize the further laying of charges in private disputes. The court may wish to scrutinize with some care private complaints withdrawn because restitution has been made. The judges in the criminal courts express their reluctance to act as a "collection agency."

6 NEGOTIATION

It does not matter whether the limitations on the exercise of prosecutorial discretion to reduce or withdraw charges are imposed by policy considerations or by the co-operative attitude taken toward police requests, or even by the need for formal ratification by the court of the decision taken. They only amount to minimal restraints on the prosecutor's freedom of action in pre-trial negotiations. During that phase,