

How To Get Out Of Going To Court

October 17, 2008

Volume 7, Number 7

Write A Good Report!

*By Brian Beasley, Avid Incident Report Reader
and Legal Adviser, High Point PD*

For those of you who opened this thinking that I was about to share some underhanded, sneaky way for you to avoid having to go to court after being subpoenaed, I am sorry to disappoint you. There is no way that I am aware of to avoid going to court once you have been served with a subpoena that does not involved the risk of arrest, your personal dishonor, and bringing disrespect to the police department as a whole, something our department (and especially the legal office) wishes to avoid at all costs.

Instead, I decided to title this update thusly¹ because if I had simply titled it "Report Writing And You," you would either not open it at all or open it with a glazed look in your eyes. On the other hand, if I had titled it "Police Pursuits and Easy Women" several of you would have broken your computer mice by double-clicking with too much force. These are some of the life and death issues that I have to deal with on a daily basis.

And while police pursuits and easy women would not have anything to do with report writing, a good report WILL often keep you from having to go to court to testify. Consider the following real life example:

In the late 90s, I sat down in Durham County Superior Court to try a gentleman for Obtaining Property By False Pretenses. I was just finishing up jury selection when my primary officer walked into the courtroom and sat down next to me at the prosecution table. Somewhat irritated at having been called into court when there were so many other places he would rather be (a common emotion, as you might expect), the officer turned to me and expressed his intense surprise that the defendant was interested in taking this particular case to trial.

The following exchange then took place:

Me: "Why do you say that?"

Officer (showing me a piece of paper): "Because he signed a written confession."

Me: (Fpoofth²)

¹ Not only does using the word "thusly" make you sound really smart, it is also just a fun word to say. Don't believe me? Read that sentence out loud – you'll see that it really excites your whole mouth.

² That was the sound my head made when it exploded. Fortunately, all the king's horses and all the king's men were able to put me back together again. My full head of hair, sadly, remained a casualty. Think of the sound that occurs when you have poured a whole bottle of lighter fluid on your charcoal grill and then throw a match on it. That's "fpoofth."

ROLL CALL TRAINING

*From North Carolina's 24/7 Police
Attorney Law Firm*

PO Box 4803

Greensboro, NC 27404-4803

Telephone (336) 691-7058

fax (336) 969-1879

www.policehelp.net

You see, the officer not only had failed to include the signed confession in his prosecution summary, but he had never mentioned anywhere in his report that he ever even interviewed the defendant, much less obtained a signed, written confession. Had he included this tidbit of information in his report, he would never have had to come to court at all. Instead, his failure to give the statement to me resulted in my failing to give the statement to the defense attorney, thus rendering the confession inadmissible at the trial that should have never happened in the first place.³

In the same way, if you write a clear and thorough report, answering all questions that leave room for a defendant to wriggle out from under his criminal behavior, you will probably never have to come to court. So while report writing is a pretty dry topic, it can help you save time which is better spent learning about police pursuits and easy women.⁴

Let's look at four things to strive for when you are writing a report. Accuracy, completeness, clarity, and objectivity are all important features of a well-written report.

Reports must be accurate to avoid problems down the road, both in the context of a criminal case and the potential for a civil suit. Let's say you have arrested an individual for a domestic assault, he resists and you use the Vulcan nerve pinch pressure point tactic to bring him "into compliance." In so doing, the arrestee receives a minor shoulder injury. You take the individual to the hospital where he receives an evaluation that he does not require treatment, whereupon he punches at but misses the doctor and falls off the gurney onto the floor. You pick him up, handcuff him, ask the doctor if he wants to press charges (he does not), and you transport the arrestee to the magistrate's office for booking. You fill out your arrest report.

Now you go back to the department to write your Incident Report but your shift has ended so you decide to write that report on your next work shift, which happens to be in four days. Your lieutenant also decides to write his supplemental report concerning these events on the return shift. Your back-up officer is going on vacation so she writes her supplemental to your Incident Report (which doesn't exist yet) and submits it to the on-duty lieutenant who knows nothing about what actually happened and in that vacuum he approves the report and it goes into the system.

When the original lieutenant comes back to work, he writes his supplemental without first reading the Incident Report or the other supplemental. Instead, he writes his report from memory. Then, the arresting officer writes his Incident Report and Use of Force Report from memory. None of the officers mention the arrestee's attempted battery on the doctor, the doctor's not wanting to prosecute, nor do they mention that the arrestee fell from the gurney to the floor.

The result? Glaring conflicts between the reports of all three officers and critically important information missing from the reports or as we say in the legal community, "genuine issues of material fact," that can and often does strip officers of their shield of qualified immunity to Federal claims made against them for violations of individual's civil rights.⁵

³ It turns out that the confession actually did come in because the defense attorney, even after learning about the confession, was stupid enough to put her client on the witness stand.

⁴ I was going to insert something here that made me seem less sexist, like "easy women and men" or "easy people of all genders," but let's face it...most men are easy. There's nothing noteworthy there.

⁵ Save your explanations for why this wouldn't happen here or we don't do it this way protestations. That's irrelevant to the point I'm making.

All that to say this. Generally, the more time that passes between an event and when you write it down, the less accurate your report will end up being. In addition, if there has to be a delay before the report is written, use notes, not just your memory. Make sure that you read other reports that have already been written to refresh your recollection, and be sure to include everything that happened. There is no way to know when a tidbit that seems unimportant now might become a critical piece of information in the future.

Somewhat related to this is the fact that your report must be complete. You should answer the six W's: who, what, where, when, why, and how.⁶ For reports in uncomplicated cases, you should make sure your report thoroughly answers three questions: what was my reasonable suspicion for the stop, what was my probable cause for the search and/or the arrest, and what evidence is there that meets all the elements of the crime charged? If you focus on those three questions and answer them thoroughly, the result will be a well-written complete report.

On the other hand, if you don't answer those three questions completely, the D.A.'s office will probably plead your case down to less than it's worth. When prosecutors read your report, they are looking for the weaknesses of the case. If you haven't included sufficient justification for the stop, for example, they will assume the stop is bad. After all, if you had other reasons for the stop, why wouldn't you put them in your report? I know – I've been there.⁷

Part of being complete is being descriptive. The disadvantages of written reports are that facial expressions cannot be seen, voice tones cannot be heard, and gestures and other non-verbal behavior cannot be seen – unless you describe it in detail in your report. Also be descriptive when, for example, you are reporting the area where the drugs were found or how the suspect had possession of the drugs. Don't leave out information that you believe is inadmissible or not that important – let the prosecutor make that call.

One other warning: don't leave things out of your report because you know the report has to be turned over to the defense. You can't circumvent the discovery rules by hiding information from the prosecutor and defense lawyer. It's improper, unconstitutional, and bad things are guaranteed to happen. If for some reason you have a question about whether something should be included in your report, run it by me or one of the district attorneys.

Clarity is also very important in reports. Problems here include spelling⁸ and using police jargon.⁹ Putting things in chronological order is also important in most instances because it is important to know what you knew at what time since this can form the justification for later searches or seizures. Traffic stops are notorious for reports that lack clarity. I can't tell you the number of times I have read a report about a traffic stop that isn't clear about where each person was sitting in the car or even worse, refers to the suspects as "suspect 1" and "suspect 2" so that I have to keep going back and cross-referencing a

⁶ I am aware "how" does not start with a "w" but it does end with one. Call it the 5 W's and the 1 H if you prefer – just include them in your reports.

⁷ This is NOT a criticism of the District Attorney's office. Regardless of how good a prosecutor is, I have yet to meet one who could read minds. If it ain't in the report, it didn't happen as far as they know.

⁸ Two real life examples that come to mind: A report on an Assault By Strangulation that kept saying that the suspect was choking the victim, and a report of a suspect wearing a green collard shirt. I'm not making that up.

⁹ On one hand, macho phrases that work when speaking to fellow officers don't fly that great with non-police persons, e.g., I grabbed the subject and threw him on the ground, where I clubbed him with my nightstick." Attempts to be politically correct, on the other hand, can go too far. Saying that you "escorted" the perp to the ground is a little over the top.

number with a name. Please – for the sanity of everyone who will later read your report – refer to your suspects by last name if they are identified.¹⁰

Finally, be fair and objective when writing your report. Report what happened impartially and unemotionally with an unbiased outlook. Include all the facts that are relevant and don't omit facts that aren't favorable to the case. Fairness really goes hand in hand with accuracy which completes our report writing circle of life.

I hate paperwork as much as the next guy, but I guarantee that if you spend time to make sure that your report is accurate, complete, clear, and objective, it will save you time in the long run. You won't find yourself in court as often, and when you do have to go to court, you will have already laid the foundation for a successful prosecution with a well written report. I would have more to say about this, but I want to get back to watching "World's Wildest Police Videos Featuring High Speed Chases of High Class Ladies." It's on the FOX network – go figure.



Smith, Rodgers & Strickland PLLC

provides 24-hour real-time legal support for client law enforcement agencies.

“The materials on this website are instructional only, and do not constitute legal advice or create an attorney-client relationship. Readers should consult in-house counsel or city/county attorneys for advice and guidance on specific legal issues and applications. Clients of SR&S may of course contact the firm’s 24-hour switchboard for immediate legal consultation in real-time.”

¹⁰ It should go without saying, but for the benefit of our friends in the property crimes office, if two suspects have the same last name, please identify them with first and last name.