

Prosecutors and the Media: It's Better Than You Think

BY JOSH MARQUIS

IN 2003 THE USE OF THE INTERNET to exploit and actively harm children was growing in the United States. Before the advent of Internet Crimes Against Children (ICAC) programs, law enforcement was left with sting operations that relied on mail and phone calls. Proving specific intent was often difficult. Prosecutors were concerned about claims of entrapment and the ethical use of a child's photo sent by undercover officers to a suspected child molester.

In 2004 Investigative Reporter Lisa Fletcher, using many of the same guidelines law enforcement would follow to build her case, hatched her own plan. Acting on her own, without direction from any government agency, she posted photographs of herself at age 13 on Internet chat rooms assuming the name "Kelsey Cole" and displaying the trusting behavior that predators have learned to exploit. In order to prove that the would-be molesters couldn't claim they were acting on a lark, she actively corresponded with two middle aged men—one from New York, the other from Nevada. Fletcher used tracking software and a screen snapshot program, as well as printouts, to keep meticulous records of her Internet chats. There was to be no question that she was neither leading the suspects nor entrapping them. Eventually both made plans to meet with "13-year-old Kelsey" in Phoenix.

With transcripts of their Internet chats in hand,

Fletcher waited at each of the designated meeting places. With cameras rolling she called the man from New York by name, he responded and she said, "I'm the 13-year-old you came to Phoenix to have sex with."

It was a similar situation with the other predator—both caught on camera. The men were not prevented from returning to their respective states because Fletcher was *not* acting as an agent of the state but knew the rules of law enforcement. There were no police waiting to ambush the suspects, but early on Fletcher anticipated the outcome. All chats were done on a separate laptop, not connected to her company's server.

Shortly after her investigation aired, the Maricopa County Prosecutor's Office subpoenaed Fletcher's laptop and everything contained on the tracking software. The predator from New York was indicted and convicted of felony sex crimes. Although the Arizona Supreme Court overturned the conviction because Fletcher wasn't acting as a police officer, the point was made and network TV shows like *To Catch a Predator* became very popular. Fletcher won one of the highest honors in journalism—the Edward R. Murrow Award—for her groundbreaking work.

At its annual meeting in Portland, Oregon, in the summer of 2007 NDAA even awarded NBC's Chris Hansen with its 2007 Media Award for his work in the *To Catch a Predator* series.

Joshua Marquis has been the District Attorney in Astoria (Clatsop County), Oregon, since 1994 and on NDAA's Board of Directors since 1997. He currently is co-chair of the Media Committee and serves on the Executive Committee. He was the first recipient of NDAA's "Pro-Oscar" award for his numerous television appearances.

What exactly is the proper and ethical relationship between law enforcement, and more particularly, prosecutors and the press? With the rise in the use of the Internet and instant communications, print journalism, while still vital, has taken a back seat to the more immediate and visual mediums of TV and Web sites.

Historically those of us on the People's side of the counsel table have looked at best with suspicion, if not outright hostility, towards the media—particularly the broadcast media. The traditional view is that most reporters' sympathies lie with the accused and that defense attorneys will almost always get the lion's share of attention.

But that is not necessarily true and when true, has largely been because of the unwillingness or abdication of contact with the media by prosecutors who also have discouraged their investigators and police agencies from cooperating. Often the fear is that the case will be tried before trial on the courthouse steps and that jurors will be unfairly influenced. While these are reasonable concerns, a pro-active approach and understanding and a more open attitude by prosecutors can often result in a far better educated public about the true roles of the parties in America's criminal justice system.

"It's easy to win in the courtroom and lose in the court of public opinion," says Fletcher. "Even when you're trying to safeguard your case and operate in its best interest, remember that the community is important too and needs to hear substantive information from the people they trust. The reporter is not your end point. He or she is your conduit to the public."

ABC-TV established a Law & Justice Unit at its New York network headquarters in 1997 and NDAA has maintained ties with reporters and producers from that unit with the result that "the rest of the story" gets told more often. ABC President David Westin is an attorney himself and understood that hiring journalists with special understanding of the legal system added a much broader dimension to reporting on crime and justice



LISA FLETCHER, ABC NEWS
PHOTO BY PAUL MARKOH
PHOTOGRAPHY

issues.

It's no accident that ABC did devastating exposes of the myths surrounding the conviction of cop-killer Abu Jamal in Philadelphia and other cases where "legacy" print journalists had swallowed the defense line hook and sinker.

In an effort to explain what the press *really* does and how there can be ethical and mutually beneficial relationships, Fletcher has been sitting down with local prosecutors at law enforcement conferences. She transparently answers questions and works to hammer out the best path for relationships that serve the public interest.

Fletcher is a Peabody winning journalist who graduated from the University of Oregon's Journalism School in 1991. Her career began as an anchor and investigative reporter in Bend, Oregon, and Eugene before re-launching one of the nation's

most notable investigative units in the country in Phoenix, Arizona, in 2002. While in Phoenix she also anchored weekend news coverage and hosted a Sunday morning political talk show that often featured guests like Senators John McCain and Jon Kyl along with high ranking members of law enforcement. In 2007 Fletcher joined ABC Network News as a national correspondent.

Fletcher received one of journalism's most prestigious awards, the George Foster Peabody, in 2007 for her expose on dangerously lax security at Phoenix's Sky Harbor airport.

When Fletcher speaks at law enforcement conferences it's clear she knows the ropes. Her career is full of award-winning investigations that artfully navigate the intersection of law enforcement and the press.

Fletcher developed a trusting relationship with a county medical examiner (M.E.) and exposed a defective vehicle seatbelt system. The M.E. confided in Fletcher that a driver was ejected through the rear window of her vehicle and killed in an accident. Initially it appeared she wasn't wearing a seat belt. In fact the seat belt slipped under the seat recline lever. Upon stopping, the seat would drop back—launching the occupant out the back

window. Through National Highway Traffic Safety Administration records Fletcher collected compelling evidence. The response to the story was overwhelming. Exposing the defect undoubtedly saved lives. The trust built between the medical examiner and Fletcher paid off.

“Unfortunately there’s an opinion among some members of law enforcement that all journalists are after dirt,” Fletcher explained. “Truth is, there are some out there—we all know one or two—but most of us aren’t like that. The common agenda we share is to get a good story. And that’s done only through good relationships. Men and women in law enforcement are trained to make determinations about people based



Above: Fletcher accepting 2009 Genesis Award on behalf of ABC World News



Left: Photo of Fletcher as 13-year-old.

on many factors. I encourage members of law enforcement to use those skills to make determinations about the members of the media they want to work with. Make a choice to find journalists you trust.”

Oregon has one of the best funded Indigent Defense programs in the country. Fletcher had heard complaints of abuse so she gathered the billing records of high-profile defense attorneys. One happened to be running against an incumbent district attorney. While the names and details of representation were redacted, the hours billed and dates claimed were not. Sitting in her living room and reviewing the billing records for hours, Fletcher suspected that the lawyer was defrauding taxpayers. He often billed more than 12 hours a day, in some cases charging for court time on legal holidays, and on at least one day billed more than 24 hours in a single day. Her award-winning investigation prompted the Secretary of State’s Office to complete a critical audit of parts of that state’s indigent defense program. The lawyer withdrew from the campaign, citing the negative publicity.

But prosecutors need to be ready to answer tough questions as well and in one CLE session for the Idaho

Prosecuting Attorneys Association Fletcher ran through a mock interview with a classically defensive prosecutor. The ensuing exchange—which drew laughter from the assembled prosecutors—nonetheless highlighted the need for the lawyers who argue for the victims and the community to be as forthcoming as they possibly can. “There’s definitely a learning curve. Some in law enforcement are conditioned to shut the media out and act solely as gatekeepers. Fletcher explained. “ I find this happens because no journalist has ever taken the time to have an honest conversation that sets boundaries and defines expectations. Once prosecutors identify members of the press with whom they can develop trusting, professional relationships, they discover a whole new way to communicate that benefits both victims *and* the public at large.”

Fletcher also explained that journalists have ethics as well, and that a reporter with whom a prosecutor has developed a relationship of trust and respect can be counted on to withhold information that would jeopardize an investigation or endanger the possibility of a defendant receiving a fair trial.

“Sometimes the information I receive is on background or off the record to move me in the right direction,” says Fletcher. “Other times it’s an on-camera interview to convey important information. In every case it’s an officer or prosecutor that feels confident enough to trust me to accurately represent their position or take sensitive information and turn it into something that serves the public good. These relationships take work, but are worth it. Trust me, I don’t compare myself to law enforcement officers, and journalists have no business trying to act like them, but at the end of the day we both want the same thing: to flush out the bad guys, expose danger and wrongdoing and go to sleep at night knowing we sought the truth without compromising our standards.”

With budgets shrinking precipitously, prosecutors are being asked to bear the brunt of many “cost-saving” measures that in the view of many of us—and much of the public when they learn what is happening—actually endanger the public safety. *US Today* recently ran a lead piece on their editorial page warning of the long-term costs of letting criminals out to save money at a later cost that might be incalculable.

As the news business moves even faster, grows more competitive with Internet “journalism”—some of which

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lacks the standards and accountability of network TV and legacy newspapers—it is all the more critical that prosecutors reach out to journalists like Fletcher who have an open mind and are looking for an interesting and compelling story to tell.

I met Fletcher in 1991 when I was the chief deputy district attorney in Deschutes County (Bend), Oregon and she was the local anchor. We have stayed in touch as she moved up the ladder of her highly competitive business, but I have always found her to be a receptive ear for a good story and sometimes a reality check on what I am advocating as one of the founding members of NDAA's Media Committee. Co-Chair Ray Larson of Lexington, Kentucky, walks the walk with his own regular radio show *American DA Live* and probably has the most colorful, informative, and entertaining Web site of any prosecutor in America: www.lexingtonprosecutor.com.

Prosecutors' sole allegiance is to the truth. As I have

traveled to more than a dozen states to talk about the nexus of media and justice, I continue to learn how much progress there is to make in getting the word out about what we do, why we do it, and the real roles of the various players in the criminal justice system.

Reaching out to members of the fourth estate is as critical as establishing good relationships with our local community partners outside the justice system. In this Internet age where something local can become national in literally minutes we need to take every opportunity we can.

Fletcher welcomes story ideas from all members of the justice system and can be reached directly at lisa.fletcher@abcnews.com or on her Facebook page at "Lisa Fletcher." (Yes Virginia, so-called social-networking media are now part of the mass media as much as weekly newspapers.)

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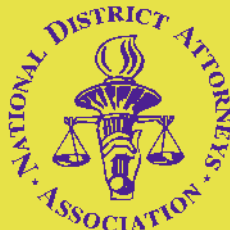
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