ABA Standard for Criminal Justice, Prosecution and Defense Functions

[Prosecution] Standard 3-3.11 Disclosure of Evidence by the Prosecutor

(a) A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

(b) A prosecutor should not fail to make a reasonably diligent effort to comply with a legally proper discovery request.

(c) A prosecutor should not intentionally avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused.

Commentary

Withholding Evidence of Innocence

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the accused is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence, including consideration of exculpatory evidence known to the prosecution. This obligation, which is virtually identical to that imposed by ABA model ethical codes, goes beyond the corollary duty imposed upon prosecutors by constitutional law. The National District Attorneys Association similarly requires prosecutors to “disclose the existence or nature of exculpatory evidence pertinent to the defense.”

Compliance with Discovery Request

The development of discovery procedures in criminal cases entails obligations on the part of prosecutors to seek diligently and in good faith to make the procedures function effectively. Prosecutors should not compel defense counsel to resort to a court order for discovery in order to harass the defense, make discovery more costly, or obstruct the flow of information when the prosecutor knows the information sought is discoverable. Where there is no obligation to produce that which is sought in a discovery request, however, a response which makes this point is in compliance with this Standard. Nonetheless, independent of any rules or statutes making prosecution evidence available to discovery processes, many experienced prosecutors have habitually disclosed most, if not all, of their evidence to defense counsel. This practice, it is believed, often leads to guilty pleas in cases that would otherwise be tried. A defense preview of a strong prosecution case, for example, frequently strengthens the posture of a defense lawyer who is trying to persuade the defendant that a guilty plea is in the defendant's best interest. Voluntary disclosure also serves to open areas in which the parties can stipulate to undisputed or other facts for which a courtroom contest is a waste of time.

Intentional Ignorance of Facts
Just as it is unprofessional for defense counsel to adopt the tactic of remaining intentionally ignorant of relevant facts known to the accused in order to provide a "free hand" in the client's defense, it is similarly unprofessional for the prosecutor to engage in a comparable tactic. A prosecutor may not properly refrain from investigation in order to avoid coming into possession of evidence that may weaken the prosecution's case, independent of whether disclosure to the defense may be required. The duty of the prosecutor is to acquire all the relevant evidence without regard to its impact on the success of the prosecution.