

[Talking to Witnesses: How a Criminal Defense Investigator Deals with Rejection](http://pursuitmag.com)
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TALKING TO WITNESSES



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EDITOR'S MESSAGE



Witnesses in criminal cases sometimes refuse to talk to investigators. It's disappointing, but hey—that's life. Here's how I deal with it.

by Hal Humphreys

In a criminal case, the defense always starts from a disadvantage. From resources to authority, the defense almost always begins a case from the back of their heels. The state has police, district attorneys, DA investigators, crime labs, experts, warrants, badges, and authority, whether actual or perceived.

The defense has a lawyer.

That lawyer may, in the best of circumstances, be able to hire investigators, independent labs, and experts. They may be able to issue subpoenas. But often, they are crippled by lack of funding, time, and authority.

Subpoenas for defense witnesses are routinely denied. Requests for discovery are slow-walked. Information, required information, gets delivered last minute in varying degrees of usability. The state has to provide certain information, but they don't have a requirement to provide it in an organized or even usable format. They just have to provide it, such as it is.

We defense investigators spend a goodly portion of our billable hours trying to unravel raw code and proprietary video formats. It's a time sink—and therefore, a money sink—but it's what has to be done. We cobble together resources, call in chits, and do the best we can to sort and parse and organize.

Our counterparts on the prosecution side are police. When it comes to resources and authority, we are not equals. Police have a badge. They have the full force of the state behind them. Police use proprietary video codecs, players for which they alone have access. Police have forensic computer and cell phone labs, some of which use technology that is expressly unavailable to private investigators.

Defense investigators have curiosity, charm, and good looks. No badge. No authority. Just a desire to suss out facts and understand the case.

It is this understanding, so very crucial to the defense, that drives me as an investigator.

"I have a deep sense of empathy for witnesses ... By the time I introduce myself to a witness, I usually have a sense of who they are and, quite often, a notion that under another set of circumstances, we would probably be fast friends." — Hal Humphreys

When I approach witnesses, regardless of which "side" they may be on, I do so with a desire to understand. As an investigator, I don't have an allegiance to a particular party. I have a 100% allegiance to the facts. That's it. Nothing more.

We are tasked with providing our clients with as many facts as we can identify so the attorneys can be as informed as possible prior to trial. This is the heart of our work. Finding facts.

Facts can be good. Facts can be bad. Facts just are. The attorney, our client, can address those facts in any way they choose, but they MUST know as many as possible—good and bad—in order to litigate a case effectively, equitably, and fairly.

I have a deep sense of empathy for witnesses. By the time I make the first approach, I've often gotten to know the witness through background information, social media research, and other means of open-source and readily available information. I read news reports. I study public Facebook posts. I pore through Instagram. I read Twitter posts. By the time I introduce myself to

a witness, I usually have a sense of who they are and, quite often, a notion that under another set of circumstances, we would probably be fast friends.

Often, we share political views. Often, we like the same kinds of things. If it weren't for the unfortunate circumstance that compels our meeting, we'd have a lot of fun and agreeable things about which to chat. So in my peculiar version of naïveté, I often have a sinking feeling when witnesses refuse to talk.

I've long since stopped assuming that any refusal to answer my questions is personal. I do not take the rejection as a rejection of me. I see it as a rejection of the "side" for which I'm employed. Regardless, I always feel a deep disappointment when I realize a declining witness has no interest in making sure the entirety of a story is clear to all parties. This is where my mind gets hung up. This is where I struggle.

In a perfect world, and I am under no delusion about the state of humanity, we would share the stories and inform the prosecution and defense as openly and fairly as possible. This is not a perfect world. Attorneys sometimes use tactics to insure the letter of the law is met, while the spirit withers. Witnesses are sometimes instructed, in no uncertain terms, that they DO NOT have to talk to anyone.

It's true. They don't have to talk to me.

For that matter, they aren't usually compelled to talk to the prosecution's investigators. Though it's much easier to say "no" to some dude with a PI license than it is to refuse an armed detective with a badge.

I'm comfortable with my lot as an investigator. I understand why a witness might not want to talk to me. I still find it disappointing.

But hey—that's life.