

BARGAINING JUSTICE

Officers with convictions – which might have cost them their careers in other states – can exploit weaknesses in Minnesota’s licensing rules to keep their jobs.

By Jennifer Bjorhus (<http://www.startribune.com/x/34031274/>) and MaryJo Webster
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The license plate on Fred Bruno's black Acura says it all: COPLAW1.

Whether it's a fatal shooting on the job or a DWI off duty, Minnesota police officers know that when they're the ones in trouble, Bruno is the fixer.

For decades, the Twin Cities attorney has defended law enforcement officers in some of the state's ugliest misconduct cases — and anything else that could threaten their badges: bar brawls, domestic disputes, repeat drunken driving arrests. At 61, Bruno figures he has handled hundreds of police cases, and never lost a case involving on-duty conduct.

"He's the best in the business," said Lt. Bob Kroll, head of the union that represents Minneapolis police officers.

Bruno is proud of his record. At the same time, his success highlights the way law enforcement officers can take advantage of weaknesses in Minnesota's police licensing rules to keep their jobs — even when convicted of crimes that might cost them their careers in other states.

A Star Tribune review of court records and documents from Minnesota's police licensing agency, known as the POST Board, found more than 500 current or former officers who have been convicted of crimes since 1995. Just 126 of those officers were ever disciplined by the licensing board. More than 140 are on duty in Minnesota today.

One reason is the resourceful way they navigated the legal system. The Star Tribune found 301 cases that started with a felony or gross misdemeanor charge — charges that would automatically trigger either license revocation or a review by the POST Board. More than one-third of those cases wound up as misdemeanor convictions — with no discipline by the board.

In addition, scores of other officers were able to reduce their charges to petty misdemeanors or get them dismissed entirely, ensuring that their crimes never even reached the POST Board's purview.

Of course, the same courthouse strategies are available to any citizen charged with a crime. But criminologist Samuel Walker, the author of more than a dozen books on police accountability, said police are simply better organized to get higher quality, more motivated legal representation to save their careers.

“Because the stakes are so high, the attorney is going to be far more focused and aggressive to get the better deal,” Walker said. And, he said, they can capitalize on a deep-seated cultural bias in the criminal justice system that tilts in favor of law enforcement.

Whether conviction rates for police are lower than for the general public is unclear; the Star Tribune couldn’t calculate the rate for officers because Minnesota’s court administrators would not provide the necessary dismissal data.

Bruno agrees that peace officers should be held to a higher standard. But they are not, he said in an interview, because their cases go to the same civilian courts that handle everyone else.

“They are not being prosecuted in military court or cop court, they’re being prosecuted in civilian court,” Bruno said. “The truth is a lot of civilians get really great deals because they have good lawyers or because they’re pathetic or they’re disadvantaged ... and so cops should be given the same privileges.”

Ingrid Bergman

Dozens of criminal defense attorneys across Minnesota take police cases. But in the Star Tribune’s review of court records, no lawyer shows up more often than Bruno.

That’s likely because officers of the Minneapolis Police Department used him exclusively from 2002 to 2016, before the department joined the Minnesota Police and Peace Officers Association’s legal defense fund. Now Bruno sits on a panel of 14 criminal defense lawyers — an elite corps of attorneys such as Paul Rogosheske, Peter Wold, Earl Gray and Kevin Short.

Bruno's client roster reads like a roll call of headliners: Dustin Schwarze, the Minneapolis police officer who shot Jamar Clark in 2016; Bradley Schnickel, an ex-Minneapolis officer caught luring teen girls into sex via Facebook and Skype; and Minneapolis police officer Jason Andersen, who fatally shot teenager Fong Lee during a foot chase in 2006.

His latest cases include Minneapolis police officer Matthew Harrity, who was behind the wheel on the night officer Mohamed Noor shot Justine Damond; and Minneapolis police officer Efrem Hamilton, who was off duty but in uniform last year when he shot into a BMW full of young people trying to drive away from a late-night fight near Target Field. Hamilton has been charged with second-degree assault and intentional discharge of a firearm, both felonies.

Not long ago, Bruno took the case of a man who, at the time, was a Hennepin County sheriff's deputy charged with stalking an ex-girlfriend. He had flooded her Facebook page and phone with messages begging to see her and saying he knew her whereabouts, despite her pleas to stop. The woman testified that she was so fearful at work that colleagues escorted her to her car.

In the courtroom, Bruno came across as affable and bookish — thick binders under his arms, reading glasses and hearing aid at hand. Hoping to convince the jury that the deputy was simply heartsick and acting on a basic human emotion, he played a 1966 film clip of Ingrid Bergman. She plays a jilted woman, crumbling emotionally as she frantically tries to reach her ex-lover on the phone.

When the clip ended, Bruno addressed the ex-girlfriend. "He loved you and he wanted to get back together with you," he said.

Assistant Dakota County Attorney Jessica Bierwerth, who prosecuted the case, said Bruno's win had less to do with the theatrical gambit than the fact that the jury, she learned, decided that the deputy's firestorm of messages was too brief to constitute harassment.

The court reporter told him Ingrid Bergman was his best witness, Bruno said.

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Flash and sizzle

Bruno was born and raised in Providence, R.I., the middle of six children who grew up hearing tales of the mob. The old mill town was headquarters for a ruthless crime family run by mafia boss Raymond Patriarca, and Bruno's father, an OB-GYN surgeon, was the physician for Patriarca's wife.

"You don't [bill] a guy like that," Bruno recalled. "But every Christmas, religiously, Raymond would send my dad a bottle of Chivas Regal Royal Salute."

After graduating from Stanford University and St. Louis University School of Law, Bruno landed in Minnesota in 1980 to run a now-defunct legal clinic in Richfield.

His first police client was a Mound officer caught stealing drugs from an evidence locker; Bruno lost on appeal, but the "flash and sizzle" of winning at the trial level left an impression.

Minneapolis defense lawyer Julie Loftus Nelson, who worked with Bruno for years, said her mentor never got complacent.

"He can outlawyer prosecutors, whether they are assistant county attorneys or city attorneys," she said.

Of course all good criminal defense lawyers know how to protect their clients, and the tools are numerous: plea bargains, diversion programs, stays of adjudication, stays of imposition — even convincing the prosecutor there's insufficient evidence to charge the case.

Bruno likes a deal known as a continuance for dismissal. There's no guilty plea and no conviction, and when the defendant completes the judge's conditions, such as probation, the entire case goes away.

That's what Bruno got for a Minneapolis police officer arrested last summer and charged with domestic assault after police reports said he hit his wife and pulled her hair. A transcript of her terrified 911 call reveals her running away from their minivan, yelling: "He's gonna kill me!"



ELIZABETH FLORES, STAR TRIBUNE

DEAL BROKER: Lawyer Fred Bruno, with his client Brian R. Johnson, said, "Civilians get really great deals ... and so cops should be given the same privileges."

The officer got six months probation. He was arrested again this year for interfering with a 911 call and two counts of domestic assault; the victim did not cooperate with prosecutors, and all three charges were continued for dismissal. This time the officer got one year probation.^{[P]_{SEP}}

Alternatively, lawyers can bargain a client's charge down to misdemeanor disorderly conduct, an offense Bruno calls "a great garbage can of criminal behavior." A key advantage: The POST Board doesn't issue discipline for them.

The system has human variables as well, including an individual judge's sense of justice and the professional judgment of a county prosecutor.

Minnesota is one of just three states where judges have the authority to set the final level of a crime at sentencing, according to Sherburne County District Judge Mary Yunker.

A gross misdemeanor, for example, can become a misdemeanor at sentencing. That's because decades ago, the Legislature decided judges need discretion to consider collateral consequences for defendants — for example, an immigrant with a family who could face deportation over a felony.

Are Minnesota judges more lenient on police officers? Yunker doesn't think so. She's inclined to be stricter with someone who is better educated and wears a uniform because they carry a certain level of responsibility, she said. On the other hand, she added, "They could lose their career of 20 years."

Teresa Nelson, interim executive director of the ACLU of Minnesota, cited another factor. In her experience, she said, prosecutors hesitate to come down hard on police officers and sheriff's deputies because they have to preserve their relationship with them to do their jobs.

"There's an incentive, or there's a pressure, to give officers the benefit of the doubt and to arrange soft landings," Nelson said.

Robert Small, executive director of the Minnesota County Attorneys Association and a former judge, said he has seen no evidence to support Nelson's theory, but didn't challenge it. "I just don't know," Small said.

As Bruno sees it, judges used to be sympathetic to officers, in what he called the "Golden Era," because they both deal constantly with the damage caused by dangerous defendants. But that has changed since the summer of 2014, when police in Ferguson, Mo., fatally shot Michael Brown, a turning point in debate about excessive police force.

"Now it's decidedly worse for cops than civilians, because for a public official to appear light on cops could be fatal to their career," Bruno said.

Asleep at the wheel

Of course, judges sometimes just go along with the deal the lawyers reach. That's what happened with St. Paul police Sgt. Tom Arnold's second DWI.

In 2007, Arnold was arrested for drunken driving after he crashed his truck into a boulder in Little Canada while driving home. He refused to take a Breathalyzer test and was charged with gross misdemeanor test refusal. That charge would trigger a review by the POST Board, but Arnold and his attorney bargained it away in favor of a misdemeanor drunken driving.

Five years later, officers found Arnold in a drunken slumber behind the wheel of his Silverado one night in the drive-through of a Little Canada McDonald's. This time Bruno represented him. Ramsey County District Judge Joy Bartscher agreed to the plea deal Bruno recommended: Dismiss the gross misdemeanor for refusing to submit to a chemical test and Arnold would plead guilty to drunken driving with a stay of imposition. The stay would reduce the gross misdemeanor to a misdemeanor if Arnold successfully completed two years of probation, again avoiding POST Board review.

Arnold has been disciplined at work at least 15 times since 1990 for infractions such as excessive force, improper conduct, unbecoming conduct and preventable accidents, personnel records show. He declined to be interviewed.

Should he still have a badge?

“Without a doubt,” said Bruno. “He is a great cop and a caring and considerate human.”

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