

BASICS OF INVESTIGATING AND DEFENDING CHILD SEXUAL ASSAULT CASES

Countering “Why would we be here if
nothing happened?”

INVESTIGATION OF OTHER CASES VS. INVESTIGATION OF CHILD SEX CASES

IS THE SAME EXCEPT

1. Often will be no corroboration of complainant's claim AND
2. jurors start from presumption of believing complainant.

INVESTIGATION OF OTHER CASES VS. INVESTIGATION OF CHILD SEX CASES

In cases with child/teen complainants, he/she may be:

- ◉ **Led by overzealous adult influence.**
- ◉ **Mistaken.**
- ◉ **Needing attention so untruthful.**
- ◉ **Needing to redirect focus of anger.**
- ◉ **Kid is having normal sexual curiosity, parents cannot deal.**
- ◉ **Truthful.**

INVESTIGATION OF OTHER CASES VS. INVESTIGATION OF CHILD SEX CASES

In response, prosecutors argue:

1. Why would victim lie?
2. Why would victim lie?
3. Why would victim lie?
4. Why would victim lie?
5. Besides, our sex assault expert says under oath the victim is a victim.

KEY: CIRCUMSTANCES OF DISCLOSURE

- ◉ **How do you find out about circumstances of disclosure?**

Forensic interview/recorded interview.
Transcript.

What questions were left unanswered?

What was not investigated?

What doesn't the interviewer know?

KEY: CIRCUMSTANCES OF DISCLOSURE

- How do you find out about circumstances of disclosure?

Forensic interview/recorded interview.

- 1. rules
- 2. narrative event practice - What does complainant talk about?
- 3. Everything after “Tell me why you’re here today?”
- 4. Anything else? (Fertile ground for other acts/alternative sources of sexual knowledge.)

KEY: CIRCUMSTANCES OF DISCLOSURE

- **How do you find out about circumstances of disclosure?**

What does client know about circumstances?

Relationship to child.

Time spent with child.

Photos.

KEY: CIRCUMSTANCES OF DISCLOSURE

- **How do you find out about circumstances of disclosure?**

Brainstorm

Family tree

Daily life

Classmates

Social media

interests

KEY: CIRCUMSTANCES OF DISCLOSURE

- ◉ How do you find out about circumstances of disclosure?

Discovery demands

- Shiffra motion.
- Demand for reports of mandatory reporters - Denis LR case 2004 WI App 51
- Just ask for it, under Brady. Brady v. Maryland, 373 U.S. 83 (1963).
- Bias is never collateral. State v. Williamson, 84 Wis. 2d 370, 383, 267 N.W.2d 337, 343 (1978) holds bias and improper motive of witness are never collateral.
- Good old 971.23(10)(e): Prosecutor “upon demand” must disclose “within a reasonable time before trial”. . . . [a]ny relevant written or recorded statements of a witness named” on a witness list.

KEY: CIRCUMSTANCES OF DISCLOSURE

- **How do you find out about circumstances of disclosure?**

Motions in Limine

- Other acts - She was in trouble so....”don’t be mad at me, be mad at him!”
- “motion to introduce facts” - context of life that you know would be helpful

KEY: CIRCUMSTANCES OF DISCLOSURE

- ◉ **How do you find out about circumstances of disclosure?**

Repeat all of the above.

Keep asking client.

Keep reviewing social media.

Think about complainant's daily life.

What do you know about the people around complainant?

KEY: CIRCUMSTANCES OF DISCLOSURE

By trial, you want to know:

- 1. What was child feeling in the minute, hour, day prior to the disclosure? What was going on? What, if anything, did anyone else know about child's status immediately prior to disclosure?**
- 2. Names of everyone who was told anything about the allegations by complainant. What was said.**
- 3. Names of everyone who was told anything about the allegations by ANYONE. What was said.**
- 4. What did the government do to corroborate a single thing?**

TRIAL

Jury Selection

Issue: Do you discuss current events?

#metoo, Kavanaugh, etc.

- You would have to be pretty tuned out during the last two years to not notice the number of accusations of abuse that women have made against men, especially men in powerful positions.
- And sometimes these accusations were made long ago, *but the women were not believed.*
- Some/many of these accusations are *valid* and *overdue*. I am sympathetic to this.
- So, here my client is accused of sexual assault. My client is innocent.
- So I want to share my concern with you: that you may enter this case thinking that the complainant should be believed over Mr. Client because she is claiming abuse.
- *Who here understands why I am concerned about that on behalf of my client?*

TRIAL

Jury Selection

Questions I have asked:

- ❑ When some people hear the charge in this case is 1st degree sexual assault of a child by an adult, they get a physical reaction? Pit in stomach, lump in throat, etc. Who felt that when the judge read the charge?
- ❑ Being a good citizen means paying taxes and serving on jury duty. Being a good citizen does not mean that you must vote for a certain candidate, that you must pay the same amount of taxes each year or that you must be a juror on a certain case. A good juror is the one who says "this case makes me feel uncomfortable and is the not right case for me." How many jurors feel this way about this case?

TRIAL

Jury Selection

Questions I have asked:

- ❑ Some people say a child might lie but not about serious things like sexual assault / other people say a child could lie even about serious things like sexual assault? Does anyone believe that it is highly unlikely that a child could lie about being sexually assaulted?
- ❑ Does anyone believe that a child could lie about being sexually assaulted? Why?
- ❑ Some people say they would like to see the police develop corroborating evidence when a child makes an accusation, others say a child's work is enough. Where do you stand?

TRIAL

Jury Selection

Questions I have asked:

- ❑ How can you tell if a child is telling the truth or telling a story about something she claims happened to her?
- ❑ Would it be easy or difficult for a child to convince a parent that she was touched?
- ❑ Would it be easy or difficult for a child to convince a police officer that she was touched?
- ❑ Would it be easy or difficult for a child to convince a jury that she was touched?
- ❑ Do you think it would be easy or hard to defend yourself against a false claim that you had inappropriately touched a young child? Why?

TRIAL

Jury Selection Questions I have asked:

- ❑ False accusations are usually hard to clear up. Why is that?
- ❑ How hard would it be to clear up false accusations of child molestation?
- ❑ How is it possible that an innocent person can be accused and brought to trial for a crime he did not commit?
- ❑ Some people believe that every accusation of sexual molestation of a child should be considered true. What do you believe?
- ❑ What would happen if every claim of child molestation was automatically considered true?

TRIAL

Jury Selection

Questions I have asked:

- ❑ Have you ever promised your children that if they said a person did something bad to them, that you would believe them no matter what?
- ❑ If a child tells a false story to a parent, do you think most children would continue to tell the story or would they admit that they made the story up? Why?
- ❑ If an adult reinforces a child's false story about being touched or sexually molested, what would happen?
- ❑ Has your child ever told you something that you believed then it turned out not to be true? Weren't you absolutely convinced your child was telling you the truth? How did it make you feel when it turned out your child had not been truthful to you?
- ❑ How would your friends and family members react if you sat on a child molestation jury and returned a verdict of not guilty?

TRIAL

CROSS OF COMPLAINANT

People are too scared of this.

You can be empathetic. Not because she is a victim, but because she is a kid who either had to lie or was mistaken.

Probe the context of the disclosure. What was going on for her in her life?

TRIAL

CROSS OF COMPLAINANT

Be respectful.

Recognize you will not have a Perry Mason moment where she will break down and admit that she was mistaken or lying.

TRIAL

CROSS OF COMPLAINANT

Develop the number of people she has told.
Disclosure witnesses. Law enforcement.
Forensic interviewer. Family. Friends.
Counselor. School. Medical.
She cannot change course now.
She is taking the easiest path.

TRIAL

CROSS OF COMPLAINANT

Develop the reinforcement of the initial disclosure.

Develop the attention, care, concern directed at her since disclosure.

TRIAL

CROSS OF COMPLAINANT

Develop possible alternative sources of sexual knowledge. Good touch/bad touch curriculum. Social media. Movie/TV/music. Friends. Prior allegations by friends, family or complainant.

TRIAL

CROSS OF COMPLAINANT

Develop the circumstances of the alleged act(s). Environment. Other people. Timing. Specifics of description.

What experiential details are lacking?

Do not ignore the alleged details. The details are where the case can be won.

TRIAL

DIRECT OF CLIENT

Standard witness preparation.

- ⦿ Tell the truth.
- ⦿ No overlapping voices.
- ⦿ Talk slowly.
- ⦿ Focus on lips of questioner, don't think of opening mouth until questioner's are shut.
- ⦿ Do I understand the question?
- ⦿ Why not to worry about getting cut off by questioner?
- ⦿ Breathe.

TRIAL

DIRECT OF CLIENT

Possible chapters in direct.

- ❑ Statement of innocence
- ❑ Reaction to testimony
- ❑ Employment, education, skills, military, church
- ❑ Important relationships
- ❑ History with complainant
- ❑ Arrest/locked-up

ONLY ONE THING TO REMEMBER

**What were the circumstances
that existed at the time the
allegations first entered the
word?**

Questions?

Travis Schwantes

414-227-5056

SchwantesT@opd.wi.gov

