

**AVOIDING THE UNJUST
ACQUITTAL: WHY WE LOSE
CASES WITH GOOD
EVIDENCE**

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Objectives

- ☐ Understand, Identify, and Overcome:
 - Common Defenses
 - Myths Associated with Child Crimes/Sex Crimes
 - Investigation Pitfalls
- ☐ Develop Better Practices
- ☐ Ensure all Evidence is Utilized to its Potential
- ☐ Obtain More Convictions

**Why We Don't Get Cases Charged,
Lose Cases, or Don't Get the
Sentences Deserved**

- ☐ Loss of skill/experience:
 - Burn Out
 - Lack of Passion
 - Fear of Failure/Bad Facts
 - Attrition
- ☐ Cultural Issues - how it's done
- ☐ Public Distrust of Cops and Government
 - Ferguson/Nifong
- ☐ Institutional Support/Lack of Resources

Common Defenses:

- ☐ Innocent?
 - Not Really a defense

- ☐ Defenses attempt to account for or explain evidence

- | | |
|---|--|
| ☐ Kid or Sexual Assault Victim is Lying/Evil | ☐ Bad Investigation <ul style="list-style-type: none">▪ Incomplete▪ Dirty/Bad/Lying Cops▪ Planted Evidence |
| ☐ Coaching <ul style="list-style-type: none">▪ Mom or Dad▪ Officer | ☐ SODDI |
| ☐ Kid is Suggestible | ☐ Attack the most serious charge <ul style="list-style-type: none">▪ Age of Child▪ No Penetration |

Mutual Exclusivity

- ☐ Two events cannot exist at the same time

- ☐ "Either it is or it is not"

- ☐ Good guy v. Bad guy

- ☐ US v. Them

False Dichotomies

- ☐ Recognize them in ourselves
- ☐ Types of Investigators
 - Preliminary
 - In Depth
- ☐ Black/White/Gray
- ☐ Director Comey - unconscious bias and hard truths
- ☐ Mental Shortcuts
- ☐ Truth Screen
- ☐ Inability to de-escalate
- ☐ Accept and Embrace Mistakes
 - Mistakes Dirty/Bad Cops?
- ☐ Television/Media

Our Job Is To Educate

- ☐ Educate the Public about the Real World (Real World visual)

Myths v. Reality

Molesters

Myth: "These Guys are only interested in little boys or little girls not adults."

In Reality

- Interested in Adults
- Not Gender Specific

Myth: If We Tell Kids to Beware of Strangers They will be Safe

Stranger Danger Does Happen



In Reality

- > Mom's Boyfriend
- > Step-Dad
- > Bio-Dad
- > Grandpa
- > Uncle
- > Cousin
- > Family Friend
- > Neighbor
- > Teacher



Myth: Molesters Were Molested Themselves

- > Studies Vary 20% to 40%
- > Leaves 80% to 60%
- > Offenders Lie

Offenses

Myth: All Abuse Happens in Private

In Reality:

- ▣ Abuse happens when others are present
 - Makes the victim feel the abuse is normal
 - Helps to conceal the abuse
 - If others don't say anything, why should I?
 - Grooms other potential victims

Myth: There will be physical evidence of Abuse

- ▣ Medical Evidence
- ▣ Physical Injury/Trauma
- ▣ DNA



In Reality:

- ▣ The vast majority of cases lack physical evidence

It's Normal to be Normal

In Reality: Physical Injury

- ☐ Offenders want to continue the abuse
 - Vulva Penetration
- ☐ The body heals very quickly
 - Within 24 hours
- ☐ The body heals completely
 - Scarring
 - Virginty test



In Reality: DNA

- ☐ Offenders want to continue the abuse
 - Clean up
- ☐ Offenders don't always ejaculate
- ☐ Can be difficult to locate
- ☐ Can be diluted
- ☐ Degrades quickly over time
 - 24 to 72 hours

Victims

Process of Victimization

1. Selection
2. Engagement
3. Grooming
4. Assault
5. Concealment

Selection

Offender Preferences

- >Sex
- >Age
- >Physical Appearance
- >Access
- >Vulnerable
- >The Child No One Will Believe

Engagement

Gain Trust and Access

- > Family
- > Teacher/Coach
- > Family Friend
- > Gifts
- > Forming a Special Relationship

Grooming

Breaking Down Physical Barriers

- > Hugging/Kissing
- > Tickling
- > Wrestling
- > Massages
- > Pornography
- > Sexual Discussion

Assault

- > If the offender is initially rebuffed – Return to Engagement and Grooming

Concealment

Keep secret acts secret – Don't tell

- > Authority Figure
- > Vulnerable Child
- > Shared Responsibility
- > Consequences
 - > Perceived/Real
- > Other

Victim Myths

Children Lie

Victim Myths

Children Imagine things that aren't real

Victim Myths

Children Can be Influenced - Kids coached

In Reality

- Reasons Children Lie
 - Get out of trouble
 - Benefit themselves
 - Help Others

In Reality

- Interview Techniques
 - Influenced/Coached
 - Language
 - Corroboration/Evidence
 - Sensory Perception
 - Lie
 - What does the child have to gain
 - What does the child have to lose
 - Imagined
 - Fun?
 - Help explain the world

Victim Myths

- ☐ Children Tell Right Away
 - Good Touch/Bad Touch

In Reality

- ☐ Children Feel Guilty
 - Shared Responsibility
- ☐ Scared
 - Will I be in Trouble?
 - How will parent/adult react?
- ☐ Embarrassed
- ☐ Relationship between the Victim and Offender
 - Who would believe me over him?
- ☐ Manipulated; Threatened; Bribed
- ☐ Doesn't know it's wrong
- ☐ Strength of Engagement

In Reality

Result:

DELAYED DISCLOSURE

When No Grooming/Engagement



In Reality

- ▣ Types of Disclosure
 - Purposeful
 - School Lesson
 - TV Program
 - Prompted
 - Parent/Teacher Asks
 - Accidental
 - Photos found
 - Injury

Victim Myths

- ▣ A Child Tells Everything the First Time

In Reality

- ▣ Kids tell little by little - Piecemeal Disclosure

In Reality

- ▣ May still under disclose
 - Males
 - Certain Acts

Victim Myths

- ▣ Real Victims don't recant

In Reality

- ▣ Disclosure disaster

In Reality

- ▣ Other parent supports the offender
 - Was financial support
 - Family suffers real consequences
 - Child is considered “bad”
 - Denial
 - Takes child to jail

In Reality

- ▣ Result:
 - Recant
 - Fail to cooperate
 - Under disclose

In Reality: Other Disclosure Issues

- ▣ Children react to abuse
 - Fight, Flight, or Freeze during abuse
 - Freeze
 - Dissociation
 - Not there
 - Fantasize
 - Protection
- ▣ Result:
 - Fantastic Disclosure

Victim Myths

- ☐ Victims behave a certain way
 - Hyper Sexualized
 - Withdrawn
 - Distrusting of Adults
 - Nightmares
 - Bed wetting
 - Poorly in school
 - Etc.

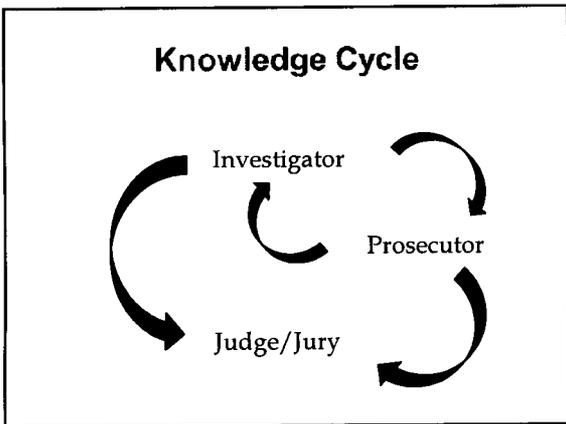
In Reality

Kids display a wide range of behaviors

Investigation Techniques

- ☐ Corroboration
 - Photos
 - Audio
 - Records
 - Pretext Calls
- ☐ Follow Through - Defense Shifts
- ☐ Confirmation Bias
- ☐ Common Sense is not so common

Presenting The Evidence



- ### Team Approach
- ▣ Get Prosecutors and Other Team Members Involved Early
 - Maximize Resources
 - Foundational Knowledge

 - ▣ Keep Investigators and Other Team Members Involved After Charging
 - Understand Weaknesses/Defenses

Develop a Theme and Theory

Argument  Defense

Are the Arguments Horses or Zebras (get a newer analogy)

Sign Posting/Road Mapping

Stacking Evidence

Remove Best Evidence

Adapt and Overcome

Embrace "Bad" Facts

- ☐ There are no good facts and bad facts
- ☐ There are only facts
- ☐ If a fact explains/demonstrates the real world then we can use it to our advantage

"Bad" Facts

- ☐ Recanting Victim
- ☐ Lying Victim
- ☐ No DNA
- ☐ No Medical Evidence
- ☐ No Confession

Questions

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