The Dirty Dozen

Lessons in sex crime investigation and prosecution learned primarily the hard way at the Mille Lacs County Attorney's Office

Presented by:

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An Introduction to Mille Lacs County

Population- 26,097 (2010 census), 14% of households below poverty level

Jurisdiction- 8 cities within the county, Trust Lands of Mille Lacs Band of Ojibwe Indians

Trust Lands- lands owned by the federal government and held in trust for tribes or individual Indians; this is NOT a reservation.

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An Introduction to Mille Lacs County

A look at the Mille Lacs County Attorney's Office

High Felony Levels

High Overall Volume

High Juvenile Volume

Attorney Caseloads

Jury Trials - high number of trials.

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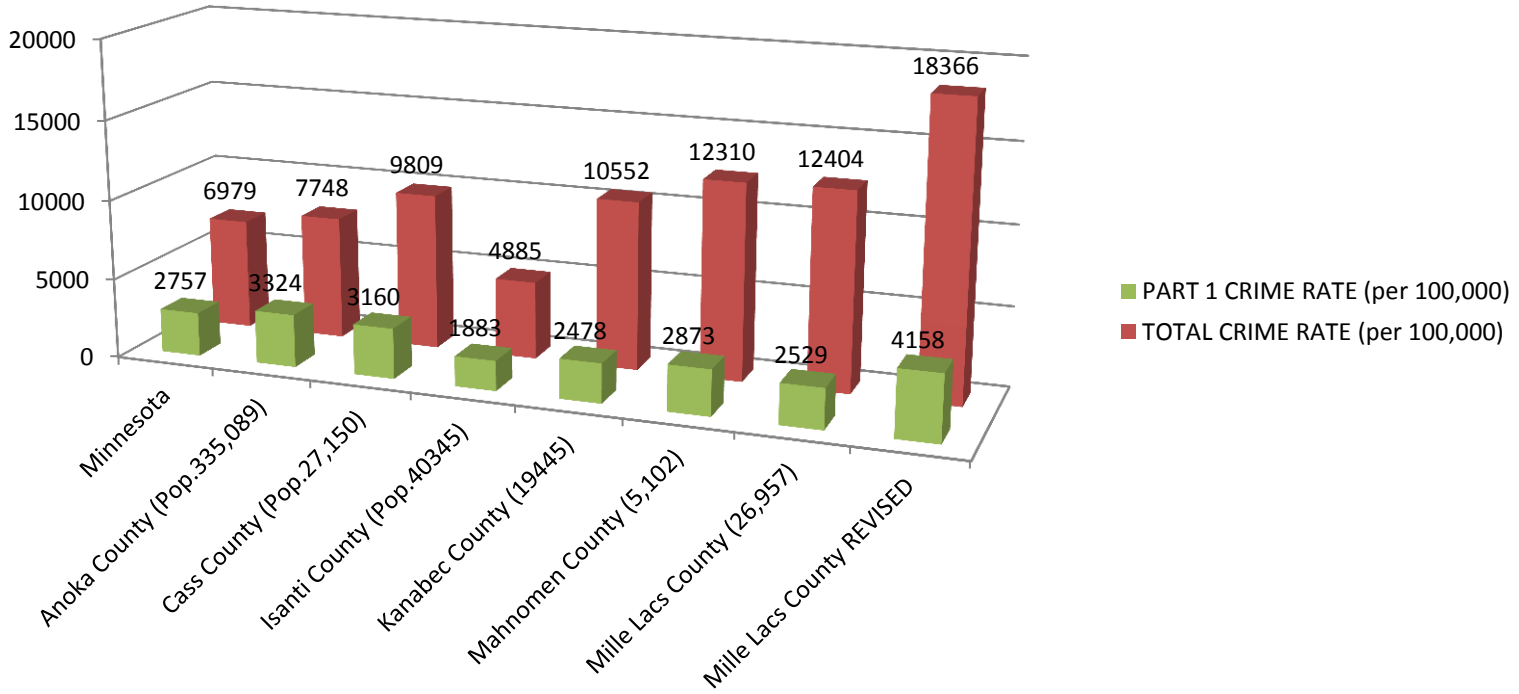
An Introduction to Mille Lacs County

Violent Crime Rate in Mille Lacs County vs. Other Neighboring Counties



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*REVISED is Mille Lacs County crime statistics including statistics reported by Mille Lacs Band Tribal Police Department in 2011.

Why are CSC cases so difficult?

http://thedailyshow.cc.com/videos/z2b627/the-fault-in-our-schools

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Lesson #1: The Investigation

"Believe the victim, unless and until, the investigation shows otherwise."

Some Facts to help you believe the victim:

- The estimate of intentionally false reports of child maltreatment for the entire United States in 2012 was 1.07%. Of the 26,364 reports of maltreatment in 2012, only 5 were characterized as false reports.

Actual research shows that as a whole, our society continues to under-react and under-estimate the scope of the problem.

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Source: Eight Common Myths About Child Sexual Abuse. The Leadership Council on Child Abuse & Interpersonal Violence

The Investigation Continued

- Every disclosure made prior to the extraordinary pressure placed upon the victim by a father or mother or anyone else to recant, is compelling evidence that the initial disclosure is true and accurate.
  - Victim tells story to mom, friends, medical examiner, forensic interviewer, school counselor, etc, etc.

These are all the same story, but each additional statement becomes an additional piece of evidence.

The inconsequential details that remain the same are the details that show the jury the statement is true.

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*Source AEquitas: Strategies, Issue #5, September 2011

The Investigation Continued

The report of the investigator is extremely important.

- It sets the tone for the case (1st impression)
- Let the prosecutor know your opinions while teaming the case, not in your report.
- Follow through with the entire investigation even if you believe the case won't be charged
- Corroboration is KEY

The Investigation Continued

Case example: Teenage girl reports that her father was physically abusive. At the end of the forensic interview, when interviewer asks if she is worried about anything else at home, she says that she is worried about her brother. She goes on to disclose that her brother is forcefully having sex with her when her parents aren't home.

Investigator Report – Dad as Suspect:

> "I spoke with *Defendant* in the driveway and explained the situation of allegations being made of domestic and malicious punishment."

> "*Defendant* was able to provide what I believed to be a reasonable explanation for all incidents which I questioned him. Taking into account *Defendant*'s explanation of the events it was determined that keeping *Defendant* in custody was not necessary."

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The Investigation Continued

Probable Cause for a crime does not disappear with information from a suspect!

The fact that there might be an innocent explanation for particular conduct does not prevent a finding of probable cause. State v. Hawkins, 622 N.W.2d 576 (Minn. 2011)

Probable Cause to Arrest = reasonably could have believed the crime had been committed by the person to be arrested.

The standard for arrest is NOT beyond a reasonable doubt.

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The Investigation Continued

MUST BE ABLE TO ROLE WITH WHATEVER COMES UP DURING THE INVESTIGATION

- Victim interview turns into suspect interview
- Physical abuse allegation turns into sexual abuse
- Parent of victim supports the abuser
- Victim too young to criminally charge

Lesson # 2: The Interrogation

[redacted]

[redacted]

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The Interrogation Cont.

ALWAYS interview/interrogate the Suspect – ALWAYS!!!

Significant Factors Identified as Contributors to Suspect's Decision to Confess:

- Suspect was blameless, child initiated the sexual contact
- Suspect cared more about the child than the child's parents
- Suspect would never force a child to do anything
- Sex act was only a small part of the whole relationship
- Desire to obtain treatment to control sexual attraction to children
- Interviewer understands why suspect is involved sexually with children
- Interviewer knew child was old enough to enjoy sexual contact

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*Understanding the Psychology of Child Molesters: A Key to Getting Confessions
Tim O'Connor, William Carson
The Police Chief, v. 72, no. 12, December 2005

The Interrogation Cont.

Dr. Anna Salter: “Truth, Lies, and Sex Offenders”

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The Interrogation Continued

"I can tell if someone is lying." No, you can't. We can't either. A jury definitely can't.

20 years of research on lying… and people rarely get above 60% accuracy when attempting to determine when someone is lying. Some groups were worse than pure chance. (Ekman, 1992)

Federal law enforcement officers examined were more confident than tested college students but were no more accurate. (DePaulo & Pfeifer, 1986)

"Niceness is a decision… not a character trait." (DeBecker, 1997)

FIND THE CIRCUMSTANTIAL PROOF!

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*Studies also referenced in the work and presentations of Dr. Anna Salter.

Lesson #3: Charging Decisions

Perpetrators are well aware of the general public's disbelief that sexual assault happens and capitalize on the flaws in the system.

Research indicates that criminal action was taken in only 24% of substantiated cases of child sexual assault.

(Finkelhor, 1983; Sauzier 1989)

Sometimes you need to charge difficult cases because it is the right thing to do!

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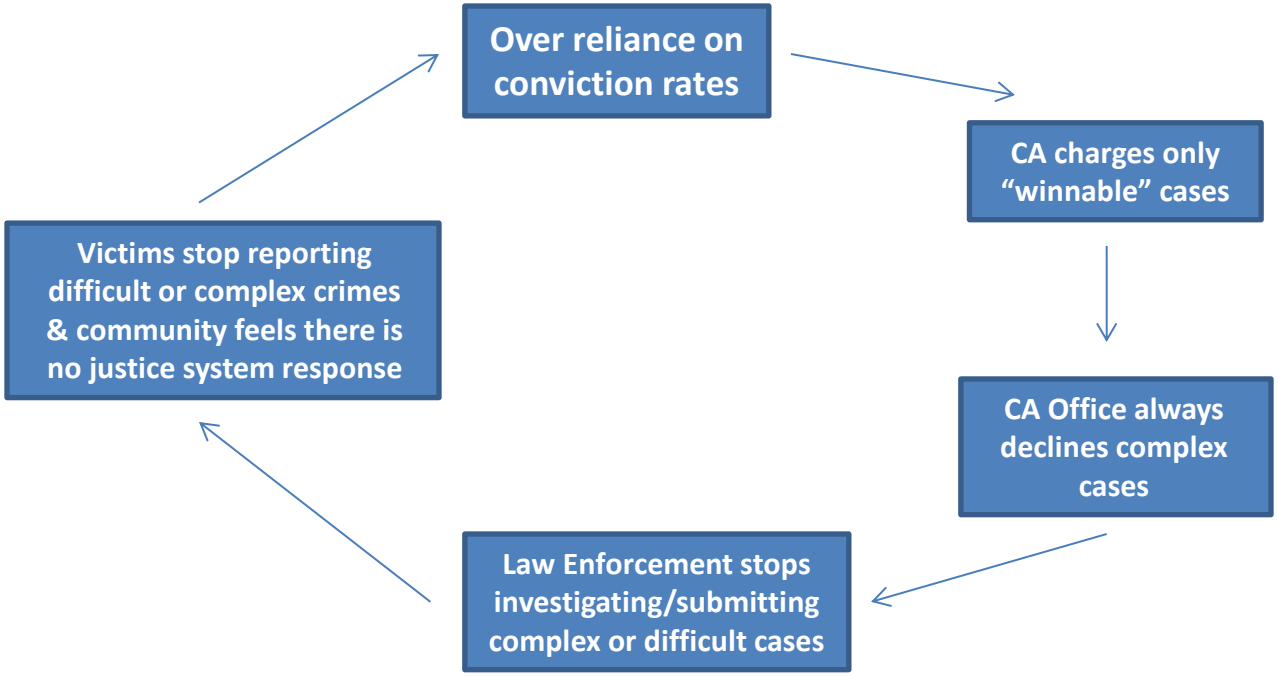
An Introduction to Mille Lacs County

What we **DO NOT** practice at the Mille Lacs County Attorney's Office



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*Source: Aequitas April 2014 Webinar Presentation, *Beyond Conviction Rates: Measuring Success in Sexual Assault Prosecutions*; Minnesota County Attorney's Association

Charging Decisions Cont.

"What happens if you can't charge? Why is the report/investigation still important?"

634.20 & Spriegl

Even the cases that do not result in immediate charges are important and may be used later.

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Lesson #4: The Juvenile Offender

How do you make a 13 year old an offender in the eyes of a judge or jury?

- Juveniles account for more that 35.6% of those who commit sex offenses against children.
- Juvenile sex offenders comprise more than 25% of all sex offenders and represent MORE THAN ONE THIRD of sex offenders against juvenile victims.
- Children who commit sex offenses are more likely than adult offenders to offend at school, offend in groups, and have more male and younger victims.
- Currently, it is estimated that juveniles account for up to one-fifth of all rapes and almost one-half of all cases of child molestation committed each year (Barbaree et al, 1993, Becker et al, 1993, Sickmund et al, 1997)
- Adolescents age 13 to 17 account for the vast majority of cases of rape and child molestation perpetrated by minors (Davis and Leitenberg,1987)

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Source: US Department of Justice Office of Juvenile Justice and Delinquency Prevention

The Juvenile Offender

What makes a juvenile offender different from an adult offender?

- Juveniles are more likely to offend in groups
- Juveniles are more likely to offend acquaintances
- Most serious offense is less likely to be rape and more likely to be sodomy or fondling
- More likely to have a male victim
- Juvenile offenders are much more likely to target young children as victims.

"Children younger than age 12 have about an equal likelihood of being victimized by juvenile and adult sex offenders, but adult offenders predominate among those who victimize teens."

(Finkelhor et al., 2009, p. 5)

Bottom Line: Juveniles constitute a substantial portion (more than one third) of those who commit sexual offenses against minors.

Any effort to prevent or intervene in sexual assault and molestation must address the risk that juvenile sex offenders pose on victims.

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The Juvenile Offender

Issues with investigation and prosecution with juvenile offenders

What is different about interviewing a child suspect?

What happens when your child victim turns into a perpetrator in the middle of a forensic interview?

What happens when your perpetrator becomes a victim or starts another case during an interrogation?

Our approach: get the information now and deal with the criminal case or charging later. This policy keeps the victim first and get the person the help they need, regardless of potential charges.

How do you cross examine a young child effectively?

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The Juvenile Offender: Interrogation

Not much research on the interrogation of children and adolescents, but we can apply some of the research on child victims and witnesses.

- Strong emphasis is placed on videotaping all forensic interviews with children.
- Developmental similarities between child suspects and victims suggest that adult interrogation techniques are not suitable for kids, particularly those under 15.
- Techniques such as assumption of guilt, pursuit of a single hypothesis, imagination requests, inviting speculation, and deliberate misleading of interviewees have resulted in false reports.

Our recommendation: get as much generalized information as possible. Dates, times, family information, school information, personal information, etc., keeping in mind the principles of a properly executed forensic interview. (Narrative practice is best, non-leading questions, etc.)

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*Noted research: The Police Interrogation of Child and Adolescents
Allison D. Redlich, Melissa Silverman, Julie Chen, Hans Steiner
Perspective in Law and Psychology
Volume 20, 2004, pp 107-125

Lesson 5: The Innocent Offender

CASE STUDY: State v. Gary Burnett

FACTS: Mother and Father are married with 2 young daughters, ages 6 and 3. Mother and father have a difficult relationship and are splitting up, mother alleges multiple instances of physical abuse toward her involving Father, some of those involving firearms. 6 year-old daughter completes a forensic interview with allegations at the time being physical abuse. She discloses that Father touched her "pee-pee" while they were in a camper and that father would touch her pee-pee with his pee-pee when they were alone at night with their clothes off. She also reported that white stuff would come out of father's pee-pee onto her leg, belly, and pee-pee and that this also happened in Father's semi-truck.

At trial, Father testifies that he is in US Army for four and a half years and was wounded twice while serving overseas and received two purple heart awards. Father states that one purple hears was for a gunshot wound to the chest and the other was for shrapnel that struck him causing hearing impairment. Father testified that he was medically discharged from the military on December 17, 2001 and used is veteran's benefits to go to college.

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Lesson 5: The Innocent Offender

JURY TRIAL VERDICT: hung jury.

After the trial….

- Defendant's mother states that Father had never served in the military and had, in fact, lost his hearing at a young age.
- Law enforcement investigator is unable to locate any records for Father for any branch of the US military. Additionally the National Personnel Records Center (National Archives) confirmed that there were no military records for Father.
- Juror from the trial reports to our office that he was so disturbed by the nature of the jury deliberations that he had to enter counseling shortly after the trial.
- We charge Father with new complaint for perjury.

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Lesson 5: The Innocent Offender

Remove the Offender's Defense

- Investigate, investigate, investigate
- What could they possibly argue?
- Take statements from character witnesses- dig and find the bias. Even a "defense" witness may surprise you
- Make it so the Offender does not testify at trial and if they do, immediately investigate statements (rebuttal witnesses)

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Lesson #6: The Defense Expert

A fancy title, office location, and 15 page resume does not mean that you are an expert in everything.

CASE EXAMPLE: juvenile case where forensic psychologist was called to evaluate the forensic interview completed by a social worker.

EXPERT TESTIMONY

(Cornerhouse invited her) "on a number of occasions to talk about interviewing techniques as well as child development issues."

TRUTH

Cornerhouse records show that this expert was hired to teach two child development lectures nearly two decades ago as a substitute for a faculty trainer and that this talk was limited strictly to discussion of child development. Cornerhouse does not permit anyone other than its own staff to train others on the Cornerhouse forensic interview protocol.

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Lesson #6: The Defense Expert

EXPERT TESTIMONY

"Cornerhouse, ah, has me on a list of a few professional who they recommend do more extended interviews with young children. We find that, typically, very young children under the age of six often times have a very hard time disclosing abuse in just one interview with an examiner. So many times they will refer those children to me for an extended interview process."

TRUTH

Expert's name was in Caregiver Guide from 2005-2009 as a resources for those seeking therapists specializing in sexual abuse. Cornerhouse, does not, and has not ever, referred anyone to expert for a forensic interview of any duration. This is a service that Cornerhouse provides and an area in which they are experts.

By expert's own later admission:
"Referring parents subsequently contacted me… the child see a therapist who could conduct more extended interviewing through the therapeutic process."

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Lesson #6: The Defense Expert

EXPERT TESTIMONY

When asked whether she had been trained in the Cornerhouse Forensic Interview Protocol, she claimed she helped develop the interview protocol and were responsible for training others on this protocol.

Expert's Later Admission: "I have in the past, and will continue in the further to refer alleged victims of sexual assault to Cornerhouse."

TRUTH

Cornerhouse records do not identify Expert as an author, develiper, researcher, or trainer for the Forensic Interview Protocol at any point in its history. Records also fail to show that Expert has never attended a training at Cornerhouse. Expert's name appears ona witness list of sixty-eight persons who testified in 1986 before the Attorney General's Task Force on Child Abuse Within the Family, Expert was not even a member of the Task Force itself. The Task Force also had nothing to do with the development of the Cornerhouse forensic interview protocol.

By Expert's Later Admission: "I have not been trained by Cornerhouse nor did I participate in the developing the current Forensic Interview Protocol developed by Cornerhouse."

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Lesson #6: The Defense Expert

Why does any of this information matter?

Administrative Hearing Order on the maltreatment finding between Defendant and Victim, where the burden of proof is preponderance of the evidence, noted:

> "(Expert's) testimony concerning the defects is the forensic technique (Forensic Interviewer) used to interview Victim is persuasive."

Even cross-examination on the lack of truthful credentials was not enough to bar this judge from considering the points made by the Expert. While the trial court judge found the Defendant not guilty on other reasoning, this Expert's testimony was influential in this determination.

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Lesson learned? Even more preparation prior to trial can prevent untruthful or misleading defense experts from testifying at trial.

Lesson #6: The Defense Expert

- Do your research- know the defense expert better than the defense attorney does.
- Consult with outside resources
- Use publications and websites to your advantage
- Always challenge the so-called “expertise”

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The Unlikeable Victim

The Abused Teenaged Victim
The Recanting Victim
The Native Victim
The Chronic Victim
The Criminal Victim

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Lesson #7: The Abused Teenaged Victim

- Belief of mother by age of child:

  Preschoolers 95%

  Adolescents 56%

  (Gomez-Schwartz, 1990)

- Disclosing Adolescents felt less supported and perceived others' reactions as negative and blamed themselves for the abuse.

  (Feiring et al., 2002)

- The older the age of onset of abuse, the more the victim engages in self blame. The younger the age of onset of abuse, the more the victim engages in external blame.
- Abuse by a peer group member also results in more self blame by victim.

  (Zinzow et al., 2010)

*Studies also referenced in the work and presentations of Dr. Anna Salter.

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The Abused Teenaged Victim

Q: After you left your interview with (Interviewer), how did your mom treat you?

A: Horrible, like I didn't matter.

Q: And was that different than how she treated you before?

A: Yeah.

Q: Can you describe what you mean by horrible?

A: If she even talked to me at all– it would be rude. She's give me dirty looks all the time.

Q: Did she make any type of threats?

A: She said that because I told someone that- told what happened, that we would lose the house. Um, she made an appointment to get my braces taken off- she said I wouldn't be able to see my family very much and I would tear the family apart. She shut off my phone.

Q: Your cell phone?

A: Um-hum– like the day after we went into the police station. (crying)

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The Abused Teenaged Victim

Q: Now you said braces; are you talking about braces on your teeth?

A: Yeah.

Q: What do you mean she made an appointment to get them off?

A: She said, oh, well because– we won't be able to live with (Defendant) anymore, he's the one paying for 'em, so we'll have to get them removed cause we can't make the payments.

(later questioning referencing mother's employment)

Q: What was she doing?

A: Going to school.

Q: Where was she going to school at?

A: She went to Anoka-Ramsey and SCSU.

Q: Did she say anything to you about her school?

A: That she would probably have to drop out.

Q: And how long was this treatment occurring?

A: Ever since I went to the police station.

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Lesson # 8: The Criminal Victim

Which criminal record is the victim?

Sometimes, there isn't a good way to tell the difference between a defendant and the victim.

Many times a victim may have a more lengthy criminal record than the defendant.

Some victims are chosen specifically because of their history of personal and/or legal problems because the perpetrator knows that no one will believe victim if they report because of this history. A history of legal issues also increases the likelihood that a victim will not appear in court. (very common problem in Mille Lacs)

Motions prior to trial can help to limit portions of the victim's criminal record from being used against them, however, some information may not be protected.

Case example: State v. Kevin LaDue: Juvenile female victim disclosed sexual abuse while in placement in juvenile detention. While the juvenile record is protected from use as impeachment evidence, judge ruled that victim's placement at the time of disclosure was relevant for trial for victim credibility purposes.

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Lesson # 8: The Criminal Victim

How to use this to your advantage.

- The “perfect” victim argument
- Don’t be afraid for the negative stuff to come in.
- Be the first to tell jurors about it
- Expert to talk about propensity of sexual abuse victims to commit crime.

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The Criminal Victim

When the Native Victim AND the Criminal Victim AND the Abuse Teenaged Victim.

- This is one of the most common criminal sexual conduct victims we have in Mille Lacs County.

- In Mille Lacs County, many younger members of the native population are targeted at a very early age for gang membership or association because of the less serious consequences offered in juvenile court. Youth are also attracted to the gang lifestyle by the availability of drugs and the status gained by participating.

- Access to a per capita payment at age 18 upon graduation of high school also makes young people an attractive target of the gang population.

-Many victims have a criminal past due to affiliation with or other crime and are particularly at risk for sexual assault due to this criminal association. This also makes cooperation with these victims particularly difficult.

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Lesson #9: The Native Victim

Native women and girls suffer the highest rates of domestic violence and sexual assault in the United States.

We frequently deal with Native women and children in sexual assault investigations and they are frequent uncooperative, unmotivated, resistant, and hard to reach.

There are factors that impact a Native victim's participation in reporting, investigation, and prosecution of sexual abuse that are different from other communities.

How do you show a judge and/or jury that you are dealing with a community of people with potentially drastically different cultural ideas and backgrounds without saying "these people are different from you"?

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The Native Victim

http://vimeo.com/54786283

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The Native Victim

In many tribal communities, reporting domestic or sexual abuse is considered inexcusable betrayal.

When dealing with a case involving a Native victim or witnesses, it is important to understand that cooperation with law enforcement or authorities has historically been a dangerous choice in Native communities.

A victim or witness often has to balance the dangerousness of cooperation with the risk of separation from the family, chemical dependency issues, the community response to a report or prosecution of a crime, and the victim's desire to live a life free of abuse and trauma.

THIS IS NOT EASY INFORMATION TO GET BEFORE A JURY!

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The Native Victim

Geography also plays a role in sexual assault investigations in Native communities.

- Studies consistently point to the importance of victim-offender relationship in predicting reporting. (Ruback 1993; Pollard, 1995; Ruback and Menard, 2001.)

- "The closer the relationship between the victim and assailant, the less likely the woman is to report the crime." (Hunter, Burns-Smith, Walsh, 1996).

- In rural communities, as with Native communities, cultural attitudes like frequent distrust of outside help makes the work of rural sexual assault investigators significantly more difficult.

- Studies have shown that although the number of sexual victimization cases reported in urban areas is higher, the ***RATE*** of sexual assaults in rural areas was higher.

Source: "Sexual Assault in Rural Communities", Susan H.

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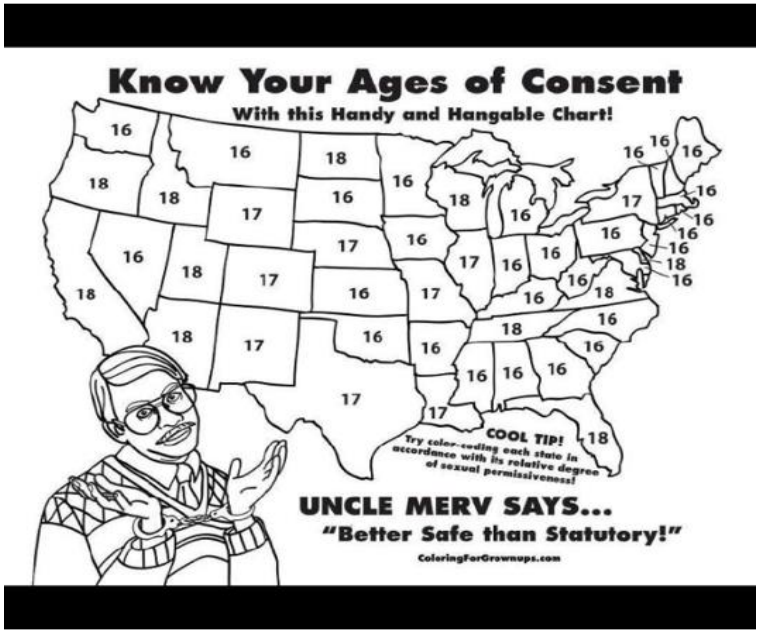
Lesson #10: The Consenting Victim

What can you do to build/win a case with a consenting victim defense?

- Explanation of why victim could not possibly consent according to legal definition- this is a thorough investigation!

- Strategic jury selection- use juror questionaires and well-thought-out voir dire to build the best audience for your case. This may include suggesting that consent is not always a defense by law.



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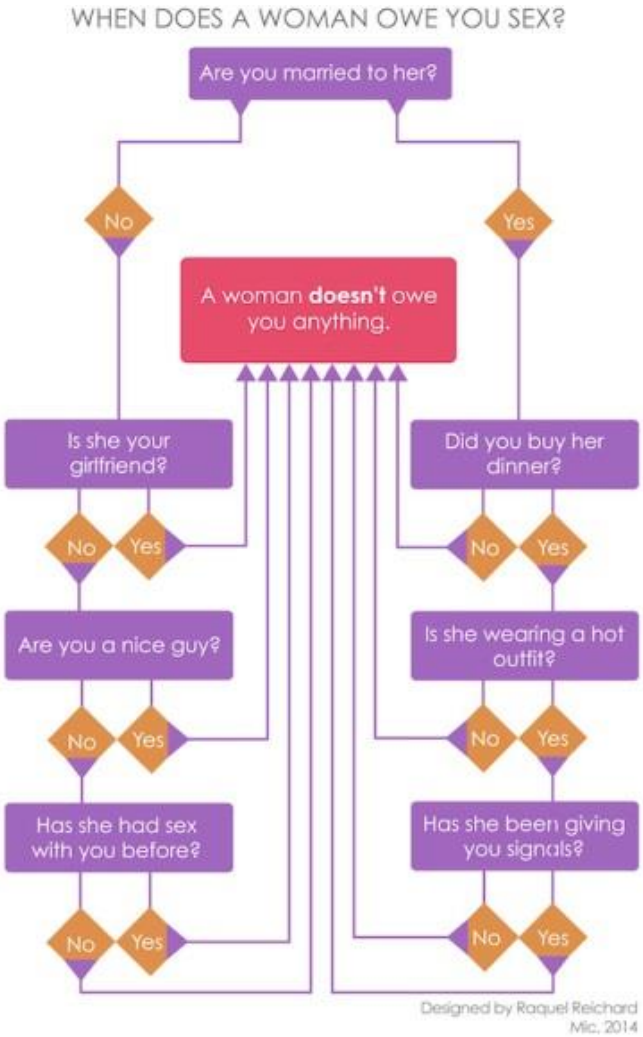
The Consenting Victim

This message can sometimes be difficult to communicate to a jury.

Photo credit to MIC and #AllMenCan

- Do everything to limit available defenses and/or corresponding testimony in JIGS, motions in limine, and closings.
- Be ready to OBJECT and know the reason why your objection is valid.



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Lesson #11: The Recanting Victim

In cases where an offender confessed, 24.5% of victims recanted fully or partially.

(Malloy, Lyon, Quas, & Forman, 2005)

A recanting victim DOES NOT mean that your case is dead.

In fact, we have managed to get a conviction with a recant of a recant of a recanted statement.

"I took everything back that I said because I didn't want what my mom said to come true. I didn't want any that stuff to happen and I didn't want to lose my mom. (crying)"

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The Recanting Victim

CASE STUDY: State v. Dustin Davidson

Defense Theory of the Case: "At the end of this case, there will be all sort of doubts about whether (Victim)'s story that she was molested first given when she was drinking if not drunk, is true- because this is a criminal case requiring proof beyond a reasonable doubt."

Facts of the Case:

- Victim accidentally discloses when drunk at a party
- Victim does forensic interview with detailed disclosure (first recorded statement)
- Mom does not support Victim
- Victim recants to law enforcement (second recorded statement)
- Victim discloses abuse to school counselor
- School counselor gives a statement to law enforcement
- Victim recants the recant (third statement- not recorded)

To charge or not to charge- MDT had different opinions

The Recanting Victim

Always be prepared for the Recent (just expect it)

- Do motions in limine (807 notices) to anticipate the recant.
- Have jurors prepared for a recant as much as you can.
- What happens if victim recants during trial?
- An expert- are you using your forensic interviewer as an expert?

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Lesson # 12: The Retrial

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Lesson # 12: The Retrial

Is it crazy to retry a hung jury verdict? Just because it is a lot of work doesn't mean you shouldn't do it.

I say go for it- you'll either get better results the second time around or a plea.

Must take into consideration all of the circumstances, pros/cons.

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[redacted]

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In closing…

Teddy Roosevelt gives excellent perspective.

> "It is not the critic who counts; not the man who points out how the strong man stumbles or where the doer of deeds could have done better."

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“The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood, who strives valiantly, who errs and comes up short again and again, because there is no effort without error or shortcoming,…”

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“…but (he) who knows great enthusiasm, the great devotions, who spends himself for a worthy cause; who, at the best, knows, in the end, the triumph of high achievement…”

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"…and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

Theodore Roosevelt, "Citizenship in a Republic,"
Speech at the Sorbonne, Paris, France. April 23, 1910.

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We are the law enforcement, social workers and prosecutors charged with maintaining justice!

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