



Module 13: The Role of Prosecutors in Cases of Staff Sexual Misconduct

Investigating Allegations of Staff
Sexual Misconduct with Offenders

Developed by the NIC/WCL Project
under NIC Cooperative Agreement
#06S20GJJ1 Developed by D. Berman
under NIC CA 07S24G101

OBJECTIVES

- Understand the barriers to prosecution
- Identify why these case should be prosecuted?
- Define and understand what prosecutors need for a successful prosecution
- Understand the importance of the initial investigation for prosecution

TOPICS FOR DISCUSSION

- Selling your case
- Preparing for trial
- Anticipating defenses
- Additional criminal charges and sanctions
- Benefits of prosecution

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BARRIERS TO PROSECUTION

- Sexual assault prosecution requires special expertise
- Lack of understanding of correctional culture
- Role reversal of prosecution and defense
- Little positive feedback & lots of ill will
- The case that never ends (civil suits, arbitrations, etc.)

SEX CASES IN GENERAL

- Comes down to he said, she said (no witnesses)
- Lack of physical / biological evidence
- What exactly is consent
- Problematic victims

CORRECTIONAL CASES IN GENERAL

- Victim is a criminal
- Gets what s/he deserves
- Witnesses are criminals
- Law enforcement benefit of the doubt
- All about the civil \$\$\$\$ lawsuit (ulterior motives)

WHY PROSECUTE? SEXUAL ASSAULT= SYMPTOM

- Contraband issues
- Safety and security issues
- Public health issues
- Behavioral issues
- Morale issues

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CASE CLASSIFICATIONS

- Staff/Inmate vs. Inmate/Inmate
- Historical case vs. “Real Time”
- Multiple victims vs. Single victim
- Multiple defendants vs. Single defendant

CASE STUDY:

Comm. v. LeShawn Walker

- Eight female victims
- Sexual activity from 1995-2003 (pre-PREA)
- Historical case (no physical evidence)
- One inmate eyewitness for one victim
- Female CO's & other inmates as defense witnesses
- Result: guilty-4, not Guilty-3 hung jury-1
- Sentence: 10-28 years

WHY THIS RESULT:

Comm. v. LeShawn Walker

- One day of testimony from internal affairs explaining physical layout, rules and regulations, record-keeping, and informal culture
- Jury able to see a common course of offender conduct over the years through details of inmate testimony
- Jury reluctant to believe inmates who had filed lawsuits

WHAT PROSECUTORS NEED

- Policies & procedures
- The initial report
- Corroboration (witnesses, DNA, physical evidence)
- Crime scene
- Admissions

POLICIES AND PROCEDURES

- Clearly articulated sexual misconduct directives consistent with PREA
- Training/retraining on directives

THE INITIAL REPORT

- Timing of report of sexual assault
- Devil in the details
- Demeanor of victim

THE INITIAL REPORT



- Location
- Any prior contact/relationship with suspect
- Willingness to go forward

CORROBORATION

- Sexual assault kit
 - Injuries
 - DNA
- Reports of rape
- Eye/ear/prompt complaint witnesses
- Physical evidence
- Documentary evidence

CAREFULLY PROCESSED CRIME SCENES

- Determine location of assault (the place/person)
 - Prison cell
 - Office
- Immediately photograph/diagram

CAREFULLY PROCESSED CRIME SCENES

- Recover all physical evidence
 - o From the person of the victim
 - o Bedding
 - o Defendant's clothing
 - o Condoms/wrappers
 - o Cups/glasses

ADMISSIONS

- Non-custodial interview of suspect/lock in details
- Custodial- Miranda waiver
- Statements to co-workers and supervisors

INITIAL INVESTIGATION

- Documentation
- Medical forensic examination
- Photograph / diagram scene
- Determine all sexual contacts or acts
- Uncover all potential witnesses (eye or ear)

INITIAL INVESTIGATION

- Determine prior contact with target
- Obtain log books, inmate locators, shift schedules
- Copy of staff personnel or inmate discipline file
- Obtain internal investigative reports (watch out for *Garrity*)

SELLING YOUR CASE

- Seek prosecutor with sexual assault experience
- Be prepared to educate prosecutor about your agency's culture
- Offer a tour of your facility.
- Explain importance of case to your institution (disease model)

SELLING YOUR CASE

- Be convinced yourself!
- Don't misrepresent facts- prosecutors hate surprises!!
- Be willing to do additional investigation if required.

PREPARING FOR TRIAL

- Locating and securing inmate witnesses
- Addressing witness safety issues, including intimidation
- Securing employee witnesses
- Updating criminal histories of witnesses

PREPARING FOR TRIAL

- Keeping prosecutors informed of civil litigation and other discovery issues
- Keeping prosecutors advised of exculpatory evidence
- Investigation does not end with an arrest

ANTICIPATE DEFENSES



- Fabrication
- Bias
- Motive
- Consent
- Nullification

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ANTICIPATE DEFENSES



- Poor investigative work
- Identity
- Reasonable doubt
- Character of victim

PRE-TRIAL DISPOSITION

A Conviction = A Conviction

- Guilty pleas are good
- Saves victims from testifying
- Ensures conviction in weaker cases
- Avoid issues of recantation
- Avoid issues of witness relocation

PRE-TRIAL DISPOSITION

A Conviction = A Conviction

- Useful in cases w/ no DNA /weak corroboration
- Opportunity for civil release negotiation in weak cases
- Registered sex offender
- Potential for jail time
- Deterrent effects
- Encourages reporting

ADDITIONAL CRIMINAL CHARGES

- Physical/ Sexual Assault
- Sex Offender Registration
- Loss of License
- Mandatory Reporting
- Vulnerable Victims
- Statutory Rape
- Obstruction of Justice
- Perjury

ADDITIONAL CRIMINAL CHARGES

- Conspiracy
- Witness Tampering
- Bribery
- Malfeasance in Office

WHAT PROSECUTORS ADD

the independent analyst – the director – the hammer

- Independent investigation
- Cover (internal and external)
- Experts
 - Medical
 - Sexual assault/power
 - DNA

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WHAT PROSECUTORS ADD

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- Grand jury compulsion
- Wiretap corroboration
- Sentencing options

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BENEFITS OF PROSECUTION

- Deterrence
- Improved working relationship between internal affairs and prosecutors for other cases
- Safer environment
- Increased funding for jail in county budget
- Revised policies and procedures re: sexual harassment