

Top Ten Arguments in
Child Molestation Cases

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Mission

To persuade the jury that the
Defendant is Guilty by arguing
with both *emotion* and *reason*.

Emotion

We must have
conviction if we want to
win a conviction.

Reason

Most jurors want to be able to justify their decision even if their gut tells them that the Defendant is guilty. Help them.

Make logical arguments incorporating the evidence.

Argue the defense and show why it is not the most reasonable position.

Unique Challenge



Defendant
Did IT

Overcoming this Challenge

It's a Battle of the
Wits



What do we learn from this?
The Best Offense is a Good Defense

Don't fall victim to one of the classic blunders!

Never forget that jurors have a "two-faced" approach to child molestation.

- 1.They hate the crime and the offender.
- 2.But they often want to disbelieve or discredit the child because it is a difficult crime to acknowledge occurs.

Lighting the Pathway



Our job is not just to present the evidence but to **guide** jurors to the truth. In order to find the truth, they've got to be resolved that it is important to find it and that they will find it if they diligently and earnestly seek it.

Top 10 Arguments by Defense

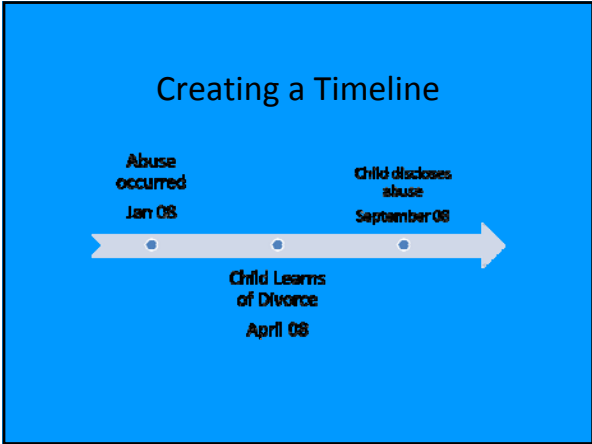


- 1. Divorce/Custody Dispute or Family Vendetta
 - Can involve child resentment against one parent
 - Can involve coaching on behalf of a family member

Divorce/Custody Dispute

- Cause and Effect-Did the allegations of abuse cause the separation/divorce?
- Did the allegation surface after the child felt it was safe to disclose?
- Review child interview and prepare to defend coaching argument
- Prepare a timeline-including important dates such as when the alleged abuse occurred, when the child reported, when the divorce or separation was made known to the child, when the divorce was filed or when the separation occurred.

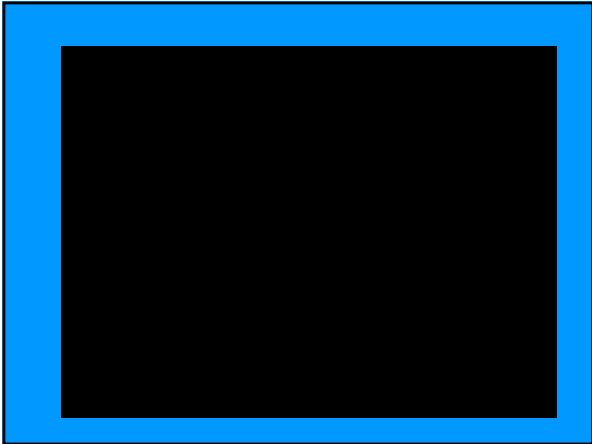




Top 10 Arguments by Defense



- 2. Child Wants Attention-Child is Lying.
 - Recent changes in family
 - Middle child syndrome
 - Competing with someone else for attention
 - Has a crush on alleged perpetrator



Why do Children lie?

So they won't get in trouble

To get attention

So someone else won't get in trouble

Child is Lying

•Maintain credibility by admitting that children do lie. "Do children lie? Yes. Do they lie about this? Sometimes. Is this child lying about this? No. (Explain lack of motive)"

•Obtain facts/witnesses that show that child receives social attention (i.e.-child good soccer player-scores a lot of goals)

•Remind jurors of how difficult/embarrassing this investigation/trial has to be for child--who seeks this kind of attention?



Child is Lying

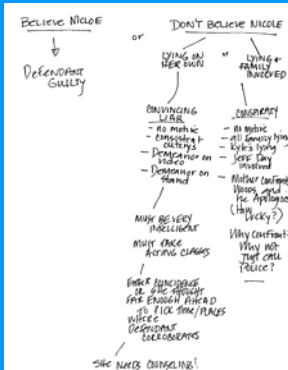
•Point to demeanor of child on the witness stand and on videotaped interview when asked about details. I.e. child puts their head down in shame, voice lowers, cries etc.

•Adults lie too! What about his/her interview. Why does it always have to be that the child is lying? What about him/her?

•Chart it out. Give the jurors the alternatives that they have when trying to resolve the credibility contest.



Charting it Out



Top 10 Arguments by Defense

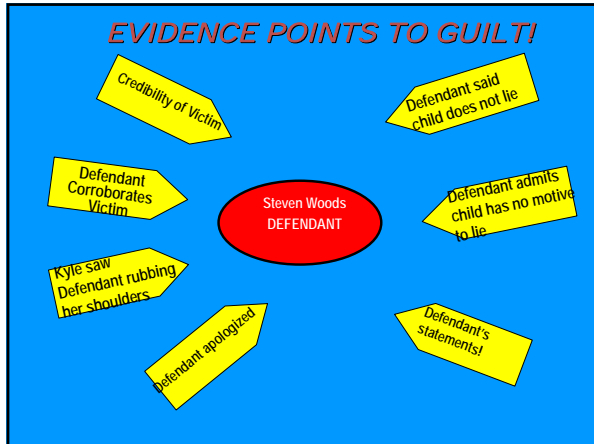


- 3. Child isn't lying----just mistaken
 - There may have been a touching—just wasn't intentional
 - The "Butterfinger" defense---Accident

Butterfinger Defense

- Corroborates victim's time/place of event which is great.
- If it was an accidental brush of an "private part" would it have gotten this far?
- Usually in context of giving child a bath, wrestling with child, child sitting in lap, playing swimming pool, etc.
- Almost always see Defendant say "oh, I love the child so much" and "she wouldn't lie, she's a real good girl" defense. She must have took it wrong.





Top 10 Arguments by Defense

- 4. The case of the “Mistaken Lover”
 - “I thought I was sleeping with my wife/girlfriend” defense



Mistaken Lover Defense

- Almost always coincides with drunkenness or drug-induced state. This is when inhibitions are low. This is an ingredient for the recipe of crime of opportunity.
- Get pictures of child at age of alleged abuse and clothing sizes (including bra size).
- Contrast how they are "sober" enough to perform other functions but not to recognize who they are fondling/kissing/etc.



Top 10 Arguments by Defense



- 5. Investigators/Professionals on a "Witch Hunt"

"Witch hunt" Defense

- "I only told them that I did it so they'd let me go home." Nobody ever admits to being a Child Molester without really being one.
- The Child Advocates have tainted the investigation. Refute this argument with training, corroborating evidence of what child says in interview, testimony that sometimes allegations are deemed to be unfounded or not supported by the evidence.



Top 10 Arguments by Defense

- 6. "I thought he/she was older defense"
 - This is **Not** a Legal Defense
 - Still jurors may sympathize-nullify

"I thought he/she was older"

•File a motion in limine to prohibit the Defendant from offering testimony that he/she thought child was of age. (Haywood v. State, 283 Ga. App. 568 2007)

•Introduce photographs of child, evidence of child's routine---i.e. goes to school, doesn't drive, doesn't work etc.



Top 10 Arguments by Defense

- 7. Insanity Defense
 - Did not know difference between right and wrong
 - Only affirmative defense to child molestation

“Insanity Defense”

- Were the child and Defendant alone? In private?
- Defendant alleged that he/she was molested as a child...PTSD.
- Obtain mental evaluation and consult expert
- Prepare as would in any other case-obtain evidence that shows Defendant was not suffering from any delusion.



Top 10 Arguments by Defense

- 8. Ill-handled Investigation
 - Leading interviews
 - Sloppy investigation
 - No investigation
 - No follow-up on corroboration

“The Ill-Handled Investigation”

- Review file early and ask for follow-up in investigation or have your investigator follow up.
- Make the best of it. Don't concede the investigation was not properly done. But don't make excuses why things weren't done that should have been.
- Answer each argument lodged against the investigation. Don't ignore these arguments. Explain why they wouldn't necessarily add anything to the case.



Top 10 Arguments by Defense

- 9. He said/She said Case
 - Often goes out of way to not discredit child
 - Investigation fine, but not enough evidence to convict BRD

“He said, She said Defense”

- Reiterate that there is not going to be physical evidence in most cases. Have expert testify to this.
- Request the single witness charge. No corroboration required under Georgia law. (Keith v. State, 279 Ga. App. 819) 2006
- Point out what Defendant says whether in statement or on stand. Make a list of all his incriminatory statements and emphasize in closing.



EVIDENCE OF GUILT

- | | |
|--|---|
| <p>TESTIMONY OF VICTIM</p> <ul style="list-style-type: none"> Def. and her got along fine before the abuse. Defendant and her were to spend whole weekend together Defendant told her not to tell Defendant prayed for forgiveness Defendant took her to Wal-Mart Victim asked Defendant to take her home early | <p>CORROBORATION OF VICTIM</p> <p>Defendant's Statements</p> <ul style="list-style-type: none"> Admits that he and Victim got along fine Says has no idea why victim would lie Admits Victim asked him to take her home thus changing their plans Admits he took victim to Wal-Mart to buy her something on way home <p>Testimony of Victim's Grandma</p> <ul style="list-style-type: none"> Victim came to her upset/embarrassed Victim visibly afraid of Def. Victim so upset, barely able to speak Victim was often sad after disclosure <p>Testimony of Interviewer</p> <ul style="list-style-type: none"> Victim -specific details of what events took place on day before and after abuse Victim's physical exam consistent with her allegations Victim gave consistent account of initial outcry to grandma |
|--|---|

Defendant's Statements

- "She does real good in school"
- "I'm not going to sit here and lie and say that, yeah she's a big liar because I've never known her to be that way"
- "I can't say that she would just out and out lie about anything. Now, she may have took something the wrong way."

Defendant's Statements

- "I may have rubbed her leg"
- "it was after that incident with the wrestling that she said I touched her in improper places"

Top 10 Arguments by Defense

- 10. Child "came on to me" defense
 - Admits the act---but denies criminal intent.

“Child came on to me defense”

- What efforts did Defendant make to resist the alleged advance?
- How could child physically overpower the adult?
- Focus on circumstances surrounding disclosure--- Defendant did not disclose.



Just remember...
What's at Stake?



