

Working Effectively with Defense Investigators

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The Mission: Search for The Alternative Narrative vs The State's Narrative

Investigator Mission: Hunting, Exploring, Mining for the "Gold"

The Defense Investigator: Historian: Documenting the Good, the Bad, the Ugly

The WHY QUESTION FOCUS: Why the Why is a central Element

Understanding How The State Builds Their Case

Understanding How To Challenge and Dismantle the State's Case

Examining the Elements of The State's Case

Law Enforcement Field Reports: Take Notes in Preparation for Interviews

Searching & Seizing Evidence

Recorded and Written Witness Statements

The RP, The Complaining Witness, The eyewitness

Invoking Rights, Waiving Rights

CCTV Footage: The Perishable Fruit

The Temptations of Low Hanging Fruit

Taking Advantage of The Propensity to Over Charge

Conducting Effective Onsite Field Investigations



**THE DEFENSE TEAM MISSION:
SEEK OUT/DEVELOP AN
ALTERNATIVE NARRATIVE TO
THE STATE'S PROBABLE CAUSE**

**CHALLENGING THE
VERACITY OF THE STATE'S
CHARGE**



THE IMPORTANCE OF PROFESSIONAL CONDUCT STANDARDS

Obtaining/Preserving Evidence That May Be Presented at Trial

- Written Summaries of Interview(s)
- Recorded Witness and Complaining Witness Interviews

Credible Evidence Means: Ethically Obtained, Accurately Documented

Answering the WHO/WHAT/WHEN/WHERE/WHY AND HOW

BUILDING INVESTIGATOR CREDIBILITY:

WHY CREDIBILITY IS SO VITAL TO EFFECTIVE DEFENSE

**CREDIBILITY: THE FOUNDATION OF WHAT IS BELIEVED TO BE
TRUE**

ELEMENTS OF CREDIBILITY

Details, sequence of events, dates,
times, locations

Forging the Defense Strategy: The
theory of the alternative narrative to
what the State alleges the client has
done that resulted in their current
charge.

BUILDING THE DEFENSE INVESTIGATOR TASK LIST



Whom to Interview and the order
of conducted interviews

The Interview Sequence of
Questions

Onsite Investigations

Inspecting State's Physical
Evidence

CRITICAL INTERVIEW COMPONENTS

Failing to Plan is Planning to Fail: Hope is Not a Strategy

The Six "P's": Prior Planning Prevents Piss Poor Performance

Recorded Interviews vs Summary of Interviews

Permission to Record

Key Elements of an Interview Introduction

Relationship Foundation/Background

Recounting the words/actions associated with State's Charges

CRITICAL INTERVIEW COMPONENTS

Pt 2

Objective Questions

Subjective Questions

Identifying Who initiated Physical Contact and WHY

Necessity Self Defense

Law Enforcement Conversations: Before and After Their Interviews(s)

Conclusion Questions

YOU MIGHT NEED A DEFENSE INVESTIGATOR WHEN:

Client says, "I didn't do this. I wasn't even there."

Client says, "I only pushed her after she attacked and struck me in the face."

Client says, "I was never Mirandized. LE threatened/coerced and intimidated me."

Complaining Witness calls and says, "I want to retract my LE Statement."

Complaining Witness says, "I didn't want to give a statement but the officer told me that if I didn't give a recorded statement, they'd have to report me to CPS and I'd lose custody of my kids."

Complaining Witness says, "The officer started telling me how she was a past victim of domestic violence and giving a statement is the only way to protect myself."

CREATING A THEORY OR PLAN OF DEFENSE

Client interviewed thoroughly by both defense attorney and investigator. Take copious notes. This is privileged information/work product may become the foundation for future interview preparations.

Thoroughly digest all States Evidence: Field Reports/Supp Reports/DV Supp Reports/Physical evidence/witness statements/CW statements. TAKE NOTES.

Consider transcribing LE recorded interviews, especially CW recorded interviews.

WHY? Once CW is interviewed, compare what they stated vs LE interview

When client's narration of incident events does not comport with allegations in LE reports, the inertia begins to grow to bring the defense investigator onto the case.

WHOM TO INTERVIEW AND IN WHAT ORDER: WHY IT MATTERS

The State's Star Witness: The Complaining Witness or Alleged Victim

The Eye Witness: Often Substantiates or Challenges the CWs Narrative

The "RP": 911 caller(s)

Background Witnesses: May add context to actions/state of mind of the Complaining Witness

Preliminary Interviews may uncover omitted incident elements: How omission of all the facts can contribute to impugning the credibility of State's witnesses.

ADVANTAGES TO CONTACTING/REQUSETING INTERVIEW WITH THE COMPLAINING WITNESS: OBTAINING THE UNTAINED ACCOUNT OF EVENTS

**What happens when the prosecutor is present for defense
interviews**

The Prosecutor "Message"

THE CAVIAT TO REQUESTING INTERVIEW FROM A COMPLAINING WITNESS

“You have the right to interview with me WITHOUT THE PRESENCE OF THE PROSECUTOR AND/OR VICTIM’S ADVOCATE. HOWEVER, it is also your right as the complaining witness to have the prosecutor and/or victim’s advocate present

Important Elements in Requesting Interviews through the State

“Attorney Brian Gerhart has directed me to request the scheduling of interview with Complaining Witness Ima Victim. We prefer this interview to be in person. Please keep Brian in the loop as he may attend per his court schedule. My availability for the next two weeks is as follows:”

The Zoom Interview Disadvantage

THE RECORDED INTERVIEW

INTRODUCTION: WHY IT'S IMPORTANT

Prosecutor Present Interviews vs No State's Presence Interviews

Setting the stage for Professionalism

Putting Interviewees at ease:

- Interviews under most circumstances can be intimidating
- Relax, be calm, be polite, reassuring
- Briefly explain how the interview will go/generally what will be covered
- Questions will be open ended
- If you're uncomfortable, you can take a break, end interview at any time

THE IMPORTANCE OF DOCUMENTING PERMISSION TO RECORD

“Cassandra, are you aware we’re recording our conversation today?”

“And is that with your permission?”

“And would all others present today please identify yourself and acknowledge that we’re recording?”

THE RECANTING COMPLAINING WITNESS

Recanting CW's present daunting challenges to the State's case

Attempt to conduct these interviews without the State's presence. Why?

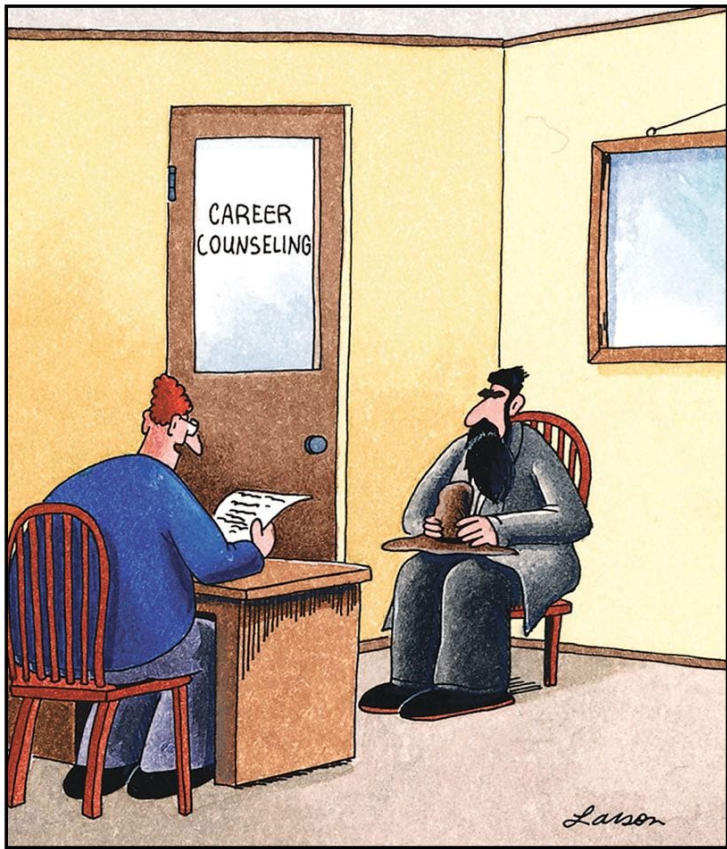
Making the most of the Recanting CW Interview:
There's Gold in them their hills

PREPARING THE RECANTING CW INTERVIEW

The Main Field Report: Take Notes. Focus on what the Report Author said the CW said. Will it comport with the CW Recorded Interview?

Will it comport with what the CW states during the Defense Interview?

THE IMPLICATION OF MORE THAN ONE VERSION OF EVENTS



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Potential Credibility Implications

Somebody Got It Wrong: “So which one of your versions of events is the truth?”

Omission of Facts and How to Exploit It:

Drug/Alcohol Issues: Law Enforcement’s Double Standard

“Well, Mr. Cody, according to our questionnaire, you would probably excel in sales, advertising, slaughtering a few thousand buffalo, or market research.”

CONDUCTING JUVENILE INTERVIEWS

Custodial Parent Rights: Permission and Presence During Juvenile Interviews

- Exceptions

Contact Custodial Parent First to Request Interview

As a custodial parent, you have a right to be present for the interview if you so choose

The Tenino Hit List Case: Interviewing Juveniles in a School Setting

- Written Summaries of Interview(s)
- Recorded Witness and Complaining Witness Interviews

Attorney/Client Privilege Umbrella

Discussing your findings with anyone other than your client's attorney is potentially a violation of the law/ethical standards

Maintain strict confidentiality of your investigation findings

Establish your Professional Credibility by Adhering to the highest ethical practices

Documentation of Evidence Findings

Maintain Detailed Task Notes

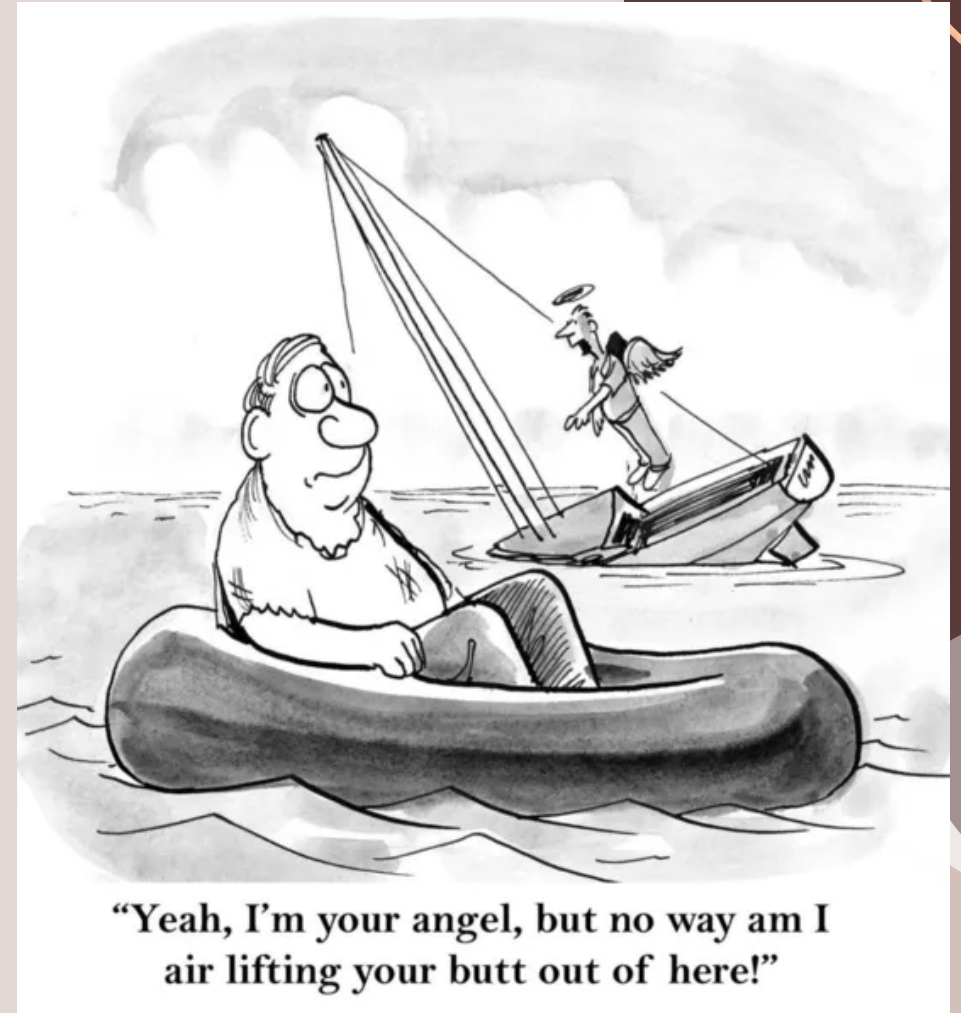
Maintain a Log Sheet for Date/Tasks/Time on Each Task for Billing

Log Sheet is your Billing Information

The Importance of Accuracy

Submit Accurate/Timely Invoices

How to Submit Additional Hours Requests



Investigator/Attorney Communication

A Defense Attorney's Work World is Driven by Deadline Dates

- Omnibus, Pretrial, Trial Week Hearings and Dates

Know these dates for each case to which you're assigned

Continually Apprise your Attorney of your Task Efforts

Justifying Additional Hour Requests

Apprise your Attorneys:

- Tasks Completed, Tasks Working On, Interviews Scheduled
- Unsuccessful Efforts In Contacting Witness

Maximizing the Impact of Your Defense Interview Summary

Complete Interview Summaries Immediately Upon Completing the Interview

Compose Summary from Your Notes Taken During Interview

Attempt to Use Exact Words Stated by the Interviewee

- Accuracy Equals Credibility

Deliver Interview Summaries/Recorded Interview ASAP

Be Prepared to Apprise Your Defense Attorney of Your Assessment of Interview

- Helpful or Harmful or Not Helpful to the Defense's Case. How So?
- Credible or not Credible? How So?

THE CHALLENGE OF SCHEDULING INTERVIEWS

Persistence is Key

**Be prepared to Leave a Voice Message:
Clear, Concise, Brief, Request Call Back**

COLD CALLING

Always Notify Someone in Your Office When Cold Calling

Recognizing Potentially Unsafe Situations/Locals

Listen to Your Inner Voice: When in Doubt, Back Out

Be Vigilant About Your Personal Safety

Anticipate No One Home. Compose and Leave a Request for Interview Letter

Once You Make a Phone Call Attempt, Enter Name/Number in your Directory

Rapport Often Begins With a Personable Phone Conversation

Opening Doors: What You Say and How You Say It Matters

Impeachment Strategies

Comparing Witness Statements to LE vs What They State During Defense Interview

Multiple Versions of Events Can Diminish Witness Credibility at Trial or During Defense Attorney/Prosecuting Attorney Negotiations

Prior to Defense Witness Interviews, Familiarize Yourself with LE Reports/Interviews: Know When Their Story Changes



The Alibi Defense

The Client Couldn't Have Committed the Crime.
He/She Was Not There.

Locate/Interview Witnesses Who Can Corroborate
Client's Story.

Answering The Why Question: Why would your
client's accuser(s) fabricate your client's
presence if your client was IN FACT NOT
present?

Establishing a believable motive for Accuser to Fabricate is potentially helpful



The Reality of Eyewitness Accounts of Events/Incidents

The Reality of Eyewitness Physical Descriptions

Important Elements When Interviewing the Eyewitness

- Visibility Encumbrances vs Clear, Unobstructed View
- Distance from Eyewitness to the incident
- Time of Day, Time of Year, Weather Conditions
- Physical Description Elements, All Clothing Elements
- State of Mind of Eyewitness at Time of Incident
 - Fearful, vengeful, injured, under influence of drugs/alcohol
- Post incident Conversations witness had or didn't have with other witnesses

Conducting On Scene Investigation

Documenting the On Scene Investigation: Photos, Range Finder, Tape Measure

Case Fact Familiarity Prior to On Scenes Important.
Know What You're Looking for if Possible

Photographs, Measurements, Sketches. The Cherry Case Example

CCTV Footage: Timing is Crucial. The Frazier Case Example

- The lifespan of CCTV Footage
- Serving Subpoenas DT for Records and Video Footage
- On scene visit prior to serving Sub DT for Footage



Preparation for and Conducting the Defense Interview

Initial Discussion with Defense Attorney

- Begin to Flesh out Case Defense Theory
- Identify Potential Witnesses to Interview

Familiarize Yourself with State's case. LE Field Reports/PC Statement

- Take notes. Use exact words from Field Reports

Preparing Introduction of Interview, Compose Questions

Review/Finalize Questions with Defense Attorney

Scheduling the Defense Interview: Options

If not Recorded, Prepare to Take Notes During Interview. Options

- The Importance of Detailed, Legible Notes (Andre Thompson Case Example)





Thank you!

Do you have any questions?

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