

# PROSECUTING INMATE ON INMATE SEXUAL VIOLENCE



Building Cases From Investigation  
To Indictment To Disposition  
The Prosecutors' Perspective  
March 11-16, 2007

# TRAINING OBJECTIVES

- To understand the prosecutor's approach to investigations of inmate on inmate sexual violence
- To understand what prosecutors want before they will accept a case of inmate on inmates sexual violence
- To understand what prosecutors need to successfully prosecute inmates for sexual violence
- To understand the barriers to prosecution
- To understand recommendations to improve prosecutions

# Rev. Dr. Martin Luther King, Jr

(1929-1968)

Letter from the Birmingham Jail, April 16, 1963

Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

# PROSECUTOR'S OVERVIEW

- The Initial Report
- Corroboration
- Strength of the Initial Investigation
- Crime Scene
- DNA
- Admissions
- Witnesses

# JURY HURDLES

- Most Witnesses Have Criminal Records!
- These Are Not Very Likable Folks
- The Victim Has An Ax To Grind!
- Could This Be A Set Up?
- Is This Fabricated?
- Was This Consensual?
- Why Should I Care?

# SEX CASES IN GENERAL

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

# AGENCY CASES IN GENERAL

- Victim is a criminal
- Gets what s/he deserves
- Witnesses are criminals
- All About the Civil \$\$\$\$ Lawsuit

# SEX CASES IN PRISON

- Nature of sexual act itself
  - Same gender assault
  - Sexual behaviors that seem out of the ordinary, so difficult for people to talk about
- Gender issues
  - Perception that cases involving male and/or female inmates are more attractive
  - Race and class
- Disability
  - Mental health
  - Drug addiction

# ANTICIPATE DEFENSES

- Fabrication
- Bias
- Motive
- Consent
- Nullification
- Poor Investigative Work
- Identity
- Reasonable Doubt

# THE INITIAL REPORT

- Timing of Report of Sexual Assault
- Devil in the Details
- Demeanor of Victim
- Any Prior Reports of Rape
- Victim's Parole Status
- Location
- Any Prior Contact/Relationship with Suspect
- Willingness to Go Forward

# CORROBORATION

- Sexual Assault Kit
  - Injuries
  - DNA
- Reports of Rape
- Eye or Ear Witnesses
- Physical Evidence

# STRENGTH OF INITIAL INVESTIGATION

- The Rape Report
- Rape Kit/Medical Forensic Examination
- Document Visible Injuries with Photographs
- Photograph / Diagram Scene
- Determine All Sexual Contacts or Acts
- Uncover All Potential Witnesses (Eye or Ear)
- Determine Prior Contact with Target
- Obtain Inmate Locators
- Obtain Internal Investigative Reports
- Consider Defenses

# CAREFULLY PROCESS CRIME SCENE

- Determine Location of Assault (the place/person)
  - Prison Cell
  - Bathroom
- Immediately Photograph/Diagram
- Recover All Physical Evidence
  - From the Person of the Victim
  - Bedding
  - Defendant's Clothing
  - Cups/Glasses

# POWER OF DNA

- Fabrication Defense - Gone
- Misidentification - Gone
- Powerful Corroboration
- May Force Defendant To Testify
- Look For Nuclear DNA
  - Swabbings from Victim
  - Bedding or Sheets
- Look For Mitochondrial DNA
  - Hair Samples
- Helpful Serological Results
  - Semen vs. Blood/Saliva

# ADMISSIONS

- Interview of Suspect
  - Let Suspect Provide Explanation
  - Lock Suspect Into Statements Re Any Contact with Victim During Time Frame of Assault
  - Fully Flesh Out the Alibi with All Details
  - Confront them with Details and Evidence Recovered in Your Case
- Written Statements
- Statements to other inmates
- Statements to correctional staff
- Miranda Waiver
- Impeaching Statements
- Disciplinary Files

# QUALITY/ QUANTITY OF WITNESSES

- Taking Witness Statements
- Witness Relationship to Victim
  - Other Inmate
  - Correctional Employee
- Criminal History of Witnesses
- Keeping Track of Witnesses
- Using Witnesses at Trial
- Witness Security Issues
- What's in it for the Witnesses?
- Lock out Future Contradictory Witnesses

# PREPARING FOR TRIAL

- Victim Trial Preparation
- Locating and Securing Inmate Witnesses
- Securing Employee Witnesses
- Witness Trial Preparation
- Obtaining Custodians for Records
- Updating Criminal History
- *Brady/Giglio/Lewis*
- Preparing Your Arguments

# THEMES

- A Nation of Laws
- Duty to Follow the Law
- No One Is Beneath The Law
- This Is About Power, Not Consent

# WHAT PROSECUTORS WANT

- Offender v. Offender = waste of time
- Tie it in a Bow - Quickly
  - o Evidence – physical / biological
  - o Interview every potential offender witness
  - o Interview every potential staff witness
  - o Medical records – psychological / physical
  - o Photographs / Diagrams of the scene
  - o Offender records (disciplinary / program)
  - o Internal policies

# WHAT PROSECUTORS ADD

- Independent Investigation
- Cover (Internal and External)
- Experts
  - Medical
  - Sexual assault
  - DNA
- Grand Jury Compulsion
- Sentencing Options

# HOW TO DEAL WITH THE RETICENT PROSECUTOR

- Get Him/Her Involved Early
- Complete A Comprehensive Report
- Be Responsive
- Personally Present Full Report
- Follow-up Regularly
- Document All Conversations
- Supervisor to Supervisor

# 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
- Useful In Cases w/ No DNA or Weak Corroboration
- Registered Sex Offender
- Potential for Jail Time
- Deterrent Effects
- Encourages Reporting

# OUR IMPACT

- Just Result – rapists should be incarcerated
- Sends the Right Message – Inexcusable
- Deterrence – Stop and Think
- Safer environments – Rules are Rules

# BARRIERS TO PROSECUTION

- Inadequate reporting structures and safety assurances for victims
- Investigations
- The Institution
- Conflicts between administrative and criminal cases
- Consent v Rape
- Law
- Lack of experience
  - Sex Cases
  - Institutional Cases
- Witness Reliability
- Resources
- Sentencing

# RECOMENDATIONS

- Train prosecutors
- Clarify and improve reporting structures
- Improve the quality of investigations
- Build relationships with other actors
  - Victim Services
  - Law Enforcement
- Amend state and federal law
- Specialized prosecution units

# QUESTIONS

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