

INVESTIGATING THE CASE

YOUR ETHICAL DUTY TO KNOW WHAT'S
GOING ON
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American Bar Association Standards for Investigation and Preparation. Standard 4-4.1

- Defense counsel has a duty to investigate in all cases, and to determine whether there is sufficient factual basis for criminal charges.
- The duty to investigate is not terminated by factors such as the apparent force of the prosecutors evidence, a client's alleged admissions to others of facts suggesting guilt, a clients expressed desire to plead guilty, or that there should be no investigation, or statements to defense counsel supporting guilt.

Investigation and Preparation Standard 4-4.1 C

- Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client.

**Investigation and Preparation
Standard 4-4.1 C**



- Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise.

Interview with client



- Verify correct contact information
- Assess the facts
- Interview child and parent
- Identify and locate witnesses

Take advantage of detention hearings



- Be prepared to appeal
- Investigate alternative placements
- You must take the pressure off of your Judge
- Sex offenses may require special arrangements
- Detention levels matter

Grand Jury Practice

- Obtain affidavits
- Full investigatory powers
- Your presentment should be brief and succinct
- Multiple copies (13)
- Have witnesses seated in the hallway
- Request consideration of all the evidence
- Explore lesser included offenses

Investigation

- Visit the scene / time sensitive
- Interview witnesses
- Look for new witnesses
- Take pictures / demonstrate impossibility
- Take measurements
- Walk through with client / witnesses

Subpoena Records

- Phone
- 911 tapes
- Video
- Officer's notes
- Weather reports
- Medical records
- Autopsy reports
- Auto pound visit
- Social media

Investigative Practice Tips

- Be professional with everyone (Roosevelt Doctrine)
- Take ownership of subpoena delivery
- Widen disposition options with placement match order
- Private placements are often acceptable. (Make sure that your client has been accepted and funding has been approved).
- Make use of temporary releases. Provide court with proof of emergency.

Voir Dire

- Representing the respondent is an honor
- Empathy with respondent must be established
- Traffic ticket example
- Develop rapport
- What has my client done wrong?
- Speak with confidence and humility
- Use juror testimony to support your position
- Be visual on burden of proof

Opening Statement

- Never, never ever waive
- Do not exaggerate
- Tell jurors what to look for
- Be confident about the outcome
- An easel may be of benefit

Jury Trial

Evidence – Premark your exhibits
Average American Adults have a 20 minute attention span
You must score points to win
Avoid dead air
Exhibits should be published at the end of your examination
Be true to your personal style
Your preparation will develop into passion
Use of outlines will help with your thoroughness
Work on your closing contemporaneously with each witness
Properly admit all evidence

Witness Preparation

- Motivate witness to be present
- Professional dress is preferred
- They must look at the jury!
- Your case is still on trial outside of the courtroom
- Dress and de-tattoo your client
- Pack your power bars

Witnesses who reside in Mexico

- Prepare and send subpoena to your witness
- Coordinate with witness the date and time for international bridge crossing
- Use bus line with passenger manifest
- Contact supervisor at the bridge 2 hours before arrival, obtain fax number and fax subpoena and cover letter
- Be available by cell!
- Have witness contact you when they cross border and are boarding bus
- Turn in visa upon border return (very important)

Closing

- Recap opening statements
- Maintain chronological order

Motions for New Trial

- Preserve all error!
- Review your time deadlines
- Do not let your case be overruled by operation of law

Appeal

- Perfect your appeal according to rules
- Your brief must be user friendly (quote from your record)
- Maintain chronology if possible
- Place error on jury and judge

Release Transfer Hearings



- Review entire record with client
- Check your clients performance with personnel turnover
- Categorize and defend referrals

Conclusion



- Representing and mentoring children is the most important work that you will ever undertake. The skills and guidance you give them will be multi generational and will far outlive your practice. It is much more than a career, it is a calling. A life spent in this endeavor will be a life well spent.
