

Developing a Pretrial Investigation and Discovery Plan

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OVERVIEW

First Principles

- Pitfalls of Juvenile Court & Public Defender Culture
- Identifying Who Is In Charge
- Establishing Credibility with the Court

Investigation

- Information about the Case
- Information about the Client
- How to Get It

Discovery

- What You're Entitled to
- Overcoming Nonproduction & Objections by the DA

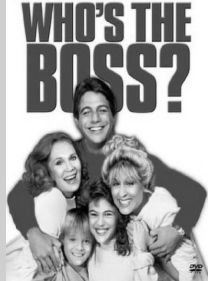
FIRST PRINCIPLES

PITFALLS OF JUVENILE COURT & PUBLIC DEFENDER CULTURE:

- Viewing the judge as your boss
- Developing comfort with assembly-line case handling
- Lacking a sense of ownership over cases
- Letting future cases affect how you handle the case before you
- Jack of all trades, master of . . . ?

FIRST PRINCIPLES

Who's in charge? Who makes the big decisions?



FIRST PRINCIPLES

How should your client feel after meeting you?



FIRST PRINCIPLES

TWO OF THE GREATEST ASSETS YOU CAN HAVE AS AN ATTORNEY:

- Willingness to insist that the judge follow the law

- Credibility

CREDIBILITY:

- Being honest
- Being trustworthy because you know what you're talking about (know the case and the client)
- BUT NOT telling the judge only what she wants to hear; be willing to make unpopular arguments – may be all you have

INVESTIGATION

WHAT DO YOU WANT?

- **INFORMATION ABOUT THE CASE (ALLEGED OFFENSE):** Differs a lot from case to case
- **INFORMATION ABOUT THE CLIENT:** Differs, too, but there are some things you need for every client

REMEMBER: A juvenile case may be about the juvenile as much as the case

INFORMATION ABOUT THE CASE

Identify what you want early, then adapt to what you learn

- What's the charge? Unless you know the statute by heart, read it. Scrutinize elements.
- What defenses does *the State's version* of the facts suggest?
- What defenses does *your client's version* suggest?

Write down your initial impressions in detail.

INFORMATION ABOUT THE CASE

Created	Note
02/22/2012	<p>Def's behavior has been very CHINS-y (see PO report in Documents, and note that Mom filed BC complaints when Def was 6, 9, and 11), and PO was strongly opposed to dismissing. I renewed my motion to dismiss for failure to follow school offense protocol, but it was denied.</p> <p>Pled NT; set for trial 4/19/12pm. Def ordered to leave drug screen today, and Judge verbally told PO that if it were dirty, "I would put him on EM lockdown," though nothing about that was included in the order.</p> <p>In addition to the stuff in the PO report, Mom believes that Def stole her gun, but she (and in-home counselor?) searched through all Def's stuff and didn't find it. In-home counselor conceded that Mom doesn't do anything to impose discipline, but also seems to think that it's unrealistic to insist that she try. Also, "She had him when she was really young, like 12 or 13." [A current JPO who used to be an in-home counselor] actually was his in-home worker back when he was 7 or so.</p> <p>Def has been hospitalized three times -- 2 mentioned in the PO report and a third a few weeks ago, from 2/1-14 at Hill Crest. He was diagnosed with depression NOS and impulse control d/o -- but somehow [his JPO] got the impression from the Dr. that Def doesn't really have a diagnosis, "he's just bad"(?!). According to Mom, the psychiatrist at HC was [redacted] and the therapist was [redacted]. I'll call and see if either of them could be useful at trial -- e.g., to negate the mental state.</p> <p>I don't think we've got "fighting words" here, since he was addressing teachers and school board employees. If the DA pushes an argument for tumultuous or threatening behavior or unreasonable noise, then they may have something, although perhaps some of that can be negated on cross. I desperately want to keep the kid off probation in the current judicial/PO climate, because he would not do well.</p>

INFORMATION ABOUT THE CLIENT

INFORMATION YOU NEED FOR EVERY CLIENT:

- Family structure, history, dynamics
- Educational history, including discipline and special education
- Mental health history – diagnoses, treatment
- Medical history – significant health problems, physical trauma
- Court history, including child-welfare cases

HOW TO GET IT

INFORMATION ABOUT THE CASE

- Interview witnesses, favorable *and* (ostensibly) unfavorable; make a recording and/or get a written statement
- Go to the scene; take photos and video; measure objects and distances
- Inspect surveillance video, records, etc. by subpoena duces tecum
- Whenever possible, bring an investigator or other non-attorney for foundation-laying

HOW TO GET IT

INFORMATION ABOUT THE CASE (CONT'D)

- Your investigation just might yield something surprising

HOW TO GET IT

INFORMATION ABOUT THE CLIENT

- Talk to client and parent(s) to identify areas of inquiry
- Get releases and subpoena school, medical, mental-health, and other confidential records
- Interview teachers, treatment providers, DSS workers
- Independently check legal background of child and family members

DISCOVERY

INVESTIGATE FIRST, *THEN* SEEK DISCOVERY (BUT EXCEPT IN RARE CASES, *SEEK DISCOVERY*)

- Investigation will help you identify what the State should have (including things the police may have and the DA may not)
- Investigating first will help you identify the rare case where you might opt out of discovery
- Make sure your motion is thorough
- If at first you don't succeed: motion to compel

DISCOVERY

WHAT YOU'RE ENTITLED TO:

- Copies of written or recorded statements by client and co-defendants, and the substance of any other statements by them
- Witness list
- Documents and tangible objects the State will offer as evidence, or material to defense, or belonging to client
- Physical or mental examinations, tests, measurements, or experiments
- Anything exculpatory, including evidence that would be admissible to impeach a prosecution witness

DISCOVERY

OVERCOMING NONPRODUCTION AND OBJECTIONS BY THE STATE

- “We don’t have it” – make sure “we” includes the police, not just the DA
- Just because the DA says it’s not exculpatory doesn’t mean it’s not exculpatory
- Work product is protected by state law; if something you’re *constitutionally* entitled to is contained in work product, state law can’t shield it from discovery
