

Discovery : what do you have, what do you do with it?? (critical review and handling)

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1

Remember:

Investigation starts the minute you meet the client or get the call from the Attorney

1. Go with the attorney to meet the client and always take notes!
2. Start at the beginning of the case to organize and gather and view discovery
3. Develop a "to do" list with every case and personalize for each case
4. You are the attorney's confidant and sounding board
5. Make sure the attorney gets you appointed or retained!!!

2

Where does the discovery come from????

- ▶ DAS-- uploaded from the DA office-- does your attorney want it printed??? (I do) see to it that every page is bates stamped-- any missing?? Get access to DAS
- ▶ EVIDENCE .COM (yuck) uploaded to DA office from LE-- may have voluminous phone and text and social media, photos, video or audio interviews, JAIL home wave or phone recordings
- ▶ Old fashion DVDs, flash drives, PAPER!

3

What to do with the superior court dump of discovery

1. Get a program that makes the discovery searchable and book mark-able!!
(Adobe pro, FoxitPhantom, etc.)
2. Is the DAS bate stamped??? Be aware of any missing pages– you can merge additional discovery as received– check DAS often
3. Do the DVDs open?? Get a copy for you!!
What player do you need?? (VHS, Blue ray, some other weird one)

4

Investigation Checklist-what gems are in the discovery

- ▶ Miranda issues, Massiah rights??
- ▶ Search and seizure issues
- ▶ Search warrants– Franks issues in affidavit??Inventories?
- ▶ Crime scene review, physical evidence chain of custody, lab reports, cell phone dumps and towers
- ▶ Evidence collected- need for independent tests??
- ▶ Witnesses—who are they—what do they say
- ▶ What did your client say and how many times
- ▶ Inconsistent or contradictory statements of witnesses . your client??
- ▶ Timelines– make them, remake them, use discovery as well as your client and your investigation– compare with state's timeline

5

Let's get real– What do you do with what you find in Discovery?

- ▶ 1. Statements by your client– do not rely on a "report"— watch the video– painful as it may be—are there incriminatory or inconsistent statements– **need a transcript?? Make a chart!**
- ▶ 2. Statements of key witnesses– same thing—are they consistent– more than one interview?? **Make charts and get transcripts**
- ▶ 3. use discovery to start initial location and interview of witnesses

6

What do you do with the discovery cont!

- ▶ Read the search warrants– is the affidavit sufficient?? Inventories?? Any thing wrong??
- ▶ Crime scene– is investigation adequate– can you or expert recreate what LE did??
- ▶ Lab Requests—(Reports take awhile) what went to the lab??
- ▶ Chain of Custody– don't take it for granted!
- ▶ Lost or Destroyed Evidence??? Contaminated?

7

Do you always “wait to see or rely on the discovery?”

NO

- ▶ Get to the crime scene
- ▶ Get to the seized vehicle
- ▶ Get your own toxicology if relevant
- ▶ Get your own records– including victims and witnesses!
- ▶ Get to see the client with your attorney--

8

Are there records in the discovery– what is NOT included that you need??

- ▶ Medical (do you need xrays.scans, notes?)
- ▶ Psychological(DSS eval? What about the victim?) **have any witnesses with MH issues**
- ▶ Military(drug use, **PTSD?? TB??**) more than just honorably discharged)
- ▶ School(IQ tests, special classes, diagnosis?)
- ▶ Employment (potential witnesses)
- ▶ Phone records(just cellbrite?) towers? Raw data!!!!

9

Why should an investigator nitpick the Discovery???

- ▶ 1. you may see constitutional errors early on in statements, search warrants, evidence collection and storage
- ▶ 2. you will see areas where you can recommend an expert – DNA, cell phones, psychological, pharmacologist, toxicology, medical---- etc.
- ▶ 3. you can get your own records and should– do not wait for all the discovery!!!
- ▶ 4. you will find witnesses that lead to other witnesses

10

How do Investigators turn lemons of discovery into lemonade defense??

- ▶ 1. Careful scrutiny finds error in how LE did their investigation!!
 - ▶ - crime scene, search warrants, evidence collection and storage, seizures, Miranda and Massiah.
- ▶ 2. **Witnesses sometimes recant** or modify what they told LE!!
- ▶ 3. telephone calls, oral conversations and notes are not provided!!
- ▶ 4. crucial evidence is ignored, used up, destroyed!!

11

WHAT IS HIDDEN BENEATH ALL OF THAT DISCOVERY MIRAGE??

- ▶ Often it is what is **NOT** in DISCOVERY that turns your investigation around– **WHO** did they **NOT** talk to?? **WHAT** did they **NOT** do?? **WHY** did they **NOT** consider other suspects??
- ▶ What is in those phone records– pictures– surveillance cameras that may help your client?
- ▶ **What did they not seize** ??? Business videos?? Phones?? Physical evidence??
- ▶ Anything that smells like Brady or Giglio violations?? Excessive force or policy violations??

12

Investigation can result in great justice for your client!!



13

AND SOMETIMES YOU ARE THE HERO!

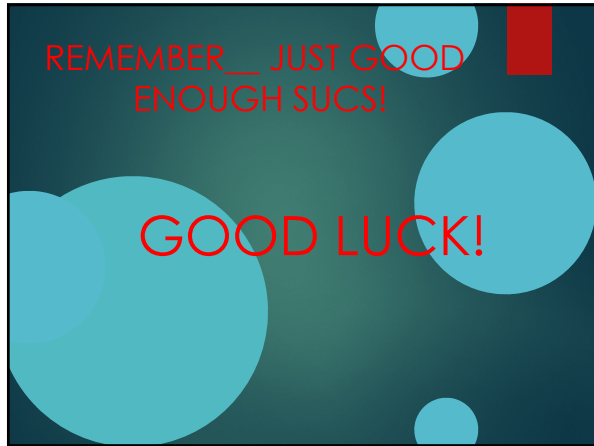


14

CONCLUSIONS

- ▶ 1. GET IT ALL AND GET IT ORGANIZED
- ▶ 2. CONSULT WITH THE ATTORNEY AND HELP WITH THE REVIEW AND ANALYSIS OF LEGAL CONSTITUTIONAL ISSUES
- ▶ 3. HELP WITH THE REVIEW OF VIDEOS, JAIL CALLS, PHONE RECORDS
- ▶ 4. MAKE YOUR DISCOVERY SEARCHABLE AND BOOK MARK IF ATTORNEY WANTS IT
- ▶ 5. USE THE DISCOVERY AS LAUNCH FOR WITNESS INTERVIEWS, AND CLIENT INTERVIEWS
- ▶ 6. GET RECORDS EVEN IF SOME ARE IN DISCOVERY!

15



16
