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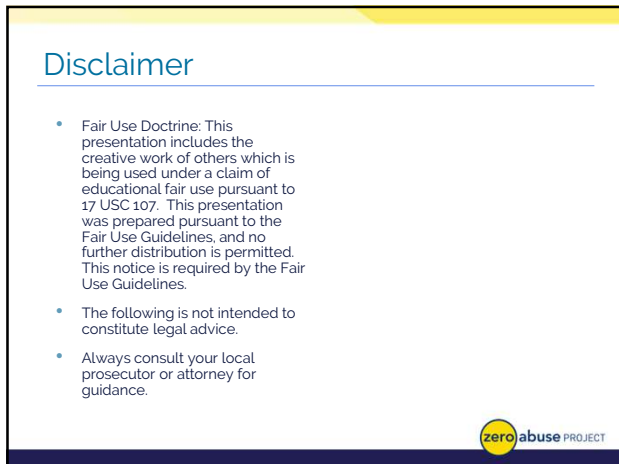
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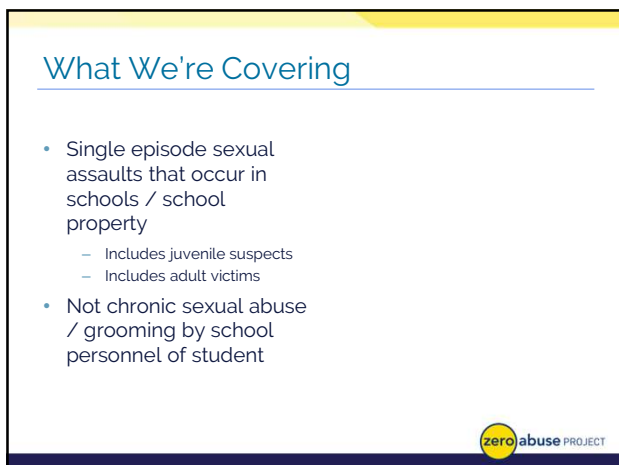
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## My Goal

- Cohesive Team Response
- Evidence Collection Ideas
- Victim Protection
- Persuasive Case Presentation



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## A Rape at Lawrence Central



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## State v. Jabril Scruggs

- March 18, 2014:
  - 1st lunch period
  - Victim in cafeteria – Defendant sitting next to her
    - "Walk with me – looking for my mom"
  - Victim walked with Defendant from one end of school to another
    - Opening doors to look for mom



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## State v. Jabril Scruggs

K.H. and Scruggs walked around the school while Scruggs checked to see if his mother was waiting by three or four different doors. When they were outside of the dean's office, Scruggs tried to kiss K.H. K.H. moved away from his advances because she did not want to kiss him. They continued to walk around while Scruggs ostensibly checked the various doors for his mother.



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## State v. Jabril Scruggs

- After checking the fourth door, Scruggs put his hands on K.H.'s back and began pushing her to walk forward. He directed her towards a secluded area by the girls' and boys' locker room.
- "He started getting a little rough, like grabbing [her] arm, twisting [her] arm back and stuff, and like putting his hand on [her] shoulder and like bending [her] over." Tr. III p. 16. K.H. told Scruggs "no" and "stop" several times. Tr. III pp. 17-18.
- While holding her arm and using his weight to keep her bent over, Scruggs pulled down K.H.'s pants. K.H. started crying and pleading for Scruggs to stop, but he pulled his pants down and forced his penis in her vagina.
- Scruggs was very forceful and rough, and he struggled to insert his penis. K.H. continued to plead with him to stop; however, Scruggs ignored her pleas and did not stop until he had ejaculated on her back.

Appellate Record



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## State v. Jabril Scruggs

- Scruggs walked away but came back to get KH
- KH crying and fixing clothes
- Scruggs took her by her arm and led her into the main gym
- KH crying and said, "I kept telling you 'no' and I kept telling you to stop"



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## State v. Scruggs

- Asst. Dean J.R. Shelt approached them
  - KH upset and agitated
  - "She did not appear to have the demeanor of a student that had just been caught doing something wrong, but instead appeared to be emotionally upset" (Appellate record)
  - Asked KH what was wrong – no response
  - Scruggs told Shelt that KH was having family issues
  - Shelt told them to go back to where they were supposed to be



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## Significance of Shelt's Testimony



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## First Report

- Victim tells friend "J-Rock raped me"
  - Friend took victim to nurse
    - Redirected to Dean Shelt's office
    - KH told Dean Shelt that Scruggs raped her
  - Shelt began reporting to Law Enforcement and victim's mom



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## Reporting Continues

- At school
  - Victim's mom and police arrive
  - Brief account of what happened
  - Victim redirected to a Center of Hope with mom
- At hospital
  - Noted she was still visibly upset and crying
  - Exam by nurse examiner
  - Samples taken for Evidence Collection Kit



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## Medical Evidence

- Nurse's findings:
  - At least 8 "pretty sizeable" lacerations and several smaller injuries to external genitals
  - Bruised hymen and redness to cervix (laceration)



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## Evidence Collection

- Pulled surveillance footage
  - No footage in hallway where rape occurred
  - Nearby cameras showed them before and after rape
    - No affection on part of victim
- Further evidence collection
  - Paper towels from bathroom where victim cleaned up
  - Defendant's clothing



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## Case Progression

- Case Filed: March 19, 2014 (day after assault)
  - Defendant charged as an adult with Rape and Criminal Confinement (x2)
    - Rape: "direct-file" charge when offender is 16 or 17 years old
    - Defendant also had some pending criminal allegations
  - Defendant held pre-trial



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## Case Progression

- Online harassment



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## Case Progression

- Fake social media posts attributed to victim
- Allegations of recantation
- Victim was attending different school



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## Case Progression

- DNA / Serology
  - Swabs: Found semen and blood
  - Found semen on victim's back and in underwear
    - Matched Scruggs' DNA



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## Trials

- First trial: Hung jury / acquitted on 1 count
- Second trial: convicted on both charges



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## Medical Evidence

- Nurse's findings:
  - Likely cause of vagina / genital injuries: blunt force trauma
  - Suggested KH did not assist Scruggs in inserting his penis into her vagina
  - Nurse: out of the several hundred exams she had done, she could not remember ever seeing so many injuries to that area
  - Neither internal injury was common, even in sexual assault cases



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## Significance of Evidence

- Remember that accountability goes beyond trier of fact:
  - Court of Appeals quoted extensively from testimony of **the nurse**
  - Court of Appeals also singled out testimony of **Dean Shelt**



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## Why Did Prosecutors Get a Conviction?

- Corroborating evidence
- LOTS of rapport building with survivor and family
- Early contact with witnesses
- Visual appeal



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## Indianapolis Isn't Alone

- Boston, MA



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Loudoun County, VA

American School and University 

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Brooklyn, NY



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North Carolina



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## National Survey

- US Dept. of Education – Office of Civil Rights
  - 2017-2018: Over 17000 school districts submitted data
    - 50.9 Million Students / Over 97,000 Schools
    - Total Incidents of Rape or Attempted Rape and Sexual Assault:
      - 13,799** incidents of sexual violence in 2017-18
        - Approximately 1 in every 7 schools
      - **43% increase** from 2015-2016



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## Investigative Strategies

*It doesn't matter whether you are a lion or a gazelle.  
When the sun comes up, you better be running.*



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## How Does This Get Reported?

- Voluntary disclosure:
  - Victim makes a disclosure seeking help.
- Involuntary disclosure:
  - Victim discloses to a friend. Friend discloses, seeking help for victim
- Digital evidence discloses
  - Recording of abuse surfaces
  - Chat / messages discovered



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## Involuntary Disclosure

- Discovery of assault may also be involuntary
  - Digital evidence
  - Offender confession

Group Anonymous 

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## Who is your team?

- School police
- Local police
- Forensic interviewer
- Prosecutor
- Victim Advocate
- Medical Personnel
- Digital Forensics
- Crime Lab

### But also:

- School administration
- School counselors
- Mental health professionals



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## Who is your team?

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• School police:               <ul style="list-style-type: none"> <li>– make immediate reports, preserve surveillance footage and other digital evidence, work with local police</li> </ul> </li> <li>• Local police               <ul style="list-style-type: none"> <li>– Ability to ID crime scene, coordinate with school officials, and work with kids as witnesses and suspects, collect evidence</li> </ul> </li> <li>• Forensic interviewer               <ul style="list-style-type: none"> <li>– Victim interview</li> <li>– May need to assist with other child interviews</li> <li>– CAC: serve as meeting point</li> </ul> </li> <li>• Prosecutor               <ul style="list-style-type: none"> <li>– Assist with search warrants</li> <li>– Work with school</li> <li>– Charging decisions</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Victim Advocate:               <ul style="list-style-type: none"> <li>– Prepare for continuity of care</li> <li>– May require coordination with school</li> </ul> </li> <li>• Medical Personnel:               <ul style="list-style-type: none"> <li>– Physical exam and evidence collection</li> </ul> </li> <li>• Digital Forensics               <ul style="list-style-type: none"> <li>– Exam devices</li> <li>– Assist with collection from school</li> <li>– Identification of social media accounts</li> </ul> </li> <li>• Crime Lab               <ul style="list-style-type: none"> <li>– Quick turnaround</li> </ul> </li> </ul> |
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## Assemble

- Think through a scenario before it happens
  - Know your team.
  - Know your responsibilities.



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## Coordination

- Why is coordination so important?
  - Will the suspect be back in the school before you can investigate?
  - Suspect interview and seizure of digital evidence?
  - Will the media get wind of investigation?
  - What is blowing up on social media?
- Schools are required to promptly respond to allegations



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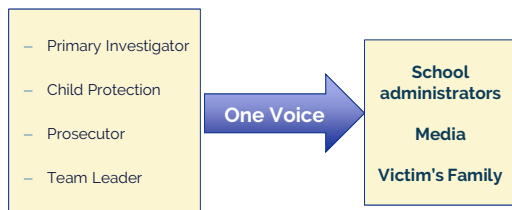
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## Soooo ...

- Having your team together to make expedient AND wise decisions is critical



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## Victim Interview

- If not a delayed disclosure:
  - Minimal Facts / First
  - Forensic interview later
- If disclosure delayed (HIGHLY COMMON):
  - Forensic interview before medical exam



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## Victim Interview

- Subjects to cover
  - Physical location of assault
  - Disclosures prior to police
  - Sources of digital evidence
    - Including social media
  - Potential witnesses
  - Intimidation



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## Immediate Evidence Gathering

- Witness identification & interviews
- Preserve digital evidence
  - School / bus camera footage
  - Building access
  - Communications about assault
  - iCloud / Google location data
- Crime scene processing
- Medical exam
  - Include suspect exam



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## Follow-up Investigation

- School records
- Additional witness interviews
- Grand Jury to lock in testimony
- Social media research
- Look for intimidation
- Suspect in-custody calls



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## Corroboration

- Find evidence to corroborate witness accounts
- Evidence doesn't have to prove case



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## Forms of Physical Evidence

- Be prepared to help jury view scene as victim saw it
  - Photographs
  - Digital Recordings
  - Diagrams / measurements / models
- Clothing
- Medical evidence



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## Victim Interviewing

- MUST use trained forensic interviewers for minor victims
- Victims with developmental / communicative disabilities



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## Witnesses

- Interview witnesses before someone tells them what to say
  - Record interviews
  - Collect additional evidence based on statements
  - Even if they can't offer helpful information, lock them into their lack of knowledge before someone convinces them otherwise



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## Witnesses: Who To Interview

- |   |  |
|---|--|
| • Student witnesses                     | • Defendant's cellmate / jail visitors after booking |
| • School personnel / staff / volunteers | • Child Protection                                   |
| • Household members / relatives         | • Medical professionals                              |



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## Witnesses to Interview

- Look to social media
  - Who claims to know what really happened
  - Anyone making threats



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## Getting *Accurate* Information

- How do I get the most accurate information from witnesses?
  - Let the witness talk
  - Ask open-ended questions
  - End with "anything else I should know"



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## Social Media as Evidence

- Posting about cases
  - Twitter hashtags
  - Facebook support pages
  - GoFundMe accounts



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## Social Media as Evidence

- Witness Intimidation
  - Online petitions to drop charges
  - Posting victim's statements / photos / other evidence
  - Use of hashtags / check-ins to gather support
  - Bright side: PC to search online accounts?



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## Social Media as Evidence

- But it goes both ways . . .
  - Caution victims
    - It's admissible.
    - Have you written anything about the case?
    - But NEVER tell a victim to delete something without capturing it and giving it to prosecutor

**The rule of "one dumb friend"**



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## Digital Evidence

- Sex offenders may talk to others about the offense
- Sex offenders use digital media to control victims and to control the narrative
- Sex offenders may keep "trophies" that show their crimes



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## Digital Evidence: Steubenville



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## My Point?

- My point is . . .
  - Get the cell phone
  - Get the computers
  - Get digital storage
  - Get into accounts



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## Who Let the Dogs Out?

- Don't forget to call in an ESD K-9 unless you want to sort through a teen's bedroom or locker



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## Digital Evidence

- Presume digital evidence exists:
  - Affidavits available regarding use of digital media, emails, websites
  - Tailor warrants to facts of case
    - Ask witnesses about digital media
  - Use trained experts to seize digital evidence
  - Consider other agencies if there were attempts to destroy digital evidence



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## Digital Evidence

- What am I looking for?
  - Cell phone:
    - Text messages
    - Call records
    - Location data
    - Photos / videos
    - Evidence of chat apps
    - Syncing accounts
  - Email communications
  - Social networking sites



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## Digital Evidence

- Don't forget about text messaging apps
  - TextNow, Pinger
  - Whatsapp
  - Telegram
- Ask witnesses: how did suspect communicate with you?
- Ask victim how suspect communicated with the victim



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## Digital Evidence

- If presence / location is a question
  - Cell tower data / phone location data
    - Verify victim's account
    - Shows defendant's opportunity to commit offense
    - May exclude presence of "alibi" type witnesses
  - Vehicle data



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## Charging / Pre-Trial Strategies



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## Charging Decisions

- Usual case assessments
  - Strength and future availability of evidence
  - Offender culpability and history
  - Victim / family participation
  - Probable cause vs. Reasonable likelihood of conviction
  - Age-based offense vs. force / threat of force



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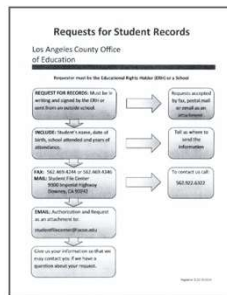
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## Pre-Trial Prep: Witnesses

- Witness considerations
  - Juvenile witnesses:
    - Require additional time to prep
    - Cautions about social media / intimidation
    - Persuading parents to allow cooperation



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## Pre-Trial Prep: Jail Calls

- Stay on top of jail calls (text, videos, etc.) by suspect
  - They will talk about offense
  - They will talk to witnesses
  - They will reveal trial strategy
  - They will use other inmates to make calls



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## Pre-Trial Prep: Motions

- Motions *in limine* to admit
  - Pre-trial determinations of admissibility of hearsay
  - State-friendly 404(b)
- Motions to require notice / prohibit
  - Character evidence
  - Rape shield



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## Rape Shield

- Rape Shield:
  - Know what is admissible and what isn't
  - Is the evidence credible?
  - How prejudicial is this?



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### A. Prior Sexual Activity by Victim or the Victim's Reputation Regarding Sexual Activity:

That any prior sexual activity by the minor victim in this cause with people other than the Defendant or any evidence as to the victim's reputation for sexual activity is inadmissible pursuant to 725 ILCS 5/115-7, and accordingly said evidence should be barred. In *People v. Leggans*, the Defendant attempted to introduce evidence that the complaining witnesses had previously been victims of sexual abuse and argued that the evidence would have permitted the jury to conclude that someone other than Defendant caused harm to the victims and that the girls had sufficient knowledge of sexual activity to allow them to fabricate their allegations against Defendant. *People v. Leggans*, 625 N.E.2d 1133, 1139 (5Dist., 1993). The Defendant's argument centered around his constitutional right to confrontation. However, the Court ruled that Defendant's attempt to circumvent the rape shield statute was intended to divert the focus of the jury from the accusations against him and cannot be permitted. *Id.* at 1140.

In the case at hand, Defendant should be barred from eliciting any testimony or presenting any evidence about the victim's prior sexual abuse or investigations regarding prior sexual abuse of the victim. K.S., the juvenile victim in this case, makes references in her CAC interview about being in foster care. K.S.'s mother and foster mother were also interviewed through the course of this investigation and discussed the circumstances that led to K.S. being placed in foster care including prior sexual abuse by a boyfriend her K.S.'s mother. The sexual abuse that was the subject of that case occurred when K.S. was 7 years old. That case was investigated and prosecuted by the United States Attorney's Office and the Defendant in that case is currently incarcerated in the Federal Bureau of Prisons.

Since this matter has been pending, K.S. has given birth to a baby boy. The father of the child was a juvenile at the time of the conception and no criminal charges have been filed against him. The relationship and the birth of the child is irrelevant to this matter and is inadmissible pursuant to the rape shield statute.

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### B. Personal Opinions of Witnesses Regarding the Victim's Credibility or Believability:

That the personal opinions of any witness regarding the truthfulness, credibility or believability of the victim in this cause are irrelevant, constitute improper reputation evidence and invade the province of the jury in the trial of this cause. *People v. Brink*, 690 N.E.2d 136 (4Dist.1998). *Brink* dealt with a witness who was called to testify to the victim's reputation for truth and veracity. The witness had given a report to DCFS based on "personal experiences" with the victim and she had not discussed victim's reputation with anyone else. Since that witness' opinion regarding the victim's truthfulness was based upon her personal experiences and not on victim's reputation for truthfulness, the trial court properly struck that testimony. *Brink* at 140.

### C. Specific Bad Acts or Lies of the Victim Offered to Impeach Her Credibility:

That at trial a sex abuse victim's truthfulness cannot be impeached with assertions of specific bad acts or specific instances of untruthfulness not related to the allegations which are the subject of the trial. *People v. West*, 632 N.E.2d 1004 (Ill.1994). In *West*, a witness was asked if the victim in the case "ever exaggerated the truth before?". The question was objected to by the State at the trial court level, and that was affirmed by the Supreme Court in their opinion. The *West* court determined that question sought to improperly elicit opinion evidence or evidence of past instances of untruthfulness. *West* at 1007. The general rule requiring reputation evidence applies to all witnesses regardless of age. The proper procedure to introduce evidence of truthfulness is to ask the witness whether he knows the general reputation for truthfulness in the community. *West* at 1008. To allow any other line of questioning or allow testimony on specific bad acts would be improper opinion evidence and not reputation evidence.

Furthermore, it is not permissible to reflect on a witness' credibility by establishing that on a former occasion he lied about a totally unrelated matter. *People v. Smith*, 316 N.E.2d 170, 177 (5Dist. 1974).

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## Common Rape Shield Issues

- Victim made prior allegation, but it was not prosecuted
- Defendant alleges prior sexual contact with victim
- Defense witness claims victim told others he / she wanted to have sexual contact with offender
- Victim made prior allegation but retracted it
  - Or defense witness claims victim made a prior allegation, but victim denies this



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## Common Character Evidence Issues

- Claims that victim has recanted this allegation
- Assertions that victim told a lie
- Influx of social media evidence
  - Claiming to be victim / witness / offender
- Evidence of motive to fabricate



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## New Threat: AI to Create Evidence

- AI will be a chance to fake evidence
  - Creating sexualized images purporting to be victim
  - Creation of fake social media posts
  - Falsified "statements" attributed to victim or state witnesses



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### Pre-trial: Combatting Witness Intimidation

- School-based assaults
  - Never underestimate the ability of teens to weaponize social media
  - Intimidation by school personnel
    - School may act to protect offender
    - Victim faces hostile environment at school



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### Pre-trial: Combatting Witness Intimidation

- Prepare for Forfeiture by Wrongdoing
  - What evidence exists of wrongdoing
  - Can action be attributed to offender
  - Is witness unavailable
- Even if witness is available, consider admissibility
  - Evidence of guilty knowledge



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### Trial Strategies



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## Trial Structure

- Witness Order
- Creating Visual Appeal
- Selecting a Jury



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## Witness Order

- Goal:
  - create the highest likelihood that jury will believe your victim is a victim *before the victim testifies*
- What evidence convinces you most strongly that the crime happened?
- What witnesses can give the best overview of the case?



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## Witness Order

- What can you set up in opening statement to help jurors see how the pieces fit together?
  - Explain predicted evidence
  - Describe, in broad terms, what evidence you expect to come from witnesses
  - Describe offense from perspective of victim



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## Witness Order

- Where to start:
  - First reporting witness
  - Strong medical evidence
  - First officer on scene
- Witness quality
  - Needs to be a strong witness or a witness who brings in a compelling piece of evidence
  - Not a witness who will be destroyed on cross-exam
  - Not a witness who seems unsure



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## Visual Trial

- How long has it been since *you* looked at your phone?

Verizon.com

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## Visual Trial

- Your visuals should
  - Help the jury see and experience the crime scene
  - Help the jury avoid unnecessary arguments about things that don't matter
  - Aid witnesses in explaining things to the jury



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## Visual Trial

- How does it look to the victim vs. mounted camera?
  - Think about the difference between body cams and dash cams



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## Visual Trial

- Just Go Pro It!!
  - School buildings
  - Inside of school bus
  - Anything that would benefit from POV



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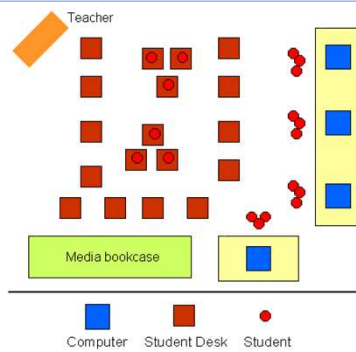
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## Visual Trial



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## Jury Selection

- Will your jury have the courage to convict?
  - Do they accept that teens are capable of rape?
  - Could they believe a teen victim beyond a reasonable doubt?
  - Can they sort through social media bashing and determine truth?



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## Get Your Jurors Talking

- Does your jury selection sound like a cross examination?
- Will your questions actually elicit information from a juror?
  - Will it be truthful or what the jury thinks that you want to hear?



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## What Do Jurors Think About?

- Sex Crimes Victims?
- Disclosures of sexual abuse?
- Motives to fabricate allegations of abuse?
- **What's the first thing you think of when you hear a person say, "I was sexually abused when I was a child?"**



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## World view

- In listening to the juror and reviewing what the juror has written, what sense do you get about whether they
  - Believe that your factual scenario does happen?
  - Are willing to convict a person under this set of facts?



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## World view

- Listen for
  - suspicion,
  - hesitation,
  - desire to qualify their answers



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