EXPOSING THE WICKED

*Extracting Useful Testimony from Abusers and Rapists*

Presented to the National Crime Victim Bar Association

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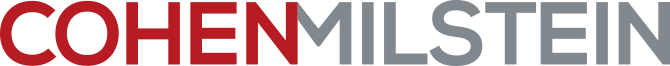
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*Dedicated to my dear friend, Bill Waters, who joined me in many successful battles against rapists and abusers.*

*Billy was much more than “just a country lawyer” as he always humbly described himself. He was a committed warrior and champion for anyone who suffered abuse.*

*May he rest in peace.*

***Always kill with a borrowed knife.***

Sun Zu

**PERHAPS YOU ARE ASKING THE WRONG QUESTION …**

As advocates for the abused, we are often challenged to prove acts that nobody witnessed other than the assailant and the survivor, acts that left behind no lasting physical evidence and acts no assailant would ever admit to under oath. Correct? No. Not the last part. Assailants might not admit to what they did and will usually try to hide the facts, but it much harder for them to hide who they are. By proving who they are, you can prove what they did.

Too often the question posed to abusers during their testimony is, “Safe to assume that you deny attacking/abusing/raping my client?” The answer will be, of course, “Yes, I deny that.” That question should be avoided. The answer will do nothing to advance your client’s case and it disrupts what could otherwise be a much more productive approach to the questioning of the perpetrator.

Also, too often depositions of perpetrators are short. It should be among the longest, if not the longest, in the case. The longer you get perpetrators talking, the more likely they are to reveal what you need to prove: who they really are.

1. ***Appear weak when you are strong, and strong when you are weak.***

Sun Zu

**SOME THOUGHTS ON TACTICS**

For most of the people who have attacked and abused our clients, nobody would have guessed in advance that they were capable of such crimes. They are usually of above-average intelligence. They are skilled at convincing others that they are safe, including our clients. Before they struck, they were trusted. They were admired. They were seen as good friends, good employees and good parents.

It is important to know that most of them relish the power they feel in pulling this off this deception. It is part of the mental “pay off” many predators experience while hunting their victims. It makes them feel powerful and feel in control when they find that lacking in their lives otherwise. As one child rapist explained why he continued to abuse a child after almost being caught the first time:

*Honestly I had control of the situation. I was out of control in life. I felt like I didn’t have any control in the relationship. I didn’t have any say so. So I was looking for a way to feel powerful. That was my way. I was able to do what I wanted.*

So when you sit them down to take their testimony, they want to feel powerful and in control again. They often believe that they are smarter than you. They believe that they can convince you, as they did others in their community, that they didn’t do or are not capable of doing what your client has accused them of doing. (In fact, in many of our cases, community and family members are still taking sides at the time we depose the perpetrator, especially in civil cases when no criminal arrest was ever made.) They can even believe that they have a shot at convincing you that they are innocent. They want to talk about themselves and feel that they are being heard *and* believed. So let them feel all of these things. Only then will they start talking and talk enough to reveal who they really are.

How do you do this? How do you make them feel powerful when they are under the control of the subpoena you issued to them? How do you make sure they feel in control when you arrive with the skills of an experienced lawyer? Think about how they are going to see and experience you from the moment you arrive to depose them.

Did you park near the building in your impressive BMW or Mercedes where they might see you? Do you look like a confident lawyer when you arrive? Are you dressed in a way that projects power? Are you wearing a business suit, complete with power colors like a bold red? Are your shoes shined and do you have an equally shiny briefcase? Do your heals click loud against the floor as you walk in? Are you well organized, with exhibits carefully clipped together and pre-marked? Do you have your questions typed out? Do you have a laptop or tablet with you? Are you ready to look they straight in the eye and stare them down?

If you answer yes to any of these questions, you are making a mistake. You are prepared only to disempower them and make them feel they have no control, a position in which they will be inhibited from telling you who they really are.

Instead, look as unimpressive and disarming as you can. When you get up in the morning, run your fingers through your hair, not a comb. Wear jeans, sneakers and don’t tuck in your shirt. Leave the Rolex on your dresser. Use a backpack, not a briefcase. No computers. When you arrive, act like it’s just another day to you and the perpetrator is just another witness to you, nothing personal. Shake the perp’s hand and say, “It’s good to meet you. Thanks for coming.” Handwritten notes; nothing typewritten. Slouch in your chair. From time to time, pretend you can’t find a document you are looking for – even declare a break and say don’t want to waste everyone’s time while you search for it. Keep your voice low and unassertive at all times. Crack jokes and smile.

Do this and the perps will more likely feel that they can be themselves and that will maximize the chance that you can get great testimony.

**BORROWING THEIR KNIFE**

Abuse perpetrators want people to see them in ways that facilitate their crimes. Most work hard to be seen by others as trustworthy and overly virtuous, so they can access their victims. These are key personality traits of many predators. But obviously there is a large gap between how they want to be seen and who they really are. It takes effort for them to keep track of the difference, combined with the fact that so many predators maintain a deranged belief that what they do to others is justified and normal. At the same time, most have distorted views of themselves, maintaining a belief that they are smarter than most (most are of above-average intelligence) and able to manipulate others with a high level of skill. These dynamics set the stage for them to eventually contradict themselves and reveal their true beliefs, but to get there during your examination of them you have to get them talking a lot and talking freely. Listening carefully and patiently is necessary to find the inconsistencies in what they say and reveal and to invite them to share their twisted views.

For these reasons, consider starting every examination by having them commit to their claimed higher principles for living, specifically the virtuous image of themselves they want others to see. Indulge them when you do this. Act like you see it in them too if you can do that with a straight face. Avoid challenging them until late in their testimony. Then you can move to questions about how they have actually treated your client and look for the chance to create contrast between their behaviors and attitudes and the principles they started with.

Here’s one example of a former U.S. Marine who still wanted to be seen for the honor of that service, despite having raped a college classmate (my client’s real name appears below, not in error, but because she courageously chose to reveal her name in public). Watch in his testimony how he abandons his principles and commitment to his own reputation so readily, including with a sexist statement near the end, plainly damaging his own credibility. All the while, his efforts to deny having raped her unravel based on his own words, those spoken and, significantly, those not spoken. Applying his stated principles to his own words leads most readily to the conclusion that he did, in fact, rape his classmate, Samantha Garrett. (This examination was conducted during a trial, so it is much more aggressive in tone that is suggested for a deposition.)

Q. Now, sir, I understand that you were a United States Marine?

A. Yes.

Q. That's a position of honor, correct?

A. Yes, it is.

Q. One of integrity?

A. Yes.

Q. Your reputation in that respect means something to you, does it not?

A. Yes, it does.

Q. Being honest and having a reputation of being honest matters to you, correct?

A. It is one of the most important things that I carry with me.

…

Q. Have you ever indicated to anyone that you engaged in nonconsensual sexual contact with my client?

A. No.

Q. Who is Rachel Emerson?

A. Rachel Emerson is a girl I went on a date with.

Q. Did you every communicate with her about Samantha Garrett?

A. Yes, I did.

Q. … Did you ever indicate to Ms. Emerson you could not go on a date with her based on something you had done to Samantha Garrett?

A. Yes, and after I was told explicitly by Ms. Garrett that I needed to.

Q. Did you ever indicate to Ms. Emerson, quote, I need to level with you. My friend is in a bad place because of something that I did. I won't be seeing you again, close quote?

A. Yes.

Q. And that was referring to Samantha Garrett, you did something bad to her?

A. Yes, after she directed me to do so.

Q. Were you being dishonest indicating to Ms. Emerson that you'd done something bad to my client?

A. No.

…

Q. Have you ever been dishonest with my client, Samantha Garrett?

A. Not to my knowledge.

…

Despite this statement of always being honest , and the stated import to him of integrity, honor and his reputation, he then tries explain away his text messages to her as being not so true:

Q. Well, let's go on then. Let's take a look at approximately four minutes later at 20:02 hours. This is the fourth item from the bottom. It appears to be a message from you, correct?

A. That is a message from me. Do you want me to continue reading verbatim?

Q. Go right ahead.

A. I'm a disgusting piece of human shit. I don't deserve it. I don't deserve to even talk to you.

Q. And at this point it's your testimony that you were scared of something?

A. Yes.

Q. What were you scared of?

A. I was scared of Samantha.

Q. Scared of her for what? She was going to do something to you?

A. Yes.

Q What did you think she was going to do?

A. She had just accused me of making her uncomfortable.

Q. Well, uncomfortable and she had accused you of being forceful towards her, correct?

A. That is what she accused me of.

Q. Did you disagree because I don't see any statement here that says she was wrong?

A. I do disagree.

Q. Did you communicate to her in your text messages here that she was wrong?

A. I did not.

…

Q. What was [your next] message [to her]?

A. “I seriously deserve nothing but a bullet to the brain. Just return everything [gifts she bought him.]

Q. … she responds by saying what to you?

A. You don't deserve that, and I still love you regardless of what happened last night.

Q. And how did you respond to her approximately a minute later?

A. I do. I'm a fucking monster, an incompetent one at that. Ever since you told me about this I vowed to be more sensitive to your past and to be there for you and I did literally the opposite. You can't fix a rabid dog. They have to be put down.

…

Q. Did you have the option of responding to her by saying thank you. I do deserve that. We have a good relationship?

A. At that point I was -- yes, I had that opportunity.

Q. But you didn't act on that, correct?

A. Correct

…

Q. Did you have sexual contact with her before these messages?

A. Yes.

Q. Did you believe they were consensual?

A. Yes.

Q. Notwithstanding when she confronts you about being forceful and not consensual, you appear to take responsibility, don't you? Wouldn't you agree that's in your messages here?

A. I've never been accused of anything like this before, and I did not know how to react.

Q. Well, so, you reacted at this time by calling yourself a monster and it appears from -- these messages are complete, correct?

A. They are.

Q. There's no messages here where you say to my client I think you misunderstood, I didn't do anything wrong?

A. That is correct.

Q. And the communications that you had with Ms. Emerson was on November 22nd, which would have been nine days later?

A. That is correct.

Q. So you told a third party at that time that you have done something wrong. You didn't say you were just accused of doing something wrong. You said you did something wrong; is that correct?

A. After being explicitly directed to do so by Ms. Garrett.

Q. Did Ms. Garrett threaten you in some way?

A. Yes.

Q. In what way?

A. That she would tell the department that I was -- that I had assaulted her, that -- she didn't need to -- this is -- I didn't think anybody would believe me.

Q. Why did you think you wouldn't be believed? You indicated earlier that you're a man for whom integrity and honor and truthfulness mattered?

A. Because in the court of public opinion if a man gets accused of these things, it doesn't really matter what the facts are.

Q. So you said all of these horrific things about yourself in order to try to appease my client?

A. Yes.

Q. That's your position?

A. Yes.

Q. Prior to these messages, which were sent out prior to that evening of November 12, 2016, had you been falsely accused by Ms. Garrett in anything else?

A. No.

Q. You've indicated that something happened on or 3 about November 12, 2016 that caused my client to believe that she couldn't trust you anymore, correct?

A. Yes.

Q. Did she ever tell you what that was?

A. She said that I touched her without consent.

Q. You did touch her; but, as I understand your testimony, you're contesting whether it was consensual?

A. Yes.

Q. The only thing that we see in these text messages is you accepting responsibility by calling yourself such things as a monster. Did you at any time indicate to my client that you were not that monster, that you were falsely accused by her?

A. No.

Here’s another example, from the deposition testimony of an incest perpetrator who masqueraded as a church-going, highly moral family man, a leader in his religious community and in the business community. This example combines the principles of first encouraging him in his view of himself, without that being challenged, followed by exposing his distorted view that a young child, just eight years-old, could be both sexualized and sexually immoral:

Q. The oath that you took at the beginning of the deposition is to tell the truth and the whole truth so help you God. Are you a person of faith?

A. Yes, I am.

Q. Do you believe in God?

A. Yes, I do.

Q. Is telling the truth important to your religious beliefs?

A. Absolutely, it is.

Q. Are there any exceptions within your faith, your religious beliefs as to telling the truth, any times when you would be permitted within your faith not to tell the truth?

A. No.

Q. In your understanding of the whole truth, how does it differ from something less than that, be it a partial truth or a half truth?

A. You simply tell the truth based on the facts.

…

Q. So in -- in that first sentence on that page [of the book you wrote], you indicate that notwithstanding business success and professional accomplishments, which you relate in the book, you indicate that if you were to lose the love of your wife or your children or grandchildren, that all of the successes would be, as you put it here, airless, joyless and meaningless. Do you see that?

A. That's a very true statement.

…

Q. Okay. Tell me about when you look at that sentence and you're referring to your terrific children, what about [my client] Rebekka is terrific? What would you say about your daughter is terrific?

A. Despite what I've seen here this morning?

Q. Yes, sir.

A. My daughter was exceptionally -- she was my little princess. And she was exceptional well schooled, well taken care of. I mean, she was a very, very beautiful girl.

Q. Did she have any particular talents?

A. She had a lot of talents.

…

Q. Okay. And in this specific paragraph, in that respect, [your expert witness] Dr. Pope relates that you describe to him Rebekka having displayed certain spells approximately every six months, during which Rebekka would become, in quotes, aggressive and flirtatious, including even being flirtatious with her father himself. Do you see that?

A. Yes, sir.

Q. Okay. Is that something you told Dr. Pope?

A. Yes, it is.

Q. How old was Rebekka at the time that she was displaying that behavior?

A. It was in her late teens, early 20s.

Q. Okay. And with respect to that, how long did this go on? Years?

A. Well, between the time she was in her late teens, early 20s and then all the way up to the day she left. But it wasn't -- it wasn't -- I mean, it was just -- it wasn't all the time; just every now and then. You know how girls get, they can get flirtatious or they can get -- you know, they -- sometimes they don't act quite right.

…

Elsewhere in his testimony he referred to his daughter as having “warmed up to” him when she was only eight years old one night when he was supposedly tucking her into bed, a story that other witnesses had described him telling years earlier. In his testimony, the sickening insinuation of that statement was confirmed when he described discussing it with his wife, apparently oblivious to what it revealed about how he saw his eight year-old child as an emerging sexualized young adult at that tender age.

A. … But one night when I went to tuck my daughter in and my boys, like I did every time I was in town or every night, read them a Bible story or pray over them, I went in to hug my little daughter, and she hugged me back in such -- and wouldn't let me -- and I felt uncomfortable. I knew that eventually when she got to be 12, 14, 15 years old, little girls turn into young ladies. And I -- I knew that. But she -- it made me feel uncomfortable. She was only eight years old. And I immediately ran in and told my wife. I said, I think Becky's starting to become a woman. And I explained to her what happened.

The jury clearly understood what he meant by “warming up” and “becoming a woman” and the significance of him seeing his eight year-old daughter in that light. On a special verdict form, they found him responsible for sexually abusing her from age eight to 24, awarding over $4.6 million in damages.

**PERPETRATORS WHO ARE TOO CHATTY FOR THEIR OWN GOOD**

Remember as you conduct your examination of perpetrators that they often speak to other people about the accusations against them and can inadvertently reveal to them that they know too much in order to continue to claim innocence or ignorance. For this reason, it is important to determine everyone the perpetrator in a case has spoken to about the allegations against him or her. Consider the testimony below from a child sex abuse perpetrator, who sexually abused a very young child. The child was his daughter’s friend. The abuse occurred in a pool at a pool party. The child alerted her parents to being sexually molested in the pool near the end of the party.

The perpetrator’s testimony about the party, below, is followed by the testimony of two other people he spoke with. The first is a media relations consultant hired before his arrest to help protect his “reputation” (he was an accomplished corporate executive) if news got out about the charges he was facing after he was scheduled to surrender to police. The second is testimony of a forensic psychologist hired by the perpetrator’s criminal defense lawyers to evaluate him after his arrest. The goal of that evaluation was to confirm their assertion that he did not have any tendencies of a pedophile and was safe. It was poorly handled on the psychologist’s part, as reflected below.

*Testimony of the Perpetrator*

Q. When did you first learn that you were accused of sexual abuse of [my client]?

A. On the date of the surrender. The time I heard what I -- that I heard in detail what I was accused of doing was … during the first appearance hearing.

Q. And what did you learn at that time?

A. I learned that I was accused of improperly touching an underaged child.

Q. Did you learn where, in terms of location, you were accused of doing so?

A. Yes. In the genital area.

Q. And how about the circumstances, were you informed of those?

A. Yes. During that hearing I was.

Q. And what did you learn -- what do you understand to be the accusation?

A. That it occurred at a pool party which was organized for the graduation of my daughter and other children of her age and that it allegedly happened in the pool.

Q. Where's the pool located?

A. It's located in the [apartment] building where [your client’s] family resides.

Q. Have you been to that pool?

A. Yes. I have. On the date of the pool party.

Q. Is that the only time you have been there?

A. Yes. That's the only time I've been there.

Q. Were you in the pool itself on that day?

A. Yes. I was.

Q. Had you ever been to that apartment complex on any other day not connected with [my client’s] family?

A. No. I had never been.

Q. Did you detect anything yourself at the end of the party that there was any animosity towards you [my client’s parents]?

A. The behavior throughout the party did not change. It was cordial, friendly. It was not different from any other interaction we may have had or we had had with the [family] previously. And so, no, there was no indication whatsoever.

Q. Have you at any time in the time that you have known [my client’s parents] had any form of a disagreement or argument with them, as far as you know?

A. No. Not that I'm aware of.

Q. Have you ever had any conflict at all with Sephine Cauff individually?

A. No.

Q. Were you surprised when you were told that you were accused of sexually molesting [my client]?

A. Completely.

So prior to his surrender, he should have had no idea that his arrest was related to the pool party, to my client or to her family. It would have been a “complete” surprise according to him. However, his media relations consultant revealed otherwise based on a conversation just a few days before the surrender date:

*Testimony of the Media Relations Consultant*

Q. And then what happened?

A. [My colleague] called me, I think, on a Friday because the first time we met with the legal team and the client [Perpetrator] I think was a Saturday at [the criminal defense lawyer’s] office. And so we were engaged, and at the point we were engaged we talked about the nature of the charges and what would be happening in the near term, which was that [the Perpetrator] would be turning himself in.

Q. So this is at a meeting with [the Perpetrator] and the legal team, right?

A. Right.

Q. So what did you talk about in terms of his charges?

A. We were just briefed on the nature of the charges and the fact that [the Perpetrator] was innocent of them.

Q. And what exactly did you hear about the charges against [him]?

A. That they believed, I think, but did not know for certain that they may have been related to a pool party and sexual assault or something with the child.

Q. What were the steps in the near term that you were talking about just now?

A. The fact that he was going to respond to the warrant by turning himself in. That there were plans for him to do that.

Even more damage was done to the perpetrator’s denials with the findings of the forensic psychologist, both as to the substance of his findings and with the timeline of events.

*Testimony of the Forensic Psychologist*

Q. So we've talked about grooming and the relationship between the perpetrator and The Child. Is grooming also a term of professional art in your profession as to the relationship established between the perpetrator and the other adults in the child's life?

A. Sometimes, yes.

Q. And could you please describe for the record what that grooming involves?

A. It involves being reliable, trustworthy. It means offering to babysit for the kid when the family needs it or to help out financially with the family when they need it or taking the kid to play ball, to – you know, oftentimes in a fatherless home, to take on the role of the absent dad.

Q. Does that grooming also involve a process of attempting to convince the other adults in the child's life that they are trustworthy around children?

A. It may, yeah.

Q. May it also include convincing them that they -- convincing the other adults in the child's life that they are morally upstanding?

A. Yes.

Q. And that they're virtuous?

A. Yes. And I don't want to be misunderstood that that implies that a parent who is understanding and virtuous is a pedophile. Fortunately, most people who appear to care about kids are good people. Most of them are.

Q. Right. So -- and I appreciate your clarification on that, but the point as it relates to a pedophile, an undisclosed pedophile, is that they would want the people around them to believe that they are more virtuous than they actually are?

A. True.

Q. They would want people to believe that they are more trustworthy than they actually are?

A. True.

Q. That they are good people, when they are not, correct?

A. Correct.

Q. When you administered the MMPI to [the Perpetrator], did it not conclude that he matched the similar profile to people who are -- who tend to minimize their faults and to present themselves as overly virtuous and good?

A. True.

Q. And so does that not -- does that help not support or advance the proposition that he may, in fact, be a pedophile?

A. It supports many propositions as to why a person responds with that pattern, only one of those is what you're suggesting, and what you're suggesting is one.

Q. And if you turn to page 11 of your report, that's where you identify that outcome, correct?

A. Yes.

Q. And then you also indicate, your explanation, it appears, in terms of how you analyzed that finding, that result of the MMPI, was to attribute his defensiveness and his presentation in those results as being related to his awareness of the damage that could result to his career in the event there was, as you put it, even a partially supported allegation of abuse?

A. Yes. He appreciated the seriousness of what's happening here.

Q. And could it not also be the case that that was the result of him actually fearing, not so much the damage to his career, but the fact that he could be exposed as being a pedophile, if that's what he actually was?

A. And, at one point, the damage to his freedom. I mean, he could be locked up for many, many years. So all of those things are possibilities, yes.

The psychologist’s logic that the perpetrator’s defensiveness and presentation of self that was reflected in the MMPI could be attributed to fear of being locked up for many years for a crime he never committed, contains a fatal flaw. The prosecutor dropped the charges based on insufficient evidence to meet the criminal burden of proof several weeks *before* the testing was performed.

**ELIMINATING POTENTIAL DEFENSES**

Using a civil case to depose an assailant who is or may be a defendant in a criminal case can provide an opportunity to assist with or encourage a prosecution. In particular, it presents an opportunity to eliminate certain bases that a criminal defense lawyer may later assert are facts the state failed to address that give rise to reasonable doubt. This includes the potential for financial motive of a witness to lie or other ulterior motive based on other connections between witnesses and the criminal defendant. These can be matters that a prosecutor can never otherwise get into evidence if the defendant refuses to take the stand in the criminal case.

Here are some questions for a sexual assault case involving a massage therapist who sexually assaulted my client during a massage, as he did another woman about three months before (my client was a designated *Williams* Rule witness in that prosecution). The latter case was the subject of a pending criminal prosecution when I asked these questions:

Q. Now, when you interacted with the police officer, did you ever question whether or not my client would have a financial motivation to lie about you?

A. No, sir.

Q. Did the police indicate anything to you that my client may have had any reason, financial or otherwise, to lie about you?

A. No, sir.

Q. Do you know whether or not you had performed massage therapy on that client at -- on that client from Massage Envy more than once or just on the one occasion?

A. Just the one occasion.

Q. Do you know any member of that client's family?

A. No, sir.

Q. Do you know any of her friends, any connection at all to her?

A. No, sir.

Q. Do you have any information as to why she would be dishonest about you?

A. No, sir. I don't know.

Q. I'm asking, other than anything you may have already discussed today, now that we've had this -- this discussion as long as we have, can you think of any other reasons whatsoever that my client would have lied about you touching her vagina during the massage?

A. I would not have any idea, sir.

In the same case, the perpetrator had told the police that he may have “accidentally brushed against” my client’s vagina during the massage. He contradicted that in his civil deposition testimony by stating that he kept his hands “four to five inches” away from her vagina, while simultaneously confirming that the massage he provided included touching the entire body (“head to toe” in his words and “yes” to my asking if he meant, “entire body top to bottom?”) and demonstrated on video the most sensitive areas of my client’s body that he touched. This prevented any “reasonable doubt” argument that the state could not or did not prove he provided any massage below the waist, as well as providing the jury an opportunity to see his demeanor on video as he tried to explain how careful he was to avoid touching my client’s vagina, compared with his statement to the police to the contrary. Within two weeks of delivering the transcript and video of this testimony, he pled guilty to the criminal charges against him.

**UNDERSERVED EMPATHY CAN GO A LONG WAY**

On a related matter, if the perpetrator’s guilt has been confirmed, many of the same principles exist to taking that deposition. This holds true if you have an institutional defendant who is trying to make excuses for why they are not responsible for the assailant’s actions and if that institution wants to blame your client. It presents you with an opportunity to draw the perpetrator and the institutional defendant close together. You may be surprised how willing an institutional defendant is to do so. Consider feigning empathy with the perpetrator and give him or her a chance to complain about your client and even explain their own actions to gain sympathy as to why they did what they did.

In this case, brought against a chain of group homes for troubled at-risk youth, my 13 year-old client was raped by an adult resident late one night in the residential quarters. The defendant raised questions about whether my client consented or even initiated the sexual contact, which my client denied. So I asked the perpetrator, who was now in prison for the crime after pleading guilty, about that. I knew at that time of the perpetrator’s own history as a child sex abuse victim and presumed it impacted the perpetrator’s sensibilities and could be drawn into discussing it in ways that exposed conflicting standards of assigning fault. It proved to be quite easy to do so. I first established that each step taken in the chain of events in which my client was brought into the room where she was abused and then the abuse itself were steps initiated by the perpetrator, not my client. The perpetrator stated she presumed consent from lack of resistance. Then I asked this:

Q. You indicated you were upset with [my client] at your sentencing hearing. Why were you upset with her?

A. For one, because I was -- I was pretty much signing over my rights to anything and being sentenced to prison for something that wasn't forced, and, two, I was -- I wasn't really upset with her about the second. I was really upset about myself for allowing someone -- well, allowing myself to do something like this after the incident with my brother.

Q. Do you think that [my client] is partially at fault that you are in prison today?

A. Yes.

Q. What percentage fault would you assign to her?

A. I would say at least 50 percent.

Q. We've had a number of questions both by myself and defense counsel about use of force, and you've indicated repeatedly you did not apply any force to [my client.] Do sexual assault victims always resist their attackers?

A. From my knowledge, most of the time, actually maybe like 80-something percent of the time.

Q. They resist?

A. They resist.

Q. So 20 percent of the time, to your understanding, they do not?

A. As far as I know.

Q. What is the source of your knowledge?

A. Watching -- doing research and watching movies that have that type of conduct in it where -- and also in my case with my brother.

Q. Did your brother apply force?

A. There was times where he would tell me that I had to do it, and if I didn't, he would push me up against the wall, and I would try to resist.

Q. Did you always resist?

A. It got to the point where I had no choice but to let him have his way.

In subsequent depositions of the institutional defendant’s employees, I asked if they agreed with the perpetrator’s assignment of fault. Despite the tension between blaming my client for her own abuse and the fact that she was only 13, every one of them concurred with the perpetrator anyway, causing severe harm to how a jury would see them. Here’s a representative exchange:

Q. The first question I placed to [the rapist was] this: "Do you think [my client] is partially at fault that you are in prison today?" Answer: "Yes." The next question immediately after that was: "What percentage of fault would you assign to her?" And the answer was: "I would say at least 50 percent." My question is, do you agree with those answers [the rapist] gave in the context of [your employer’s] interrogatory answers that assigns fault to my client?

A. Yes.

Q. So it is your position, just for clarity, on behalf of [your employer], that [my client] is 50 percent at fault for the fact that [her rapist] is in prison today; is that correct?

A. Yes.

Further, despite acknowledging that consent by a 13 year-old was barred by applicable law, even the defendant’s expert witness, a forensic psychologist, struggled to avoid agreeing with the perpetrator, but when pushed ultimately did anyway so as to not contradict the defendant’s employees:

Q. Based on your opinion that [my client] assented to sexual contact with [the rapist], do you agree with [the rapist’s] testimony that I showed you earlier from her deposition that [my client] is partially at fault that she's in prison?

A. Well, [the rapist] was charged because of the age difference. So, you know, it's not really up to me to say that [your client] was responsible for putting [the rapist] in prison.

Q. So do you disagree, then, with [the rapist]?

A. I don't disagree with [the rapist].

Q. With due respect, a double negative. We need to iron that out. Do you agree or disagree with [the rapist’s] statement that my client is partially at fault that [the rapist] in prison?

A. I believe [your client] is not unaccountable in this. I believe that there is some accountability that should be taken on by [your client].

Q Do you agree with [the rapist’s] assignment of a percentage fault of at least 50 percent to my client?

A. Yeah. I think that's fair.

**MEASURING CONSENT**

As we know, many rapists knowing or fearing that their DNA was recovered, will admit to sexual contact with our clients, provided they are of age. So the question becomes one of consent, which the presence of DNA cannot answer one way or other.

Consider other ways to determine consent that the perpetrator may not see coming until it is too late. In that regard, consider how well the rapist did or did not know your client before having the sexual contact they admit occurred, the length of time spent alone (if any) and specific steps the perpetrator did not take that would indicate consent was sought in some fashion. For the latter, the best questions are those that confirm the perpetrator did not know something about your client that he really should have known before having sexual contact, but cannot guess at without a risk of being proven wrong. This will most readily cause the perpetrator to admit ignorance. In a male-on-female attack, knowledge of whether your client was on birth control is one good example of this.

Here is deposition testimony of a celebrity who was accused of raping my client after dark on a golf course in their residential community, having met her just a few days before on a tennis court adjacent to the golf course. He admitted sexual contact, but claimed consent:

Q. I believe you testified earlier that it was approximately four days before the date that my client says you raped her that you first met her?

A. I said that I wasn’t sure if it had been three or four days.

…

Q. So far your first and second meeting with [my client] was on the tennis court; correct?

A. Correct.

Q. And both times her [minor] son was with her; is that correct?

A. Correct.

Q. The first meeting, how long did that last?

A. Well, the first meeting it was just a short time. It was just a meeting to get to know each other. The boy was there … and she asked me if I could sign an autograph at the next opportunity.

…

Q. Did that meeting last more than 15 minutes?

A. I don't remember, but maybe, I'm not sure.

Q. The second meeting when you signed the autograph, how long was that meeting?

A. Well, again, I can't tell you exactly, but I signed the autograph. They took pictures, playing tennis, but I don't know, probably it could have been two hours that they got there until they left.

Q. Did you interact with them for the two full hours, were you doing stuff with them for that full time?

A. Correct.

Q. Did you play tennis with them?

A. Yes.

…

Q. When was the next time that you saw my client?

A. If I don't remember wrong, it was the following day.

Q. And where was that?

A. Again, at the tennis court.

…

Q. And did you do anything [else] with [her] when she returned?

A. We went out to walk, that's when she offered to walk.

…

Q. Did you accept the invitation?

A. Yes.

Q. Did anyone go on the walk with you?

A. No, only the two of us.

Q. What time of day was it?

A. It was nighttime, but I don't recall the exact time.

Q. How long was the walk?

A. I would say approximately 30 minutes, 25 minutes, 30 minutes. I don't know exactly.

Q. Was this the first time you were alone with my client?

A. Yes.

Q. What did you do during those 30 minutes other than walk?

A. We talked, we chatted about our -- her things, my things, up to a certain limit. After that we made a detour to get to the golf course. And then we walked for about, well, it was kind of in the mid -- well, we were near the tennis courts and we were there still talking. We were kissing each other for a while. We were talking for a while and then we, at some point, we were talking about her breasts. And at some point she showed them to me and she allowed me to touch them.

…

Q. Did you discuss having sex with her at that time?

A. No, actually, I wanted to go back to the tennis court and that's what we did.

…

Q. Before she left, did you discuss meeting her again?

A. Of course, yes, of course. Yes, actually during that conversation, that walk that we had, we talked about the possibility of seeing each other again, the next day.

…

Q. And what did you do when she arrived?

A. We greeted each other. We talked for a while and then we went out for a walk again.

Q. When you say you greeted each other, did you hug or kiss?

A. We just say hi to each other, it was nothing explicit, nothing.

Q. How long did you talk then before you started the walk?

A. For about five or 10 minutes.

…

Q. Okay. And how long did you walk before you stopped?

A. Well, I have no idea, I would say probably about 15 minutes.

Q. And what happened then?

A. Well, we were on the cart path and then I stopped, and I said that is too dark over there. But then she said that's no problem because I walk in that area all the time. She was saying that she used to walk in that area every night and exercised over there and that she was used to walk on that cart path.

Q. So what happened after you walked about 15 minutes?

A. After we stopped, we kept walking like deeper on to the cart path. I would say we walked for about 200 or 300 feet. I'm not sure about the distance. … And then in that case after that we started kissing each other, and we were hugging. At that point we were already holding hands and walking. And then we got to the location where we had sex.

Q. Tell me how it came about that you had sex?

A. In the way that everything was being said, you know, the embracing, the kissing. And I was feeling that there was a need for more, that she wanted more. And in that such a way we got to the point of having sexual relation.

Q. Is this what you meant when you told the police that my client seemed desperate for sex?

A. As we were having our intercourse, her demeanor, she was very excited. She was talking when she said that I was hot. …

Q. When did you first think about having sex with [my client]?

A. When I was there with her.

Q. You had not discussed this before?

A. No. Well, there was this hint the day before and we stopped, and then on the following day it was more intense. And that took us to the moment when we got to the point of having intercourse.

Q. What was the hint?

A. The way she kissed, the way she was feeling, the way we were interacting. I felt that it was something that it was very attractive and attractive for her and she would show it that way.

Q. What specifically did she do other than kissing that showed you she wanted to have sex with you?

A. The way we got when we got to the location where we did it. We touched each other. We touched our parts. …

Q. Anything else that led you to believe she wanted to have sex with you?

A. The way everything was evolving and the way the situation was being managed. And it was really obvious that we both wanted the same thing.

Q. Well, you indicated in addition to the kissing that you were each touching each other, and she was touching your penis and you were touching her vagina area, what made you believe based on that that she wanted to have sex right then?

A. We were both feeling the same and she was touching me too.

Q. Did she express any feelings in words or was it just her physical actions?

A. She told me, you're hot and she was touching me.

Q. Did she say anything else other than that you were hot and she was touching you?

A. Something more for what?

Q. Was there anything else she said in words or did with her body or her hands that led you to believe she wanted to have sex right then?

A. Her grunts, her sounds, the way she was feeling at that moment. And after that, very quickly after that, we started to have sex.

Q. Is this what you've just testified to the reason why you told Detective [] that it was very obvious that we were going to end having sex at that time?

A. Because of the situation, the way it was evolving and the way she was talking, the way she was touching me, it was pretty obvious.

Q. And did [my client] also say to you at that time that she wanted to go to her home?

A. At some point when we were about to finish she said that her home, her house, was open and that we could go to her house, the house she had.

Q. What do you mean when you say you were about to finish?

A. When I was about to ejaculate, when I was about to finish, yeah.

Q. How long did the intercourse last before that moment?

A. I don't know about the time, but I would say 10 about 10 minutes. I don't have the exact time.

Q. You told Detective [] that while you were having sex with her she was talking about going somewhere else, going to her house; correct?

A. Correct. At some point she said that we could go to her place. But, you know, I've never been in a situation -- I mean, I've never been in her house before, but not even in a situation like that outside, but we were in the middle of the situation already.

Q. What did you say to her when she said she wanted to go to her house?

A. Well, we were in the middle of the intercourse at this point. And as I said before I was about to ejaculate. And actually that's what happened, I ejaculated on her leg and that was it.

Q. Did you only ejaculate on her leg or did you also ejaculate inside of her?

A. I did it on her leg.

Q. But you had been inside of her?

A. Yes, we had sexual intercourse.

Q. Why did you withdraw before climaxing?

A. Because I didn't want to do it inside of her. I didn't want to take any risks.

Q. A risk of what?

A. That probably she could get pregnant or something like that.

Q. So you didn't know before you had sex with her whether or not she was on birth control; is that correct?

A. No. No, I didn't.

Q. You never discussed that?

A. Not at all.

Q. Have you ever discussed her views on abortion?

A. Who?

Q. Had you ever discussed with her her personal beliefs about abortion?

A. Not at all.

Q. Had you ever discussed religion with her?

A. Not that I remember.

…

Q. Is it inappropriate to have sex in a public location?

A. I think it's inappropriate if people see you.

Q. Did you have any feelings of guilt?

A. Guilt for what?

Q. For having had sex with [my client]?

A. I didn't have any guilt.

Q. Did or did not?

A. I did not have any guilt because of having sex with her. I enjoyed it and she enjoyed it too.

Q. Did there ever come a time when you felt guilty for having sex with [my client]?

A. No, no moment whatsoever.

…

Q. Where did you go after [the golf course]?

A. Home.

Q. Who was home when you got there?

A. My wife and my children.

…

Q. Have you ever spoken to anyone about [my client] prior to [meeting her], anyone who knew her, any of her friends or family?

A. I didn't know her.

Q. So you did not know anyone else who knew her?

A. No, not that I know of.

…

Q. Do you believe that before a man has sex with a woman he should ask her first if she wants to have sex?

A. I don't know. Every person should have his or her own criteria.

Q. Did you ask [my client] if she wanted to have sex with you before you did?

A. We go back to the same thing, everything was mutual and in the way it happened.

Q. So the answer is no, you did not ask her?

A. I don't want to put words in my mouth that I have not said.

So it was established in this testimony that he had spent as little as 45 minutes alone with her, and no more than 55 minutes, before assuming that she wanted to have full intercourse with him in a public location. He ultimately has to admit that he did not actually ask for consent or discuss in advance having sex. He did not even ask her about birth control. And his lack of moral compass is obvious when he effectively says sex in public is only wrong if you get caught and that he never felt guilty, despite confirming in the next breath that his wife and children were home alone when he did this.

**OCCASIONALLY, SOMEONE WILL ADMIT TO ABUSE**

While many perpetrators lack enough integrity to even feel guilty about what they did to your client, let alone being honest about it, occasionally they just might confess, if even just to a part of what they did. Consider the testimony below from my client’s older brother in a civil suit filed against their father for perpetrating incest against my client from age 8 to 24 (a portion of the father’s testimony appears in the *Borrowing Their Knife* section above). It was also alleged that the brother was encouraged and directed by the father to sexually abuse his sister from the time she was 12, when he would have been 15.

*The Brother’s Testimony*

Q. Are you familiar with specific allegations made by your sister of you having engaged in behavior against her that she did not wish?

A. Yes, sir.

Q. When did you first hear of those allegations?

A. Several years ago.

Q. And how did you first find out about them?

A. I believe it was from my parents.

…

Q. Did you feel that any of the allegations you heard were true?

A. Some were.

Q. Okay. Which ones did you feel were true?

A. Some of the things that were mentioned as far as our relationship were true, but then a lot of it was not.

Q. In terms of the allegations that you found to be true, can you remember specifically what those were?

A. In relation to myself or with my parents?

Q. Let's start with your parents.

A. I didn't believe any of the allegations were true.

Q. How about yourself?

A. Some of the -- some of the information that was spoken about, some of it was true.

Q. Do you recall what the specifics were that were true?

A. The type of relationship that we had growing up as far as from a sexual standpoint, as far as our being together as far as when we were younger was true. Not in the way that it was presented, but --

Q. What would be an accurate presentation, then of that relationship?

A. Consensual a hundred percent.

Q. You had consensual sexual contact with your sister?

A. Correct.

Q. At what age were you at the time?

A. 15.

Q. And how old --

A. She was 12.

The lawsuit was only brought against the parents, not the brother, despite his admissions of continuing to perpetrate incest against his sister for almost ten years, which included a time that he was an adult and she was still a minor. We saw him first as being a victim of his father too, for having been coached into sexually abusing his younger sister, despite his chance later as an adult to end the abuse. We felt he would tell us more in his testimony if he was not sued and that strategy appears to have worked.

However, the brother did not admit that his father had coached and directed him to abuse his sister in the first place, a fact not particularly surprising since the brother worked most of his adult life as president of the father’s wholly-owned company, the only professional employer he ever had.

The defense effort to assert that the brother acted alone and would not have forced himself on his sister backfired. It backfired because the defense focused on the brother’s character and risk to children, not on what psychological testing results proved about the father’s likely role. The brother had been evaluated by a forensic psychologist in connection with his own divorce and child custody case about two years before our trial. The psychologist knew that the brother had admitted to sexual contact with his sister. He administered a psychosexual evaluation and concluded that the brother was not a threat to his own children or any other children, a finding we accepted and embraced. On cross-examination, that psychologist found himself effectively admitting that it possible the father coached and directed his son to abuse his daughter:

Q. Isn't it true that these evaluations, the psychosexual evaluations, are not supposed to be used to determine guilt or innocence?

A. As an expert I do not talk about whether someone is guilty or innocent.

Q. Likewise these tests do not affirmatively determine whether or not somebody is or is not a sexual offender?

A. Right. They are to determine the likelihood and we come up with a professional opinion.

…

Q [In this case] You performed a personality test [of the older brother], a personality inventory, correct, the MMPI?

A. Yes.

…

Q. Now, the personality testing that you did in this case you indicated that you concluded that [my client’s brother] did not have the psychopathology to abuse a child.· Is that what you said?

A. No.

Q. I misunderstood then.· Tell me, what did you conclude?

A. The personality test, what I said was that there were no elevations on any of the scales that would indicate that he has psychological problems or a tendency toward those problems.

Q. From the standpoint of the development of personality and temperament, does that tend to be stable over the course of someone's lifetime?

A. It's supposed to and generally does.

Q. If somebody behaves in a manner that is inconsistent with their temperament and personality, does that cause you to conclude that most likely they are reacting based upon some outside stimulus?

A. It raises questions and I would want to look at all of those questions.· I would not come to a conclusion about one of those simply on the basis of the fact that somebody acted outside of what I would expect them to act.

Q. Would external influence be one of the possible bases for that behavior that you would have to rule out?

A. Yes.

…

Q. Okay.· So it's possible that an adolescent could be easily influenced by an adult that is caring for them. Do we agree on that?

A. It's possible for an adolescent to be influenced by an adult that's caring for them.

Q. So starting with that fact, adding to it the fact, as you've acknowledged, that incestuous sexual contact between siblings is abnormal behavior, if you receive a report that a 15 or 16 year old brother is seeking out sexual contact with a 12 or 13 year-old sister, you have to ask the question of whether or not an adult caring for them may have influenced that behavior to occur?

A. If I ever receive a report of incest between a 15 year-old and a 16 year-old, which I would be interpret something to be like intercourse, then I need to consider all sorts of possibilities as to where that behavior came from. …As far as whether or not the behavior came from a parent, a neighbor, friends, pornography, that's a pretty broad question and not generally something we can answer quickly.

**WHAT YOU MUST KNOW AND DO**

The foregoing illustrates three essential things that are important to success in examining abusers and rapists.

First, it is important always to be mindful of how they think and behave in order to know how to put them into their weakest position, ironically the position in which they actually feel the most powerful and in control.

Second, it is critical to understand the psychological medicine that applies to evaluating perpetrators, specifically what evaluations can show in order to pair any of that evidence that may be available with other evidence. Psychology is an imprecise science and will not definitively conclude whether an unadmitted perpetrator is or is not an abuser or has the capacity to abuse or rape. But the application of psychology to the perpetrator narrows the possibilities and those possibilities often include that the perpetrator is, in fact, guilty.

Third, keep asking questions, patiently, methodically and as quietly as you can. Do not stop until you find the perpetrator’s knife. Then pick it up. It’s yours now. Kill with it.