

# MODEL PRACTICES IN THE INVESTIGATION AND PROSECUTION OF CHILD SEXUAL ABUSE CASES



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# Welcome to Child Abuse

- ▣ The crime occurred a long time ago
- ▣ There is rarely any scientific evidence
- ▣ Often no one believes the victim
- ▣ The victim loves the defendant
- ▣ The victim has recanted
- ▣ The victim is barely verbal
- ▣ CPS and therapists are your new best friends

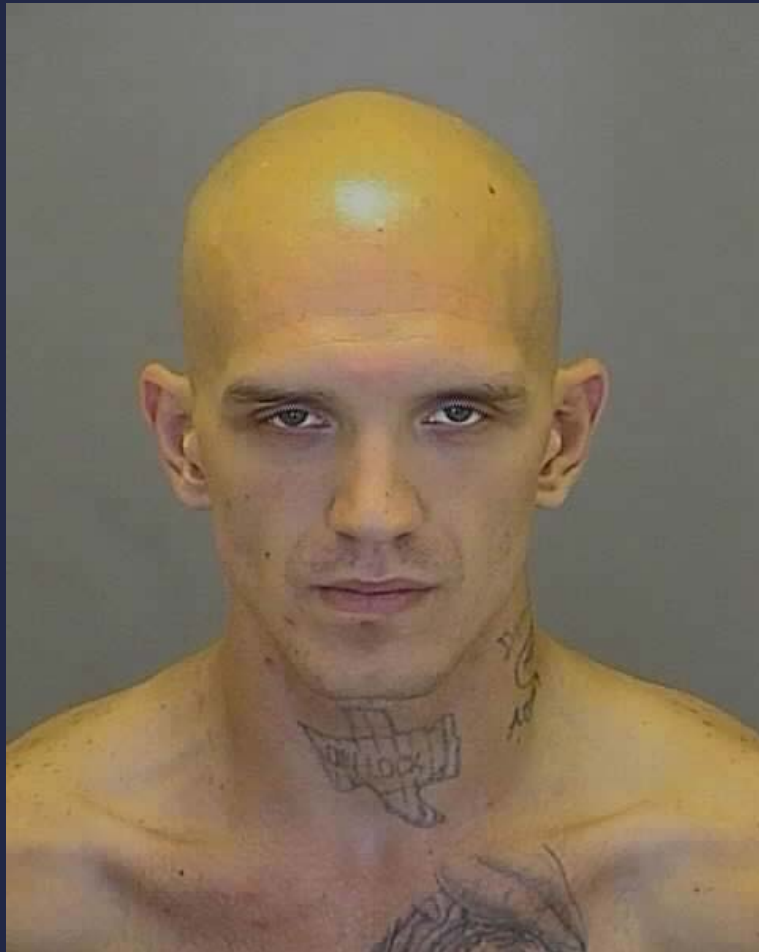
# Your Victims?



# Your Victims?



# Your Suspect?





# Your Suspect?



# Your Suspect?



# Learning Objectives

- ▣ Identify the challenges associated with the prosecution and investigation of a child sexual abuse case
- ▣ Identify potential solutions or means to combat obstacles to investigation and prosecution
- ▣ Approach these cases with the attitude that the problems can be overcome through dedication and teamwork



# Advantages of Teamed Investigation

- ▣ Each discipline contributes unique strengths to the investigation
- ▣ Shared information & expertise
- ▣ Reduces redundancy
- ▣ Eliminates confusion
- ▣ Reduces amount of trauma to survivors and non-offending caregivers
- ▣ Increased level of success for criminal prosecution and civil court actions
- ▣ Prevention of future abuse of children

# Challenges of Teamed Investigations

- ▣ Different communication styles
- ▣ Different goals
- ▣ Different opinions
- ▣ Relationships are time consuming

# What makes these cases challenging?

- ▣ No physical evidence
- ▣ Little or no investigation
- ▣ The interview
- ▣ Delayed outcry
- ▣ Problem victim
- ▣ Problem family
- ▣ Recanting victim
- ▣ Consenting victim
- ▣ Uneducated Juries
- ▣ Multiple indictments
- ▣ Old cases
- ▣ Defendant's good character or status

# Common Defenses

- ▣ Coaching/Custody
- ▣ Bad interview
- ▣ Malicious Liar
- ▣ Throwaway Kid
- ▣ Somebody else did it
- ▣ Jury Nullification
- ▣ Bad investigation
- ▣ False confession
- ▣ Reasonable Doubt/ No “evidence”

# What does a basic sexual abuse investigation look like?

- ▣ Statement from outcry witnesses
- ▣ Forensic Interview of Child
- ▣ Corroborative evidence from the interview
- ▣ Statement/Forensic interview of siblings and anybody else the child told
- ▣ Search warrant for photos, forensics and electronics
- ▣ Medical referral
- ▣ Suspect Interview
- ▣ Therapy referral

# THE INVESTIGATION BEGINS...





WHO SHOULD BE  
PRESENT?

# Before the interview

How did we get here?

What is the goal?

# FORENSIC INTERVIEW

## *Special Considerations*

Hospitalized Victim

Special Needs

Language Barriers

Make sure these are addressed before the  
interview

# Finding Corroboration



The investigation does not stop after the forensic interview.

The detective's work is just beginning.

# Corroborative Evidence

Identity of the OUTCRY WITNESS is a judicial determination.

More than one?  
Other kids?





# Corroborative Evidence

Eye Witnesses?

Surveillance Video?



# Corroborative Evidence

How does the perpetrator have access and opportunity?

Work records?



# Corroborative Evidence

What does your crime scene look like?

Go take pictures.





# Corroborative Evidence

Search warrant for the location?

Search warrant for electronic devices?



# Corroborative Evidence

Medical Referral?

Therapy Referral?







# One Party Consent Phone Calls



# Things to consider...



- ▣ Does the victim know the perpetrator and, if so, does he/she have the perp's phone number?
- ▣ Would a phone call from the victim seem unusual or out of character to the perpetrator?
- ▣ Is the victim capable of making the call?
  - Willing?
  - Mentally prepared?



**Who should make the call?**

It doesn't have to be the victim.



# Confession vs. Incriminating statements

- ▣ The suspect does not necessarily need to make a complete confession during the one-party.
- ▣ Incriminating statements can be just as damaging and help in the corroboration of the victims outcry.





# Ex-coach admits sex assault of teen

He changes plea, gets 15 years for abusing student at elite gym

By **MICHAEL GRABELL**  
Staff Writer

A former Dallas gymnastics coach was sentenced to 15 years in prison Tuesday after pleading guilty to sexually assaulting his teenage student at the elite academy that produced Olympic gold medalist Carly Patterson and U.S. champion Nastia Liukin.

Christopher Wagoner, 33, initially pleaded not guilty but changed course Tuesday morning after less than an hour of testimony Monday from the victim's mother.

If the jury had convicted him, he could have faced up to 40 years in prison, or two 20-year sentences combined.

"I think probably he saw the



**Christopher Wagoner**

jury," said his defense attorney Ernest White. "He was concerned that if they found him guilty they would stack the sentence."

After the guilty plea, the victim — who is 18 but was 14 at the time of the 2002 and 2003 assaults — took the stand to tell Mr. Wagoner the effect his abuse had on her life.

"This is really hard for me, but I want you to know that I feel you've taken my teenage years away from me," she said softly, her voice shaking. "You have completely affected my family in more ways than you can imagine."

The teenager said her former

See **EX-COACH** Page 2A

# Ex-coach gets 15 years in sex assault of teen

*Continued from Page 1A*

coach manipulated her by saying that he loved her even though he was engaged and had children from a previous marriage.

"It was all so difficult to understand at the age I was," she said.

"The decision to let it all out was the hardest decision I ever had to make," she added. "I want to be able to help everybody else that's been affected [by other assailants], anyone else who's been sexually assaulted to come forward."

The victim's mother testified Monday that Mr. Wagoner had manipulated her family to get closer to her daughter.

"I'm grateful that you did finally admit that you're guilty because that was the hardest thing; to relive this again," she told him Tuesday during her statement.

According to the victim's statement to police and a lawsuit, Mr. Wagoner met her while he was an instructor at the World Olympic Gymnastics Academy.

He began giving her private lessons in 2002 and encouraged her to try unsafe eating habits associated with bulimia to lose weight, she contends in the lawsuit. When she became ill, the lawsuit says, he introduced her to cocaine as another way to lose weight and gain extra energy.

The teenager alleges Mr. Wagoner had sex with her repeatedly over the next several years at her house, at his and another instructor's apartment and at the academy's two gyms in Dallas and Plano.

Mr. Wagoner confirmed the girl's allegations in a tape-recorded conversation listened to by a detective, court documents show. He eventually confessed to police, said Dallas County prosecutor Felicia Wasson.

Ms. Wasson said the 15-year plea deal had been an option for a

while. She said that though the evidence was strong, she has prosecuted "more heinous" cases in which the suspect has received probation. And not having the victim retell her story weighed on her decision to forgo the trial, she said.

"I have to make sure that I'm not unduly putting a victim through trauma and making a victim relive the offense when a very satisfactory resolution can be achieved through a plea bargain," Ms. Wasson said.

Mr. Wagoner will have to serve half his sentence, or 7½ years, before he is eligible for parole. He also faces two counts of felony sexual assault in Collin County.

His attorney, Mr. White, said that had the trial continued, he would have presented evidence showing that Mr. Wagoner did not introduce the girl to drugs and that his friends saw him as a caring person.

"They all seemed to stress that he was a very loyal person, caring and helping to those he considered friends," he said.

Asked whether Mr. Wagoner felt remorse or wanted to say anything to the victim, Mr. White said it was up to his client to answer that question.

Mr. Wagoner declined an interview request at the Dallas County Jail, where he is being held. He did not make a statement in court.

This month, the victim sued the gymnastics academy and its owners — Nastia's father, Valeri Liukin, and Carly's coach, Yevgeny

Marchenko — accusing them of failing to screen and supervise Mr. Wagoner.

"Obviously, the gym owners and management are sorry for any injury that this young woman may have suffered, but we still don't know the total picture here," said Barbara White Boyd, spokeswoman for the academy.

"I can assure parents that there is heavy screening," she said. "There is supervision. There are safety policies. There is verbal instruction. There are meetings. There are written policies. Those are all in place."

Carly's mother said in an interview that she was aware of the sexual assault allegations but that it doesn't change her opinion of the gym.

"Awesome gym. Awesome coaches. Awesome people," said Natalie Patterson, who was in Los Angeles, where her daughter is on the TV show *Celebrity Duets*. "This could happen to anybody."

Ms. Patterson said she knew the coach when he worked there but that Carly never trained with him. The responsibility should lie with the mother, not the gym, she said.

"I don't think this should have any bearing on the kind of people they are and the kind of gym they want to run," she said. "I did trust them wholeheartedly with my daughter, and they raised her just as I would have done myself."

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# Corroborative Evidence

More victims?

CPS records?





# Corroborative Evidence

Suspect Interview

Polygraph?



The investigation doesn't stop when  
the suspect is arrested...

# Corroborative Evidence

Jail Calls

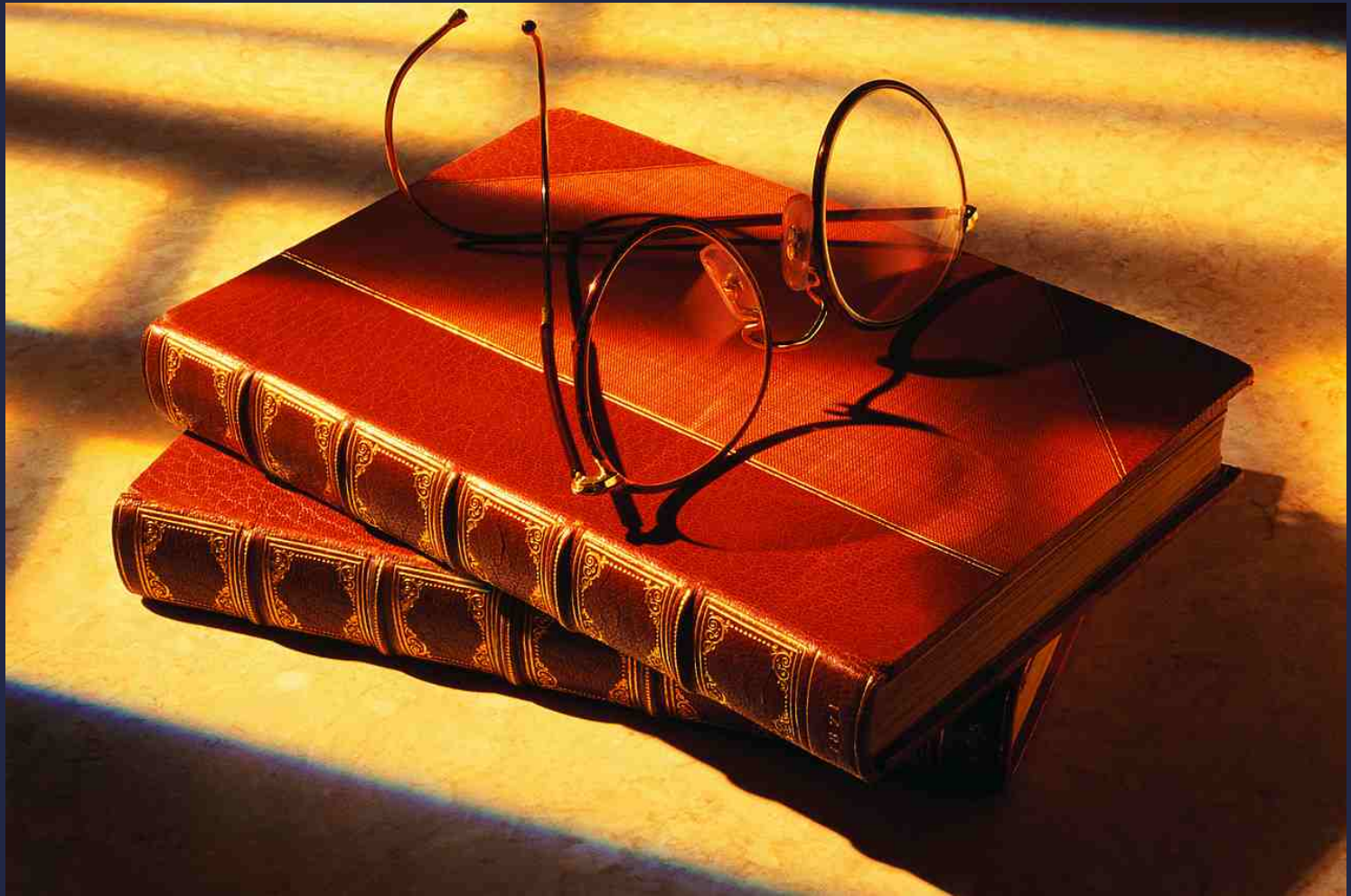


# What does the trial look like?

- ▣ Victim
- ▣ Outcry witness
- ▣ Family member
- ▣ Medical Professional
- ▣ Therapist or expert
- ▣ Detective
- ▣ Forensic Interviewer
- ▣ CPS investigator
- ▣ Character witnesses
- ▣ ???

THE MOST IMPORTANT  
THING THE PROSECUTOR  
CAN DO IS ...

...your homework



# Review all records you can get your hands on

- Defendant's work records
- Mother's work records
- Defendant's priors
- Defendant's jail records, including visitors
- All CPS records
- Victim's school records
- Victim's therapy records
- Defendant's therapy records
- Defendant's medical records
- Victim's medical records
- Victim's computer activity

# What else?

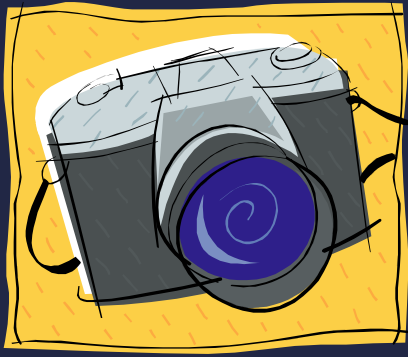


- ▣ Watch video
- ▣ Interview the child
- ▣ Line up character witnesses for victim and Defendant
- ▣ File the proper notices and requests for notice
- ▣ Interview the entire family
- ▣ Look for the extra “stuff”



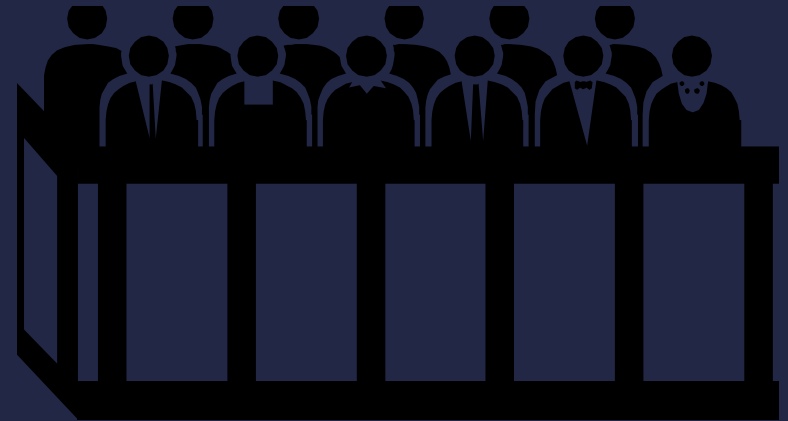
# Make something out of nothing.

- ▣ Use maps, photographs, diagrams.
- ▣ Call experts to explain why there is no evidence.



# Voir Dire

- ▣ Find out what their expectations are.
- ▣ Let them educate each other.
- ▣ Remind the panel who determines whether evidence is left behind.
- ▣ Find the nuts.



# What to do when the victim has ISSUES...



# The victim, like most children, lies.

- ▣ Ask for a hearing outside the presence of the jury
- ▣ No specific acts unless you want them
- ▣ Consider the source
- ▣ What does the child lie about?
- ▣ Find witnesses to testify that she has a good reputation for truthfulness

# She's accused someone else

- ▣ If she has made an allegation that was reported, the disposition is key.
- ▣ If the allegation was not reported, we don't know if it was a false allegation but the fact that the allegation was made would still constitute an inadmissible specific bad act.
- ▣ If she has been a prior victim, Rule 412 applies.

# Texas Rule of Evidence 412-

## Sexual history of victim not admissible

- ▣ File a motion in limine
- ▣ Be careful when discussing medical evidence
- ▣ Don't argue that the child is credible due sexual details in the outcry
- ▣ Defense must be able to prove it to be true

# She acts out sexually

- ▣ Depending on the age of the child, use this to your advantage
- ▣ Call experts
- ▣ Rule 412

# Credibility issues with teens.

- ▣ Corroboration
- ▣ Go to the offense location
- ▣ Photographs
- ▣ Search warrant
- ▣ Use one party consent
- ▣ Subpoena cell phone records
- ▣ Interview former boyfriend or girlfriend





# She is too young

- ▣ Be flexible
- ▣ Use experts to explain vocabulary
- ▣ Prepare for the coaching defense - this may open the door for you to play the video

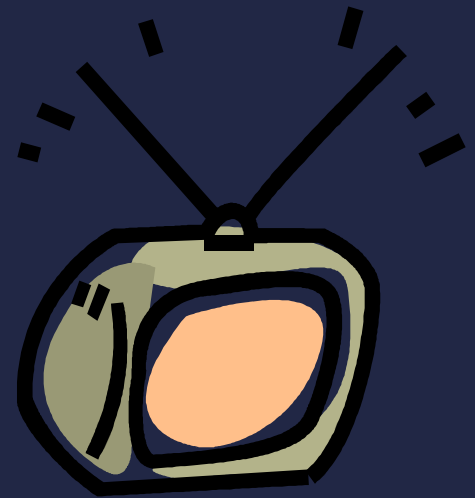


She just can't talk about it



# Closed Circuit Testimony

## Texas CCP Art. 38.071



What to do when no adult cares  
that this child was molested but  
you...



# She has a bad family

- ▣ Throw the non-believing mom under the bus.
- ▣ Helps with the coaching defense.
- ▣ Make a family tree.
- ▣ Stay in contact.
- ▣ Embrace the craziness and explain it all.

What do you do when she says  
she made it all up...

# Use of Outcry Witness

## Texas CCP Art. 38.072

- first person 18 or older
- child 14 years old or younger at the time of offense
- child disclosed the details of the offense
- reliable in time, scope, content
- hearing outside the presence of the jury
- victim must testify or be available to testify

# What happens when the outcry witness “forgets” or recants?

- ▣ Go to the next person who is able to recall the outcry
- ▣ Original outcry witness is subject to prosecution for Failure to Report Child Abuse



# These cases can actually be easier to prove

- ▣ Make sure you don't interview this child alone.
- ▣ Do you need to make a CPS referral?
- ▣ Look for other documentation such as therapists or medical records.
- ▣ Focus on the motive to recant and demeanor at the time of the outcry.
- ▣ If the child denies ever making an outcry, use the video.

What do you do when the victim is in love with the Defendant... and the defense attorney has all the letters in which she tells him so?



# Considerations

- ▣ What is the actual age difference between the victim and the defendant?
- ▣ Did Defendant know the victim's true age?
- ▣ What signs should he have noticed?
- ▣ What are the community standards?

- ▣ When the victim has consented to the conduct and is of sufficient age (whatever that is), your case is won or lost in voir dire.
- ▣ Approach the case differently than a “molestation” case.
- ▣ In your closing argument, make the jury remember the promise they made to the judge as well as the consequences to society if they fail to enforce the law.

QUESTIONS?

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