

Client Relations in Child Sexual Exploitation Cases

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Establishing a working relationship with your client in this difficult area of the law is of critical importance, if you want to accomplish anything on his behalf.

First Meeting:

I recommend an in person meeting, if at all possible in the age of COVID. There is no substitute for looking your client in the eye.

A. WHO ARE YOU?

The first question your client wants you to answer is this: WHO ARE YOU?

You are not his JUDGE.

You are not his FATHER/MOTHER.

You are not his co-conspirator.

You are his LAWYER.

What does that mean?

-“The good lawyer is not the man who has an eye to every side and angle of contingency, and qualifies all of his qualifications, but who throws himself on your part so heartily, that he can get you out of a scrape.” – Ralph Waldo Emerson

-“Lawyers are just like physicians: what one says, the other contradicts.” – Sholom Aleichem

-“Don’t misinform your Doctor nor your Lawyer.” – Ben Franklin

-“A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.” – Sir Walter Scott

I deliberately chose two of those quotes because they reference doctors, and the physician/patient relationship is a good analogy for a child pornography or child exploitation case.

- (1) Your client has an illness, and that illness is a criminal case against him.
- (2) You need to diagnose just how serious it is (how strong is the government’s case)

- (3) You need to diagnose what the harm is going to be (sentencing guidelines), and how much of your client's life it is going to cost him.

During my initial meetings with clients, I explicitly lay out this relationship: "I think of representing my clients like a doctor treating a patient. I want to see how badly this charge against you is going to hurt you, and do all that I can to minimize that harm."

A benefit of this explicit relationship is 1) it will be a familiar analogy, 2) it establishes your motivation to help, and his motivation to be truthful with you, and 3) it removes a great deal of the emotion and judgment from your interactions.

B. HOW SERIOUS IS THIS?

Your client wants to know how much trouble he is in. The answer, in these cases, is almost universally this: This case is as serious as it gets.

This case will most likely result in 1) a significant term in prison, 2) a lengthy period of registration as a sex offender, 3) publicity and public humiliation. I frequently use the following analogies (note the medical tie-ins):

Some soldiers have returned from our various gratuitous wars with very serious and sometimes catastrophic injuries, such as missing limbs. The life they envisioned for themselves before their injury is no longer a life they get to have. There are things they will no longer be able to do. They have to make adjustments, for their lives have changed, and they must accommodate the changes. Sometimes their injuries are invisible, such as traumatic brain injuries or PTSD. You have been charged with a serious sex offense, and your life from this point on is going to be different, and you will need to make adjustments.

C. CAN YOU MAKE THIS GO AWAY?

Unfortunately, in the vast majority of cases, your answer is going to be no. Frequently, I can reduce the harm. I can sometimes get a possession of prepubescent CP knocked down to a single count of possession, and get the ten year cap. Sometimes I am fighting for a 20 year cap. Sometimes (like in a production case), I am fighting for a 30 year cap. I can often influence the placement of the client after conviction, so that he does his time in a safer facility for sex offenders, such as FCI Seagoville, FCI Devens Massachusetts, or FCI Florence, Colorado. (you should always ask the sentencing judge to recommend placement, even if you think he won't)

To impress upon my clients the seriousness of the charge, I use this analogy:

It is like cancer. One of the true stories I frequently tell my clients is this: Fifteen years ago I found out that I had cancer. I had renal clear cell carcinoma, in the form of a tumor, slightly larger than a quarter, sitting in the middle of my left kidney. It was growing. The doctor told me I had two choices: I could have a nephrectomy, an operation to remove my kidney, and the

operation might kill me. It would certainly leave me with just one kidney, a life changing proposition. The other choice was to decline the operation, and the cancer would kill me.

I did not get to choose not to have cancer.

Life is like that. Sometimes all of your choices are bad, and you have to choose between them.

In this story, who is the lawyer? The lawyer is the doctor, who lays out both bad options.

D. WHAT ARE MY CHANCES AT TRIAL?

This next illustration may be controversial, but I sometimes tell my clients this:

“In criminal cases the client is presumed innocent, and the burden of proof is beyond a reasonable doubt. The first time the jury looks at a photographic image of an adult male sexually penetrating a toddler, that presumption of innocence goes out the window. They are going to want to punish someone for the fact that picture even exists, and the only person they have available is you.”

When the jury reads the text your client sent to the victim saying ‘show me your pussy’, your technical argument that he didn’t say ‘naked’ or ‘explicit’ or ‘vulva’ is going to be on pretty shaky ground.

When the jury sees that your client sent a picture of an erect penis to a police officer posing as a thirteen year old girl, your entrapment argument may be a tough sell.

The fact of the matter is that Americans are a more or less puritanical society, and a chivalrous society, at some level. Girls twelve and under are always innocent, never played any part in what happened, and their conduct is of essentially zero interest to the jury. This is also true of the prosecutor and the judge.

E. WHAT THE HELL CAN YOU DO FOR ME ANYWAY?

Sometimes this is the hardest question of all to answer. When your client spent ten years of her life sexually exploiting all of her natural born children and putting the films she so produced online and offering them for sale, you have a long row to hoe, and it may be that you can do very little. In that case I got a fifty year cap, and the judge told me that he almost rejected that agreement.

When my client, on parole for a violent offense, forced an eleven year old boy to perform fellatio on him at gunpoint, the judge deliberately fashioned the sentence to equal my client’s life expectancy, plus ten years.

When my client kidnapped a woman and then repeatedly raped her while driving around looking for drugs, and then showed an utter lack of remorse for her during his sentencing, the judge almost rejected the forty year cap I somehow got for him.

Sometimes the patient is terminal.

But Not Always.

You are the doctor, and the best tools you carry in your little black box are your stories: Here are some of the ones I keep in my box:

(child porn)

Child porn addiction is like drug addiction, an addict needs more to get the same high.

To a child porn addict, the internet is like a crack dealer who has all the crack you need, for free.

A chat room is like a drug den. Junkies sitting around and encouraging each other to get higher and higher, and to bring more drugs to the party.

(child sexual abuse/enticement)

Sometimes the abused become abusers. That is a familiar story that happens to be true. My client was sexually exploited repeatedly (I have a mitigation brief on this, also)

Crazy people do crazy shit, and sometimes people get hurt. Also true. (hire a shrink for this)

People from other cultures don't always understand that what is okay in rural Mexico is not okay in rural West Texas. (you will need to back this up with some kind of statistics, such as ages of marriages)

My grandmother married at thirteen, was widowed by the same man at sixty, ran a successful farm and raised five successful children. Not all thirteen year olds are children. (personal story, happens to be true)

Pictures of beautiful young blondes are kryptonite to lonely pathetic losers. (used this to reduce an internet enticement case down to 'sending obscene material to a minor': used it again to knock one down all the way to telephone abuse/harassment)

But barring some great negotiation, it may be that all you can do is be the doctor who listens. Sometimes (frequently) you will be the only person in the client's life who will listen to him, hear him out, and not reject him out of hand for what he has done.

You can be the doctor who treats his lung cancer without mentioning the fact that he was a two pack a day smoker for thirty years.

You can be the doctor who treats his facial laceration without mentioning the fact that he got it while plowing into the back of a car, drunk, and killing two people.

If that is all you can do, then that is what you should do. It is significant.