

# DEFENSE OF A FALSE CHILD SEXUAL ABUSE CHARGE:

## The Grand Jury Phase

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*“How can a child describe sexual abuse without experiencing it?”*

Any prosecutor, any County, any State, Everywhere.

*“The supreme art of war is to subdue the enemy without fighting.”*

Sun Tzu, ‘The Art of War ‘

*“The burden of proof shifts in a child molestation case. The old rules do not apply. The government cannot, by conventional methods, prove its case beyond a reasonable doubt.*

*In reality the burden is on the defense to disprove the allegations beyond all doubt. One envisions Alice In Wonderland suffering the diatribe of the vexatious Queen of Hearts: ‘Off with their heads !!! Unless, of course my dear you prove to my satisfaction something did not happen. ’ ”*

Paul Stuckle

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The best way to win a false child abuse allegation case is to strike early and quickly. The defense has a golden opportunity to have the case dismissed at the grand jury level before facing a formal criminal indictment. Far too many lawyers advise against presenting evidence to a grand jury.

This is a huge tactical blunder. Almost every client who fails to present a grand jury defense will be indicted. Almost every client who presents a thorough and aggressive grand jury defense has an excellent chance to avoid an indictment.

This article will proceed on the basis of the hypothetical fact scenario set forth below. All of the characters (other than the law firm) are fictional and any resemblance to any real person is purely coincidental. The fact scenario selected involves an adolescent stepdaughter who makes a false accusation against her stepfather. This scenario was adopted because it mirrors many false allegations seen today.

## *State vs. Rayburn ( Hypothetical ):*

### The Players:

*Rick Rayburn* : The Accused, Defendant, and Alleged Perpetrator; Husband of Susan Rayburn; Father of Josh Rayburn; Stepfather of Thomas Myers and Sarah Myers.

*Susan Rayburn*: The Non-Offending Spouse of Rick Rayburn; Mother of Sarah Myers, Thomas Myers, and Josh Rayburn; Ex-Wife of Gary Myers.

*Sarah Myers*: The fourteen (14) year old Alleged Victim; Daughter of Gary Myers and Susan Rayburn; Sister of Thomas Myers and Josh Rayburn; Stepdaughter of Rick Rayburn.

*Gary Myers*: The Father of Sarah and Thomas Myers; Former Husband of Susan Rayburn.

*Thomas Myers:* The twelve (12) year old son of Gary Myers and Susan Rayburn; Brother of Sarah Myers and Josh Rayburn.

*Josh Myers:* The five (5) year old son of Rick and Susan Rayburn.

*Carol Hill:* Forensic Interviewer at the Children's Advocacy Center.

*Rebecca "Becky" Mursap:* The fourteen (14) year old best friend of Sarah Myers; Daughter of Helen Mursap.

*Helen Mursap:* The Mother of Becky Mursap and friend of Susan Rayburn.

*Patricia Pruitt:* Sarah Myers eighth (8<sup>th</sup>) grade school counselor.

*Marcia Uriquez :* Child Protective Services Investigator.

*Det. Elicia Johnstone:* Child Sexual Assault Investigator for the Dallas Police Department.

*Savannah Summers:* Fourteen (14) year old school friend and acquaintance of Sarah Myers and Becky Mursap.

*Paul Stuckle:* Senior Law partner of Stuckle and Ferguson, a false allegation law firm.

*Alyse Ferguson:* Junior law partner of Stanton and Burns.

*Rachel Wimbish:* An associate attorney with Stanton and Burns.

## *I. The Call*

Rachel Wimbish closes out Word Perfect on her laptop after emailing herself a copy of a motion to finish later that evening at home. It was the Friday of both a long day and a long week. Many clients had called to check in with various degrees of concern and questions. Fortunately, the day's questions are rather routine and there are no bona fide emergencies. The law partners, Paul and Alyse, are out of town in Waco finishing up a week long jury trial. Alyse checked in earlier with a trial update on the Stephens case.

Rachel has worked here long enough to detect the enthusiasm in Alyse's voice. Paul and Alyse are anticipating an acquittal on all eight counts of James Stephen's case. Although Alyse has tried enough cases with Paul to know that you can never tell what a jury is going to do, all signs are pointing towards a complete acquittal. Rachel asked Alyse how she and Paul were holding up.

Alyse sighed, "I am exhausted and I know Paul is as well. We are still going strong but the prosecutors have been going in and out of the courtroom all day whispering to each other. Something is up, but it's too late. Too much has been said in court for any last minute savior to come waltzing in for the state and change these juror's minds."

"Jury's bck, gotta go, I'll call with the verdict." Alyse quickly ended the call

Hanging up, Rachel mulls over all the work that went into the Stephen's defense; witness interviews, private investigation, office depositions with court reporters, stacks of legal research, all of which seemed to have a yellow sticky saying "important case", boxes of business records from the alleged victim's therapists and schools, many pre-trial hearings, three boxes of child protective services records, photographs and witness transcripts, trial notebooks, blow up posters for jury selection, cross examination, and closing argument.

Unexpectedly the telephone rings and disrupts Rachel's thoughts about the Stephen's case. Rachel looks at the clock. It is about an hour after she usually goes home. Caller ID says "Rayburn, R", a name unfamiliar to Rachel. She picks up the receiver.

"Stanton and Burns, Rachel speaking".

“Oh, hi, I wasn’t expecting to get anyone at this hour. Uh, this is Rick Rayburn”.

Rachel immediately recognized the tone in Mr. Rayburn’s voice. It was one she had heard many times before. It was a voice of utter desperation, confusion, and fear. Rachel sat down to listen to the story she had heard on so many occasions, from so many other people.

“I have been falsely accused of touching my stepdaughter and need some help. I did not do this...”

Rachel was on the phone with Rick for almost forty-five minutes. At the end of the call she sets an appointment for Sunday. The firm prefer to interview particular clients on days and at times that will avoid interruption. Her initial interview tells her this is one of those particular clients.

“You know, I called a couple of other lawyers and they didn’t want to hear anything about the case or about me. They just wanted to rush me into an appointment. You spent all this time with me and answered so many of my questions. I feel good about this firm already.” Rick said as the call approached an end.

Rachel said “Thank you, I’m glad to have been of help. Let me just take a minute and explain the typical process of the case so that you are not hit with any more unexpected events.”

Rachel then went through the investigative process and addressed Rick’s questions. “We will see you Sunday at 1:00 PM.”

## *II. The Meeting*

The partners and Rachel met with Rick and Susan Rayburn for two hours. For the majority of the meeting the lawyers were silent as they listened.

“The first thing I have to say is that I am innocent”, Rick began. “I have never touched my stepdaughter or any child inappropriately. This is a false allegation. I feel so helpless”.

Susan jumped in: "Look at this. I took a picture on my cell phone. This is my garage. This is where we have lived as a family for seven years. This is what greeted us a week ago."

Paul looked at the small screen on Susan's phone where an out of focus but still very clear image showed the vandalism. Written in spray paint with huge letters across the garage door were the words "Child Molestor". The misspelling did not detract from the utter anger and cruelty of the message.

"Who would do this, said Susan? Was this one of our neighbors?"

Paul thought to himself, it might be one of your jurors. Paul knew full well the enormity of the task that lay ahead. That is how people think. Guilty until proven innocent. Sometimes with this crime, Guilty even though proven innocent. Paul did not share this thought.

"Tell us what is happening here" asked Alyse.

### *III. The Story*

"Let me start", said Susan.

"I don't know where to begin. I was in Kroger just doing some grocery shopping. And my phone rang. It was Helen, she is a friend of mine. I mean we know each other, not real close friends but acquaintances. I was expecting her to call because Sarah had spent the night with her friend Becky, Helen's daughter."

"So, it was about time for me to pick her up. Anyway, she asked if I was busy, that she needed to talk to me. I told her I was at the store but said I could talk. She said it would be better in person. At that point I got scared. No, tell me now, what is up?"

"Well Susan, I don't know how to say this. Becky told me that Sarah said that Rick has been touching

her, sexually”.

“If you have ever had one of those moments where your whole life flashes before your eyes, this was it”, said Susan. “I mean I’m just minding my own business trying to decide which instant oatmeal to buy when I get this phone call that basically says, ‘Hey, guess what? Life as you know it is over.’ So I say something real intelligent, like, uh what. Sarah said what?”

“Becky said that Sarah said that Rick has been going into her room at bedtime and late at night and touching her,” Helen said.

“Well did Sarah say that or just Becky”, Susan asked.

“I went and asked her right after Becky told me that. Sarah started crying and said Yes, it was true, and it has been going on for about three years, ever since Lake Texoma”.

“We used to time share a lake house at Lake Texoma over the summer. Is Sarah there?”, Susan asked.

“Yes, but she doesn’t want to come to the phone”, Helen said.

“I’ll be right over. Leaving now,” Susan said as she hung up the phone. Susan walked out of the grocery store leaving her half full cart in the cereal aisle.

“I went over to Helen’s house to pick up Sarah and figure out what was going on”, Susan said. “As soon as I saw Sarah, I knew it was a lie. I got there and Helen let me in.”

“Sarah and Becky were in Helen’s backyard practicing drill team drills. I could see that Sarah did not have a care in the world. I walked into the backyard and told Sarah to get her things and tell Becky goodbye, that we were going home.”

“Oh, can she come over Mom?” asked Sarah.

“No, she cannot. We are going to have a talk”.

“How about ten more minutes” Sarah begged.

“No”, Susan stated firmly. “Get your stuff now”.

The attorneys listened as Susan went through the story. Apparently, Sarah spent the night at her friend Becky’s house a week ago on a Friday. This was normal as the two were best friends and on the drill team at school together. They often spent the night at each other’s homes. At some point Sarah made an outcry to Becky that Rick had been touching her.

Susan wasn’t able to get much clarity out of Sarah regarding the details of the outcry.

She did find out, from Helen, was when they both were lying in their beds talking after everyone else had gone to sleep. Something about a teacher, Mr. Fuller, who both girls find strange. Mr. Fuller teaches science and is a very well respected teacher. However, he has zero personality and dresses like it was the 1950's. He wears bow ties to class every day and the kids make fun of him behind his back.

Becky said something about how ‘Funky Fuller’is looks so weird that he probably a child molester.

Then Sarah said she knew how child molesters look and they don’t all look like Mr. Fuller. Becky asked what she meant by that and Sarah just said that they could look like her step-dad. Becky asked why she would say that.

Sarah said that her stepfather was a molester and had been touching her for years behind her mom’s back. Sarah told Becky that when her Step-dad, Rick, would come to tuck her into bed at night he would wait until her mother, Susan, was in the shower or taking a bath and then go upstairs to Sarah’s room. There he would slide his hand under her nightshirt and touch and play with her breasts. His hand would go down inside her pajama bottoms and he would touch her vagina. Sometimes he would put a finger inside of her vagina. He never did anything else according to what Sarah told Becky and, later, Becky’s mom. She said that her step-father told her not to tell and that no one would believe her. Once he said if Sarah told anyone that he would kill her pet dog.



Helen asked Susan what she was going to do. Susan said she needed to talk to both Sarah and Rick before she did anything. Helen asked if she should call her sister who was a counselor in Arizona to find out what to do. Susan asked her to please refrain from talking with anybody while she tried to find out what was going on. Helen agreed to let Susan figure out what had happened and what to do.

When Susan got home she talked with Sarah. Sarah was very evasive and did not provide many details. Sarah said there was no point in talking because Susan would not leave Rick anyway and would never believe her. But, Sarah kept saying it was true and had been going on for a long time. Then Sarah asked if Susan would divorce Rick. Susan said she would if what Sarah was saying was true. Sarah said it was true and that her father had never done anything like this to her. Sarah asked if she could go live with her father and Susan said no.

When Susan asked for details all Sarah would say is that Rick touched her and stuff like that. When asked what she meant by touching and stuff like that, Sarah would just say playing with my breasts and touching me down there. When Susan asked if Rick would remove her clothes she said no, but that sometimes he would take his pants off. On those occasions Rick would take his hand and grab Sarah's hand and put it on his penis. Then he would move her hand up and down until he satisfied himself. Susan asked what that meant and Sarah said until he came.

Susan asked where Thomas and Josh were while all of this was happening. Sarah said Josh was usually asleep and Thomas was playing video games in his room. Susan asked Sarah why she had never told her about this and Sarah replied because he said he would kill you, me, and all of us. He would just kill all of us. Sarah said she was afraid of him because Rick used to be in the Army and knows how to kill people.

Sarah asked her mom what was going to happen. Susan said she did not know yet, but was going to talk with Rick when he came home from work. Sarah asked again if she could go live with her father. Susan said no but let me call and see if you can go there today while I talk to Rick. Susan knew Rick has a temper and it would not be a good idea to spring this on him while Sarah was at home. Susan called her ex, Gary Myers to see if Sarah could spend the night because something came up. Gary said that was fine.

Rick denied everything when confronted by Susan. He stated that he has never touched Sarah inappropriately. He admits going to tuck her in at night but says he does that with all the children. He says that even though Sarah and Thomas are not his children he has always wanted them to feel like they were. He tries not to treat them any different than their son, Josh.

## *IV. The Family Dynamics*

Rick reminds Susan of how badly Sarah was affected by the divorce and how she has always wanted to live with her father. So much so that Sarah has been in and out of therapy over the last several years to deal with these and other issues. A couple of years ago Sarah was hospitalized for three days because of what they believed was a fake suicide attempt. Sarah had lightly cut herself on her wrists. The parents knew that another girl in Sarah's class had been a real cutter and had been in a psychiatric hospital for several months.

There also was the time a packaged condom was found in Sarah's purse. She swore up and down she was given that by another student at school. She insisted she had no intentions of having sex with any of her boyfriends. Sarah also was mad at Rick because he was not going to fix up his old Chevrolet Impala for her to have a car to drive when she turned sixteen (16).

Sarah often had said that she hated Rick. Susan always felt it was just teenage emotions going haywire because there were just as many examples of Sarah showing affection for Rick. There were the Fathers Day cards Sarah had purchased for Rick along with the birthday card in which she had said she was sorry for being so difficult. The birthday card ended with Sarah saying she loved having Rick for a father.

Sarah had often mentioned that she wanted to live with her father. Usually it was after a fight with her mother or when she had been grounded by Rick. Sarah's father, Gary Myers, was everything Rick was not in a father figure. Where Rick was strict and a disciplinarian, Gary was loose with rules. Gary did not discipline Sarah for violating the few rules he had. In short, Sarah could get away with murder while staying at her father's house. She could stay up late chatting to friends and had the laptop computer Gary had purchased for her last Christmas. She had "My-Space" and "Facebook" accounts, both of which she portrayed herself as being much older than she really was. Gary let her talk

outside with boys until late at night with little supervision. Sarah loved the freedom that came with being at her father's house. Gary tried to have Susan let Sarah live with him during her upcoming Freshman year of high school. Susan said no and Sarah did not speak to her mother for two weeks after that.

Rick was always the disciplinarian and closely monitored Sarah's activities. There were strict rules to be followed and violation of those rules had consequences. Sarah was prohibited from attending the drill team Christmas party for being caught chatting on the internet at 1:00 AM to someone who Sarah said was a teen age boy. Rick also took her laptop away for two weeks on that occasion. Rick had grounded Sarah in the past for texting boys on her cell phone and for talking with a boyfriend after she was supposed to be in bed.

Rick monitored Sarah's computer activities and had the password to her "My Space" and "Facebook" accounts. Once Sarah was grounded for a week and could not use either account after she posted a picture of herself in a bathing suit that Rick found to be too revealing. On this occasion Sarah told Rick she hated him and wished he had never come into the family. Susan added two additional days of Sarah being grounded for those remarks.

## *V. Child Protective Services*

The following Monday at school, Becky Mursap asked her friend Savannah Summers if she could keep a secret. Savannah swore that she could. Becky then told her Sarah had been raped by her stepfather. Later that day at school, Savannah asked one of her friends if she could keep a secret. Savannah then told her friend the story about Sarah she had heard from Becky.

Tuesday morning during first period geography Sarah received a note to go see the school counselor, Patricia Pruitt. Sarah went to the counselor's office. Ms. Pruitt asked if everything was alright at home. Sarah burst into tears. Ms. Pruitt said she had a report that Sarah's stepfather had been touching her. Sarah admitted it was true. Ms. Pruitt told her by state law she had to contact Child Protective Services (CPS). First, Ms. Pruitt was going to call Sarah's mother. Sarah informed Ms. Pruitt that her mother already knew but had done nothing about it. Ms. Pruitt asked if the stepfather was still residing at home.

Sarah informed her that he was. The counselor then sent Sarah on to her next class. Ms. Pruitt then contacted CPS through its online reporting system. As a mandatory reporter the school counselor believed she had reasonable cause to believe a child sexual assault had taken place. Child Protective Services received the referral and assigned it a priority one. The case was assigned to Investigator Marcia Uriquez at the local office.

Ms. Uriquez received the assignment and went to the middle school Sarah attended. At 2:30 PM. Sarah received her second note of the school day. This time she was to report to the Principal's office immediately. Sarah left her math class and went to the principal's office.

At the office Sarah was met by Ms. Uriquez and taken to a conference room. There Ms. Uriquez asked Sarah a ton of questions concerning her home and family life. Sarah stated she had been touched by her stepfather for over three (3) years on her breasts, her vagina, and her butt. When the investigator asked if her Mother knew, Sarah told her yes that she had known since Saturday. Sarah informed the investigator that her Mother was still thinking about what to do. Sarah added that Rick

was still living at home. Sarah asked Ms. Uriquez if she could go live with her father. Ms. Uriquez told her she wanted to speak to Sarah's mother before any decisions were made. Then she sent Sarah back to her last class of the day.

Marcia Uriquez contacted Susan at her job. She informed Susan she worked for CPS and that Susan had to bring all three (3) of her children to the Child Advocacy Center.

Susan asked when and was told to do so right now. Susan said she was at work and the kids were still in school. Ms. Uriquez told her to leave work, get the children, and appear at her office within the hour. Further, the CPS investigator informed Susan there was concern whether she could adequately protect her children. Susan asked whether she should contact an attorney and Ms. Uriquez said an attorney was not necessary at this point. Additionally, if Susan was going to talk about getting lawyers involved then CPS would just remove all three children and put them in foster care. Susan was warned by the investigator not to inform Rick of where she and the children were going or there could be consequences.

## *VI. Law Enforcement*

Susan picked up the children and went to the Child Advocacy Center as directed. There she met with Ms. Uriquez who immediately separated Susan from the children. The CPS investigator talked with Josh and Thomas individually. No outcries of abuse, either physical or sexual were made by either child. When it was time to talk to Sarah again, Ms. Uriquez called in police Detective Elicia Johnstone. Sarah re-stated her outcry to Ms. Uriquez in the presence of Detective Johnstone.

Detective Johnstone then went to the lobby and introduced herself to Susan. The Detective took Susan past secured doors into an interview room. Susan was not informed her conversation was being audio and video recorded. Detective Johnstone informed Susan that she was living with a child predator and her children were in danger. The Detective said that it has been proven over and over again that child molesters cannot be rehabilitated and they will continue to sexually abuse children. The Detective said there would be consideration of a criminal failure to protect charge against Susan since she knew of the abuse for four (4) days but did not contact law enforcement or CPS.

Ms. Uriquez then joined the interview. The CPS investigator informed Susan that either Rick had to leave the home or the children would have to leave. Susan said Rick is an independent real estate agent who works out of the home and it would be extremely difficult for him to leave. Ms. Uriquez stated CPS would consider alternate placement with a relative since Susan had brought the children to the office. Susan was told she had to sign a "safety plan" in order to avoid having the children taken into foster care. Susan agreed to place Sarah and Thomas with their father, Gary Myers, and

Josh with her parents. Susan begged to not have Josh taken from home. The CPS worker emphatically told Susan that she was living with a perpetrator where no child would be safe.

Susan began to explain the problems the family had been having with Sarah and why she felt it was a false allegation. When Susan said that Sarah was making this up to go live with her father Ms. Uriquez told her that she was in denial. Detective Johnstone informed Susan that children do not lie about sexual abuse and that she had to believe her daughter. Investigator Uriquez added that Susan would have to agree to attend “nonoffenders” class as a condition of the safety plan. The Detective informed Susan that she would have to choose between her husband and her children because at the moment Susan was not being a protective mother. The CPS investigator added that Susan had to believe and support her daughter in order to not have a CPS case against her. Susan was informed that she needed to contact an attorney to begin divorce proceedings against her husband and agree to support in the prosecution against him.

## *VII. The Forensic Interview*

One week after the placement of Sarah with her father she went to the Children’s Advocacy Center again. This was the day of the forensic interview. Sarah was met by Carol Hill, the interviewer for the state. *This interview at the advocacy center is the most critical early point in the process. Frequently, this is the make or break point for the state’s case. This interview is videotaped and conducted by an interviewer who has been trained by the state.*

Sarah repeated her earlier allegations against Rick, but there was a twist. When asked if there was ever penetration of her vagina she mentioned Rick would place his fingers inside of her. However, she added that on two occasions when Susan was out of town Rick placed his penis inside of her vagina. She also said that he tried to place his penis in her butt, but she did not allow that to happen.

The outcry of sexual abuse against Rick during this interview meant the case was going to be presented to the grand jury. There would be a formal case package put together by Detective Johnstone. Rick and Susan were unaware that a decision had already been made. Detective Johnstone contacted Rick to have him come in for a talk to ‘get his side of things’. Rick believed that in talking with Detective Johnstone there was a chance the case would be dismissed if he told her everything he knew about Sarah’s motives. He could not be any more mistaken.

Rick had consulted with an attorney the family had retained in the past for a Driving While Intoxicated case that he had been arrested for five (5) years ago. The attorney had done a good job in getting the

DWI reduced to a reckless driving charge. When advised by Rick that Detective Johnstone wanted to discuss Sarah's allegations with him the attorney told Rick to go in and be honest and that the case would likely go away. The attorney said it would be better for Rick to go in to see Detective Johnstone alone as Rick had nothing to hide.

### *VIII. The Police Interview*

Rick went to Detective Johnstone's office on the designated date and time. What Rick did not know is that Detective Johnstone had a case package all ready to be mailed to the District Attorney's Office. The detective wanted to add some damaging comments that could be attributed to Rick to make the case iron clad.

Law enforcement had already been involved in the Sarah Myers case for some time. Detective Johnstone had observed the forensic interview through a two way mirror. The interview in addition to the earlier verbal outcry made to the detective was all Johnstone needed to believe in the case. There was nothing Rick, as an alleged perpetrator, could do at this point to change the decision. There was going to be a case.

The police detective did not inform Rick that her mind was already made up. Rather, the police detective wanted to strengthen the case. The way the case would get stronger is to have Rick talk with the detective.

Detective Johnstone called Rick to come in and to 'give his side of things'. The detective told Rick that she was aware Sarah had some 'adolescent issues' and that there were always two sides to a story. What Detective Johnstone really wanted, as a 'Reid School of Police Interrogation' graduate was to have the suspect in her office, on police turf. Rick did not know this was a trap which had been set for him.

The first factor unknown to Rick is that by the time the police call it is already too late. The case is going forward, with or without the 'cooperation' of the suspect. The second factor is that there is nothing, nothing, nothing, Rick could have said that would sway the already made decision of going forward with the case after a forensic interview outcry. The third factor is anything the Rick says at the detective's office is good for the detective. A denial is expected and does nothing to diffuse suspicion. A confession is the final nail in the coffin for the police. What usually happens is the suspect makes a denial and then tries to come up with a theory of why the child is saying this happened. This ends up being a disaster. The suspect will become forever linked to whatever he says and it will come back to

haunt the accused later at trial.

All of Rick's activities at the police station were videotaped without his knowledge. Detective Johnstone would leave him in an interview room alone to be observed for a period of time. The detective entered and left the interview room on several occasions, all of the time recording Rick's every nuance. Later it would be argued that Rick's rolling of his eyes and head shaking were due to a guilty suspect trying to put one over on the police.

Detective Johnstone trained for this moment. She had attended schools, seminars, and conferences to focus on how to best obtain favorable evidence from a suspect during an interrogation. The leading model on obtaining favorable admissions from suspects of child sexual assaults is the 'Reid Technique'. Detective Johnstone had a cache of different tactics to use depending upon Rick's reactions. One constant feature was that Rick's innocence was not an option. Detective Johnstone would act friendly, hostile, indifferent, understanding, and a host of other roles with one goal in mind: to obtain an admission or at the very least some damaging statements.

The following are techniques Detective Johnstone used on Rick from the 'Reid Technique', Inbau, Reid and Buckley (1986) and Inbau et al. (2001).

### **Step 1: 'Direct Positive Confrontation'**

This consists of the suspect being told with 'absolute certainty' that he or she committed the alleged offence. The interrogator states confidently that the results of extensive enquiries by the police indicate that the suspect committed the offence. Even if the interrogator has no tangible evidence against the suspect he or she should not give any indication of this to the suspect and if necessary must pretend that there is evidence. The interrogator then proceeds to Step 2.

### **Step 2: 'Theme Development'**

Here it is important that the interrogator displays an understanding and sympathetic attitude in order to gain the suspect's trust. The interrogator suggests various 'themes' to the suspect, which are aimed to either minimize the moral implications of the alleged crime or give the suspect the opportunity of accepting 'moral excuses' for the commission of the crime (i.e. they are face-saving excuses.) It is recommended that the type of theme utilized by interrogators should take into account the personality of the suspect.

(a) Tell the suspect that anyone else being faced with the same situation or circumstance might have committed the same type of offence. This has the effect of normalizing the criminal behavior of the suspect and, combined with the comfort from the interrogator's apparent sympathy with the suspect, makes it easier for the latter to confess. In sex cases, it is particularly helpful to indicate to the

suspect that the interrogator has indulged, or has been tempted to indulge, in the same kind of conduct as involved in the case under investigation (p. 98). This amounts to the police officer being encouraged to make a false confession in order to manipulate and trick the suspect into making a confession (Gudjonsson, 1993a). It is particularly helpful to indicate to the suspect that the investigator has a friend or relative who indulged in the same kind of conduct as involved in the case under investigation. In some situations, it may even be appropriate for the investigator himself to acknowledge that he has been tempted to indulge in the same behavior (p. 243).

(b) Attempt to reduce the suspect's feelings of guilt for the offence by minimizing its moral seriousness. This can be achieved, for example, by the interrogator commenting that many other people have committed more shameful acts than that done by the suspect. This has the effect of reducing the suspect's embarrassment over talking about the offence., this theme is particularly effective when suspects are questioned about sex crimes.

(c) Condemnation of others as a way of sympathizing with the suspect. The rationale for this theme is that it will make it much easier for the suspect to confess if some responsibility for the offence can be attributed to the victim, an accomplice, or somebody else. The interrogator can use this ploy to his advantage by exploiting the readiness of many suspects to attribute partial blame for what they have done to others. Inbau et al. suggest that this type of theme can be particularly effective in certain sex crimes, for example, where children are the victims.

(d) Point out that perhaps the suspect's involvement in the crime has been exaggerated. The emphasis here is that the interrogator makes the suspect believe that perhaps the victim has exaggerated his involvement in the offence. Pointing out the possibility of exaggeration may make some offenders more willing to make partial admission, which can subsequently be built upon.

(e) Try to get the suspect to somehow associate himself with the crime. This consists of, for example, trying to get the suspect to agree to having been at or near the scene of the crime, or somehow having incidental links with the crime. This should be done early on during the interrogation so that the suspect does not fully realize at the time the implications of agreeing to his presence at the scene of the crime.

(f) Suggest there was a non-criminal intent behind the act. Here the interrogator points out to the suspect that the criminal act may have been accidental rather than intentional. The idea is to persuade the suspect to accept the physical part of the offence while minimizing the criminal intention.

Through Detective Johnstone's use of the Reid Technique, Rick admitted being alone with Sarah in her bedroom on multiple occasions to tuck her in at night. Further that when she was much younger



of having applied prescription ointment to a rash near her vagina area. Rick also admitted that Susan frequently had to leave town on business, leaving him alone at home with the children. Rick also admitted there had been frequent play wrestling sessions when he may have inadvertently touched Sarah's breasts over her clothes. Rick insisted such touching was not for sexual gratification and would have been only by accident during the play wrestling.

Detective Johnstone asked Rick how a child could make this up if it in fact had not occurred. She informed Rick studies have clearly shown that children do not lie about sexual abuse and cannot describe sexual scenarios unless they have personally experienced them.

Detective Johnstone had Rick agree that a child molester should not receive any second chances and that incarceration would be the only safe choice for the community when faced with a child predator.

Rick agreed it was possible that a child might react by cutting herself if she were a victim of sexual assault. A child might also act out by being sexually promiscuous and rebellious in general if she were being sexually abused.

Rick admitted that he had been in position to commit the offense by being alone in Sarah's bedroom late at night while Josh was asleep, Susan was in the shower, and Thomas was in his own bedroom.

Rick agreed that it would not take a suspect a long time to place his hand up a child's nightshirt and down her pajama pants.

Rick denied any sexual abuse of his stepdaughter but admitted a child molester was the lowest form of person on earth and should be severely punished.

Rick agreed that Sarah was well developed for a fourteen (14) year old and had the physical body of a much older woman.

Rick stated he never had any sexual feelings for Sarah but admitted that he was sexually aroused by child performing artist Brittany Spears and others before they became of age as a legal adults.

When the interrogation session was completed Rick felt relief because he had supplied Detective

Johnstone with many reasons and motives for Sarah's allegations. He was concerned because the detective told him she had to send the case into the district attorney unless Rick passed her polygraph exam.

Detective Johnstone was pleased with the interrogation session because she now had evidence from the suspect himself that he:

1. Had touched the child in her vagina area;
2. Acknowledged that he could have touched Sarah on her breasts by accident;
3. Was sexually aroused by developed underage females;
4. Had multiple opportunities to commit the offense;
5. Corroborated the victim's story of being alone in her room late at night;
6. Corroborated the victim's story of her wearing nightshirts and pajama bottoms;
7. Corroborated the victim's story of being alone with the children while Susan was out of town on business trips;
8. Admitted that child molesters could not be cured;
9. Acknowledged that child molesters should not be placed on community supervision but should be incarcerated for life;
10. Acknowledged that child victims of sexual assault could act out in the same manner as Sarah by cutting themselves, being promiscuous, and rebellious in general.

At the end of the interrogation Detective Johnstone informed Rick that she would like for him to submit to a polygraph examination to sustain his version of events. Rick said he had no problem with taking the polygraph but wanted to check with his attorney first.

Detective Johnstone stated an innocent person had nothing to fear by taking a polygraph and this test could clear Rick of the charges. She recommended Rick take the polygraph that very afternoon but Rick insisted on talking to counsel first.

Detective Johnstone bid Rick a good afternoon. She was ready to submit her case information to the District Attorney but would wait to see if she could induce Rick into taking a polygraph examination.

The police department uses a polygrapher who rarely passed any suspect. In fact this polygrapher had sustained allegations in 98% of cases in which Detective Johnstone had sent suspects. Detective Johnstone gave Rick one week to come in for the polygraph. Unfortunately, she said, that Rick's failure to submit to the evaluation would have to be considered as an admission of guilt and the case would thereby have to go to the District Attorney. It would be out of Detective Johnstone's hands at that point.

Detective Johnstone knows there will be no further cooperation from the suspect as soon as he is arrested. She decides to wait on issuing the arrest warrant until after it is confirmed that Rick will not be taking the polygraph. The polygraph is only a tool the Detective wants at this point to cut off any family or friend support for Rick. She knows he will fail with the examiner she is setting up for him. Even if he were somehow to pass, the case would still be submitted for prosecution.

Rick went home and discussed the situation with Susan. It was determined that they had not received good advice from the current attorney about meeting with the police detective without an attorney present. Susan found the Stuckle and Ferguson false allegation law firm on the internet. Rick then called and had the conversation with Rachel.

## *IX. Legal Advice*

The attorneys had listened intently to Susan and Rick describe their circumstances. The case has many of the red flags one would expect to find in a false accusation. Unfortunately innocence does not amount much for someone caught up in the criminal justice system. Without a very strong defense an innocent person can very easily be convicted and have their entire life ruined by the false accusation of a child.

The following is advice for those, like Rick, who find themselves falsely accused of child sexual assault. The first thing is to recognize the allegation is not going to magically go away. Once an accusation has been 'validated' by the authorities then the accused will experience being in the system. A major mistake is the assumption that silence must mean the accusation has been dropped or disbelieved. Precious time is being wasted by the naive subject who thinks common sense will eventually prevail and the accusers will come to their senses and drop the matter. **Wrong.**

The falsely accused need a very good lawyer. They need an excellent lawyer and the sooner the better. The earlier a false accusation attorney can become involved in the process the sooner much pain and suffering can possibly be avoided. A good false accusation attorney can succeed where the accused simply cannot on their own. Huge mistakes are made with using the wrong lawyer. It is not one size fits all. There are many attorneys who practice criminal defense. The vast majority of those lawyers are clueless when it comes to a false accusation defense. Their lack of knowledge will be devastating to the falsely accused. Child sexual abuse defense is a specialty in and of itself and a general practitioner will spell disaster for the falsely accused.

While it is best to hire the right attorney early in the process, it is still better to replace an ineffective one and retain a false allegation attorney before the trial. After trial, it will be too late as the emphasis will now be on trying to undo what has occurred. The percentages are much higher with seeking a dismissal or acquittal than prevailing on appeal.

## *X. Grand Jury Defense*

The best method of winning a false allegation case is to defeat it before it officially starts. In many states felony offenses must receive a grand jury indictment prior to the filing of a case. This means the prosecutor cannot simply file the case but must have the grand jury screen the evidence and make a decision of whether there will be a formal case filing.

The grand jury is a screening panel of persons selected from the community to serve a six month term reviewing cases to determine if 'probable cause' exists. If the grand jury finds probable cause, they will issue a 'true bill of indictment'. The case then gets assigned to a trial court for disposition. If the grand jury issues a 'no bill', the case ends.

The prosecutor has the right to present a case to another grand jury if a 'no bill' has been returned, however this is rare, and is usually only invoked in cases which have gathered media attention.

The accused in grand jury states must take advantage of this procedure. A vigorous grand jury defense is a viable method in which a false accusation attorney can get the charge dismissed. One advantage of a strong defense at this point is that the grand jury can consider evidence which would otherwise be inadmissible at trial. The grand jury does not have to follow the rules of evidence or criminal procedure in deciding whether or not to indict a case. This means the grand jury defense can include hearsay and other inadmissible evidence such as testing and evaluations that show one is unlikely to have committed the offense.

A falsely accused defendant has a golden opportunity to avoid an indictment by preparing evidence for the grand jury to review prior to its decision. The grand jury is controlled by the prosecution, and does not have to accept defensive evidence. It is customary, however, for the prosecutor to provide defensive evidence to the grand jury upon request. Defendants and defense witnesses can be made available to testify before the grand jury, but the decision whether or not they are allowed to testify is up to the grand jury. Defense counsel is not authorized to be in the grand jury room when evidence is

presented, nor is counsel allowed to make oral argument. The defense attorney can be outside the grand jury chambers and can prepare witnesses to testify.

## *XI. Grand Jury Packet*

Here is some evidence to build Rick Rayburn's grand jury defense packet:

- A. Client's Lack of Criminal History;
- B. Honorable Discharge and Military Records;
- C. Education Records;
- D. Polygraph Results;
- E. Polygraph Report;
- F. Psychological and Personality Testing of Client;
- G. A Factual Summary of the Defense Version of the Case;
- H. Sworn Statements That the Alleged Victim Has Made False Accusations in the Past;
- I. Legal Research and Case-law to Show Reason to Not Indict;
- J. Good Character Letters;
- K. Availability of Defendant and Others to Testify If Requested;

L. Recantations from Alleged Victims When Available;

M. Expert Witness Testimony & Affidavits Regarding the Tainted Evidence Which Comprises the Prosecutors Case; and

N. Test Results Showing the Accused Is Not a Child Molester or Pedophile.

### *XII. Polygraph*

A lie detector, or polygraph test is not admissible in a criminal trial. However, it is a test that can be considered by the grand jury in whether or not to indict. Not every polygraph examiner is the same. Polygraph examinations proposed by law enforcement are to be avoided. It is extremely rare for anyone to pass a state oriented polygraph examination.

To have the greatest impact with the grand jury, the accused should take an examination by an attorney recommended examiner who is a state licensed sex offender polygrapher. This individual meets additional standards to conduct polygraphs for sex offenders on community supervision, probation, and parole. These higher standards enhance the meaning of a passed polygraph examination.

In Rick's case the polygraph will have to cover several areas including:

1. Rick did not touch Sarah's vagina for sexual gratification;

2. Rick did not place his finger(s) in Sarah's vagina;

3. Rick did not touch Sarah's butt;

4. That Sarah has not touched Rick's penis;

5. Rick has not penetrated Sarah's vagina with his penis;

6. Rick has not attempted to penetrate Sarah's anus with his penis.

Due to the sheer volume of questions that must be addressed it is anticipated that Rick would need to take two (2) polygraphs on two (2) separate occasions. The typical polygraph only authorizes three (3) focus questions and there are too many with Sarah's allegations to cover in one exam.

### *XIII. Evaluations and Records*

The defense can also provide expert witness reports and affidavits explaining the unreliability and tainted evidence obtained by the prosecution. It would be beneficial for Rick to undergo a full battery of psychological testing to undermine the state's theory he is the kind of person who would sexually abuse a child. A full psychological evaluation in Rick's case may include:

1. A full psychological report based upon several hours of a forensic psychological interview and the following evaluations:

(A) Minnesota Multiphasic Personality Inventory (MMPI) is one of the most frequently used personality tests in mental health. It is used to assist in identifying personality structure and psychopathology.

(B) Paulhus Deception Scales (PDS) is an instrument used to determine whether or not an individual tends to answer truthfully on other psychological tests.

(C) Psychosexual Life History Questionnaire.

The Psychosexual Life History is designed for use with persons referred for psychological or forensic evaluation following allegations of sexual abuse and addresses several broad areas of life history; Namely: physical features, health information, personality styles, parental and family history, childhood / adolescent development history, education history, work history (adult only), substance abuse history, sex history (3 parts), marital history (adult only), childhood / adolescent behavioral history, adult behavioral history, treatment history and allegation information.

(D) STAXI-2 Anger Expression Inventory.

The State-Trait Anger Expression Inventory-2 (STAXI-2) is a 57-item inventory which measures the intensity of anger as an emotional state (State Anger) and the disposition to experience angry feelings as a personality trait (Trait Anger).

(E). Reynolds Depression Screening Inventory (RDS).

The RDS is a self-report measure designed to quickly assess symptoms of depression in adults ages 18-89 years. The RDS items assess the contemporary symptoms of depression specified by the DSM-IV™ for Major Depressive Disorder.

(F) Adult Sexual History Questionnaire (ASHQ).

The ASHQ is a comprehensive assessment of an individual's sexual history. It is specifically created to assess male offenders and help evaluate the offender's risk to others and his potential for rehabilitation by determining his specific sexual experiences.

(G). Multiphasic Sex Inventory (MSI-II) measures sexual characteristics of an adult accused of committing sexual offense.

(H). SVR- 20 Sex Offense Risk format is a predictive tool to measure the likelihood that he is at risk for committing a sexual offense.

(I) The Abel Assessment for Sexual Interest is an objective method for evaluating deviant sexual interest. The assessment was developed by Gene G. Abel, M.D., a veteran with over 25 years experience and research in the area of sexual aggression. This technology uses non-evasive means to achieve objective measures of sexual interest. (<http://www.allencowling.com/abelinfo.html>)

(J) Penile Plethysmograph: The penile plethysmograph measures penile circumference in millimeters caused by a partial or total erection. It is, therefore, a good, direct measure of physiological arousal because erection rarely occurs except to sexual stimulation. The Abel Assessment, on the other hand, uses an entirely different approach, an indirect measure. These are two totally different methods of measuring a sexual preference, such as pedophilia.

(<http://www.allencowling.com/abelinfo.html>). The penile plethysmograph is an invasive procedure and is not used in every case. It can be a beneficial tool for the appropriate situation.

#### *XIV. Interviews, Records, Character Evidence, and Inconsistent Statements*



## 1. Criminal History Reports:

Rick Rayburn's criminal history report to show lack of a criminal record will be included in the grand jury package. While Sarah is too young to obtain a criminal history report there may be some witnesses in the case in which their criminal history is relevant. The defense will obtain the criminal history of any adverse witness where it can be used to show they are not a truthful person and should not be believed.

## 2. Medical Records:

It is entirely possible that Sarah has medical records which are relevant to the charge. These records can be obtained by Susan Rayburn as Sarah's mother. Parents can obtain medical records concerning their children. Sarah may have had physical examinations and notations on medical records which indicate the lack of sexual activity. Also important is the lack of any outcry to a physician of sexual abuse. A mandatory reporter such as a physician is under a legal duty to report an outcry of sexual abuse. The lack of an outcry would be by negative inference, meaning that if an outcry had been made it would have been reported in the medical records. The fact the records are silent means an outcry of sexual abuse was not made.

## 3. Mental Health Records:

Sarah had been in counseling for her difficulty in dealing with the divorce as well as the cutting incident. She has acquired a significant amount of counseling and mental health records which are relevant to the accusation. Just as with medical records, parents can obtain the psychological or therapy records of their children. These would include any prior or current psychiatric treatment of the alleged victim. These psychiatric and counseling records would be extremely important as they

would show the lack of an outcry of sexual abuse despite Sarah being in a safe environment in which such an outcry could have been made. As with the physician, counselors are mandatory reporters and would have a duty to report such an outcry, if made.

## 4. Education Records:

Education and school disciplinary records of the alleged victim are important. Records of good grades and school extracurricular activities show Sarah was able to concentrate and perform well in school which arguably is inconsistent with someone who was being sexually abused. Likewise, if Sarah has been a disciplinary problem the school records could corroborate the defense claims in this area.

Frequently the education records contain notations by teachers of problems they are having with students. There could be records of instances in which educators have caught Sarah in lies or raise questions about her credibility. The school records are also a great source for potential witnesses. During the school year Sarah may have spent more time with certain teachers than at home with her

parents. Teachers also have to be on the defensive for false allegations of abuse and often have sympathy and a desire to help when a false charge has been made.

## 5. Court Records:

Certified copies of court records involving the client or the alleged victim or key witness can be significant.

Examples:

A. Divorce Records.

B. Protective / Restraining Orders.

C. Custody Records.

D. Liens.

E. Civil Lawsuits.

F. Bankruptcy.

G. Criminal Convictions.

The divorce records for Susan and Gary Myers might be important in the case to see if any social studies were conducted. The studies could aid the defensive theory of how devastating the divorce was for Sarah. Also, there may have been issues involved in the divorce that could be vital if Gary took an active adverse role in the case. Perhaps Susan had to file a protective order against Gary and other significant reasons why a divorce was necessary. The defense must examine the divorce records with a fine tooth comb.

## 6. Witness Statements and Interviews:

The defense must acquire all prior written and recorded statements made by the alleged victim and all witnesses. It is imperative to get statements of those who will testify for or against the client. The defense needs to know what they said and prepare to defend against it. Also, the witnesses may testify to something different at trial and it can be shown they are not truthful by the prior inconsistent statements.

It would be important to interview Thomas, Sarah's younger brother as he would know significant information about his sister and her motivation. Additionally there were at least two adolescent girls who knew of the outcry. Talking with Sarah's friends and enemies could provide important information concerning her state of mind.

An interview of Susan and the grandparents would be critical. It is highly likely both are aware of Sarah's desire to go and live with her father. Susan was the one who denied Sarah's request to live with her father during her upcoming freshman year of school. With the outcry Sarah has accomplished this goal.

Gary Myers is a source of information that needs to be followed up on. The defense cannot assume that Gary would be a hostile witness. He may be eager to talk, perhaps in thinking that he is putting nails in Rick's coffin. Many times when people are trying to hurt another they provide information that is actually helpful to the defensive theory.

Sarah herself is a great source of information. It is known that she was active with a computer and had both "My Space" and "Facebook" accounts. It is not unusual for teenage girls to have created an online diary which would provide key day to day accounts of her inner most thoughts. A search of her emails and texting of friends could provide key details about her plans, goals, and motives.

Sarah, in a very short time, has also provided many inconsistent descriptions of the alleged sexual abuse. The initial description to the outcry witnesses was limited to a touching of the breasts and vagina. In addition, Sarah was firm that this was all that had happened. However, when describing the abuse for her mother, Sarah added that Rick had her touch his penis and masturbate him. Next she added for the CPS investigator and police detective that Rick touched her butt. During her

forensic interview the escalation of allegations continued with claims of vaginal penetration by Rick's penis and attempted anal penetration. She also was inconsistent over who Rick threatened to kill if she told, whether it was her dog or Sarah and her whole family.

These inconsistent statements concurrent with a lack of detail are significant red flags in her account of the alleged abuse. It must be strongly pointed out for the grand jury that due to the varied and growing accounts she is not a consistent and credible witness. This will be a hard fought battle as the state has experts who will urge a delayed and staggered disclosure is normal.

Additionally there are occasions in which an alleged victim wishes to recant her statement as being untruthful. These are circumstances which must be handled with absolute skill and care. The wrong move can result in additional criminal charges against the accused or 'non-offending' spouse for tampering with a witness. The worst move is having the alleged victim recant to law enforcement, the

District Attorney's Office, or Child Protective Services. While these agencies cling to the mantra of 'Believe The Child', the reality is they only believe the accusing child. The 'nothing really happened' child is viewed by the child savers as merely taking the accusation back to avoid the discomfort associated with being a complainant in a criminal case. The government is at the height of their hypocritical selves with the selective application of when to believe and when not to believe the

child. The author, unfortunately, is keenly aware of prosecutors and police officials applying duress

and coercion to the recanting child, even to the extent of threatening criminal prosecution and termination of parental rights if the child is to withdraw the complaint.

#### 7. Bad Character Evidence:

The defense must determine if it can obtain bad character affidavits of the alleged victim and key witnesses. Important areas would be the character trait or reputation of the person for being:

- A. Untruthful.
- B. Law breaker.
- C. Violent.
- D. Sobriety.

Obtaining bad character evidence must be handled with care. Sarah, even with a false accusation, is still a child and will garner much sympathy. A frontal attack on a child is not a sound defensive theory. Rather the attack must be an indirect one in which the points are made but not at the expense of ganging up on a child. Attacking a child is another area where the skill of the defense attorney can make all the difference in either obtaining jury support or, if handled incorrectly, alienating both a grand jury and trial jury.

#### 8. Good Character of the accused:

The defense will want to impress upon the grand jury the good character of the accused. The state will often point to studies which show the typical child molester has not been in trouble with the law and often holds good jobs and positions in the community. Despite the state's attempt to compare the client with a child molester, it is important for the defense to show the grand jury the type of person the accused really is. Grand juries frequently deal with individuals who have lengthy criminal

histories, inadequate social skills, frequently unemployed individuals, under educated and with poor relationships.

##### A. Persons to request letter:

1. Employer;
2. Pastor / clergyman / minister;
3. Neighbors;
4. Community leaders who know the client;
5. Influential persons who know the client;
6. Friends;

7. Co-workers;

8. Family members.

The letter should be addressed and written to grand jurors but mailed to attorney for review and inclusion in the grand jury packet.

9. Life Plans:

While the defense will make Rick available to testify in front of the grand jury it is a good idea to include an affidavit from the accused to inform the jury of his goals in life. It is important to distinguish Rick from the real criminals the grand jury is used to seeing who frequently lack real life accomplishments and have no vision of the future. The accused's affidavit of life history and future goals sets him apart from the typical person the grand jury reviews.

Subjects to include in lifestyle plan:

1. Include clients future plans for all aspects of life, such as:

(A) Employment.

(B) Family plans.

(C) Residence.

(D) Education.

(E) Parenting role.

(F) Volunteer activity.

(G) Community involvement.

(H) Religious practice.

## *XV. Final Thoughts*

Generally, the falsely accused must:

1. Hire a false accusation attorney as soon as the accusation arises.
2. Find the financial resources to defend the charge;
3. Follow the advice of the false accusation attorney;
4. Prepare a life history;
5. Prepare a time line ;
6. Pass a polygraph exam on the specific charges
7. Have finances available for posting a bail bond
8. Assist the attorney in acquiring documents and evidence regarding the accuser
9. Hire a private investigator
10. Take sexual proclivity and psychological evaluations.

## *XVI. CONCLUSION*

The state's position is clear: It cannot prove the case, therefore, failure to disprove is the equivalent of guilt. The burden of proof is unconstitutionally shifted in these cases to the defense. Although not written in any law book, the reality of the circumstances is the defense must prove a negative: That the allegation did not occur. Proving something did not happen is difficult. But it can be done.

Armed with all of this information the law firm of Stuckle and Ferguson is ready to go to work. The

facts have all the appearances of a dangerous false allegation.

The motive is clear in that Sarah wants to go live with her father. The adversary, Sarah, is a very astute and vicious accuser. The allegations have enough of a ring of truth to make it through the system unscathed. Without a strong defense these facts could easily place Rick in the penitentiary... for life.

How does the grand jury defense all come together? Watch for the next article in this ongoing series.

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