

# Basic Criminal Investigation: Team Defense

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# Prosecution investigations

- Purpose is to develop facts sufficient to establish legal guilt of the accused
- Two basic categories:
  - Investigation seeking to identify and convict the perpetrator of a reported crime
  - Investigation seeking to manufacture a crime on the part of a targeted individual

# Investigation of Reported Crime

## Characteristics:

- Normally involve several people
- Usually disjointed unplanned, not thorough
- Fast moving/Often under political pressure
- Tend to follow flow of accusation
- Little or no legal consultation or budget
- Shuts down when there is enough evidence to substantiate allegation in investigator's mind

# Investigation of Reported Crime

- Initial Focus is Identifying & Locating Accused
- Focus shifts to pressuring accused for an admission
- If Accused does not “Fess-up”
  - Corroborate allegations of accuser
  - Refute or discredit any exculpatory statement

# Strengths & Weaknesses

- Assumes crime was committed
- Assumes witnesses are truthful and accurate
- Does not generally investigate defenses
- Open to 4th & 5th amendment violations
- Investigation usually stops if accused makes a statement which can be interpreted as an admission
- Can be sidetracked by shifting priorities

# Investigation of Manufactured Crime

## Characteristics:

- Generally involves fewer people
- Well planned budgeted and thorough
- Follows information delivered by informants
- Usually integrate legal counsel
- Usually slow & deliberate
- Usually will not shut down until there is ample evidence to refute entrapment defense

# Investigation of Manufactured Crime

## Focus:

- Identify who the target should be
- Induce Target into commission of particular crime
- Document target in commission of crime
- Link Target to other Targets
- Gather sufficient evidence to refute entrapment defense

# Strengths & Weaknesses

- Assumes the truthfulness and accuracy of informants
- Assumes accused is proper target
- The investigation usually does not stop until accused commits several offenses
- Open to 4th & 5th amendment violations
- Open to entrapment defense
- Open to discrediting for bias

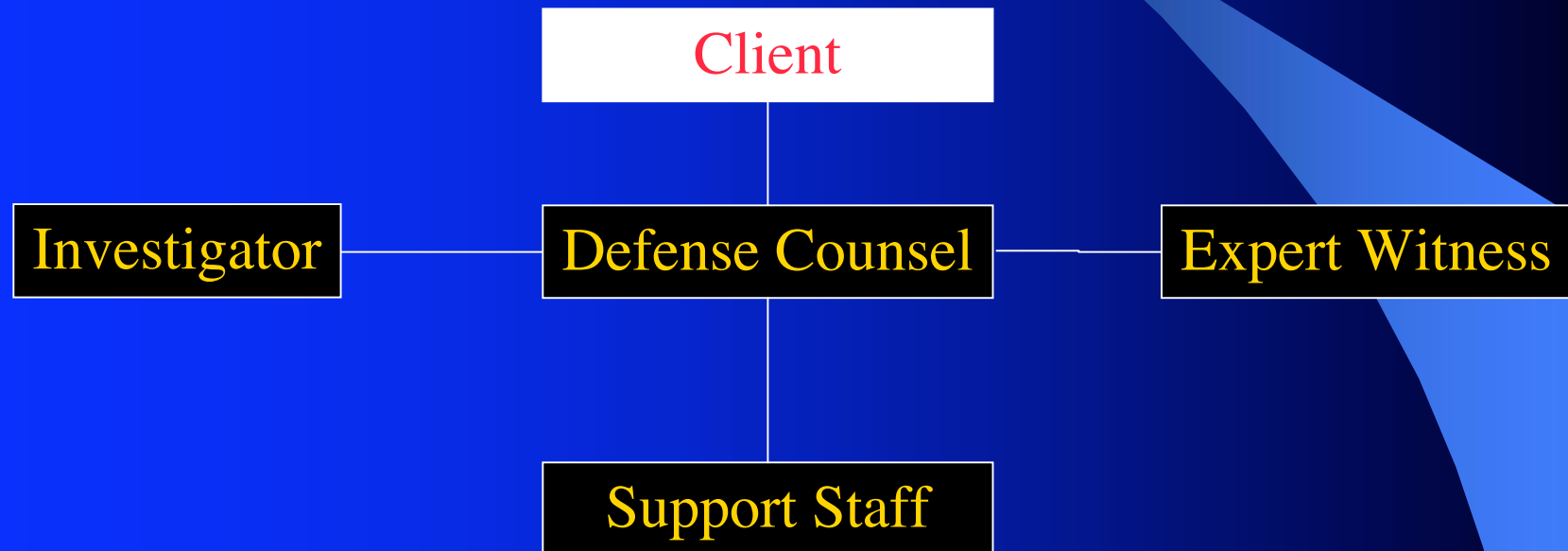
# Defense Investigation

- Involves Defense team
- Uses mix of formal/informal means
- Limited budget/deliberate effort
- Initial focus is reactive
  - Discover prosecution case
- Shifts to developing and presenting factual basis of theory of defense
  - Corroborate client story
  - Refute prosecution story
  - Discredit Prosecution/investigation

# Why a Team Defense?

- Lawyer can't do it alone;
- Neither can Investigators
- Effectively uses client resources
- Focus efforts
- Eliminate Blind spots
- Capitalize on each team member strengths

# Defense Team



# Roles

- **Lawyer**

- Coordinate Investigation
- Conduct formal investigation
- Present case

- **Investigator**

- Conduct Informal investigation
- Prepare & assist the attorney/2nd chair
- Helps prepare client
- Testifies and presents exhibits

- **Expert**

- Suggest lines of investigation
- Explain evidence

- **Support Staff**

- Assists Informal investigation
- Prepares & assists the attorney/2nd chair
- Helps prepare client for testimony
- Prepares exhibits

- **Client**

- Tells you what he can

# Steps to creating Effective Defense

- Developing the Theory of Defense
- Developing an Investigation Plan
- Collecting and Preserving Evidence
- Presentation of Evidence

# Theory of Defense

A credible explanation of events which is supported by the evidence and consistent with the facts beyond change

# Developing a Theory of Defense



# Developing Theory of Defense

Brainstorm–Investigate–Brainstorm

- Rules
  - Keep an open mind.
  - Be Creative
  - Keep going until out of new ideas
- Raw material
  - The law
  - The Client statement
  - Whatever you can learn of the police investigation

# What to do During Brainstorm

- **What are facts beyond change**
- **Who are known & possible witness**
- **What are known and possible pieces of evidence**
- **What could have happened other than crime**
- **What are the dominant emotions**
- **What are the Positive Defenses**
  - **No crime was committed**
  - **Criminal act was justified**
  - **Defendant not the perpetrator**
- **Decide on a tentative theory**

# Developing an Investigation Plan

- **Ask: What kind of evidence is or may be out there?**
  - **List the documents/records you need/want**
  - **List the physical evidence you need/want**
  - **Decide how to obtain**
  - **Decide when to visit the scene**
  - **List photographs and diagrams you need/want**

# Developing an Investigation Plan

- **Ask: Who are the actual/potential witness(es)**
  - **Decide what you want out of the witness(es)**
  - **Decide what order to interview**
  - **Where to interview**
  - **Decide how to obtain**
  - **Decide who will be present**
  - **What you need to take with you**

# Collecting and Preserving Evidence

- Make a plan
- Ask: What kind of work product you need
- Think how you will present evidence at trial & how attorney will use evidence at trial
- Seek the strongest evidence from the most neutral source
- Think about security of your investigation

# Preservation of Evidence

- Tag, Bag & log
- Number all documents received in discovery
- Have duplicate tapes, transcripts, photo& diagrams

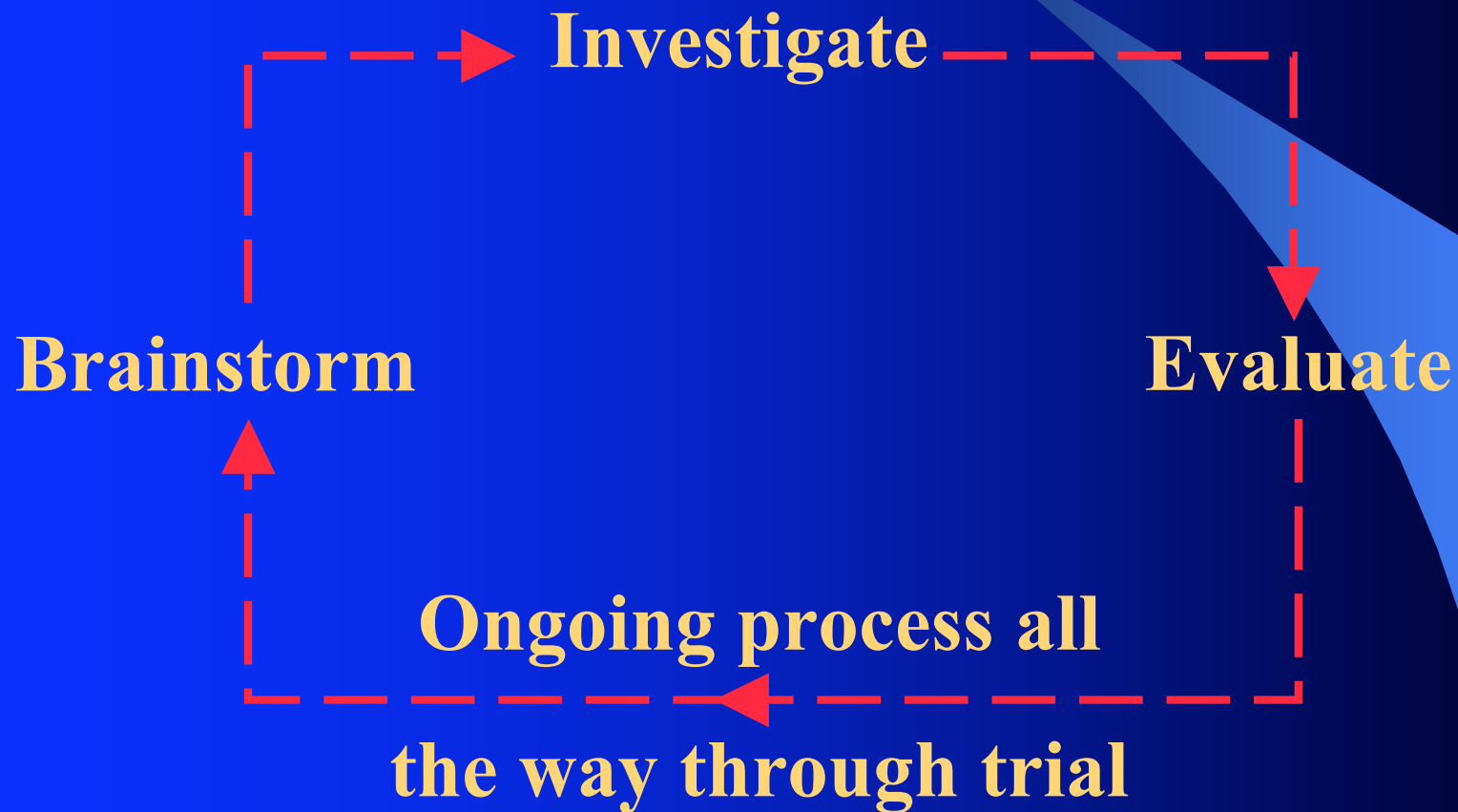
# Presentation of evidence

- Be involved in all exhibit preparation
- Prepare all exhibits for trial using exhibit labels and tags sequential order
- Best to have original for the court, and copy for defense & copy for court and prosecution
- Be at trial!!

# Final Points

- Don't expect prosecution to do your work
  - i.e. don't rely on *Brady* motions
- Talk to the prosecution investigator
  - but treat him like any other hostile witness
- Don't forget to view prosecution physical evidence
  - Inventory and photograph
- *Never* obtain evidence in a manner that will prevent you from using it at trial

# Developing a Theory of Defense



# How to Get Answers to Questions?

# Basic Rules

- Ask Only Open ended Questions
- Ask only one new Query per question
- Follow-up to the fact
  - Don't accept conclusions or opinions

# Organization of interview

- Work in “chapters”
- Exhaust each chapter
- Use transitions to close and open chapters

# Get to the hard facts

- Formulate questions using “senses”
- Get to the source of witnesses’ Knowledge
  - What did you see
  - What did you hear
  - How do you know
  - When did you learn
- Ask the “One Question Too many”