
ON TRIAL:
LEGAL ISSUES AND CASE STUDIES

**The Little Rascals Day Care Center Case:
The Ingredients
of Two Successful Prosecutions**

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The nature and extent of allegations of sexual abuse of children in day care settings in recent years have posed unique challenges to prosecutors when such cases go to trial. These challenges were very clear to prosecutors involved in the "Little Rascals" day care case in Edenton, North Carolina.

Edenton, a small town populated by approximately 6,000 people, found itself in the midst of a problem of immense proportions when children who attended the Little Rascals day care center began to disclose in January, 1989, that acts of sexual and physical abuse had occurred at the day care. At first, only a few children spoke of abuse, and it was these few children whose allegations caused the local department of social services to investigate and later substantiate that abuse had, in fact, occurred. The day care remained open

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pending further investigation by personnel at the day care section of the North Carolina Department of Human Resources. When their investigation was complete, they too substantiated that abuse had occurred and revoked Little Rascals' license to operate. The day care closed at the end of April, 1989.

After Little Rascals closed, more children began to disclose acts of abuse. Eventually, approximately 90 children were evaluated by mental health professionals, with between 70 and 80 of them reporting having been involved in or witnessing some form of abuse at the day care. A large number of those 70 to 80 children remained in therapy after the initial evaluation period.

As children began to disclose that they had been abused or had witnessed abuse involving several different perpetrators, both male and female, most of whom were employees at the day care but some of whom were not, it became apparent to investigators and prosecutors that this case would require careful attention and preparation. Prosecutors began to focus their full attention on the case during its early stages, realizing that it was unlikely that a case of this magnitude with this many co-defendants where young children were the accusers would result in plea agreements being reached. Therefore, strategies which might result in successful prosecutions were examined early, and the focus of this article will be on those strategies which eventually did result in two convictions during two separate trials of Robert F. Kelly, Jr., the co-owner of the day care, and Dawn Wilson, the cook at the day care.

CHARGING DECISIONS

By September, 1989, four day care workers as well as an owner of a local video rental business had been charged, and a number of children were identified who could testify and who could corroborate each other's testimony. There were many factors considered in determining what charges should be brought and against whom. The factors discussed among prosecutors, police, family members and therapists in determining whether a particular charge should be brought against a particular defendant included first and foremost the child victim involved: his/her age, verbal ability, developmental level (memory and perception), emotional state, whether or not the

child had recanted the allegations or adamantly denied them at an early stage, whether the child was clear in his/her identification of a particular perpetrator, and whether the family agreed that their child could be named as a victim, thereby consenting to the possibility that the child might have to testify at a future time. Consideration was also given to legal issues concerning the use of hearsay testimony, contamination by way of suggestive interviews or cross pollination of information among families, and the extent and nature of any inconsistencies in a particular case.

Prosecutors did bring charges in every child's case where they believed in good faith that the child could face the stress of testifying, where the child's disclosures were made clearly and strongly, using his/her own language, and where there was other evidence to corroborate the abuse. It was felt by prosecutors that in a case of this size and nature, it was best if the child victim gave live testimony in front of the perpetrator and jury, although alternative means were considered including testimony via closed circuit television and closing the courtroom to spectators during the children's testimony. Eventually, 29 children were named as victims in indictments against Bob Kelly. Of those 29, 12 children actually testified to the charges the State had pending against Bob Kelly. The remaining charges were dismissed either prior to the presentation of the State's case (because the child was emotionally traumatized and unable to testify) or at the close of the State's case. After 12 children and their families had testified, prosecutors felt the jury had enough evidence to convince them of Kelly's guilt beyond a reasonable doubt.

PRETRIAL MOTIONS

It took nearly 18 months from the time indictments were returned against all the defendants to hear and decide all pretrial motions before the first trial began in July, 1991. Prosecutors were blamed for "dragging their feet," when in reality the majority of the delays in bringing cases to trial were caused by the defense.

A strategy which proved initially successful for the defense was moving to join all seven defendants for trial. Prosecutors felt this decision was a mistake, especially when considering the perspective of the child witnesses who would have to face all seven defen-

dants and their attorneys in one trial. Prosecutors also believed the trial judge who made this decision to join had no authority to do so, because by law in North Carolina, only the State may move to join co-defendants for trial, and then only under certain conditions. Therefore, prosecutors had to determine whether to appeal the judge's decision to join, thereby causing the trial to be delayed. In making this determination, prosecutors consulted with many people, including psychological experts as well as the children's families. Even though the risk was present that a child would have to testify at seven trials over a period of years, both the experts and the families agreed that it would be far more damaging for one child to face all seven defendants and their attorneys during one trial. Therefore, prosecutors appealed the judge's decision to join, and the issue was eventually decided by the Supreme Court of North Carolina in favor of the State. The court reversed the judge's decision to join all seven defendants for one trial. Prosecutors then decided to bring Bob Kelly to trial first, and eventually succeeded after several futile attempts to set his trial date.

Another issue addressed at length pre-trial was venue. Eventually, after many hearings, venue for Bob Kelly's trial was set in Farmville, North Carolina, a 1 hour, 30 minute drive from Edenton. Although this made jury selection easier because of a larger population base than existed locally, it was a hardship on the children and their families because of the distance. Venue for Dawn Wilson's case was eventually set in Elizabeth City, North Carolina, a city about 40 miles from Edenton, where the jury was selected. The actual site of the trial once the jury was selected was in Hertford, North Carolina, a town about 15 minutes away from Edenton.

There were many other motions heard pre-trial in both cases, which caused inevitable delays and postponements of already scheduled trial dates. Eventually, Bob Kelly's trial began in July, 1991 and concluded in mid-April, 1992. Dawn Wilson's trial began in November, 1992 and concluded in late January, 1993. Kelly was found guilty on 99 of 100 counts of abuse involving 12 children, and received 12 consecutive life sentences. Wilson was found guilty on 5 of 7 counts of abuse involving 4 children, and received 1 life sentence.

PARENT INVOLVEMENT

Prosecutors knew at an early stage of the investigation that parents of the children who were abused at Little Rascals would need to be monitored carefully, kept informed, and given a great deal of support. Prosecutors began meeting with the entire group of parents early and on a regular basis in order to relay information to them concerning the progress of the case. Prosecutors called special meetings after court hearings concerning pre-trial issues to inform them in lay terms as to what had occurred at each particular hearing. Prosecutors were careful never to discuss specifics of any particular child's case during these meetings and instructed families to refrain from discussing case specifics among themselves in order to avoid the later inevitable defense claims of hysteria and cross pollination of information. Nevertheless, prosecutors had to deal with the defense strategy at trial of attempting to show the allegations of abuse were fueled by community hysteria. This problem was compounded by the defendants and their supporters appearing on "Frontline," a nationally syndicated PBS series, prior to the start of Bob Kelly's trial, and presenting their view of the case, while prosecutors and families could say very little at that time, thus leaving the viewing public with a skewed view of how the allegations of abuse actually developed. At trial, however, prosecutors were able to present information which revealed that parents were anything but vindictive and hysterical. Evidence was presented which showed that many people in the community and also other parents isolated the initial reporting parents from any support, thus reinforcing the idea that nothing sexual occurred in the day care, and the Kellys should be believed. It was not until the day care closed and their own children began disclosing that these other parents were forced to re-think their position and face the reality that their children had been molested at the day care. This reality was in direct contrast to the defense strategy to compare this situation to the Salem Witch Hunt and to try to prove there was social peer pressure among the group of parents whose children attended Little Rascals.

The prosecution would have had a much more difficult time dealing with defense claims of hysteria if they had not intervened early with parents and kept them informed and supported. Fortu-

nately, prosecutors realized that without the cooperation of well-informed, emotionally healthy and supportive parents, chances of a successful prosecution were slim.

During both trials, prosecutors had to be caring and sensitive to the needs of the children and their parents as it came time for them to testify, because this was an extremely stressful and emotional time for the families. In each child's case, both parents were called as witnesses in order to corroborate, if possible, their child's testimony about the abuse and to describe their observations concerning their child's behavior during the time the abuse was occurring and after the child began to disclose. In calling several different "family units," prosecutors were able to demonstrate that most parents did not know the specific allegations other children besides their own were involved in. They were further able to show that many parents who had been experiencing behavior problems with their children during the time the day care was still in operation knew that other children besides their own were having similar behavior problems because of discussions that had occurred regarding the problems between various mothers who were at their wit's end as to how to deal with these issues. Thus, such discussions reassured those parents who were seeing behavior changes in their children to more easily dismiss the unusual behavior as a "phase" that all children go through. Use of the "family unit" testimony proved to be a positive support mechanism for the parents by bringing them closer together during the trials, thus allowing for the development of a strong support system among the entire group.

CHILDREN IN COURT

Preparing all the potential child witnesses for testifying was a major undertaking for the prosecutors. Because of the large number of potential child witnesses, prosecutors had to find a way to effectively prepare all of them for the upcoming trials. One of the prosecutors was familiar with the court school concept, and felt that it would be the best way to familiarize the children as a group with what they could expect if they were called as witnesses. The school consisted of two sessions, each 1 1/2 hours long, which were held in an actual courtroom after hours. The objectives of court school

were to familiarize children with the courtroom setting and acquaint them with the people who may be present in court during a trial. The main emphasis was on the child's "job" as a witness—to tell the truth. Role-playing was utilized to reinforce this issue, and also to teach them that the truth may be that they do not know or do not remember the answers to some of the questions asked of them. During court school, children were not allowed to discuss the facts of their particular cases. Other children who had cases pending besides the Little Rascals victims also participated in court school. Prosecutors videotaped all court school sessions and made them available to the defense; however, none of the defense attorneys ever requested to view the tapes.

Court school was an effective tool for preparing the children to testify, but it also served the prosecutors well. They were able to assess each child's potential ability to be an effective witness. It provided the prosecutors and the children an opportunity to become acquainted. It gave the children the time and space they needed to develop trust in the prosecutors. It let each child realize that he/she was not in this alone. Finally, it provided prosecutors with the opportunity to determine which of them should question which child if that child testified.

After every potential child witness completed court school, prosecutors divided the children into groups and assigned each group to an individual prosecutor for individual preparation. This was more difficult for both the children and prosecutors as together they went over each particular child's case. Individual preparation began with a rapport developing stage, which involved getting to know each child on a more personal basis over a period of time. Specifics of a child's case were not discussed during this stage of preparation. After a child became more comfortable, the discussion would turn to what had happened to him or her at the day care. Prosecutors were careful, however, to avoid over-prepping because they wanted the children to be themselves on the stand and to testify in their own words. Prosecutors also kept the parents informed of their child's progress and emotional state during this phase of preparation, because most children had difficulty discussing what had happened to them at Little Rascals, as they had been threatened to keep it a secret.

The decision to choose which children would actually testify at both trials included many of the same considerations used in making the original charging decisions, as well as whether a particular child had medical findings, documented behavior changes, unique descriptions of abuse made in their own words, corroboration by other witnesses, clear and concise disclosures of abuse, and corroboration of their statements and behavior within journals parents kept. Prosecutors paid close attention to how the children described what they had perceived and used the children's language in such descriptions. This was an important factor used to rebut the defense theory that parents and therapists had planted these ideas in the children's minds. There were many examples of unique child-like descriptions of what were clearly sexual activities that were stated by the children and other corroborating witnesses at trial, which illustrated to the jury that the children were not influenced by parents and therapists. Jurors also heard each child use their own unique words to describe the same kinds of abuse.

Before Bob Kelly's trial began, prosecutors had intended to call approximately 20 children to testify about acts of abuse they were involved in personally. However, it became obvious after several children and their families had testified that the impact of their testimony on the jury was starting to diminish. Also, prosecutors had a better idea after hearing the defense attorneys cross-examine the children and their families as to what the defense strategies were. Thus, prosecutors decided after presenting evidence of abuse through 12 children and their families to call no more children, believing that jurors had ample evidence to convince them beyond a reasonable doubt of Kelly's guilt.

During Dawn Wilson's trial, prosecutors originally intended to call 6 children to testify. Again, however, after the trial began and prosecutors could better grasp the defense theories of the case, they called only 4 children to testify about acts of abuse they witnessed or were involved in personally.

Careful and sensitive attention to the needs of the child victims in these cases on the part of the prosecutors, both before and during trial, was one of the most important factors in bringing about convictions in these two cases. The children's parents had to believe that prosecutors had the best interests of their children at heart

during the decision making processes, and the children had to believe that the prosecutors were people they could trust. Prosecutors knew that if they did not do all they could to gain the trust and support of the child victims, they had no chance of ever being able to prosecute these cases at all. Therefore, careful planning at an early stage of the investigation concerning preparation of the child victims and presentation of their testimony turned out to be invaluable.

CONCLUSION

Most prosecutors will never find themselves involved in a mass molestation case involving several perpetrators. However, those who do find themselves in such a case should be fully prepared for what may be months and years of difficult challenges, frustration, and extreme stress.

It is very important, if a prosecutor is faced with what appears to be a case involving several child victims and more than one perpetrator, that he or she immediately organize a multidisciplinary team of qualified, competent individuals who will see the case through its investigation and prosecution. It is best to already have such a team in place. It is also helpful to seek the help and advice of other individuals who have been involved in mass molestation cases. Prosecutors and investigators in the Little Rascals case sought the advice of others all around the country who had been involved in both successful and unsuccessful prosecutions of cases of mass molestation of children, thus enabling prosecutors to anticipate and plan for what might lie ahead of them during the investigation and prosecution of the Little Rascals case. Such advice, in hindsight, turned out to be invaluable.

Finally, prosecutors involved in mass molestation cases should remain flexible, realizing that what brought about convictions in one trial may not bring forth convictions in the next trial. The Little Rascals case has now been in existence since the first charges were brought against Bob Kelly in March, 1989. Two cases have been successfully prosecuted, with convictions being won in both. The prosecutors, however, still continue a constant evaluation process, examining what has worked and what has not. Strategies and deci-

sions are never firm until they are brought into the courtroom during a trial. Prosecutors firmly believe that by remaining flexible and continuing to learn from each other as well as from others, they will be in a better position when the next trial begins, as it may call for new approaches, new strategies, and most importantly, fresh perspectives.