Broken Trust: Getting Justice for a Sexually Groomed and Sexually Abused Young Athlete

This article describes the legal advocacy skills a plaintiff's attorney needs to conduct a lawsuit and bring it to a conclusion, all the while being highly sensitive to the client's unique psychological needs.

By **Andrew J. Leger Jr. and Daniel Pollack** | July 19, 2019 at 11:00 AM

In this Nov. 22, 2017 file photo, Dr. Larry Nassar, 54, appears in court for a plea hearing in Lansing, Mich. Nasser, a sports doctor accused of molesting girls while working for USA Gymnastics and Michigan State University pleaded, guilty to multiple charges of sexual assault and will face at least 25 years in prison.

Her legal case is now over but her emotional torment will live on. A teenage athlete was sexually groomed and abused by her coach, a scenario that unfortunately has happened countless times in all area of sports, especially at the elite level.

At the national, regional and state levels much is being done to address the problem of sexual grooming in teenage sports. Professional and political oversight and investigative committees are reviewing laws, policies and procedures. Athletes and their families are being encouraged to be vigilant of improper behavior by coaches, trainers and medical personnel. This article addresses a wholly different facet. It describes the legal advocacy skills a plaintiff's attorney needs to conduct a lawsuit and bring it to a conclusion, all the while being highly sensitive to the client's unique psychological needs.

As an attorney working with a survivor of sexual grooming, it may be easy to focus on responding only to the legal aspects of abuse that occurred, but it is equally important to address the whole person. Toward that end, here are four attributes that are indispensable when representing a teenage victim of sexual grooming:

Empathy

Empathy is the conscious effort of thinking through the case from your client's emotional perspective. Not only does it demand sincerely maintaining a deliberate attitude of active listening, it also means tapping into one's ability to communicate that warmth and genuineness to the client. In a recent **study** of pediatricians in an intensive care unit, in which decisive decisions of critically ill children needed to be made and in which there was a high need for physician empathy, researchers determined that there were five major areas of missed opportunities for empathy. The doctor:

(1) "responded with a medical statement" when empathy was sought;

(2) "negated the family's emotional statement by attempting to discount it as false;"

(3) “pivoted by simply moving on to another topic.”

(4) “ignored the comment completely;” and

(5) “deferred responsibility to another member of the health care team.”

The lesson for attorneys representing a sexually groomed young athlete is clear: Genuine empathy is not just nice, it is necessary and effective.

Professionalism

From the first day of law school, attorneys are taught that one of the qualities necessary for success is professional etiquette. Especially when dealing with a victim of abuse, this means:

• introducing yourself without fanfare;

• allowing the client to bring up sensitive topics on their own time;

• being mindful of your body language.

• maintaining positive eye contact;

• using appropriate hand gestures when speaking;

• avoiding all legalese in the interview;

• picking the setting for the interview at a place where the victim will be comfortable;

• interviewing the victim over multiple meetings so as to establish rapport and trust;

• explaining and, if possible, attending all criminal hearings with the victim.

Respectful

In the initial meeting, concentrate solely on the victim and their parents, and make sure not to rush them through the meeting. If the victim will be more comfortable talking to you without their parents being present, facilitate that as well (with a secretary and/or paralegal also present.) Remember, this victim has gone through significant trauma; discuss but do not dwell on the salacious. The more “difficult” facts can be drawn out at subsequent meetings. It will only serve to embarrass the victim, her parents or both. Also, given that you are likely a stranger to the victim, if you attempt to draw out all of the facts of the story too quickly and in too much depth in the initial meeting you will likely be rebuffed. Draw out just enough so that you understand the case and then schedule another meeting soon thereafter to delve into matters further. Avoid interruptions by office staff, phone calls, text messages and/or emails. Your client must be your sole focus.

Knowledgeable

One or both parents will feel guilty and/or responsible for allowing the events to have happened. This is because “sexual grooming” is meant to work in that manner. Indeed, it is likely that the victim in front of you is not the perpetrator’s first victim. It is more likely that they have honed this monstrous skill over years and/or decades.

Sexual grooming is a recent concept in civil law. It is a preparatory process in which the perpetrator gradually gains a person’s or organization’s trust with the intent to be sexually abusive. Although the victim is usually a child, they were usually not the only ones in the relationship being groomed. The offender often first intentionally builds a relationship with the adults around the child. This increases the likelihood that the offender’s time with the child is welcomed and encouraged. Sexual grooming has a fivefold purpose:

(1) it manipulates the perceptions of adults around the child;

(2) it manipulates the child into becoming a cooperating participant which reduces the likelihood of disclosure and increases the likelihood that the child will return to the perpetrator;

(3) the trust built up with the adults reduces the likelihood of the child being believed if they do disclose;

(4) it reduces the likelihood of the abuse being detected; and,

(5) it is far more likely that the child will deny to the adults (and be believed) that anything ever untoward ever happened.

Significance of Sexual Grooming

Once in litigation, during discovery it is very likely that defense counsel for the facility (such as a gym) or an organization (such as a school or team) will focus on developing evidence that the parents knew or should have known what was occurring between the coach/teacher and their child. Although warning signs might have existed, sexual grooming is insidious in nature. Thus, it is hindsight that makes it truly apparent. This occurs primarily because the perpetrator has first ingratiated themselves with the parents, thereby making it more difficult for the parents to see these same signs at the time they are occurring. However, defense counsel will highlight the previously hidden warning signs and attempt to exploit them.

The attempt to exploit the “failure” of the parents to protect their child from a danger that was unknown to them relies upon human nature. Once the defense turns the spotlight on warning signs of the sexual grooming that was originally hidden from the victim’s parents, the jurors, some of whom are undoubtedly parents themselves, may become hyper-critical of the parents.

They will be dubious of the parents' claim of ignorance of the grooming and subsequent assault, believing they would "never have fallen for it" if they were in the parent's "shoes." With the knowledge that seems so readily apparent now, defense counsel will subtly or not so subtly be asking the jury to admonish the parents for failing to recognize what was going on at the time.

Pre-Trial Tips

Experience indicates that although defense counsel enthusiastically seeks to blame the victim's parents, they do not, however, join these same parents in the lawsuit. Thus, it is critical for plaintiff's counsel to file a motion in limine to preclude the defendant from introducing evidence that attempts to characterize the parents as being at fault for their child's injured status. This is premised on two factors. First, in many states the law dictates that alleged negligence of the parents cannot be imputed to the child, which is in effect what the defendant is trying to accomplish by introducing evidence against the parents at trial. Second, to allow the introduction of evidence against the parents who were never joined in the lawsuit is improper—the rationale being that to allow a defendant to pass blame onto non-parties and/or insinuate blame on a non-party is to condone trial by ambush.

Not being joined as a party means that the parents were never able to conduct discovery and/or raise defenses at trial. Moreover, they will not be on a jury verdict slip, nor will the jury be provided any instruction by the court as to potentially apportioning liability against the parents. Thus, the jury will be left with argument, but no remedy. Obviously, this is unfair to the victim as well as the parents.

Trial Tips

The child should be alone with you in the courtroom. They will likely appear vulnerable. This is exactly how they appeared to the perpetrator and it is exactly what you are trying to convey to the jury. The parents may be, and should be, present in the courthouse, but not in the courtroom. Likewise, all witnesses you intend on calling should be brought into the courtroom only when they are called to testify. Then, after their dismissal they should vacate the courtroom.

The parents should not be called as witnesses. Instead, rely on friends and/or experts, such as clergy, psychologists and/or social workers to convey the harm done to the victim.

The victim in most cases should take the stand. Prior to trial their preparation should be minimal. What they have gone through is horrific. Even should they stumble a little in their testimony, the jury will understand. This is far better than preparing them too much. This risks the testimony seeming flat, rehearsed and unsympathetic.

Finally, keep their testimony short. What is unsaid can be more powerful than what is said.

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