

DEPOSITION QUESTIONS FROM DEFENSE ATTORNEY FOR UNDERCOVER CHATTER

Here are definitive questions that a defense attorney needs to get answers to during a pre-trial deposition or witness examination at trial. Defense attorneys may feel that they know what to do, but the deposition of the ICAC chatter & charging officer is critical. These questions must be asked & answers demanded from the police chatter:

1. Did you receive an operational plan briefing prior to the start of the sting?
2. Who provided all the equipment for the sting and were you required to bring anything?
3. Do you receive a copy of the ICAC Standards and operational plan? Are you aware that ICAC Standards are based on codified Federal law?
4. What was your Chatter Supervisor doing during the operation?
5. Who reviewed and approved your adult website ad?
6. Did you read the Terms of Use (ToU) and what was specific about them?
 - 6.1 Are you aware that ToU are legally binding e-commerce clauses governed by contract law?
 - 6.2 Are you aware that only adults may enter into contracts, including the contracts between classified adult websites & its users? Did you knowingly violate that and why? Do you acknowledge you have effectively broken Contract law in your effort to enforce ICAC law?
 - 6.3 Did you list the age of the fictional minor in the ad itself? Why not?
 - 6.4 Are you aware that websites have security mechanisms in place to “flag” & remove ads or posts that violate its ToU, like your ad?
 - 6.5 Did you intentionally omit stating the age of the fictional person that you were pretending to be, precisely to subvert such security mechanism meant to protect website?
 - 6.4 What specific law gives you the latitude as an adult chatter to pose as an adult, obtain responses from people who believe they are responding to a fully legal ad posted by an adult and then change pose to effectively entrap them?
 - 6.5 Do you admit that you posed as an adult in posting the ad, by agreeing to the ToU? And then changed pose to a minor later when it was convenient for you, after you had baited the respondent? Do you acknowledge this sequence makes you (an adult officer) an imaginary

minor (undercover persona) who posted an ad as an adult (lying) and later changed pose to the minor (switch)?

6.6 Have you ever received any complaints of any minors being solicited or abused on an adult dating site – like Craigslist, Backpage, Adultfriendfinder, PoF? Isn't that precisely because these are adult sites intended for adults only and no minors may post there by law?

6.7 Was the respondent's identity known prior to him responding to your ad? Was the respondent under any prior suspicion for soliciting minors? Any suspicions at all?

6.7 Does the respondent's response to an adult ad on an adult dating classifieds website predispose him to deviant sexual attraction or criminal solicitation of children or minors?

6.8 Are you aware that there are legal & criminal liabilities for impersonation as stipulated in the ToU?

6.8 When you place an ad on an adult dating website after agreeing to its ToU, stating that you are an adult, (*specifically in the "Intimate Encounters" sub-section*), aren't you setting the stage for respondents in a sexually toned environment? According to ICAC Operational Standards (codified Federal law), proactive investigations forbid the chatter from setting the tone & pace of the conversation. Do you feel your ad itself violated that condition of tone & pace when it was placed in the adult section, intimate encounters sub-section (of Craigslist or Backpage)?

7. Do you know and understand the term "bait and switch"? Did you knowingly lie (to the website) when you clicked that you were 18 years of age and over? Did you know that you cannot list "bait and switch" ads on adult websites?

8. During the chats, how many times did you lie about age, posting the ad, your guardian not being home, you being all alone, you having had sex with other adults etc.?

9. When was the last time that you attended a training session, specifically one on the ICAC Standards?

10. During this sting operation, how many individual chats were you running at any one time? How many arrests did you achieve?

11. During the operational plan briefing, what were you told to do if the individual stated that he/she did not want to do anything illegal, was not interested, only wanted to hangout or did not want to get into trouble?

12. Was there a quota mentioned during the operation?

12.1 Are your operations designed to run for a specific amount of time – say 3 days? How many responses did you receive to your ad? Were there other respondents who were not arrested within those few days? Were there respondents who did not cease communication after age disclosure?

12.2 Did you cease communication with these respondents after the sting operation period (3 days) ended? If you believe that these other respondents are potential child solicitors, why did you feel the need to not pursue them after your sting time period ended?

12.3 Real police work in ferreting out predators does not normally end when a pre-arranged time period of an operation ends, does it? Is there a difference between making arrests within a time period from adult dating sites and apprehending actual pedophilic predators who are unlikely to surf adult dating ads if they were looking for minors?

13. Who in the sting op group ended up getting the most arrests?

14. Did you post or send a picture? How old was the minor in the picture? How do you know this? Did you have a written consent from the person that provided you the minor's picture?

15. Did you knowingly send a picture of a minor to the defendant? ***This is a violation of ICAC Operational Standards.***

16. Are you allowed to send pictures of minors?

17. Who offered to send a picture of the minor and who asked for a picture of the defendant?

18. Do you know the state's entrapment laws?

19. Are you aware that sting operations are intended to capture people in the act of a crime and not to lure people in with the promise of a legal act which you can reverse engineer into questionable criminal evidence with a simple switch of a number (age) in your communication?

20. In your opinion, did the defendant commit a crime or mistake in not ceasing communication with you after you disclosed the fake age of the minor? Are you aware of the 1st Amendment of the US Constitution, what is your understanding of it? Are you aware that the defendant is not required to cease communication / free speech regardless of whom he is communicating with?

21. Are you aware that travelling does not constitute an act of solicitation? [REFERENCE](#)

22. At any time during the chats or texts were you setting the tone and pace to the conversations?

23. Did you participate in the arrest interview in accordance with the ICAC Standards?

24. Who mentioned sex first in the conversation or the insinuation of sex? If the respondent did so, could that be reasonably be deduced because you placed an ad on an adult site seeking adult company for intimacy?

25. Who asked the defendant to travel to your location and identified the location?

26. Who asked the defendant for a phone number and to let them know when they departed and were close to the location?

27. At what point were you able to affirmatively determine the identity of the respondent? Was it based on looking up his phone number in an investigative database? Did you compare that to any photos he sent you?

28. What was the probable cause that authorized you to search for his identity?

29. What did you find besides his name, car or address? Was the defendant a known target and did you have any prior arrest information on him?

30. Who asked the defendant about the type of car and color they were driving?

31. Who first talked about condoms and bringing them?

32. Did you ask the defendant to bring anything specific?

33. Where within the conversation did you first let him know that you were a minor? If not at the beginning, why did you wait until later?

34. Who owns the phone that you used to communicate with respondents? Who paid for the plan and in whose name is the phone or plan registered?

35. Was there a search warrant involved? Did you lie on the warrant stating that you were posing as a minor and the defendant responded to your ad knowing that it was a minor?

36. If applicable: Did Craigslist send you an email informing you that your ad had been blocked and removed? Did you submit this email as part of your report annotating that you had wrongly submitted an ad that violated Craigslist terms of use.

Notes: When law enforcement officers (LEO) post a sexual solicitation ad on a casual sex, adult personals /meeting classifieds service, posing as a willing minor or adult & minor posting an adult advertisement under the guise of an adult, they are:

1) Falsely advertising (**violation of Contract law & advertising law**)

2) Setting the context/tone/topic (**violation of ICAC Standards**)

3) Expressing their consent to or readiness to commit an act which is understood by anyone approaching /interacting with them (**inducement**)

4) They are doing the soliciting/luring/enticing/seducing. Their own illegal suggestive solicitation and readiness expressing or confirming consent is not a result or response from any "soliciting" "luring" "enticing" "seducing" from the defendant. So Florida statute 847.0135 has been not violated on this alone, but the problems with 847.0135 aren't limited to that. There's a major issue with the "a person believed to be" and "another person believed to be" clauses and their application doesn't allow decoys to be used the way they are:

- Non-criminalized scenario: A minor in a sexual setting approaches or advertises herself as a promiscuous adult, ready to sex it up, to which the defendant responds to expressing interest. The target is not swaying the minor's decision to break the law. If it's a real minor, he is held culpable only if he commits an overt act toward her. Please refer Ticknor - the decision mentions unsworn testimony, but that's irrelevant to how they came to their decision, and just addressed it because the prosecution

raised that allegation.

- Criminalized scenario: Defendant approaches a minor in a neutral, mixed-age setting, and convinces her to have sex with him. The necessary sequence is criminal intent, knowledge of age / minor status, actions of commission constituting solicitation.

A sting operation may only pose to the extent of detecting & exposing the ongoing criminal actions, not the manufacturing of a criminal through a non-criminalized scenario.

Possible Pre-Requisite motions:

1. File a motion to compel the ICAC MOU.
2. File a motion to compel the ICAC Task Force Operational Plan.
3. File a motion to lift Internet Access.
4. File a Double Jeopardy Motion.
5. File a motion to drop other charges if applicable.

References:

[US vs. Nitschke](#)

Lakin decision: FL vs. Jorge Martinez

FL vs. David Miller