

# CRIMINAL CASE: *STATE V. BYRON WARD HOWLAND*

## A. SUMMARY OF *STATE V. HOWLAND*



Georgetown, Capitol of the State of Major

Suzanne Sells is a 42 year-old real estate agent and a single mother who resides in Georgetown, the state capitol of the state of Major. Her daughter is 16 year-old Jenny Sells, who attends Eckstein High School. On May 13, 20XX-1 (last year), Suzanne Sells was in her daughter's room. Jenny was then 16 years old, her birthday being on March 16, and she attended Roosevelt Middle School. Curious and knowing her daughter's password, Suzanne turned on her daughter's desk top computer, and went to the e-mail inbox. There she found an e-mail addressed to "teengirl" by "lawman@comcad.net." dated that read: "THINKING ABOUT U ALL DAY. SEE U SAME PLACE SAME TIME TOMORROW. U MADE ME LATE FOR A MEETING MONDAY – HEY BUT IT WAS WORTH IT." Suzanne checked for other e-mails from lawman but none were saved and Jenny's delete box and recycle bin had been emptied.

Because Suzanne's relationship with her daughter was strained and because she knew that her daughter would resent her looking in the computer without her

daughter's permission, she did not tell Jenny about what she had found. Rather, Suzanne installed a computer program on her daughter's computer to track e-mail communications. For the last two weeks of May, Suzanne recorded and printed out e-mail communications between her daughter and lawman. The sexually explicit e-mails from her daughter shocked her, including one that read: "Today, I was thinking about that time in your condo when you did me in the Jacuzzi. . . that was a very erotic thought for me today." Other e-mails from her daughter contained poems that involved sexual experiences. E-mails from lawman to teengirl were not sexually explicit in nature but did express concern about her miserable home life and how much "I care for you."

Suzanne took her e-mail printouts to Georgetown Police Detective Bill Hutchinson, who, in turn, took the printouts to Special Agent Clancy Flynn of the state Internet Crimes Against Children Task Force (ICAC). Using administrative subpoenas, Flynn was able trace "lawman@comcad.net" to identify the customer of the IP address as Byron Ward Howland.

Byron Howland is 48 years old and a prominent citizen of Cle Elum, a small town on the east side of the state. He is a legislator (in the state being a legislative representative is a part time occupation with the legislature in session from January to June) and a partner in a top law firm in Cle Elum. Howland was a sheriff's deputy in Cle Elum before he became a lawyer. He is married and has three children, two boys and a girl. When he serves in the legislature, Howland lives in a condominium in Georgetown. As a legislative representative Howland initiated legislation to outlaw various forms sexual exploitation of minors including child pornography and enticing a minor over the internet.

Georgetown Detective Hutchinson and Special Agent Flynn went to the Sells' residence and met with Jenny Sells to question her. When first questioned, Jenny denied knowing or ever communicating with Byron Howland. Then, when she was confronted with the e-mails, she at first said that she only communicated with lawman over the internet. Then, when confronted with the e-mail indicating that she had been in Howland's condominium, she admitted that she had.

Eventually, Jenny gave a statement to the investigators as follows. Jenny first communicated with "lawman" when she visited a chat room late in the summer two years ago. Howland expressed concern about Jenny's difficult home life, particularly his concern about her being unable to get any understanding from her mother. Howland suggested that they meet at Inner Visions, a coffee bar in the Georgetown mall. They met and talked for several hours. Howland explained to her that he was a legislator in town for hearings. She was impressed to meet a legislator. She was doubly impressed when he told her that he used the name "lawman" because he was a lawmaker and used to be a police officer before becoming a lawyer and legislator. She felt safe with him. Howland expressed sympathy for her situation and told her how much he admired the poetry she showed him. Over the fall when Howland was in town they met several times usually at the mall.

On Saturday night of the first week of December two years ago, Howland invited Jenny to his condominium which is in the Laurelhurst building near the state capitol building. He ordered in Thai food. They ate dinner in the small dining room. He served her wine, telling her it was a particular favorite of his called "Woodpine" from a Washington state winery. After dinner they were sitting on the couch when Howland

began kissing her. She began kissing him back. However, when Howland put his hand under her blouse, she told him that she needed to go home. Howland continued, unbuttoning her blouse and kissing her. Howland would not stop and pulled off her pants. Jenny told him, "No. No. I want to go home." Howland put his hand over her nose and mouth, and she gasped for breath. Afraid that he'd hurt her more, Jenny stopped resisting. Howland put his fingers in her vagina and forced her to have oral sex on him. Afterwards, he told her that he was sorry that he had put his hand over her nose and mouth and that he really cared for her. He helped her clean up. He apologized again and drove her to a location near her home and dropped her off. Jenny told no one what happened – in part because she was ashamed, embarrassed and in part because she both feared and cared for Howland.

According to Jenny, this was not the end of their relationship. Howland met with Jenny the next day. He again expressed remorse for putting his hand over her face. They began meeting at least once a month at Howland's condo, drinking wine, smoking marijuana and having intercourse. Howland told Jenny that he loved her, but given his position, no one could know about their relationship. "It's our secret." However, in March, 20XX-1 Jenny confided in her friend Sherry Vinton.

Detective Hutchinson obtained a search warrant for Howland's condo, taking photographs of the condominium, seizing bottles of Woodpine wine and the computer located in the living room. Forensic analysis of Howland's computer's hard drive and a key word search for "teengirl" disclosed ribbons of e-mails between Howland and Jenny. A key word search of Jenny's computer revealed the same communications. E-mails from Howland expressed affection and concern but were not sexually explicit. No mention was ever made of Jenny's visits to the condo. On the other hand, Jenny's e-mails contained sexually explicit short stories and poems with references to Howland. Detective Hutchinson also spoke to Sherry Vinton who said that in early April Jenny had confided in her that she was seeing a legislator who she really cared for. Jenny swore Sherry to secrecy.

Detective Hutchinson arrested Howland. Howland made no statements to Hutchinson. The Douglas County Prosecutor charged Howland with rape in the second degree, enticing a minor over the Internet and multiple counts of child rape in the third degree. Howland is out on bail awaiting trial. When interviewed by the media, Howland called the allegations "patent falsehoods."

During his investigation, Detective Hutchinson ran a records check on Jenny Sells and discovered that on February 9, 20XX-1 at 2:00 a.m. Georgetown Police arrested Jenny Sells just outside the Georgetown mall. Jenny was drunk and carrying a beer bottle. Jenny told the arresting officers that she met a man she described as in his mid-thirty's. She said he told her his name was Drake. Jenny said that they drove down to the river in his car, and they sat in the car, drank beer and talked. She said that Drake sexually attacked her, putting his hand over her nose and mouth until she could not breathe and forced her to perform oral sex on him. He threatened that if she told anyone, he knew where she lived and he would come after her. Drake drove her back to the mall and dropped her off.

According to the police reports, the officers called Jenny's mother and took Jenny to Lakeview Medical Center for a sexual assault examination and the Georgetown Police Sexual Assault Unit took a report. Suzanne Sell's came to the Medical Center

and drove her daughter home. The case was eventually closed for lack of a suspect. The officers also had cited Jenny for being a minor in possession of alcohol. Eventually, Jenny's case was diverted to a Juvenile Conference Committee and Jenny had to perform community service hours.

When Detective Hutchinson questioned Jenny about what happened on February 9, 20XX-1, she admitted that she had been with Howland that night. She said she made up the story about Drake to get her mother to "ease off" her about being drunk, to explain how she got the beer and to protect Howland.

Jenny still expresses love for Howland and doesn't see the problem with her relationship with Howland. She is uncooperative.

Pursuant to state of Major discovery rules, Mr. Howland provided notice of an alibi defense and listed two witnesses: Kyle Evans, Howland's political adviser and campaign manager and Marco Busono, his campaign finance chairman. Detective Hutchinson interviewed them and took written statements. Both men stated that they were with Howland on the evening of March 16, 2009. They remember that they met at Evans' home to plan Howland's campaign breakfast. Jenny Sells, in her written statement said that she was with defendant Howland on that evening celebrating her 16<sup>th</sup>, the day before her birthday.

## **B. ASSIGNMENTS FOR THE HOWLAND CASE**

## TABLE OF CONTENTS

- ASSIGNMENT 1: Prosecutor's Case Analysis and Case Theory and Theme Development
- ASSIGNMENT 2: Defense Counsel's Case Analysis and Case Theory Development
- ASSIGNMENT 3: Prosecutor: Content of the Cross-Examination of Alibi Witnesses
- ASSIGNMENT 4: Prosecutor: Content of the Cross-Examination of Defendant Byron Ward Howland
- ASSIGNMENT 5: Defense Counsel: Content of the Cross-Examination of Jenny Sells
- ASSIGNMENT 6: Prosecutor: Scripting the Cross Examination of Defendant Howland
- ASSIGNMENT 7: Defense Counsel: Scripting the Cross Examination of Jenny Sells
- ASSIGNMENT 8: Defense Counsel: Cross-Examination of Jenny Sells
- ASSIGNMENT 9: Prosecutor: Cross-Examination of Alibi Witnesses Kyle Evans and Marco Busono
- ASSIGNMENT 10: Prosecutor: Cross-Examination of Defendant Byron Ward Howland

### **ASSIGNMENT 1: Prosecutor's Case Analysis and Case Theory and Theme Development**

You are employed as a deputy prosecutor in the Criminal Division of the Lincoln County Prosecutor's Office. You have been assigned to the *State v. Byron Ward Howland* case. Howland is a prominent legislator and lawyer from Adams County who lives east of the mountains in Cle Elum, Major. Howland is charged with rape in the second degree, enticing a minor over the Internet and multiple counts of child rape in the third degree.

Plea negotiations have gone nowhere. Defendant Howland has declared to the media that the allegations against him "are patently false." You need to get ready for trial. Before you can plan your opening statement, case-in-chief, cross-examinations or do anything else for that matter, you need to develop a case theory and theme.

### **PREPARATION**

**READ:** Case Files Entries 1-12; (2) Chapter 2.

## THOUGHTS FOR THIS ASSIGNMENT

1. What facts do you need to prove a prima facie case for each of the crimes charged?  
Can Jenny Sells testimony alone support the charges?  
Are there any other witnesses who can provide testimony supporting the charges?
2. What is the prosecution's persuasive narrative story? What are human values, which the jurors will care about, that underpin the story? How can you establish a human interest theme? What is the plot? Who is the protagonist? Are both the story and the witnesses credible?
3. What are the strengths and weaknesses of your case?
4. You have been served with a notice of alibi witnesses. At this juncture, how do you plan on meeting the alibi defense?

## ASSIGNMENT FOR CLASS

In class, be prepared to discuss your case theory including both factual sufficiency and persuasive story as well as the strengths and weaknesses of your case. What is your case theme? Also be prepared to discuss your tentative trial plan. Also, be ready to discuss who the witnesses are that you are planning to call. What are your plans for addressing the alibi defense?

## **ASSIGNMENT 2: Defense Counsel's Case Analysis and Case Theory Development**

You represent Byron Ward Howland who has been charged with rape in the second degree, enticing a minor over the Internet and multiple counts of child rape in the third degree. Your client has professed innocence to you and pled not guilty to the charges. You met with his two alibi witnesses Kyle Evans and Marco Busono. This case is going to trial. It is time to build your case theory and plan your trial strategy.

## PREPARATION

**READ:** Case Files Entries 1-12; Chapter 2.

## THOUGHTS FOR THIS ASSIGNMENT

1. How do you intend to attack the sufficiency of the state's case?  
Is the prosecution's legal theory defective in any way?  
Can the prosecution produce sufficient evidence to support the charges?  
How is the prosecution's narrative story vulnerable?  
At this point, how do you plan on attacking the witnesses who are likely to testify for the state?
2. What is the defense's narrative? What are the human values in that story that the jury can relate to? How can you establish a human interest theme? What is the plot? Who is the protagonist? Are both the story and the witnesses credible?
3. What are the strengths and weaknesses of your case?

## ASSIGNMENT FOR CLASS

In class, he prepared to discuss your case theory including both factual sufficiency and persuasive story as well as the strengths and weaknesses of your case. Also be prepared to discuss your current trial plan including the witnesses that you plan on calling. What are your tentative plans for demolishing the state's case and witnesses?

### **ASSIGNMENT 3: Prosecutor: Content of the Cross-Examination of the Alibi Witnesses**

The defense has supplied you with notice of alibi witnesses Kyle Evans, Howland's campaign manager, and Marco Busono, his campaign finance chairman. You sent lead Detective Hutchison to interview both men, and Hutchison provided you with their witness statements. Both men claim to have been with the defendant during the evening of March 16, 20XX-1, which is the same time that Jenny Sells stated she was with the defendant celebrating her birthday and having sex with him. Jenny's birthday is the next day, March 17<sup>th</sup>, but she could not be with Howland then because she had to be with her mother.

## PREPARATION

**READ:** Case Files Entries 1-12; Chapter 3.

## THOUGHTS FOR THIS ASSIGNMENT

1. What do you plan to say about these two alibi witnesses in your closing argument? Are Kyle Evans and Marco Busono credible? Do they have a bias? Are they lying? Telling the truth? Could they be mistaken?
2. Brainstorm for concessions that will help build your case theory or undercut the defense case theory. What concessions can you seek?  
Ask yourself: what must these witnesses admit or stamp their answer as either a lie, mistaken or ludicrous?
3. With the aid of the list of nine areas of impeachment found at page \_\_\_\_\_, identify those areas that are applicable to these alibi witnesses.

## ASSIGNMENT FOR CLASS

Outside of class, prepare a one-page statement summarizing what you intend to argue in closing about the two alibi witnesses. In class, be prepared to deliver your closing argument and to discuss the content of your cross-examination.

### **ASSIGNMENT 4: Prosecutor: Content of the Cross-Examination of Defendant Byron Ward Howland**

Defendant Howland has never given a detailed statement. When arrested, he exercised his right to remain silent. When interviewed by the media, he denied the allegations stating that they were “patently false.” Defense counsel has stated that he will prove that the allegations against his client are without merit.

You anticipate that the defendant will take the stand and testify. A consent defense is out of the question because it would concede that he would be guilty of rape of a child in the third degree given Jenny’s age. Therefore, it is likely that Howland will deny any sexual contact with Jenny. It is now time to anticipate what the defendant may testify to and to identify the content of your cross-examination.

## PREPARATION

**READ:** Case Files Entries 1-12; Chapter 3.



## THOUGHTS FOR THIS ASSIGNMENT

1. What story do you envision that the defendant will tell on the witness stand? What do you plan to say about the defendant's story in your closing argument?
2. Brainstorm for concessions that will help build your case theory or undercut the defense's case theory. What concessions can you obtain from the defendant?  
Ask yourself: What must the defendant admit or stamp his answer as either a lie, mistaken or ludicrous?
3. With the aid of the list of nine areas of impeachment found at page \_\_\_\_\_, identify those areas that are applicable to the defendant.

### ASSIGNMENT FOR CLASS

Outside of class, prepare a one-page statement summarizing what you intend to argue in closing regarding the defendant and his testimony. In class, be prepared to deliver your closing argument and to discuss the content of your cross-examination of the defendant.

### **ASSIGNMENT 5: Defense Counsel: Content of the Cross-Examination of Jenny Sells**

Jenny Sells is the prosecution's main witness. You have yet to interview her, but you do have all of her witness statements. Given Jenny Sells age and the nature of the allegations she has made against your client, you believe that she is likely to be a sympathetic witness and a challenging witness to cross-examine. You are ready to identify the content of your cross of the complaining witness.

### PREPARATION

**READ:** Case Files Entries 1-12; Chapter 3.

## THOUGHTS FOR THIS ASSIGNMENT

1. In your closing argument, what do you plan to say about Jenny Sells's credibility and her testimony?
2. Brainstorm for concessions that will help to build your case theory or undercut the prosecution's case theory. What concessions can you obtain from Jenny Sells?  
Ask yourself: What must the Jenny Sells admit or stamp her answer as either a lie, mistaken or ludicrous?
3. With the aid of the list of nine areas of impeachment found at page \_\_\_\_\_, identify those areas that are applicable to Jenny Sells.

### ASSIGNMENT FOR CLASS

Outside of class, prepare a one-page statement summarizing what you intend to argue in closing regarding Jenny Sells and her testimony. In class, be prepared to deliver your closing argument and to discuss the content of your cross-examination of Jenny Sells.

## **ASSIGNMENT 6: Prosecutor: Scripting the Cross Examination of Defendant Howland**

Now that your brainstorming sessions have helped you identify the content of your cross-examination, it is time to write out your cross-examination of defendant Howland.

### **PREPARATION**

**READ:** Case Files Entries 1-12; Chapter 4.

### **THOUGHTS FOR THIS ASSIGNMENT**

1. What are the topical units that will make up your cross-examination of the defendant?
2. Does each topical unit have a beginning, middle and end?
3. Does the left column of the cross notes in each topical unit contain short, clear statements, rather than questions? Are the statements well phrased and crafted to control the witness? Are they free of adverbs and adjectives?
4. In the right column of the cross notes (opposite any assertion in the left column) are there references to where the sources for the assertions can be found? Is there legal authority in the right column that can be cited if there is an objection made to the question?
5. Are the topical units organized into a story that has a beginning, middle and an end? Does the cross-examination begin and end in a powerful ways?
6. Have you edited your cross-examination to eliminate minutiae, too many topics, why questions and questions to which you do not know the answer?

### **ASSIGNMENT FOR CLASS**

Outside of class, prepare two topical units of cross notes for the cross-examination of the defendant. In class, turn in your cross notes for the two topical units. Also, be prepared to discuss your lines of cross for the defendant.

## **ASSIGNMENT 7: Defense Counsel: Scripting the Cross-Examination of Jenny Sells**

Now that your brainstorming sessions have helped you identify the content of your cross examination, it is time to write out your cross-examination of Jenny Sells.

### **PREPARATION**

**READ:** Case Files Entries 1-12; Chapter 4.

## THOUGHTS FOR THIS ASSIGNMENT

1. What are the topical units that will make up your cross-examination of Jenny Sells?
2. Does each topical unit have a beginning, middle and end?
3. Does the left column of the cross notes in each topical unit contain short, clear statements, rather than questions? Are the statements well phrased to control the witness? Are they free of adverbs and adjectives?
4. In the right column of the cross notes (opposite any assertion in the left column) are there references to where the sources for the assertions can be found? Is there legal authority in the right column that can be cited if there is an objection is made to the question?
5. Are the topical units organized into a story that has a beginning, middle and an end? Does the cross-examination of Jenny Sells begin and end in a powerful ways?
6. Have you edited your cross-examination to eliminate minutiae, too many topics, why questions and questions to which you do not know the answer?

## ASSIGNMENT FOR CLASS

Outside of class, prepare two topical units of cross notes for the cross-examination of Jenny Sells. In class, turn in your cross notes for the two topical units. Also, be prepared to discuss your lines of cross for Jenny Sells.

### **ASSIGNMENT 8: Defense Counsel: Cross-Examination of Jenny Sells**

The prosecutor has called Jenny Sells to testify. Unless your instructor informs you otherwise, you can assume that Jenny has testified consistent with her written statement in Case File Entries 3-5.

Defense counsel has finished direct examination and stated “No further questions.” Judge Lum looks your direction and says, “Counsel, your cross-examination?”

## PREPARATION

**READ:** Case Files Entries 1-12; Chapters 5, 8 and 12.

## THOUGHTS FOR THIS ASSIGNMENT

1. How are you going to adjust your behavior and demeanor so that it is suitable for the cross-examination of Jenny?
2. What techniques can you apply if Jenny proves to be difficult to control during your examination?
3. Does Jenny Sells have a motive to fabricate? What could it be? How will you expose the motive, if at all?
4. How, if at all, will you explore Jenny's recanted allegations against the person she called Drake?
5. Are you prepared to respond to objections?
6. How will you highlight the favorable responses that you get from Jenny Sells?

## ASSIGNMENT FOR CLASS

In class, conduct the cross-examination of Jenny Sells.

### **ASSIGNMENT 9: Prosecutor: Cross-Examination of Alibi Witnesses Kyle Evans and Marco Busono**

Both Kyle Evans and Marco Busono testify that on March 16, 20XX-1 they were with defendant Byron Howland. They testify that they met at Evans's home in Cle Elum and that the purpose of the meeting was to plan a campaign kickoff breakfast for Howland's run for another term as the state's representative for Adams County. Kyle Evans is Howland's campaign manager, law partner and life-long friend. Marco Busono is Howland's campaign finance chairman and financial officer to Howland's law firm.

Unless your instructor informs you otherwise, you can assume that Evans and Busono have testified consistent with their written statements in Case File Entries 6 and 7.

Defense counsel: "Your witness, counsel."

## PREPARATION

**READ:** Case Files Entries 1-12; Chapters 5, 8 and 12.

## THOUGHTS FOR THIS ASSIGNMENT

1. Assuming that Jenny Sells is correct that she was with the defendant during the evening of March 16, 20XX-1, are the alibi witnesses lying or mistaken?
2. What bias, interest or other motivation may have influenced Evans or Busono to testify they were with the defendant when he was with Jenny Sells?
3. How might this multiple-witness situation work to the prosecutor's advantage?
4. Are you prepared to respond to objections?
5. How will you highlight the favorable responses that you get from Evans or Busono?

## ASSIGNMENT FOR CLASS

In class, conduct the cross-examinations of Kyle Evans and Marco Busono.

### **ASSIGNMENT 10: Prosecutor: Cross-Examination of Defendant Byron Ward Howland**

The defense calls Byron Ward Howland as the defense's last witness. Although the defendant has exercised his Fifth Amendment right to silence up until now, you surmise he will testify on direct examination that he did not have any sexual involvement with Jenny Sells and that he has an alibi for March 16, 20XX-1 because his two alibi witnesses have already testified to that effect.

Unless your instructor informs you otherwise, defense counsel will conduct an abbreviated direct examination of defendant Howland. Then, counsel will turn to you and say, "Your witness, counsel."

## PREPARATION

**READ:** Case Files Entries 1-12; Chapters 5, 8, 9 and 12.

## THOUGHTS FOR THIS ASSIGNMENT

1. What concessions must the defendant make that will support your case theory that his relationship with Jenny Sells was sexual in nature?
2. What evidence or common sense factors will contradict an assertion by the defendant that his relationship with Jenny was merely platonic and supportive? Can the reduction-to-the-absurd cross technique be applied to his testimony?
3. The defendant will be able to listen to the details of his two alibi witnesses' testimonies. If he were inclined to tailor his testimony to theirs, he could do so. How, if at all, might you highlight this?
4. Are you prepared to respond to objections?
5. How will you highlight the favorable responses that you get from the defendant?

## ASSIGNMENT FOR CLASS

In class, conduct the cross-examinations of defendant Byron Ward Howland.