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When a Child Stands Alone: The Search for Corroborating Evidence

by Victor I. Vieth[1]

The outcome of many child abuse cases is determined by an evaluation of the child's credibility.[2] When a victim believes her testimony is the state's only evidence, the child experiences exacerbated stress.[3] When a child's statement stands alone, it is easier for the defense attorney to attack the child's allegation on memory and suggestibility grounds.[4]

To reduce the child's stress, strengthen the government's case, and ensure justice, child abuse investigators and prosecutors must find and offer the jury evidence corroborating a victim's statements. The following rules will aid in the search for corroborating evidence.

Do not think too narrowly. In many cases, investigators fail to locate corroborating physical evidence because their definition of physical evidence is too narrow. Many investigators think of physical evidence only in terms of hair, fibers, blood and semen. Since this type of physical evidence is not present in most cases of abuse, an officer confined to this narrow definition will routinely come up empty handed. Instead, an officer should think of physical evidence as any object or item that corroborates any aspect of the victim's report of abuse.

Search the victim's statement for clues. If the victim's statement is audio or video recorded, transcribe the statement. Working as part of a multi-disciplinary team, tear the statement apart sentence by sentence, word by word. After each line of the transcript, consider whether there is anything in the sentence that can be corroborated. Even in brief interviews, a child abuse victim may be asked hundreds of questions that produce a large amount of information.[5]

If the victim says her father read a particular bedtime story before the sexual encounter, search the suspect's house and seize the book.

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If the child describes her house as being blue, photograph the house to document the child is accurate in her description of its color. If a child claims he was sexually abused by his grandfather during a camping/fishing trip, find evidence documenting the trip. There may be a campground registration or photographs of the trip. Search the grandfather's house for a tent, camping equipment, fishing rod, etc. If a child says she missed school as a result of abuse, obtain the attendance records. If a child claims a particular song was playing on the radio during the abuse, go to the radio station and obtain a copy of the play list.

When child abuse investigators define "physical evidence" more broadly, corroborating physical evidence can be found in most cases.[6]

Do not assume a victim's statement cannot be corroborated. A young child may be developmentally incapable of giving a coherent answer to every question posed to her.7 When this happens, an officer may be tempted to use the child's inability as an excuse not to investigate. In one case, a three-year-old girl told an officer she was molested at a neighbor's house. The child said the abuse took place in a room with the "gigantic eagle." The officer did not believe the suspect had a gigantic eagle in his house but he searched the residence nonetheless. In the suspect's bedroom, the officer found a bedspread depicting a large eagle. The room was photographed and the bedspread was seized as evidence. By investigating and not summarily discounting the child's statement, the officer was able to enhance the credibility of the child. If the officer had failed to examine the crime scene, a defense attorney could have attacked the victim as a child who fantasizes about gigantic eagles. The defense attorney may have asked the jury "what else is she fantasizing about?"

Search for evidence that brings the crime to life. Seize clothing or other items that brings the crime home to the jury as a real event. If a child claims her father reached under her Winnie-the-Pooh pajamas and fondled her vagina, seize the pajamas and put the clothing into evidence. The pajamas document the small stature of the child at the time of the abuse and the ease with which a perpetrator could reach beneath the garment for sexual purposes. More importantly, the pajamas will make the assault less abstract for the jury. When the jurors see and touch the pajamas, it puts them at the scene of the crime and allows them to picture the child's ordeal. This is why thousands of Americans flock to museums to be near Babe Ruth's bat, Judy

Garland's ruby slippers, or remnants of the Titanic. Seeing the item connects us to an individual or an event in a powerful, personal way.

There is always a crime scene. The location of the child's victimization is a crime scene that needs to be inspected. Even if there is no reason to believe that blood, semen or other evidence can be found at the site of the abuse, the crime scene must be photographed. The photographs will give the jury a picture of the child's world. If the child's room is barren and completely lacking in toys, decorations and color, the jury may sense the coldness of the child's environment. If the room is decorated with the trimmings and trappings of childhood, the jury may sense the lost innocence that took place in the room. The photographs can also be used to aid the child's testimony. For instance, the child can use the photographs to point to locations in the house where various acts took place.

In addition to photographing the crime scene, check the room to determine the ease with which abuse could take place undetected. Is there a working lock on the child's door? How far is the child's room from other sleeping quarters in the house? How thick are the walls? Tick walls may explain a father's boldness in abusing a child while others are awake. If the walls are the equivalent of paper, the child's statement "daddy told me not to make a noise" is all the more compelling.

Search for evidence of motive. Many abused children love their perpetrators and have expressed their love by drawing pictures, sending letters, and making projects for them. Look for these drawings or projects in the suspect's house and place of work. A child's artwork is often displayed on refrigerators and office doors. Find out what present the child made or gave her father on a special occasion such as a birthday, Christmas celebration, or Father's Day. Artwork and other expressions of affection document that the child has no incentive to falsely accuse the suspect. A prosecutor may be able to place these items into evidence to show the child's state of mind at the time the project was made.8 A prosecutor can ten argue to the jury: "if you have ever been in love, you know this to be true. Rational human begins do not commit perjury in order to send to prison someone they love. The child's artwork proves she is not trying to hurt her father. She simply wants a father who doesn't hurt her."

Use the suspect to corroborate the victim's

statement. Even if the defendant is adamant in denying the abuse, the will often admit many of the important details surrounding the abuse. If the victim gave the police one hundred pieces of information and you can show through the defendant, that at least ninety percent of the information is accurate, this enhances the child's credibility. Just as you did with the victim's statement, transcribe the interview with the suspect and take it apart line by line. Investigate any claims made by the defendant to see if they are true. If the investigator finds wives and girlfriends who refute the defendant's claim of impotency, the prosecutor can now show the defendant to be a liar and the jury may wonder what else the accused has lied about. Beyond this, make a concerted effort to obtain an outright confession from the suspect. Properly trained investigators can and do obtain confessions in a high percentage of child abuse cases.[9] To assist investigators, APRI's National Center for Prosecution of Child Abuse trains investigators throughout the country in the art of obtaining a confession in a child abuse case that will withstand scrutiny on appeal. For further information about course offerings, call the Center at (703) 739-0321.

Conclusion. In the short run, it may be time consuming to thoroughly investigate a child's allegation of abuse. In the long run, however, a thorough investigation will save time. An investigation that produces corroborating evidence will enhance the child's credibility, lessen the defendant's desire to go to trial, and will hasten the arrival of justice. To a hurting child, a thorough investigation makes real the words of Aeschylus: "Take heart. Suffering, when it climbs highest, lasts but a little time."[10]

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[2]*See generally,* Victor I. Vieth, *When a Child Testifies: Getting the Jury to Believe the Victim*, 17 ABA CHILD LAW PRACTICE 22 (1998).

[3]John E.B. Myers, Gail S. Goodman, and Karen J. Saywitz, *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 27 PACIFIC L. JOURNAL 1, 79 (1996) (citations omitted).

[4]For a discussion of the propriety of such an attack, *see* Brian K. Holmgren, E*xpert Testimony on Children's Suggestibility: Should it be Admitted?*, 10 APSAC ADVISOR 10 (Summer 1997).

[5]Gina Richardson, Ph.D., a forensic linguist who specializes in children's language, advises that in the forensic interview transcripts she reviews, the average number of questions posed to a young child is 298. *See* Telephone interview with Gina Richardson, Forensic Linguist, Arlington, Virginia, March 31, 1999.

[6]*See* Victor I. Vieth, *In My Neighbor's House: A Proposal to*

Address Child Abuse in Rural America, 22 HAMLINE L. REV. 143, 173-174 (1998) (discussing the success of one jurisdiction in obtaining corroborating evidence). For additional information on obtaining corroborating physical evidence, see INVESTIGATION AND PROSECUTION OF CHILD ABUSE, SECOND EDITION 104-108 (APRI's National Center for Prosecution of Child Abuse, Alexandria, VA)

[7]For a detailed analysis of the abilities of very young children, *see* SANDRA K. HEWITT, ASSESSING ALLEGATIONS OF SEXUAL ABUSE IN PRESCHOOL CHILDREN (1999).

[8]A child's out of court statement may be admitted as evidence if it pertains to the child's "then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)..." FED. R. EVID. 803(3). Many of the sentiments contained in the drawings or letters of children do not fit within the definition of the hearsay rule. For instance, let use assume a child writes "Daddy, you're the greatest father in the whole world." A prosecutor who places this note into evidence is not offering it for the truth of the matter asserted. That is, the prosecutor is not offering the statement to prove the defendant is the greatest father in the world. Instead, the prosecutor is attempting to show the child has no motive to lie. Since the prosecutor is not offering the statement to prove the matter asserted in the writing, the statement is not hearsay. *See* FED. R. EVID. 802.

[9]Vieth, *supra* note 6 at 168-172 (offering strategies an investigator can employ to obtain a confession in cases of child physical or sexual abuse).

[10]MAKE GENTLE THE LIFE OF THIS WORLD: THE VISION OF ROBERT F. KENNEDY (Maxwell Taylor Kennedy, Ed. 1998).

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