

Prosecuting Child Abuse Cases with Limited Evidence



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Learning Objectives

1. Limited Evidence and Juror Perceptions
2. Corroboration
3. Use of Experts
4. Presenting Case at Trial

Examples of Limited Evidence

- Delayed Disclosure
- Inconsistent Disclosures of Abuse
- Recantation
- No Suspect Confession
- No Medical Evidence of Abuse
- No Eyewitness
- No First Complaint
- Little or No Corroboration of Child's Disclosure

Dynamics of Child Abuse

- | | |
|--------------------------------|-------------------|
| • Secrecy | Perceptions |
| • Threats | • Long Term Abuse |
| • Family Member
Perceptions | • Shame |
| • Authority Figure | • Embarrassment |
| | • Confusion |

Other Hinderances to Prosecution

- Issues with Law Enforcement Investigation
- Problematic Forensic Interview
- Inexperienced Prosecutors
- Uncooperative Caretaker / Parent of Child
- Emotionally Fragile Child Victim
- Mentally or Medically Challenged Victim
- Tender Age of Child



NO

CSI Effect

Study of Jury Expectations

46% expected scientific evidence in every criminal case

22% expected DNA in every criminal case

CRIME SCENE DO NOT CROSS



Strengthening the Case

- At Investigation Stage
- At Child Witness Preparation Stage
- At trial



Investigation Stage

- Vital Forensic Interview Conducted
 - Not just victim - child witnesses too!
- Trained Forensic Interviewer
 - Following established protocols
 - Not law enforcement when possible
- Involvement in Multidisciplinary Team
 - Communication between various agencies maximize results

Investigation Stage

From forensic, can you corroborate any details provided by child?

- TV show on during abuse
- Defendant smelled like cutting the grass
- Child taken to McDonald's before abuse
- Abuse occurred during 2nd grade year
- Younger sister home during the abuse
- Child given a present to keep silent
- Victim always liked defendant

Search Warrants

- Keep ear open for opportunities for a search warrant — especially from the forensic interview
 - Child discloses during forensic interview that teacher who abused her has a shower curtain with puppies on it
 - Vanessa advised during interview that step-dad would record some of the abuse, but he said he would delete them

Going Beyond the Basics

- Talk to EVERYONE
 - Immediate Family / Extended Family
 - Neighbors
 - Teachers / Counselors
 - Friends
 - Anyone in meaningful contact with victim or defendant
- The web may continue to get larger as investigation continues
- What may seem insignificant now may be extremely important later
 - No way to know how all pieces may come together

A Picture is Worth a Thousand Words

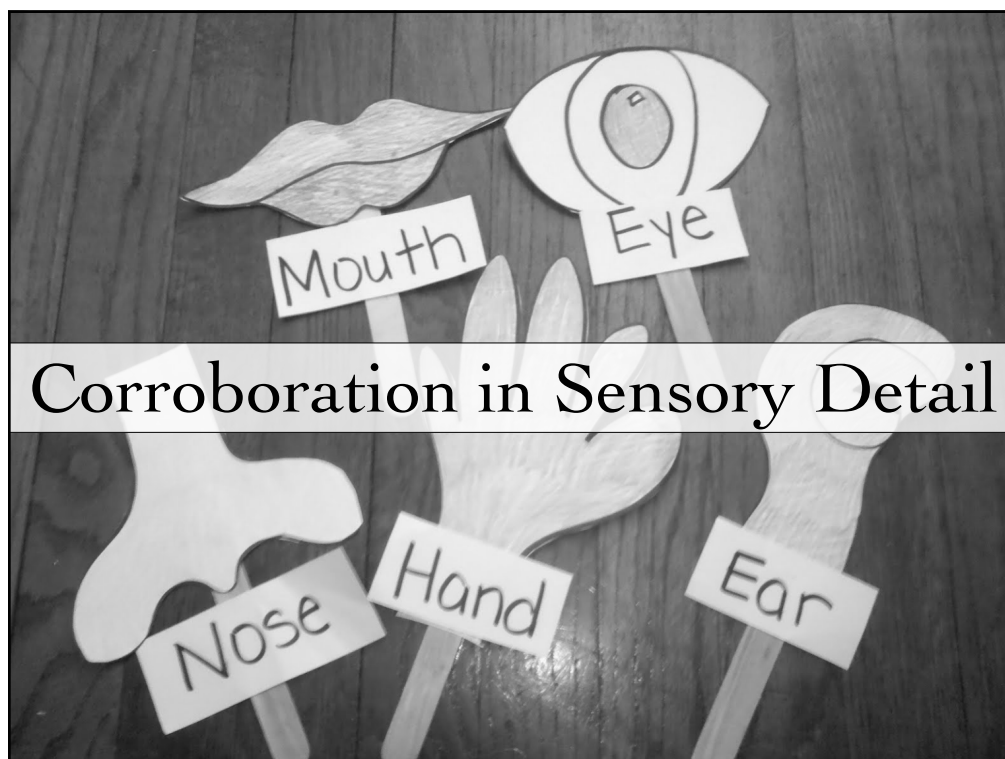
Whenever possible, photograph crime scene

- Interior of Home
 - May show distance, details described by child, furniture (or lack thereof)
- Condition of the Home
- Things that are missing
 - No photos of victim in the home?
- Corroborating Details
 - Don't know what might be important
 - Ex: Leggings



Video Worth a Million Words





Corroboration in Sensory Detail

Contextual / Sensory Details

- Sensory Details are critical to the case
 - Argue details that child couldn't make up
- Lets jury know that the child experienced the abuse
 - Not something someone told them or they made up

Sensory Details

- **Sight:** victim describes a tattoo defendant had on inner thigh
- **Taste:** victim describes that the “white stuff” tasted real bad and salty
- **Hearing:** victim hears a train go by during abuse
- **Smell:** victim says defendant smelled like an ash tray
- **Touch:** victim remembers floor was cold and hard

Contextual Details

- | | |
|---|------------------------------------|
| • Take off dirty socks | satisfying him |
| • Change pants | • Put tongue in her mouth |
| • Smelled armpits | • Pushed head down with hands |
| • Sprayed deodorant | • He kept saying it “felt so good” |
| • Wrapped legs around her | • Asked if she liked it |
| • Described how they were lying in bed - for all acts | • Licking her “privacy” |
| • Asked her if she liked | • <i>Note child’s language</i> |

Contextual Details

- Licking her vagina “felt nasty”
 - “Tickled in a bad way”
- “Hurt” when put penis in vagina
- Told her to “toot” her butt up
- Licked finger, then stuck in vagina & anus
- Hurt when put penis “in [her] butthole”
 - “I said OW quietly”
- Had to wipe sheets two times - “white stuff”
- Put sheets in closet
- Cleaned her “butt and crotch” with washcloth



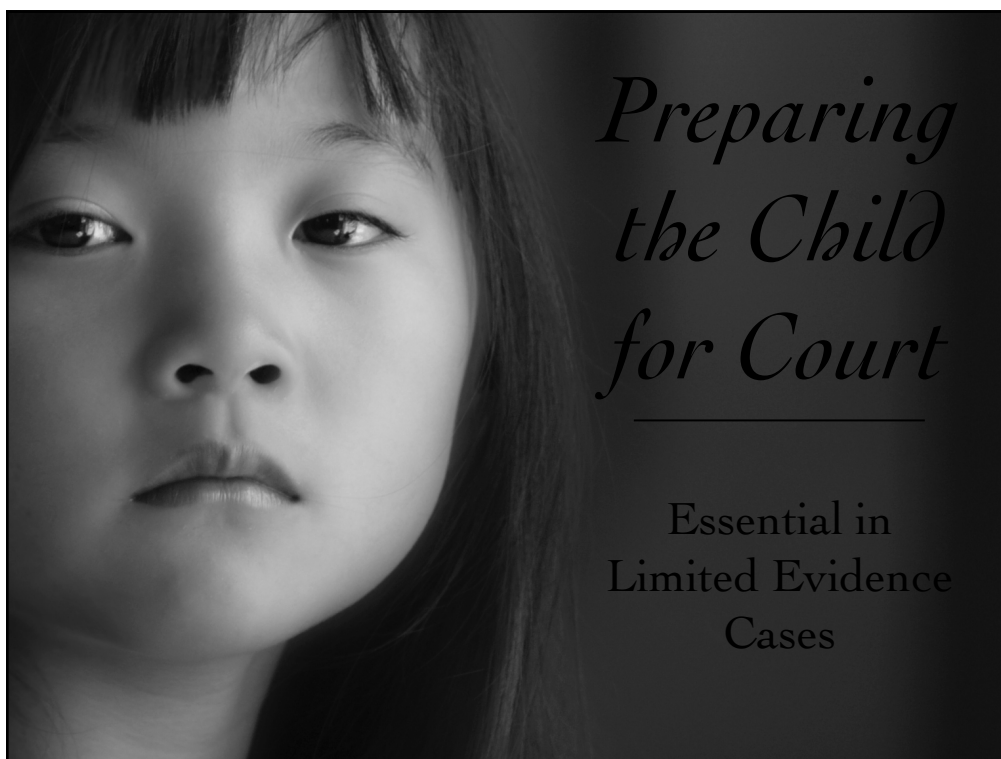


Methods of Communication

- Phone
 - Cell, Landline, Numbers, Ringtones, Files Exchanged, Apps on Phone, Photos on Phone, Type of Phone, Case
- Email
 - Names, Service Providers, Dates
 - Law enforcement should get both victim and suspects' records
- Social Media
- Apps & Online Gaming Platforms



- Porn in the home?
- Popular defense



Preparing the Child

- Building Rapport:
 - **Most important investment in your case**
 - Child needs to be comfortable with you way before jury
 - Meet as often as necessary
 - Without becoming part of the trauma
 - Meet child in comfortable environment
 - Their Home?
 - DA's Office?
 - Therapist's Office?

Preparing the Child

- Court School
 - Formal Program
 - Informal Program
- Take time to answer questions
 - Answer honestly
 - Don't want child to be surprised in court
- **Also prepare the court for the child...**

Motions Practice

- Pre-Trial Motions
 - Admissibility of Forensic Interview? Rape Shield? Irrelevant Evidence?
 - Child testifying can ease anxiety at trial
 - Handle what you can before child in courtroom
- Motion Court for Developmentally Appropriate Questions
- Address comfort item issues before court
 - Courtroom dog program

Altering Courtroom Layout

“Nothing in the law or in the Constitution preordains that courtrooms be configured in a particular way, and, so long as the defendant’s rights are protected, minor alterations to accommodate children are proper.”

Hicks-Bey v. United States, 649 A.2d 569 (D.C. 1994)

Preventing Child from Seeing Defendant

- Remote Child Testimony
 - Allowed in some jurisdictions
 - Post-Crawford analysis says OK
 - Special considerations may be made to prevent further harm
 - Defendant, judge, and jury must be able to see and hear the victim and judge demeanor
 - Defendant must be able to communicate with attorney in real time
 - Put on record routinely that above requirements have been met
- Screens / Shields - Not Recommended
- Do Not Close Courtroom!

Scheduling Testimony

- Determine if child performs better at certain times during the day
 - Don't want a tired child on the stand
 - May affect perceptions on credibility
- School Scheduling Concerns
 - Work with family and court & try not to schedule around exams, etc.
- **Don't be Afraid to Ask!**

Educating
the Jury




Juror Expectation for Child Credibility

Crying: 87%

Fear: 67%



Regan & Baker, The impact of child witness demeanor on perceived credibility and trial outcomes in sexual abuse cases. *Journal of Family Violence*, 13(2), 187 - 195 (1998).



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Deceptions

71% believe children
sometimes led by
adult into false
reporting

70% believe most
kids can be
manipulated into
making false
allegations

Using Experts

- Studies
 - Jurors Love Numbers
- Findings in Confirmed Cases of Sexual Assault
 - 28% had Normal Exams
 - 49% had Nonspecific Exams
 - 9% had Suspicious Exams
 - 14% had Abnormal Exams
 - Only 1% of patients had abnormal anal findings

Adams: Pediatrics 94: 310, 94

Educating the Jury

- Use Expert to Address Myths!
 - Example: Hymen Myth
 - 36 pregnant adolescents examined by child abuse experts
 - 34 had no specific genital findings to indicate prior vaginal penetration

Kellogg, et al; Pediatrics (2004)

Educating the Jury

Other Myths

- Normal Looking / Acting People Don't Molest Kids
- Child Molesters Act Indiscriminately
- Child Sexual Abuse Occurs among Strangers
- Abused Children would Immediately Tell Someone
- Children Exaggerate Sexual Abuse
- False Memories can be Implanted
- Child Sexual Abuse is Rare

Educating the Jury

- Other Areas:
 - Recantation
 - Delayed Disclosure
 - Suggestibility
 - Signs of Coaching
- Offensive vs. Defensive
 - Decide when best to use your expert



Opening Statements

- Lower Jurors Expectations
 - Never Oversell!!
 - If there is an issue, bring it out
- What you will Hear:
 - Child's Statement & Contextual Details
 - Circumstances of Disclosure
- What you won't hear (and why):
 - Physical Evidence - DNA, Injuries, Limited Corroboration
 - Start to discuss expert testimony

Direct Examination of Child

- Be Detail Oriented
 - Take your time & be comfortable with silence
 - Each small detail adds up for closing
 - Remember jurors are paying attention
- Begin weaving child's testimony with corroborating evidence
 - Use admissible evidence to tell story
- Use Age Appropriate Language for Child:

Information Children Can Give



3 year olds: *Who, What*

4-6 year olds: *Who, What Where*

7-8 year olds: *Who, What, Where, When*

9-10 year olds: *Who, What, Where, When, Structured Report*

11-12 year olds: *Who, What, Where, When, Structured Report, Contextual Details*

Age Appropriate Questioning

- Young children do not understand abstract words
 - “Did he have a weapon?” NO
 - "Did he gave a gun?" Yes
- Children are very concrete in their thinking and language.
 - “Did he touch you here?”
 - “No, he touched me at home.”
- Stay away from legal words
 - Jury Jewelry

Cross-Examination of Defendant

- Use as opportunity to strengthen your case
- Corroborate all you can of child's statement:
 - Address where they lived
 - Isn't it true you took Child to the circus?
 - Isn't it true that you were along with Child many times over 4 years when living on Elm St?
 - You smoke, correct?
- Can you establish elements of offense through defendant?
 - Ex: Intent - moral & indecent act

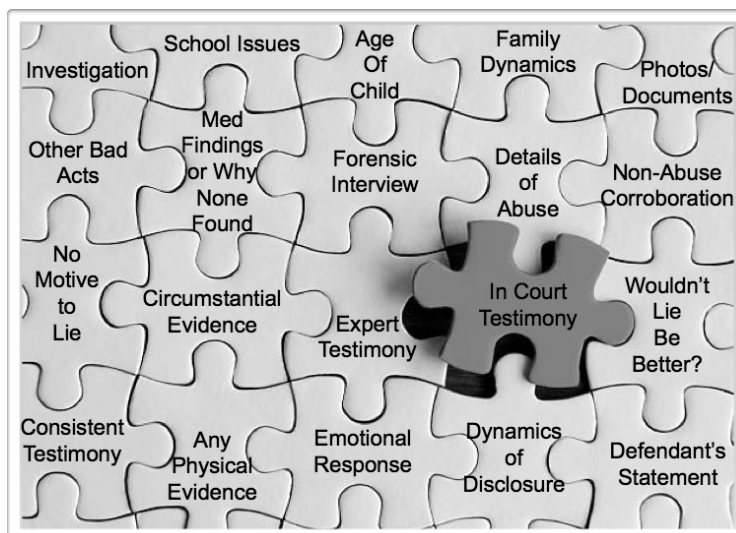
Defendant's Statement

- What if defendant doesn't testify?
- Is there an interview with law enforcement that corroborates details?
 - May not necessarily be incriminating
- But if child consistent & telling truth about other details, may increase child's credibility with jury
- Don't automatically discount non-incriminating statement to law enforcement

Closing Argument Strategy

- Use PowerPoint Presentation
- Timeline (where appropriate)
 - One of most helpful visual aids
- Address CSI Effect
 - DNA / Forensic Evidence relatively new
 - People don't commit these crimes in public
- Take your time and build corroboration details
 - Show how everything interacts

Visualizing the Evidence



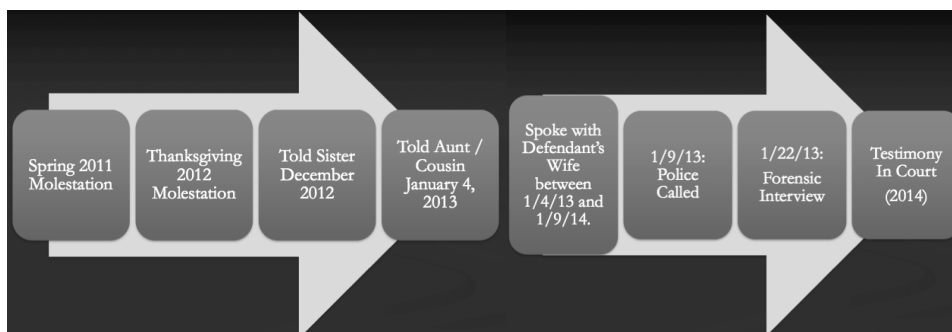


Child is Lying

- First Question:
 - What Motivation would Child Have to Lie?
- “Motivations”:
 - Divorce
 - Doesn’t Like Defendant
 - Victim in Trouble - Deflecting
- If no motivation, highlight for jury
 - Even if defense doesn’t bring it up!

Child is Lying

- How could child maintain the lie?
 - If multiple child hearsay statements come in, highlight consistency.



Child is Lying

- Highlight the Contextual Details
 - As many as possible!
 - Paint the picture in the jurors' minds
- Someone putting child up to this (Coaching)
 - Must address head on
 - Easiest trap for jurors to fall in

Child is Lying

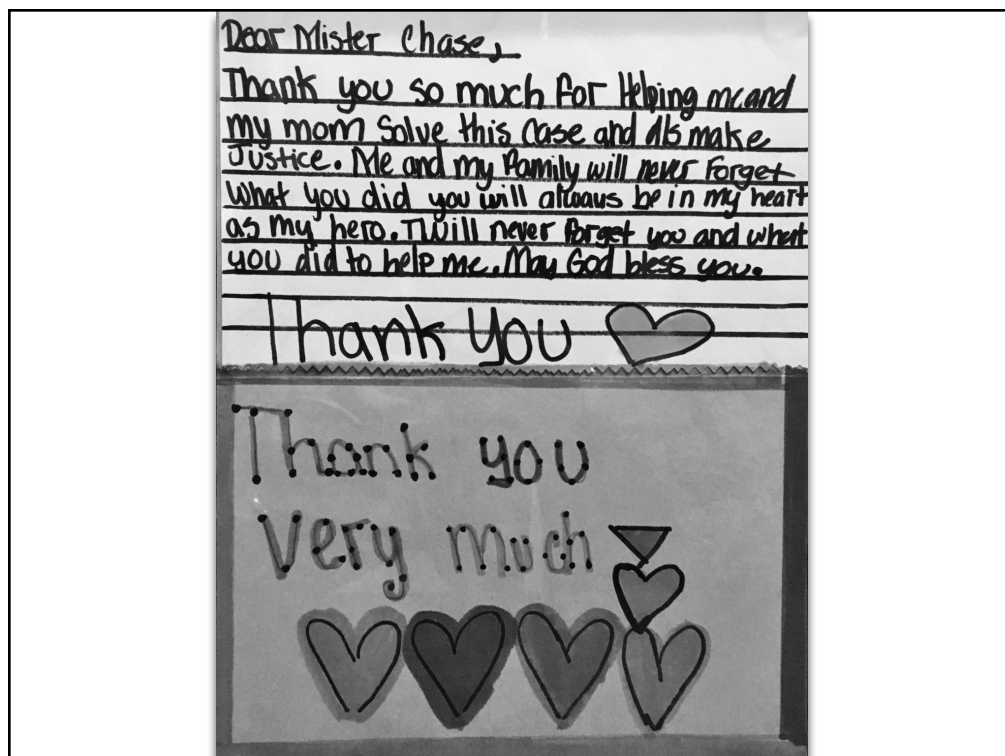
- Is there anything more than mere speculation?
 - Examples:
 - Defendant just says "she hates me." No specifics
 - Defendant previously caught defrauding mom out of money
 - Defendant caught cheating on mom
- Always come back to specifics child gives
 - Young child not going to extrapolate contextual details
 - Consistency of Statements

Child is Lying

- Suggestibility
 - Traditionally attack on forensic interviewers
 - Now more common for non-offending caregiver
 - Purposeful
 - Accidental (hovering mother)
- Remember, as child gets older, suggestibility decreases
 - 4-6 year olds most at risk
 - Drops dramatically each year
 - 10 year old no more suggestible than adult

Wouldn't the Lie be Better??

- Truth often stranger than fiction
- Argue if it was a lie, why would child put "bad facts" in the narrative
 - Other people in home / same bed / next room
 - Just Touching vs. More Egregious Facts
 - Defendant saying / doing "nice" things
 - Continued to be around defendant
- Argue odd facts prove child telling the truth!



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Child Abuse Prosecution Project
 Association of Prosecuting Attorneys
www.ChildAbuseProsecution.org

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| • Regional & National | Information |
| Conferences | • Newsletter |
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| Trainings | Database |
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| • Monographs | • Webinars |
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