



CENTER PIECE

The Official Newsletter of the National Child Protection Training Center

The Investigative Windows of Opportunity: The Vital Link to Corroboration in Child Sexual Abuse Cases

By Detective Mike Johnson¹

"We must use time as a tool, not as a couch."—John F. Kennedy²

Introduction

The single most important advantage a multidisciplinary team or lone investigator has in any type of child abuse investigation is the "Investigative Window of Opportunity (IWOP)."

Simply defined, these are the precious minutes that occur either during or immediately after the initial outcry of a child victim of sexual abuse. This is the optimum time to conduct investigative tasks for the purpose of gleaning the most detailed information. For every hour that goes by after the initial outcry without multidisciplinary team investigative intervention, information critical to case evaluation is lost. As days pass, critical information may be lost forever.

Each child abuse case presents six "windows of opportunity:"

1. Forensic Interview of Child Abuse Victims

Children typically outcry for a multitude of reasons, which can be characterized in two areas: the purposeful outcry and the accidental outcry. The purposeful outcry usually occurs when the child, for the protection of herself or a sibling, tells someone that the abuse is occurring. This outcry is frequently accompanied by a heightened emotional state in the child, who may state that she is "afraid" or "tired" of the abuse. Many of these children, due to their developmental age, have only recently become aware that the abuse is wrong. Conversely, the accidental outcry occurs when the child makes offhand statements or a parent, sibling or another person discovers the abuse. Although the child isn't prepared

to make the outcry, the resulting crisis has the same accompanying heightened emotional state, which may allow investigators to obtain more detailed information.³

The window of opportunity for conducting this interview is immediately after the child makes the outcry. In other words, if the outcry is made in the school setting at 10:00 a.m., the window of opportunity begins at 10:01 a.m. With each minute that goes by without intervention, several factors begin to occur, none of which are helpful to the investigation:

- a. *The process of multiple interviews.* The child may be interviewed by counselors, nurses or school personnel who may not be trained in forensic interviewing or are otherwise unaware of the importance of obtaining detailed, accurate information from the child. All of these "unofficial" interviews can cloud the pure information that should be obtained from the child during the forensic interview.
- b. *The family's access to the child.* School personnel may notify the child's parents - the non-offending parent and the potential perpetrator - who will then have access to the child. Additionally, siblings in the household have been known to be unsupportive of child abuse victims due to the emotional upheaval that the child's outcry causes in the home.
- c. *The victim feels responsible for the responses of others.* The child comes to understand very quickly that her outcry has caused a considerable amount of reaction from those around her (school, siblings, LE, CPS etc.). This dynamic is a major causal factor for recantation.

UP COMING conferences

Cornerhouse Advanced Forensic Interview Training

October 13-16, 2009 - Winona, MN

This CornerHouse Advanced Forensic Interview Training is open to law enforcement, child protection investigators, prosecutors, and child interview specialists who have completed the required prerequisites and work as part of their multidisciplinary team. This course teaches advanced forensic interviewing issues, modifies the CornerHouse RATAAC® interview protocol for physical abuse and other violent crimes, provides a mock cross-examination demonstration and provides participants the opportunity to learn and utilize a videotaped interview assessment tool to critique their own interviews. Students will either have a videotaped interview peer reviewed or they will participate in an interview role-play with an actor.

PRE-REQUISITES:

- Completion of one of the following basic interviewing courses that teaches RATAAC®:
- CornerHouse Child Sexual Abuse Forensic Interview Training or On-Site Training
 - First Witness™ Forensic Interview Training
 - Finding Words™ Forensic Interview Training
 - ChildFirst™ Forensic Interview Training

Completion of a minimum of fifteen interviews using the CornerHouse Forensic Interview Protocol, RATAAC® (waived for prosecutors).

To register for this course, contact **CornerHouse** at **612-813-8300**.



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2. Interview of the Non-Offending Parent (NOP)

Interviews with the non-offending parent can yield incredible amounts of detailed information that can be corroborated by investigators. The investigative window for this interview begins with the first person who speaks with the non-offending parent about the abuse allegations. The professionals who do this, typically from law enforcement and child protective services, are in a position to observe the non-offending parent's first reaction (including surprise or non-surprise) and make critical assessment decisions. Every day that goes by after the outcry increases the chance that the non-offending parent will be made aware of the allegations by the child, school officials or other means, thus depriving the investigator of the opportunity to be present during the parent's initial reaction.

The emotions of the non-offending parent during these early stages can be used to accomplish numerous investigative functions. It is during this time that the non-offending parent is often most cooperative, providing detailed information about the incident and surrounding circumstances or cooperating with consensual searches and search warrants. Investigators who miss this window of opportunity risk having the non-offending parent contacted by the perpetrator or defense counsel, both of whom will always suggest non-cooperation with investigators.

Investigators often fail to realize that the emotional strength of the victim is tied directly to the emotional strength of the mother, who is frequently the non-offending parent. To demonstrate this I often ask this question: "If you are the clinical director of a children's advocacy center with funding for only one of three client populations (victim, NOP or siblings) and your goal is finding resolution within the criminal and civil justice process, which client population do you choose to serve? The answer I usually get is "the victim," but that's not correct. If you don't support the non-offending parent's issues, she won't bring the victim in for treatment or encourage the victim's progress. However, if we address the NOPs issues, she will make sure her child receives therapy. Ideally, we should increase the clinical budget to provide therapy to all three populations. Thus, the best answer to the above question is that treatment should be provided to all three client populations.

The non-offending parent is often dealing with issues such as humiliation, anger, abandonment, mistrust, loss of affection, jealousy, past victimization and questions about her parenting skills. She may be in need of job training, financial assistance, emotional support, etc. Despite these factors, we typically direct all of our resources toward the victim and leave the mother with no one to turn to except the perpetrator, who may be actively trying to win her back. If she reunites with the perpetrator you have lost your victim, because the perpetrator will work to persuade the mother to be uncooperative and pressure the victim to recant. If we strengthen the non-offending mother, she will make sure the child's needs are met.

3. Interview of Collateral Witnesses

As with the non-offending parent and the perpetrator, the investigators who ask the first questions of the collateral witnesses have the window of opportunity for the most detailed information. This is especially critical because the information provided by these witnesses can be tainted by the perpetrator, defense counsel, non-offending parent or others. The witnesses may align themselves with the non-offending parent, the perpetrator or the child, thereby making their information less objective and more subjective.

Investigators are continually challenged to identify and interview collateral witnesses. This is one of the weakest areas in all child abuse investigations. Defense attorneys know this and frequently try to use it to their client's advantage by charging that the investigators were not acting as objective fact-finders but as subjective believers who spoke only with witnesses the officers believed would complement the state's case. It is extremely important for investigators to immediately find, interview and "nail-down" collateral witnesses' knowledge of the incident, prior to the collateral witnesses speaking with anyone else.

Character witnesses suggested to investigators by defense attorneys should be interviewed or at least an interview should be attempted. If investigators refuse to interview a character witness, defense counsel is in an excellent position to portray the investigative process as biased against his client. This area is referred to as "fertile ground" for impeaching the credibility of the investigator and the investigation.

4. Perpetrator

As with the non-offending parent, investigators who first broach the subject of child abuse with the alleged perpetrator have a "distinct investigative advantage" in gaining incriminating statements (confessions). The ability to see and hear the perpetrator's initial reaction is invaluable to the investigator's interview. However, this raises an interesting dilemma for many investigators regarding when the interview should take place. Should a majority of information be gathered before approaching the perpetrator, or should the investigator interview him in the earliest stages? In my experience, after the forensic interview of the child is completed and the non-offending parent and witnesses have been interviewed, the next most critical function is the interview with the perpetrator. Ideally, especially with cases involving in-home abuse, this should be accomplished within one to three hours after the forensic interview of the child and the interview of the non-offending parent.



Most perpetrators can be described as manipulative, controlling and narcissistic. A long delay in interviewing the perpetrator gives him time to work on an alibi or an excuse as to why he could not have committed the offense. It also allows him a chance to access those involved in the outcry (including the victim, non-offending parent or school officials) to determine how much of the allegation was revealed. It has been my experience that perpetrators will only confess to what they think the investigators already know. In a related issue, child protective service workers and law enforcement need to have a mutual agreement about what details of the allegation should and should not be discussed during interviews conducted with the perpetrator by CPS workers.

Finally, a delayed interview gives the perpetrator time to contact a defense counsel. Nancy Lamb, an attorney in Elizabeth City, North Carolina, and I present training sessions on "Combating Defense Strategies in Child Sexual Abuse Cases." In Ms. Lamb's experience, numerous defense attorneys advise that an accused perpetrator should never speak to investigators. According to Ms. Lamb, they specifically recognize that any statement made by the perpetrator, especially a confession, is always detrimental to the defense of their client.

5. Medical Evaluation

The investigative window of opportunity for performing the forensic medical examination of a sexual assault victim is immediately after the perpetrator disengages from the assault of the child. There is a recognized 72-hour rule (or window) for conducting this medical evaluation. This 72-hour rule has been grossly misconstrued.⁴ Many an investigator believes he or she has "up to 72 hours" to have a medical exam of the child victim completed. This is far from correct. Keep in mind that we get a

positive medical finding of sexual abuse in less than 4% of our cases.⁵ Delayed medical evaluations by untrained forensic medical professionals can shift this percentage to almost zero.

Investigators should remember that the IWOP starts when the perpetrator withdraws his penis, tongue, hand or object from the child's mouth, body or sexual organ. The initial hours after the assault provide the medical forensic evaluator the best opportunity for identifying marks, bruises or tears, which immediately begin to heal, as well as for collecting other biological evidence such as semen, saliva and lubricants, which immediately begin to be absorbed, wiped or transferred away, thereby eliminating the very evidence that is highly corroborative of sexual abuse.

6. Crime Scene Evaluation

The window of opportunity for conducting the investigative function of evaluating a crime scene is immediately after the assault, before the perpetrator or others have the opportunity to disturb it. For every minute that goes by, the crime scene is altered. Whether investigators are involved in the case immediately after the incident or several months later, every attempt should be made to use as many crime scene identification techniques as possible, especially photo documentation⁶ and other evidence collection techniques.

A few years ago, my police department investigated a case in which a 13-year-old boy made an accidental outcry at school that his father was sexually abusing him. When we began interviewing the boy, we discovered that the last incident occurred that morning before the father left for work. In his haste to leave, the father left his underwear beneath the boy's bed and a jar of petroleum jelly on the nightstand. Realizing that the crime scene was still intact, we rushed over to the house and received permission to search from the mother, who was extremely cooperative. As we had hoped, the items were exactly where the boy said they would be. Without these pieces of evidence, our entire case would have been different.

Investigators and prosecutors are keenly aware of the "CSI-effect" and the popularity this television show has had on American society⁷. This is the same American society that makes up our juries. The influence of CSI on the issue

of crime scene evaluation cannot be understated. All investigators are challenged to discuss this issue with their prosecutors and, at a minimum, provide clear documentation on results of crime scene evaluations and techniques used.

Gaining Better Access to the Windows

Recognizing the windows of opportunity is a critical step, but it is useless if procedural issues prevent investigators from accessing them.

Some of the most common errors that violate the investigative window of opportunity occur at the earliest stages of outcry, typically at a school by officials who delay in recognizing the abuse and reporting it to appropriate authorities. Instead, they elect to notify the non-offending parent and/or the perpetrator. Therefore, it is crucial to establish appropriate procedures and protocols and ensure that all school officials understand them. In addition, law enforcement needs to ensure that a detective is promptly notified about each call and that the detective responds immediately, instead of waiting until the next workday. Other early violations include the lack of knowledge of child abuse phenomena and hesitation to get involved with a case because one member of the team is not available to respond immediately.

Everyone involved in a case (including the multidisciplinary team, child advocacy center, and individual investigators) needs to review cases for investigative violations that may be causing coordination and intervention delays in the ability of investigators to respond immediately. The suggested evaluation technique for the quality of a case is to review:

1. The exact time the child made the outcry;
2. Who spoke with the child before CPS or law enforcement became involved;
3. When the perpetrator was first notified;
4. When the non-offending parent was notified;
5. Identification of collateral witnesses and how long it took before they were contacted;
6. The last occurrence of the offense; and
7. How long it took before the crime scene was evaluated.



Coordinated Response of Law Enforcement and CPS

Reviewing these situations will better illuminate violations of the investigative windows of opportunity. It also begins the discussion for finding the procedures/protocols to place investigators in the best possible position to access the detailed facts and information needed for investigative corroboration to protect the children in our communities.

We also need to have a cooperative response system for child protective services and law enforcement. Law enforcement operates on a "call for service system," which means if you call 911, a police officer will respond day or night. However, child protective services operates on a "priority system," in which a caller contacts a hotline and the call-taker evaluates the problem. If it meets certain criteria, a priority is placed on the call

and the information is subsequently sent to the local CPS jurisdiction for evaluation by a supervisor, who will assign a caseworker to investigate. These two systems are inherently incompatible. Both address their agencies' policies and procedures, but neither gives paramount attention to the needs of the child. Specific issues, such as risk assessment by child protective services, medical evaluation, crime scene evaluation, and interviews of important parties should take precedence. No system should violate the investigative windows of opportunity by forcing the investigators to delay their response, thus losing access to detailed information. The cases in which we have been most successful were identified and investigated within six to eight hours, from the initial outcry to the major parts of the investigative conclusion.

Conclusion

The protection of a child hinges on the intervener's ability to acknowledge that children disclose for a multitude of reasons, and the child protection team must be ready to mobilize on behalf of the child when the outcry is first made. Windows of opportunity are not contingent upon caseloads, schedules or notification procedures. When the child is ready to be protected, the child protection team must be ready to respond.

Footnotes

- ¹ Mike Johnson is a Detective with the Plano Police Department in Plano, Texas. He may be reached at michaelj@plano.gov or via his website www.detectivemike.com.
- ² Address in New York City to the National Association of Manufacturers (6 DEC. 1961)
- ³ In discussing the "traumagenics" of child sexual abuse, David Finkelhor and Angela Brown write that in situations of accidental outcries of children, the forensic interview may create an "acute psychological episode that may lead to fragmented and unconvincing statements." In other words, unlike the purposeful outcry where the victim experiences "relief" at disclosing the abuse, the "accidental" child may still feel partnership in the abuse, thus disclosing the abuse is tantamount to a confession of guilt. These children often are candidates for follow-up forensic interviews and extended assessments. See David Finkelhor and Angela Brown, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55(4) AMERICAN JOURNAL OF ORTHOPSYCHIATRY 530 (1985).
- ⁴ See American Academy of Pediatrics website for medical evaluation of sexual abuse guidelines at: www.aap.org
- ⁵ Heger, et al, *Children Referred for Possible Sexual Abuse: Medical Finding in 2384 Children*, 26 CHILD ABUSE & NEGLECT 645 (2002) (finding that only 4% of all children referred for medical evaluation of sexual abuse have abnormal examinations at the time of evaluation); Kellogg, et al, *Genital Anatomy in Pregnant Adolescents: "Normal" Does Not Mean "Nothing Happened"*, 113(1) PEDIATRICS 67 (January 2009) (noting that only 2 of 36 pregnant adolescent girls presented for sexual abuse evaluations had "definitive findings of penetration.")
- ⁶ See Victor Vieth, *Picture This: Photographing a Child Sexual Abuse Crime Scene*, 1(5) CENTERPIECE (National Child Protection Training Center 2009) (available online at www.ncptc.org)
- ⁷ See Shelton, D.E., Y.S. Kim, and G. Barak, "A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the 'CSI Effect' Exist?" *Vanderbilt Journal of Entertainment and Technology Law* 9 (2)(2006): 331 E2 80 93368.

For More Information

The National Child Protection Training Center (NCPTC) at Winona State University is a training program of the National Association to Prevent Sexual Abuse of Children (NAPSAC). NCPTC provides training, technical assistance and publications to child protection professionals throughout the United States. In addition, NCPTC assists undergraduate and graduate programs seeking to improve the education provided to future child protection professionals. In partnership with CornerHouse, NCPTC also assists in the development and maintenance of forensic interview training programs utilizing the RATA[®] forensic interviewing protocol. For further information, contact NCPTC at 507-457-2890 or visit our website at www.ncptc.org. For further information about NAPSAC, call 651-340-0537 or visit our website at www.napsac.us.

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