



UPDATE

Demystifying SMART Devices: The Role of SMART Devices in Child Exploitation Cases

Phoenix, Arizona;
Oct. 1 – 5, 2012

This four and a half day course on how cell phones and other mobile technologies are used to facilitate child sexual exploitation is for a team consisting of an investigator, a prosecutor and a forensic examiner. The participants will learn about possible evidence that can be gained internally from cell phones as well as external information from service providers. The participants will also work through a simulated investigation that culminates in a mock trial.

Please contact NCPA Senior Attorney Justin Fitzsimmons at jfitzsimmons@ndaa.org or (703) 519-1695 for additional information about these courses.

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Behind the Net: Technology and the Forensic Interview

By Robert Giles¹

“There can be no keener revelation of a society's soul than the way in which it treats its children.” — Nelson Mandela²

Child abuse cases represent some of the most difficult cases to prosecute in our system of criminal justice. These cases frequently present prosecutors with challenges not seen in prosecutions for other crimes. According to noted researchers Theodore Cross, Wendy Walsh, Lisa Jones and Monique Simone, “child abuse presents special challenges that make prosecution difficult”.³

Technology is often used by perpetrators to facilitate, continue or document their abuse of a child. Investigators who diligently seek this information can provide members of the multidisciplinary team evidence that can be used to support a child's outcry and ultimately convince jurors that the suspect is guilty. This article will look at many of the challenges child abuse cases cause for investigators and prosecutors and how use

of technology can help successfully address challenges.

Children in Court

For centuries, children have been viewed as unreliable witnesses in our criminal justice system. From the Salem Witch Trials in the late 17th Century to the present, children are regarded as lacking the credibility of adult witnesses. According to researchers Stephen Ceci and Maggie Bruck “[t]he prevailing legal attitude for the succeeding 300 years has been one of skepticism about the testimony of child witnesses.”⁴ This prevailing opinion has influenced not only the investigation of allegations, and the decision to prosecute, but also how the evidence is viewed by jurors in cases where children claim to have been sexually and physically abused by adults.⁵

The belief that children are unreli-

able witnesses stems from a variety of sources; both archaic and modern. These misconceptions influence the manner in which jurors evaluate the competency and credibility of child witnesses and their testimony.

The pop culturization of psychological principles developed by Sigmund Freud and his contemporaries suggest that children who are the victims of sexual abuse do not suffer from emotional harm. As noted by Dr. Anna Salter, “[t]he history of psychology in the past 100 years has been filled with theories that deny sexual abuse occurs, that discounts the responsibility of the offender, that blame the mother and/or child when it does occur, and that minimize the impact.”⁶

Another prosecutorial issue that must be overcome in child abuse cases is the unrealistic and often wrong perception that a child’s accurate recall of an event has been suggested by another. Reality and research studies show that false or manipulated reports of child abuse allegations are rare. Studies show that even in situations where children are exposed to the greatest potential for manipulation, where custody of a child is an issue, false reports of child sexual assault are far fewer than perceived by the general public.⁷

Further affecting the view of jurors in child abuse cases is the belief that sexual assault will produce either medical injury or scientific evidence. In the vast majority of cases where there is credible evidence that a child has been penetrated, only between 5 and 15 percent of those children will have genital injuries consistent with sexual abuse.⁸ Unfortunately most studies show that prospective jurors believe that evidence of injury will be present.⁹

Finally, jurors have been, and continue to be impacted by the CSI/Tech effect when evaluating evidence presented during a jury trial, especially cases that involve sexual assault. One study found that 73 percent of all participants in a research study expect DNA evidence to be presented in every case involving sexual assault.¹⁰ Those who prosecute cases involving the sexual assault of children know that such evidence is usually lacking. Because the ability to find scientific evidence following a sexual assault crime is predicated on time, and because most children do not report being as-

saulted within that critical time frame, the opportunity to find, analyze and present scientific evidence is often lost.

These are often daunting challenges and it is incumbent on prosecutors and investigators to find and present evidence that corroborates the allegations made by victims of child abuse. Turning to technology is one way that we can provide jurors with the corroboration necessary to get beyond the challenges and satisfy the perceived evidentiary requirements that will allow for conviction.

Technology and the Forensic Interview

Since most child abuse cases include a forensic interview in the early stages, it is vital that those interviewing the children incorporate technology at this early stage. Discussing technology during the forensic interview opens a number of corroborative avenues that investigators and prosecutors can use as the case proceeds to trial or resolution.

Rapport-Building

During the rapport-building stage, the forensic interviewer may use technology to help develop the relationship with a child necessary for a successful interview. Asking children about their cell phones, game systems or on-line activities and/or to demonstrate use gives the interviewer and other members of the multidisciplinary team the opportunity to evaluate the child’s language and developmental levels, determine their understanding of technology and explore their lifestyle. This stage of the forensic interview also presents an opportunity to allow the child to “educate” the interviewer on what they know as it relates to technology. If the interviewer allows the child to teach, often it will put that child much more at ease for the remainder of the interview and provide an environment where a child feels safe disclosing their abuse experiences.

Questions an interviewer might consider would focus on asking the child about technology in their life. Do you have a game system? What kind? What games do you play? Asking the child to tell the interviewer

about each provides the opportunity for narrative discussion allowing the interviewer and observing team to discover the development level of the child, their knowledge of technology and how to structure the remaining interview.

Narrative Interview

In addition to helping develop a positive rapport with the interviewer, discussing technology or watching the child demonstrate during the narrative phase of the interview will give investigators insight into potential evidence that could be discovered that may corroborate the child's statement of abuse. Interviewers should ask forensically sound questions designed to allow or elicit discussion about photographs the suspect may have taken, videos the suspect may have shown the child, how the child and suspect communicated, communication methods used between the child and the suspect, etc.

If the child discloses that he or she was in a vehicle with the suspect, a few simple, non-leading questions can open a treasure trove of corroborative evidence. Having the child describe what they saw in the car and whether the defendant had a cell phone with him or her can help investigators determine locations and routes the suspect may have traveled either with the child in the vehicle or to meet the child. Finding out that the suspect had a global positioning system ("GPS") built into the dashboard or on a phone, may allow investigators to corroborate what the child has indicated about where they went with the suspect. Determining if the suspect had a cell phone may allow investigators to use cell phone towers to plot the suspect's course of travel during the time they were with the child. All of these electronic possibilities give prosecutors the ability to present corroborative evidence independent of the child's testimony. Asking the child to describe what streets they drove on opens the possibility of locating street cameras that may show the suspect's vehicle and who was in that vehicle.

It is also vital that interviewers ask children about the surroundings when they were abused, with a focus on technology devices they may have observed. From

computers to thumb drives to phones, digital evidence to corroborate a child's outcry is everywhere. Photos showing the suspect and the child together can help establish opportunity and the time frame of the incident. Calendars on parents' cell phone or computer can confirm time the victim was with the offender.

Another important area where the forensic interviewer may engage the child is in the area of communication with the offender. Questions should go beyond merely using telephones or cellphones to talk. A 2009 Pew Research poll found that children between the ages of 12 & 17 were far more likely to communicate using text messaging than speaking face to face or via phone.¹¹ Questions should be asked about how the victim and the offender met and communicated with each other. It is important to look at all modes of communication; phone calls, text messages, social networking sites (Facebook, MySpace), instant messaging, on-line game play (many gaming sites and platforms, like Playstation 3, Xbox, Game Cube, etc., have the capability for players to compete against and communicate via the internet), streaming social networks (Skype), etc. Each of these methods has the potential for leaving a digital footprint that may be discoverable by investigators.

If the individual conducting the forensic interview does not ask about technology, this strong evidence will remain the undiscovered secret of the offender. In addition, consider contacting an investigator or prosecutor who is affiliated with your local Internet Crimes Against Children Task Force ("ICAC") for assistance. ICAC Task Forces and their affiliates can lend their technological expertise in ways that many investigators and prosecutors may not consider. Just because a case is does not directly involve images of child pornography, does not mean that your ICAC Task Force cannot be used to help develop evidence to corroborate your case.

Grooming

Grooming is often an integral part of the process used to sexually abuse children and quite frequently involves the use of technology. 75 percent of all teens 12 to 17 years of age own a cell phone.¹² 66 percent of those

**Unsafe Havens I:
Investigation and
Prosecution of
Technology-Facilitated
Child Sexual Exploitation**
Summer 2012, Location TBD

This comprehensive five-day course is designed to familiarize prosecutors with the various stages of an investigation, pre-trial and case preparation of a child sexual exploitation case that has been facilitated through technology. This course includes a hands-on computer lab.

**SafetyNet: Multidisciplinary
Investigation and
Prosecution of Technology-
Facilitated Child Sexual
Exploitation**
*Early Fall 2012,
Location: TBD*

This intensive five-day course is intended for prosecutors, investigators and computer forensic examiners, investigation and prosecuting technology-facilitated child sexual exploitation cases. This course includes mock trial exercises and a hands-on computer lab.

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children got their first cell phone before they reached 14 years of age.¹³ A recent study by the Pew Internet & American Life Project found that 93 percent of 12 to 17 year olds use the internet, topped only by adults between 18 and 29 years of age.¹⁴ The unprecedented and often unsupervised use by teens of a wide variety of technology presents predators and abusers easy access to groom and abuse children.

Grooming is the process through which the offender uses “a variety of techniques . . . to access and control potential and actual child victims.”¹⁵ As noted by Retired FBI behavioral analyst Kenneth Lanning “[i]f done well the [grooming] process not only gains the victim’s initial cooperation, but also decreases the likelihood of disclosure by the victim and increases the likelihood of ongoing, repeated access.”¹⁶ Offenders will use any and all means to seduce and abuse child victims; from the seemingly innocent display of child friendly videos or movies to the subtle touches designed to prepare the child for further more sexualized behavior to the display of pornographic images. Videos found in the abuse venue can make a child’s statement about watching videos before the abuse took place seem much more accurate to the jury. Asking a child about how the suspect utilized technology during the grooming process can give investigators and prosecutors vital evidence to corroborate the child victim’s statement.

Conclusion

Children who disclose that they have been the victim of abuse display great courage and determination. It is the responsibility of investigators and prosecu-

tors to honor by seeking and finding the evidence necessary to corroborate the child’s statement. Technology provides a window through which members of the multidisciplinary team can find evidence to support a child’s outcry of abuse and convince jurors that the suspect has committed this crime. Part two of this article will look at how to technology can be used during the investigation and at trial to corroborate allegations of child abuse.

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² The former President of South Africa

³ T. Cross, W. Walsh, M. Simone, & L. Jones, Prosecution of Child Abuse: A Meta-Analysis of Rates of Criminal Justice Decisions, 4 *Trauma Violence Abuse*, 323, 325 (2003).

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⁵ S. Ceci, D.F. Ross, M.P. Toglia, EDS Perspectives on Children’s Testimony 101 (1989).

⁶ A. Salter, Ph.D., *Predators: Pedophiles, Rapists, And Other Sex Offenders* 57 (Basic Books)(2003).

⁷ L. Cromer and R. Goldsmith, Child Sexual Abuse Myths: Attitudes, Beliefs and Individual Differences, 19 *Journal of Child Sexual Abuse* 618 (2010).

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⁹ Quas, et. al. Do Jurors “Know What Isn’t So about Child Witnesses?”, 29 *Law and Human Behavior* 4 at 438.

¹⁰ Hon. D. Shelton, Y. Kim and G. Barak, A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the “CSI Effect” Exist?, 9 *Vanderbilt J. of Entertainment and Tech. Law* 2 (2006).

¹¹ A. Lenhart, R. Ling, S. Campbell & K. Purcell, *Teens and Mobile Phones*, Pew Internet & American Life Project (April 20, 2010)

¹² *Id.*

¹³ 2009 Parent-Teen Cell Phone Survey, Pew Internet & American Life Project (September 9, 2009)

¹⁴ Updated: Change in internet access by age group, 2000–2010, Pew Internet & American Life Project (September 10, 2010)

¹⁵ K. Lanning, *Child Molesters: A Behavioral Analysis 5th Ed.*, 43, National Center for Missing & Exploited Children (2010)

¹⁶ *Id.*