

# Where the Boys Are

## Investigating and Prosecuting Cases of Child Sexual Abuse When the Victim Is Male

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### Introduction

The Adverse Childhood Experience (ACE) study found that approximately one out of six men were sexually abused as children.<sup>2</sup> Unfortunately, most sexually abused boys will never make an outcry during childhood and, even if abuse is discovered, investigators and prosecutors will face barriers that impede their ability to protect these children. This article explores the research on the sexual abuse of boys and offers concrete suggestions for conducting forensic interviews with these children, investigating crimes against boys, and presenting these cases to a jury. This is done, in part, through a discussion of a hypothetical case study that illustrates the challenges of responding to crimes against boys.

### Case Study: Bobby's Secret

After a personal safety lesson in school, Bobby tells Jemour, one of his first-grade classmates, that "Mr. Joey does stuff like that."<sup>3</sup> When Jemour asks him to explain, Bobby discloses that "Mr. Joey touches my pee pee, and it sort of feels good." Jemour tells Bobby that he should tell his parents, but Bobby says, "My Mom thinks boys getting touched by boys is a sin." Jemour tells some other male classmates and a few start to tease Bobby, telling Bobby that he is gay.

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<sup>2</sup> Vincent J. Felitti & Robert F. Anda, *The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders and Sexual Behavior: Implications for Healthcare*, in RUTH A. LANIUS, ERIC VERMETTEN & CLARE PAIN, *THE IMPACT OF EARLY LIFE TRAUMA ON HEALTH AND DISEASE: THE HIDDEN EPIDEMIC* (Cambridge University Press 2010).

<sup>3</sup> For a discussion of the potential value of personal safety education, see Sandy K. Wuterle & Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches*, in KEITH L. KAUFMAN, *THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK* 107, 109 (2010) citing David Finkelhor, *Prevention of Sexual Abuse Through Educational Programs Directed Toward Children*, 120 *PEDIATRICS* 640, 644 (2007).

Eventually Jemour decides to tell their teacher, Molly Reynolds, about the disclosure. Ms. Reynolds makes a mandated report to child protective services and tells the intake screener that Bobby has an athletics instructor that everyone calls "Mr. Joey" and that the instructor's full name is Joey McMaster. Mr. McMaster has been teaching gym classes for first through sixth-grade boys for about 15 years. He is known as a gregarious coach who goes out of his way to help children who are struggling. If a parent is unable to pick up a child after school, Mr. McMaster is always willing to help the parent with transportation or other needs.

Ms. Reynolds also tells the intake screener that Mr. McMaster is very religious. He goes to the same church as Bobby and volunteers for a camping ministry where he works with other boys. She knows that Bobby has camped with Mr. McMaster because Bobby brought pictures of the camping trip to school for show and tell. Ms. Reynolds says that Bobby's parents are divorced and that his mom is stressed out and working two jobs to make ends meet. She also shares that Bobby's dad is not very active in his son's life and that Bobby has no siblings.

## Dynamics of Male Victimization

The sexual abuse of boys is not better or worse than it is for girls, but there are different dynamics in play of which every forensic interviewer, investigator, and prosecutor needs to be aware. Although not every dynamic is addressed in this article, those listed below are critical for multidisciplinary teams (MDTs) to consider.

### Boys Are Much Less Likely to Disclose Abuse Than Are Girls

A study of 487 adult male survivors of child sexual abuse found that, on average, these victims delayed disclosure for 21.38 years and delayed a full discussion of the abuse for 28.23 years.<sup>4</sup> These delays increase the risk of behavioral and mental health concerns. For instance, one study found that "survivors who waited longer than 1 year to discuss their abuse in-depth had more mental health symptoms in adulthood."<sup>5</sup>

### Unique Dynamics Keep Male Child Sexual Abuse Victims Quiet So Long

Research has identified why boys find it very difficult to disclose a history of abuse. These factors include:

- **Masculinity.** "Given that the experience of [child sexual abuse] violates masculine norms such as self-protection, many [boys] felt weak, frightened, confused, or guilty around the time of the abuse."<sup>6</sup> As a result, boys choose not to discuss their abuse with others but employ

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<sup>4</sup> Scott D. Easton, *Disclosure of Child Sexual Abuse Among Adult Male Survivors*, 41 CLINICAL SOCIAL WORK JOURNAL 344-355 (2013).

<sup>5</sup> *Id.* at 346 citing O'Leary et al., *The Effect of Severe Child Sexual Abuse and Disclosure on Mental Health During Adulthood*, 19(3) THE JOURNAL OF CHILD SEXUAL ABUSE 275-289 (2010).

<sup>6</sup> Scott D. Easton, Leia Y. Saltzman, & Danny G. Willis, *Would You Tell Under Circumstances Like That? Barriers to Disclosure of Child Sexual Abuse for Men*, 15 PSYCHOLOGY OF MEN & MASCULINITY 460, 463 (2013).

strategies such as “toughing it out, being macho, remaining stoic, and handling it themselves.”<sup>7</sup>

- **Mistrust of others.** Many boys do not disclose “because they [have] difficulty trusting others.”<sup>8</sup> Of particular concern “to some survivors [is] the fear that disclosure [will] lead others to suspect them of becoming a future perpetrator or predator.”<sup>9</sup> Not every boy assumes a negative reaction from others, but there is “a generalized concern over being unable to predict responses from others and the outcomes of disclosure,” and this “fear of unknown consequences” keeps them from telling.<sup>10</sup>
- **Fear of being labeled “gay” or concerns about sexual orientation.** According to one study, “male survivors who self-identify as heterosexual are often fearful that others would use their abuse experiences as evidence of homosexuality.”<sup>11</sup> When abused by another male, some boys “question their own sexual orientation, thereby creating an additional barrier to disclosure.”<sup>12</sup>
- **The “God factor.”** When the abuser is a member of the clergy or a religious leader, there is significant risk a child will not disclose. This is because “clergy members hold extraordinary power due to their social status in the community and [because of] the association between the abuser and the survivor’s faith in God.”<sup>13</sup> In the words of one man sexually abused as a boy, “How can a man get raped, and by a priest, it’s the same as getting raped by God.”<sup>14</sup>
- **Safety and protection issues.** Some males do not report out of fear that it “might jeopardize their own basic safety and security in terms of housing, employment, and physical well-being” or because they want to protect their family or others from “discomfort.”<sup>15</sup> As one victim states, “I could not tell my parents because it would break their hearts. I’ll tell [others about the sexual abuse] when my parents are dead.”<sup>16</sup>
- **Past negative responses from others.** If a boy attempts to disclose but receives a negative response, they are more likely to remain silent. One survivor shared that he “tried to tell [his] father once, but he hit me.”<sup>17</sup>

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<sup>7</sup> *Id.* at 463.

<sup>8</sup> *Id.* at 464.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 465.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 466.

<sup>13</sup> *Id.* at 465.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 466.

<sup>17</sup> *Id.*

- **Inability to name sexual abuse as “abuse.”** Some boys are unable to “recognize childhood events as abusive.”<sup>18</sup> For instance, one survivor referred to child sexual abuse as “just part of growing up,” while another survivor said, “I wasn’t sure if it was actually abuse or not.”<sup>19</sup>

Not only are these disclosure inhibitors identified in research, but qualitative research on service providers also reveals many of these factors as barriers for male survivors to disclosure.<sup>20</sup> However, there are also facilitators to a boy’s disclosure, including parental or other support, public education, and adequate services.<sup>21</sup>

## Applying This Research to Bobby’s Case

In Bobby’s case study, several of the dynamics identified may be present and should be taken into account by the MDT. Bobby may have a level of mistrust given that a man who is both a teacher and religious leader has violated him. The negative response of the boys who bullied him after the outcry may inhibit Bobby from telling others, including those who will investigate his case. Bobby’s comment that the sexual abuse “sort of feels good” may also create a barrier to Bobby discussing his experiences in a forensic interview or court of law. Given that he has a single mom working two jobs and a distant father, Bobby may worry that discussing the case with the authorities may jeopardize his housing or other basic security. Because Bobby was sexually touched by a man, the abuse “sort of feels good,” and he has been bullied as being “gay,” questions or concerns about his sexual orientation and how others may react to his disclosure could also influence what he says or does not say about the maltreatment. Bobby may also have feelings of weakness that are exacerbated by the bullying he has received. Lastly, the “God factor” may impact Bobby in multiple ways, and the MDT will need to consider the large and growing body of research documenting the spiritual impact of abuse, particularly when the offender is a religious leader in a position of authority over the child.<sup>22</sup>

## Bobby’s Forensic Interview

In applying these dynamics to Bobby’s forensic interview, the interviewer should be aware that Bobby may not see himself as a victim or may be reluctant to label himself as such. Accordingly, the interviewer should be cognizant about soliciting behaviors and actions and should avoid any labels for the conduct other than any labels or words Bobby may employ.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Marudan Sivagurunathan et al., *Barriers and Facilitators Affecting Self-Disclosure Among Male Survivors of Child Sexual Abuse: The Service Providers’ Perspective*, 88 CHILD ABUSE & NEGLECT 455 (2019).

<sup>21</sup> *Id.*

<sup>22</sup> Victor Vieth & Pete Singer, *Wounded Souls: The Need for Child Protection Professionals and Faith Leaders to Recognize and Respond to the Spiritual Impact of Child Abuse*, 45(4) MITCHELL HAMLINE LAW REVIEW 1213 (2019).

Although the initial outcry centers around sexual abuse, research informs that most children who are abused in one way are abused in multiple ways.<sup>23</sup> If Bobby is reluctant or even unwilling to discuss sexual abuse, he may be willing to discuss physical abuse, emotional abuse, neglect, witnessing others being abused, or being shown sexually exploitive images. If so, the forensic interview may produce enough evidence for the MDT to take action to protect Bobby or others. Bobby may then eventually be willing to discuss the sexual abuse with mental health professionals or other service providers. The MDT could also consider an expanded forensic interview process for Bobby.

The interviewer should try to make Bobby feel supported during the interview. Bobby may feel alone and wonder if he is the only child who has ever experienced abuse. He may also blame himself for the abuse. Accordingly, simple statements of reassurance such as "I talk to lots of boys about a lot of different things in this room" or asking if there is something the interviewer can do to make the child feel more comfortable may reduce stress in the forensic interview. Victims may also articulate a particular judgment or label that they are fearful of being applied to them. For instance, a male victim may say, "I just don't want everyone to think that I couldn't handle this on my own." Forensic interviewers can reflect back to the child and ask more about how they are feeling. They can also remind the child that their job is not to judge or think a particular way about people that come to talk to them; the interviewer's job is just to listen. A sample response to a teenager that brings up this concern may be the following: "I hear it when you say that you don't want people to think you couldn't handle this on your own. I want to remind you that in this room, my job is just to listen and not have thoughts or judgments about the people I listen to."

Furthermore, recognizing that many boys delay their disclosures, it is imperative for interviewers to ask about the process of disclosure with male victims. Questions like, "What made it okay to talk about it now?" and "Did something or someone stop you from telling before?" can shed light on the reasons why the child did not disclose the abuse right away. Reflecting back to the child will allow the forensic interviewer to learn about any barriers to disclosing the child currently feels.

Given fears of being labeled weak, it is not unusual for a boy to make an empowering, fantastic statement. In one case of child torture in which a five-year-old boy was tied to his bed, the child said he kicked the offender in the groin and threw him out a two-story window. Given the size of the child, it is very unlikely he was able to physically resist the offender. Thus the statement was likely a coping mechanism, in which the child tried to convince himself or the interviewer that he was not weak. The interviewer should not ask for details of a statement that is likely fantastic but should be prepared, as should other potential experts, to explain this dynamic to a trier of fact should the case ever go to court. When the interviewer perceives that the child is potentially making a fantastical empowerment statement because of a dynamic of the abuse, the interviewer may choose to offer the child a possible "out" by asking, "Is that something that happened, something you wish you could have done, or something else?"<sup>24</sup> This is a similar technique to an interviewer responding to repeated answers of "I don't know" over the course of the forensic interview with "Is it that you don't know, you don't want

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<sup>23</sup> Heather A. Turner, David Finkelhor, & Richard Omrod, *Poly-Victimization in a National Sample of Children and Youth*, 38(3) AMERICAN JOURNAL OF PREVENTIVE MEDICINE 323 (2010); David Finkelhor, Richard K. Omrod, & Heather A. Turner, *Poly-Victimization: A Neglected Component in Child Victimization*, 31 JOURNAL OF CHILD ABUSE & NEGLECT 7 (2007).

<sup>24</sup> Anne Lukas Miller. (2008). *Bizarre & Fantastic Elements: A Forensic Interviewer's Response*. III. Update, 21(2-4). Part I. Part II. Part III.

to talk about it, or something else?" If questions such as these yield a response, the interviewer should follow with an open-ended prompt.

When religion is incorporated into abuse, many children raise religious or spiritual questions during the forensic interview.<sup>25</sup> Given that Bobby was abused by a religious man who worked with him, at least in part, as part of a camping ministry, religious or spiritual dynamics may be present. In advance of Bobby arriving at the CAC, the forensic interviewer and the MDT should discuss how to respond to religious questions Bobby may pose such as "Is God mad at me?" As a general rule, it is wise to reflect the question back to generate additional evidence (e.g., "Tell me more about God being mad at you") in the hope of generating additional details that may help the MDT in addressing Bobby's needs. If Bobby insists on an answer to a religious question, it may be wise for the interviewer to simply say, "That's a really important question, but I'm probably not the best person to explore that with you. I promise to make sure we have someone sit down with you to work through these questions." If the interviewer makes this promise, though, the MDT must follow through. Some CACs/MDTs have full- or part-time chaplains skilled at working with children struggling with spiritual questions.<sup>26</sup>

It is imperative for forensic interviewers to listen for statements that point to larger cultural dynamics that are at play for the child, such as those related to the child's gender or religious identity. When cultural dynamics are introduced in the interview, actively or tentatively, interviewers should give the child the opportunity to reflect on those statements. For instance, if Bobby makes a statement like "Guys aren't supposed to do that" or talks about being "angry at God for letting this happen," the interviewer should give Bobby the opportunity to further elaborate on those statements by asking open-ended questions, such as the suggestion above. Interviewers should be adept at recognizing statements discussing details surrounding the feelings the child has about abuse and the external and internal factors that have informed those thoughts and beliefs. Giving the child the opportunity to talk about these statements allows the child to elaborate on how their view of the abuse was shaped and what grooming and manipulation may have contributed to that view. When addressing cultural dynamics, interviewers should be mindful of biases or discomforts that may arise when addressing different aspects of identity and do everything in their power to address these internal biases and prevent them from impacting the forensic interview.

It should also be noted that while research informs that adherence to protocol and the use of open-ended questions and child-friendly techniques are more important than the interviewer and child sharing similar identities, a male victim may have a specific request about the gender of the forensic interviewer.<sup>27</sup> MDTs should make a reasonable effort to honor this request if it is articulated.

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<sup>25</sup> Amy C. Tishelman & Lisa A. Fontes, *Religion in Child Sexual Abuse Forensic Interviews*, 63 CHILD ABUSE & NEGLECT 120 (2017).

<sup>26</sup> Victor I. Vieth, Mark D. Everson, Viola Vaughan-Eden, Suzanna Tiapula, Shauna Galloway-Williams, Reverence Carrie Nettles, *Keeping Faith: The Potential Role of a Chaplain to Address the Spiritual Needs of Maltreated Children and Advise Child Abuse Multi-Disciplinary Teams*, 14(2) LIBERTY UNIVERSITY LAW REVIEW 351 (2020).

<sup>27</sup> Amy Killen Fisher, Tomiko D. Mackey, Carol Langendoen, & Marie Barnard, *Child and Interviewer Race in Forensic Interviewing*, 25(7) JOURNAL OF CHILD SEXUAL ABUSE 1 (2016).



## The Criminal Investigation of “Mr. Joey”

Assuming Bobby discloses one or more crimes against Joey McMaster, the MDT will need to work diligently to collect corroborating evidence. Cases with even small amounts of corroborating evidence are much more likely to result in charges and convictions.<sup>28</sup> The initial intake already provides a number of investigative leads law enforcement detectives must pursue. These leads include:

- **Forensic interviews with other children.** The detectives will want to interview Jemour about the statements Bobby made concerning Mr. McMaster as well as anything Jemour may have noticed that could be corroborative evidence. What did Jemour note about Bobby's demeanor when he made the outcry? Has Jemour made observations about the interactions between Bobby and Mr. McMaster? The children who bullied Bobby should also be interviewed. The cruelties these children inflicted on Bobby may be critical in helping a judge or jury understand any delayed or reluctant disclosure. To this point, when exploring victimization and polyvictimization, it is sometimes necessary to explore other experiences of maltreatment a child has endured, even if they do not necessarily meet a statutory definition of abuse and maltreatment, as they may contextualize the chargeable experiences of abuse and maltreatment.
- **Other victims.** If the investigation determines that Mr. McMaster is a preferential sex offender sexually attracted to pre-pubescent boys, there is a potential for him to accumulate a large number of victims.<sup>29</sup> This may be particularly true if he is operating, at least in part, in a religious community of which he has been a long-standing member.<sup>30</sup> In this case, one boy (Bobby) has made an outcry and Ms. Reynolds, the mandated reporter, has indicated the suspect has had contact with other children in both the school and in a camping ministry. Moreover, Ms. Reynolds states that Mr. McMaster has given rides to and otherwise been alone with children. Given these dynamics, it may be helpful for detectives to develop a list of all the children who may have been in harm's way, particularly those with characteristics similar to Bobby. Obviously, law enforcement will need to follow all leads and specifically follow up with children for whom there is a reasonable suspicion of abuse. At some point, it may be appropriate to ask the local CAC to meet with parents and others whose children have intersected with the suspect. The CAC can give them guidance in addressing this subject with youth in general terms about personal safety and a person to contact if they receive any information or have any concern their child may have been harmed.<sup>31</sup>

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<sup>28</sup> Wendy A. Walsh, Lisa M. Jones, Theodore P. Cross, & Tonya Lippert, *Prosecuting Child Sexual Abuse: The Importance of Evidence Type*, 56 CRIME & DELINQUENCY 436 (2010).

<sup>29</sup> Theodore P. Cross, Victor I. Vieth, Amy Russell & Cory Jewell Jensen, *Adult Sex Offenders Against Children: Etiology, Typologies, Investigation, Treatment, Monitoring, and Recidivism*, in ROBERT F. GEFFNER, JACQUELINE W. WHITE, L. KEVIN HAMBERGER, ALAN ROSENBAUM, VIOLA VAUGHAN-EDEN, & VICTOR I. VIETH, EDS., *HANDBOOK OF INTERPERSONAL VIOLENCE & ABUSE ACROSS THE LIFESPAN* 857, 861 (2022).

<sup>30</sup> Donna Eshuys & Stephen Smallbone, *Religious Affiliations Among Adult Sex Offenders*, 18 SEXUAL ABUSE: A JOURNAL OF RESEARCH AND TREATMENT 279 (2006).

<sup>31</sup> For a discussion of the potential value of personal safety education, see Sandy K. Wuterle & Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches*, in KEITH L. KAUFMAN, *THE PREVENTION OF SEXUAL*

- **Other corroborating witnesses.** Ms. Reynolds can confirm that "Mr. Joey" is Mr. McMaster and has had access to Bobby in gym class and in the church. If Bobby discloses the use of religion in the abuse, Ms. Reynolds can corroborate the "religious" behavior and language Mr. McMaster utilizes. She may also be a rich source for describing interactions between the gym teacher and Bobby and how these interactions may differ from other children. For instance, does Mr. McMaster pay more attention to Bobby than other children?
- **Physical evidence.** Ms. Reynolds states that Bobby brought to school pictures of a camping trip he went on with Mr. McMaster. These pictures need to be located and seized. At the very least, they aid in establishing opportunity.
- **Working with non-offending parent(s).** Although non-offending caregivers are "typically expected to believe and support their child after sexual abuse disclosure," their reactions "range from anger to complete denial, particularly when put in the context of their experiences."<sup>32</sup> It may be that Mr. McMaster has not only groomed Bobby but also Bobby's mother (notable, as Bobby's father is largely absent from his life). Accordingly, Bobby's mother may have some challenges in believing her son was abused. Given Bobby's mother's apparent concern about same sex behavior, this disclosure may also result in reactions that create hardships for Bobby. One or more persons on the MDT may need to work with Bobby's mother on these and other present dynamics. MDTs that address the concerns of non-offending caregivers often build stronger cases and aid the victim in recovery, and the response of a non-offending caregiver may play a decisive role in whether the child recants.<sup>33</sup>
- **Crime scene photographs.** Every place that Bobby discloses to be a location of sexual abuse should be examined and photographed. If, for instance, Bobby was abused in Mr. McMaster's care, at the campground, and in the suspect's home, all of these locations should be visited and photographed. These photographs may aid Bobby in testifying, show how isolated the areas were, and corroborate other details provided in the forensic interview.
- **Behaviors or other signs of trauma.** Teachers, parents, friends, and others may be able to identify Bobby's behaviors that are consistent with abuse. These behaviors may include truancy from school, expressions of reluctance to be with Mr. McMaster, a decline in grades, struggles to sleep, etc. If these behaviors can be shown to occur after particular episodes of abuse, the evidentiary value may be even stronger.
- **Interrogation of the suspect.** Officers need to be trained in understanding the mind of sex offenders and interviewing them in a way that increases the chance for incriminating statements. The ideal, of course, is a complete confession. In cases in which there is a

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VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 109 (2010) citing David Finkelhor, *Prevention of Sexual Abuse Through Educational Programs Directed Toward Children*, 120 PEDIATRICS 640, 644 (2007).

<sup>32</sup> Viola Vaughan-Eden, Stacie Schrieffer LeBlanc, & Yvette Dzumaga, *Succeeding with Nonoffending Caregivers of Sexually Abused Children*, in ROBERT F. GEFFNER, JACQUELINE W. WHITE, L. KEVIN HAMBERGER, ALAN ROSENBAUM, VIOLA VAUGHAN-EDEN, & VICTOR I. VIETH, EDS., *HANDBOOK OF INTERPERSONAL VIOLENCE & ABUSE ACROSS THE LIFESPAN* 789, 791 (2022).

<sup>33</sup> *Id.* at 803.



suspect confession, the rate of prosecution is 90% or higher.<sup>34</sup> The next best outcome is to lock the suspect in stories that can be proven to be false. If, for instance, Mr. McMaster says he was never alone with Bobby, but the government can show through documents or witnesses that this is untrue, the suspect's credibility is diminished. At the very least, Mr. McMaster may corroborate peripheral details provided by Bobby. If, for example, Bobby says he went camping with Mr. McMaster, was given car rides, or once showered with him in the locker room, the detective can aim to corroborate with the suspect as many of these peripheral details as possible.

- **Digital evidence.** Digital evidence plays a role in almost every criminal case, including child abuse cases.<sup>35</sup> The U.S. Supreme Court has described mobile devices as "almost a 'feature of human anatomy,'" and this phenomenon is not limited to adults.<sup>36</sup> Bobby is a young child, but he likely has access to a smartphone. According to the Pew Research Center, 60% of parents indicated their children began engaging with smartphones before the age of five, and 35% of parents indicated their children possessed their own smartphones between the ages of five and eight.<sup>37</sup> A U.K. survey of 2,167 children indicated that 53% of 7-year-old children owned a phone, 90% of 11-year-olds owned a phone, 57% of children sleep with their phone by their bed, and 39% of children questioned indicated "they could not live without their phone."<sup>38</sup>

Given the central role that technology in general (and phones in particular) play in the lives of children, investigators should explore what devices may be repositories of evidence corroborating the abuse perpetrated on Bobby. For example, Mr. McMaster's or Bobby's phones could be used to establish their locations and proximity via cell site location information or various applications that track and store location data, such as Google Dashboard. WiFi routers also have the ability to place suspects "at a scene, at a particular time."<sup>39</sup> Mobile devices may include incriminating or insightful communications, videos, and photos exchanged between Mr. McMaster and Bobby or from Bobby to his peers. The use of livestreaming applications in the context of sexual exploitation has accelerated during the pandemic and may also be present.<sup>40</sup> Use of social media is also common, including by

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<sup>34</sup> Theodore P. Cross, Emelie Ernberg, & Wendy A. Walsh, *The Criminal Justice Response to Child and Youth Victimization*, in ROBERT F. GEFNER, JACQUELINE W. WHITE, L. KEVIN HAMBERGER, ALAN ROSENBAUM, VIOLA VAUGHAN-EDEN, & VICTOR I. VIETH, EDS., *HANDBOOK OF INTERPERSONAL VIOLENCE & ABUSE ACROSS THE LIFESPAN* 1797, 1808 (2022).

<sup>35</sup> Robert J. Peters et al., *Not an Ocean Away, Only a Moment Away: A Prosecutor's Primer for Obtaining Remotely Stored Data*, 47 MITCHELL HAMLINE LAW REVIEW 1073 (2021).

<sup>36</sup> *Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018) (quoting *Riley v. California*, 573 U.S. 373, 385 (2014)).

<sup>37</sup> Brooke Auxier et al., "Children's engagement with digital devices, screen time," Pew Research Center, July 28, 2020, <https://www.pewresearch.org/internet/2020/07/28/childrens-engagement-with-digital-devices-screen-time>, last accessed February 21, 2022.

<sup>38</sup> PA Media, *Most Children Own Mobile Phone by Age of Seven, Study Finds*, The Guardian, Jan. 29, 2020, <https://www.theguardian.com/society/2020/jan/30/most-children-own-mobile-phone-by-age-of-seven-study-finds> (last accessed February 21, 2022).

<sup>39</sup> Dan Blackman & Patryk Szewczyk, *The Challenges of Seizing and Searching the Content of Wi-Fi Devices for the Modern Investigator* (2015), Australian Digital Forensics Conference, <https://ro.ecu.edu.au/cgi/viewcontent.cgi?article=1146&context=adf> (last accessed February 21, 2022).

<sup>40</sup> Michael Sullivan, *Child Sex Abuse Livestreams Increase During Coronavirus Lockdowns*, NPR, April 8, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/08/828827926/child-sex-abuse-livestreams-increase-during-coronavirus-lockdowns> (last accessed February 21, 2022).

young children.<sup>41</sup> Investigators should be alert for the child's online gaming activities and whether evidence of grooming may be present on these platforms.<sup>42</sup>

Importantly, digital evidence is increasingly stored remotely on servers across state lines and around the globe,<sup>43</sup> so it is critical for investigators to send an immediate letter of preservation to relevant internet service providers to avoid destruction of evidence through remote wiping or routine data deletion processes of the provider.<sup>44</sup> Investigators should use subpoenas to develop probable cause. For example, if a detective sends a subpoena to Google with a suspect's Gmail address, it should result in a subpoena return listing all related Google products, some of which (Google Photos, Google Drive, Google Dashboard, etc.) may be useful to articulate probable cause.<sup>45</sup> When in doubt, investigators and prosecutors should use search warrants to acquire content-based information.<sup>46</sup>

- **Forensic evidence.** Because of the sensitivity of modern forensic testing methods, every effort should be made to identify and collect potential sources of biological evidence that could substantiate the claims of abuse. If a location is determined, touch DNA swabs may be retrieved from the surroundings where contact between the victim and suspect may have occurred. For instance, if the child was placed on a bench or kneeled on a floor during the abuse, such evidence should be processed to associate the suspect and victim with the crime scene. DNA may even be retrieved from frequently used objects such as doorknobs in areas that were isolated and unlikely to be compromised by multiple DNA mixtures of non-offending persons. Likewise, detectives should consider the collection of touch DNA from any garments worn during abuse events. If the suspect touched the child as indicated, touch DNA profiles could be generated from the internal or external surface of the garments (e.g., underwear, pants, or shorts) during the contact event, or skin cells from the suspect could likewise slough off the child's skin onto these garments. Studies have shown that it takes mere seconds for sufficient skin cell deposition to occur that could generate a robust DNA profile. Even laundering items may be insufficient in removing sources of DNA for laboratory testing.<sup>47</sup>

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<sup>41</sup> "For children 7-9 years, 32% of parents report use of social media apps, 50% educational apps only, and 18% no apps." National Poll on Children's Health, *Sharing Too Soon? Children and Social Media Apps*, October 18, 2021, 39(4), University of Michigan Health, <https://mottpoll.org/reports/sharing-too-soon-children-and-social-media-apps> (last accessed February 21, 2022).

<sup>42</sup> Nellie Bowles & Michael Keller, *Video Games and Online Chats are "Hunting Grounds" for Sexual Predators*, NEW YORK TIMES, Dec. 2019, <https://www.nytimes.com/interactive/2019/12/07/us/video-games-child-sex-abuse.html> (last accessed February 21, 2022).

<sup>43</sup> Industry forecasters predict significant annual growth rates and increasing global cloud service revenue. See Louis Columbus, *Public Cloud Soaring to \$331B by 2022 According to Gartner*, FORBES (Apr. 7, 2019), <https://www.forbes.com/sites/louiscolombus/2019/04/07/public-cloud-soaring-to-331b-by-2022-according-to-gartner/?sh=7b4726665739>.

<sup>44</sup> Robert J. Peters et al., *Not an Ocean Away, Only a Moment Away: A Prosecutor's Primer for Obtaining Remotely Stored Data*, 47 MITCHELL HAMLINE LAW REVIEW 1073, 1105 (2021).

<sup>45</sup> *Id.* at 1107.

<sup>46</sup> *Id.* at 1107-08.

<sup>47</sup> Francesco Sessa et al., *Touch DNA: Impact of Handling Time on Touch Deposit and Evaluation of Different Recovery Techniques: An Experimental Study*, SCIENTIFIC REPORTS 9, 9542 (2019), <https://doi.org/10.1038/s41598-019-46051-9>; Eva Meixner et al., *Persistence and Detection of Touch DNA and Blood Stain DNA on Pig Skin Exposed to Water*, 16(2) FORENSIC SCIENCE, MEDICINE AND PATHOLOGY 243-251 (Jun 2020), doi: 10.1007/s12024-020-00234-3, Epub 2020 Mar 13. PMID: 32170495; Janine Helmus et al., *Persistence of DNA on Clothes After Exposure to Water for Different Time Periods – A Study on Bathtub*,

If a situation results in low DNA concentrations for the suspect, detectives should consider the application of Y-STR testing if available and if the forensic testing laboratory deems the evidence eligible for testing. Y-STR analysis can be empowering in cases where the victim's DNA profile may be present in high amounts, thereby masking the suspect's DNA profile present in lower quantities.<sup>48</sup>

If not already contemplated, the detective should establish the full meaning of Bobby's statements regarding the abuse event making him "feel good." Research examining the age of ejaculation has determined that a range of around 11 to 15 years of age is typically when a male may spontaneously or consciously ejaculate, producing seminal fluid that could be tested both serologically (bodily fluid testing) and through DNA testing to establish additional details regarding the case and nature of events that unfolded during the abuse.<sup>49</sup> Although Bobby is only in the first grade, Mr. McMaster works with boys approaching the aforementioned age range, which may be probative information for the case should one or more victims be in the early stages of pubescent maturation. In parallel fashion, it is possible that the seminal material may have then been transferred to Mr. McMaster's garments or other items used to potentially remediate or otherwise hide the evidence, where DNA profiles of Bobby and Mr. McMaster could be obtained for further investigative scrutiny. DNA attributed to seminal material has been found to be rather persistent in spite of attempts to obfuscate its presence through actions such as clothes washing.<sup>50</sup>

Finally, the detective should consider establishing the context of "touching" in this event. Did the touching occur in the traditional sense (digitally), or could the forensic interview of the child help establish that touching means something else, such as oral sexual abuse? If the latter, it is possible that serological tests could be performed to substantiate the presence of a bodily fluid, such as saliva, that could highlight further details of the crime(s) and enhance investigative communications with Mr. McMaster regarding how that source of serological and genetic material was deposited on Bobby or his garments.

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Pond, and River, 132(1) INTERNATIONAL JOURNAL OF LEGAL MEDICINE 99-106 (Jan 2018), doi: 10.1007/s00414-017-1695-2, Epub 2017 Sep 30. PMID: 28963636.

<sup>48</sup> Frederick C. Delfin et al., *Y-STR Analysis for Detection and Objective Confirmation of Child Sexual Abuse*, 119(3) INTERNATIONAL JOURNAL OF LEGAL MEDICINE 158-63 (May 2005), doi: 10.1007/s00414-004-0503-y, Epub 2004 Nov 24. PMID: 15565297.

<sup>49</sup> Z. Laron et al., *Age at First Conscious Ejaculation: A Milestone in Male Puberty*, 35(1) HELVETICA PAEDIATRICA ACTA 13-20 (Mar 1980), PMID: 6106006; A. Tomova et al., *Timing of Pubertal Maturation According to the Age at First Conscious Ejaculation*, 43(3) ANDROLOGIA 163-6 (Jun 2011), doi: 10.1111/j.1439-0272.2009.01037.x. Epub 2011 Feb 25. PMID: 21486428; Children's Mercy Kansas City. 2021. *Understanding Puberty*. Retrieved from <https://kidshealth.org/ChildrensMercy/en/parents/understanding-puberty.html>.

<sup>50</sup> Helen Brayley-Morris, Amber Sorrell, Andrew P. Revoir, Georgina E. Meakin, Denise Syndercombe Court, Ruth M. Morgan. *Persistence of DNA from Laundered Semen Stains: Implications for Child Sex Trafficking Cases*, 19 FORENSIC SCIENCE INTERNATIONAL: GENETICS 165-171 (2015), ISSN 1872-4973, <https://doi.org/10.1016/j.fsigen.2015.07.016>.

## Bobby's Medical Care

The medical exam of the victim may serve forensic purposes, but it can also have therapeutic benefits. It should be conducted by a trauma-informed medical provider who speaks in developmentally appropriate language and provides the child with as much decision-making responsibility as possible, including if a caregiver will be present and where they are located in the examination room.<sup>51</sup> Some research suggests that sexually abused males may be particularly wary of medical exams and that adult men may avoid necessary medical care as a result.<sup>52</sup> Accordingly, sensitivity at the outset of the exam may have long-term implications for the child's ability and willingness to access medical care.

## Bobby's Mental Health Care

The emotional and psychological sequelae of sexual abuse are enormous. A mental health referral for Bobby is a start toward interrupting negative self-evaluation that often occurs after abuse. The mental health provider should be trauma-informed and trained in evidence-based trauma therapy to address the needs of the child. The role of the therapist is to facilitate healing while helping the child reduce any symptoms related to the abuse. This includes providing psychoeducation, coping skills, and a safe place for the child to share their feelings of fear, confusion, shame, and guilt, among other emotions. Boys may not disclose for decades, leaving these unprocessed secrets to manifest in many ways, e.g., depression, aggression, promiscuity, substance abuse, or crime. They may not understand that the choices they have made (consciously or not) may be a direct consequence of the abuse. Therapy facilitates a connection between emotions, thoughts, and behaviors and gives way for empowerment and hope.

## Bobby's Spiritual Care

Although there is a significant body of research finding that many maltreated children are impacted spiritually,<sup>53</sup> there is also a large body of research finding that a healthy sense of spirituality may be a significant buffer or source of resilience for abused children.<sup>54</sup> If Bobby articulates or otherwise

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<sup>51</sup> Nicole Ayson & Suzanne Starling, *Genital Examination Techniques*, in ROBERT F. GEFFNER, JACQUELINE W. WHITE, L. KEVIN HAMBERGER, ALAN ROSENBAUM, VIOLA VAUGHAN-EDEN & VICTOR I. VIETH, EDS., *HANDBOOK OF INTERPERSONAL VIOLENCE & ABUSE ACROSS THE LIFESPAN* 789, 791 (2022).

<sup>52</sup> Les Gallo-Silver, Christopher M. Anderson & Jaime Romo, *Best Clinical Practices for Male Adult Survivors of Childhood Sexual Abuse: "Do No Harm"*, 18(3) *THE PERMANENTE JOURNAL* 82 (2014).

<sup>53</sup> Donald F. Walker et al., *Changes in Personal Religion/Spirituality During and After Childhood Abuse: A Review and Synthesis*, 1 *PSYCHOLOGY & TRAUMA: THEORY, PRACTICE & POLICY* 130 (2009); See also, Amy Russell, *The Spiritual Impact of Child Abuse & Exploitation: What the Research Tells Us*, 45 *CURRENTS IN THEOLOGY & MISSION* 14 (2018).

<sup>54</sup> See Thema Bryant Davis et al., *Religiosity, Spirituality, and Trauma Recovery in the Lives of Children and Adolescents*, 43 *PROFESSIONAL PSYCHOLOGY: RESEARCH & PRACTICE* 306 (2012); Terry Lynn Gall, *Spirituality and Coping with Life Stress Among Adult Survivors of Childhood Sexual Abuse*, 30 *CHILD ABUSE & NEGLECT* 829 (2006); Jungmeen Kim, *The Protective Effects of Religiosity on Maladjustment Among Maltreated and Nonmaltreated Children*, 32 *CHILD ABUSE & NEGLECT* 711 (2008); Katie G. Reinhert et al., *The Role of Religious Involvement in the Relationship Between Early Trauma and Health Outcomes Among Adult Survivors*, 9 *JOURNAL OF CHILD & ADOLESCENT TRAUMA* 231 (2016); Ernest N. Jouriles et al., *Divine Spiritual Struggles and Psychological*

demonstrates spiritual wounds, the MDT may need to address this issue. If a mental health professional at the CAC or on the MDT is fluent in spiritual injury research, they may be appropriate to work with the child on this topic. The American Psychological Association has published two treatises to assist in a therapeutic approach.<sup>55</sup> In some instances, it may be appropriate to coordinate mental health care with spiritual care from a faith leader.<sup>56</sup> Some CACs have implemented chaplaincy programs to aid in this process.<sup>57</sup> It may also be important to work with faith leaders to improve their understanding of and abilities to work with sexually abused boys.<sup>58</sup>

## Prosecuting the Suspect

### Preparing Bobby for Court/Pre-Trial Motions

In every child abuse case, the prosecutor should file pre-trial motions, which may reduce the child's stressors in testifying. These motions include a developmentally appropriate oath, a court order requiring the attorneys to ask questions the child can understand, allowing the child to have a comfort item and a support person, modifying the courtroom to make it less intimidating for the child, and taking the child's testimony on a day and time when the child is functioning at their best.<sup>59</sup>

### Jury Selection

Jury selection is the first opportunity for a prosecutor to speak directly to potential jurors and to begin to build the framework of a case. Questions must be worded carefully, but a prosecutor can begin to shape the foundation of the case and work to combat myths about child abuse. Prosecutors should craft questions that probe potential jurors' experiences surrounding sexual abuse, particularly in cases of male victims and perpetrators in positions of power. Jurors' pre-conceived ideas about common child sexual abuse myths such as the existence of medical evidence, the presence of DNA, and immediate disclosure of abuse can also be explored.

In conducting voir dire, prosecutors should pose questions that allow detection of any biases against male victims of abuse. For instance, do the jurors assume a boy could not be sexually abused? Do

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*Adjustment Among Adolescents Who Have Been Sexually Abused*, 10(3) *PSYCHOLOGY OF VIOLENCE* 334 (2019); Tricia Gower, *Caregiver and Divine Support: Associations with Resilience Among Adolescents Following Disclosure of Sexual Abuse*, 109 *CHILD ABUSE & NEGLECT* (Nov 2020).

<sup>55</sup> The American Psychological Association has published two treatises to assist clinicians in addressing the spiritual impact of child abuse and other trauma. See DONALD F. WALKER & WILLIAM L. HATHAWAY, EDS., *SPIRITUAL INTERVENTIONS IN CHILD AND ADOLESCENT PSYCHOTHERAPY* (2013); DONALD F. WALKER ET AL., *SPIRITUALLY ORIENTED PSYCHOTHERAPY FOR TRAUMA* (2015).

<sup>56</sup> Pete Singer, *Coordinating Pastoral Care of Survivors with Mental Health Providers*, 45(3) *CURRENTS IN THEOLOGY & MISSION* 31 (2018).

<sup>57</sup> Victor I. Vieth, Mark D. Everson, Viola Vaughan-Eden, Suzanna Tiapula, Shauna Galloway-Williams, Reverence Carrie Nettles, *Keeping Faith: The Potential Role of a Chaplain to Address the Spiritual Needs of Maltreated Children and Advise Child Abuse Multi-Disciplinary Teams*, 14(2) *LIBERTY UNIVERSITY LAW REVIEW* 351 (2020).

<sup>58</sup> Christopher D. Anderson, *Improving the Response to Male Sexual Abuse: A Primer for Communities of Faith*, 45(3) *CURRENTS IN THEOLOGY & MISSION* 45 (2018).

<sup>59</sup> Victor I. Vieth, *A Trauma-Informed Courtroom: Seven Pre-Trial Motions Child Abuse Prosecutors Should Routinely File*, ZERO ABUSE PROJECT, available online at: <https://www.zeroabuseproject.org/a-trauma-informed-courtroom-seven-pre-trial-motions-child-abuse-protectors-should-routinely-file/>

they believe a boy who is sexually abused must have done something to communicate he wanted to be touched? Do they believe if a boy had an erection that must mean he “enjoyed it”? Do they have any stereotypes as to how a victim should act? Do they believe a “religious” person could not abuse a child?

Given that there are misconceptions about sexual orientation and its role in sexual abuse, such as the idea that LGBTQIA+ sexualities are a motivator of abuse or that most men who perpetrate are gay, it may be valuable to also assess for anti-gay biases in the jury pool.<sup>60</sup> Questions may include: Do you believe that if a boy had a biological reaction to sexual touching from a man, the child must be gay? Do you believe that gay men are more likely to sexually abuse a child than other men? Do you believe that someone who is part of the LGBTQIA+ community is, for that reason alone, less trustworthy?

### Use of an Expert Witness

The dynamics of male victimization are complicated and complex. Testimony from an expert witness may be provided to the jury to assist in their understanding of those dynamics. A witness can be qualified as an expert if their specialized knowledge will help the trier of fact understand the evidence or determine a fact in issue. A jury may need the expertise of a professional well versed in the challenges faced by victims in order to understand behaviors exhibited. In Bobby’s case, an expert could explain to the jury about Bobby’s reluctance to disclose, the impact of the classmates’ bullying, and the influence of family dynamics in sexual abuse cases. In at least some courts, a forensic interviewer may be able to testify about many of these dynamics.<sup>61</sup>

### Witness Order

There is no absolute in selecting the order of witnesses in any child abuse case. As a general rule, though, prosecutors should start and end with strong witnesses. When working with the victim, focus less on when the child’s testimony would be most impactful on the jury and more on the time and day in which the child is functioning at their best. If there is concern the child may struggle on the witness stand or do or say things that may be challenging for the jury to understand, it may be wise to schedule a mental health or other professional’s testimony after the victim to explain or otherwise put in context any statement or behavior that may be confusing or easily misinterpreted. For instance, if a child waves at or blows a kiss to the defendant, the jury may not appreciate that a child abuse victim can nonetheless care about, miss, and even love a perpetrator.

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<sup>60</sup> See generally, Amy Russell, *The People in Your Neighborhood: Working with Sexual and Gender Minority Youth as Victims of Sexual Violence*, in ROBERT GEFFNER, JACQUELYN W. WHITE, L. KEVIN HAMBERGER, ALAN ROSENBAUM, VIOLA VAUGHAN-EDEN, EDs., *HANDBOOK OF INTERPERSONAL VIOLENCE & ABUSE ACROSS THE LIFESPAN* 831 (2022).

<sup>61</sup> See generally, Victor I. Vieth, *The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Expert Testimony Concerning a Forensic Interview in a Case of Child Abuse (Revised and Expanded)*, 47(3) MITCHELL HAMLINE LAW REVIEW 847 (2021).



## Closing Argument

In this case, the prosecutor should cite Bobby's delay and reluctance in disclosing as proof he is not seeking to harm the defendant; he simply wants Mr. McMaster to stop hurting him. The evidence that Bobby was bullied and otherwise not supported can rebut claims that the child is in any way benefiting from making the allegation. Any signs of trauma or behaviors consistent with abuse should be cited as corroborative evidence. The prosecutor should develop a timeline documenting the correlation between interactions with Mr. McMaster and changes in Bobby's behaviors noticed by others or documented in school records. If Mr. McMaster bestowed extra attention or time or provided Bobby with gifts, it should be highlighted in the prosecutor's closing argument. The prosecutor should review Zero Abuse Project's previous publications on closing arguments in child abuse cases and contact Zero Abuse for any assistance needed to develop themes or otherwise craft a powerful closing argument.<sup>62</sup>

## Conclusion

When investigating or prosecuting a case involving the sexual abuse of a boy, the MDT must be cognizant of dynamics that often impair the ability or willingness of a male to disclose abuse. Teams that are more sensitive to these dynamics will be better equipped to address the child's needs in the forensic interview, in the medical exam room, in therapy, and at trial.

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<sup>62</sup> Victor I. Vieth, *We're Just Going to Talk: Presenting Your Case in Opening Statement and Closing Argument*, ZERO ABUSE PROJECT, available online at: <https://www.zeroabuseproject.org/wp-content/uploads/2021/09/Opening-Statement-and-Closing-Argument-Final.pdf>

