

FORENSIC INTERVIEWING:

WHAT EVERY PROSECUTOR NEEDS TO KNOW



**CHILD
ABUSE**
PROSECUTION PROJECT
ASSOCIATION OF PROSECUTING ATTORNEYS

CONTRIBUTORS: Linda Cordisco Steele, M.Ed, LPC and Mary Sawicki

CHILD ABUSE PROSECUTION PROJECT

ASSOCIATION OF PROSECUTING ATTORNEYS

Staff

David LaBahn | President/CEO

Mary-Ann Burkhart | Project Director, Child Abuse Prosecution Project

Mary Sawicki | Senior Attorney, Child Abuse Prosecution Project

Edward Chase | Senior Attorney, Child Abuse Prosecution Project

Aimee Peterson | Project Associate, Child Abuse Prosecution Project

Ursula Donofrio | Training Director, Child Abuse Prosecution Project

Angel Tucker | Director of Communications

Rashaund Savage | Senior Graphic Designer



ASSOCIATION OF PROSECUTING ATTORNEYS
11 DUPONT CIRCLE NW, 5TH FLOOR
WASHINGTON, DC 20036

childabuseprosecution.APAinc.org



This project was supported by Grant # 2015-CI-FX-K004 Awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this publication are those of the author/presenter and do not represent the official position or policies of the United States Department of Justice.



ASSOCIATION OF
PROSECUTING
ATTORNEYS

Contents

Introduction |

Definition of a Forensic Interview |

History of Forensic Interviewing |

National Forensic Interviewing Programs |

Principles of Forensic Interviewing

Overview of Forensic Questioning and Prompts

Recall-Based Questions

Open Narrative Questions or Prompts

Cued Narrative Questions or Prompts

"WH" Questions

Recognition-Based Questions

Developmental Capabilities of Children

Preschool Children

Elementary Age Children

Adolescents

Issues of Memory and Suggestibility

Suggestibility

Child Witnesses and Time

Assessing the Forensic Interview for Prosecutorial Purposes

Additional Considerations

Pre-forensic Interview Process

Forensic Interview Structure

Non-Verbal Cues of Forensic Interviewer

Signs of Coaching

Interview Room Set-up

Post-Forensic Interview Process

Forensic Interviewer as Lay or Expert Witness

Preparing the Forensic Interviewer for Direct Examination

Preparing for Cross Examination of the Forensic Interviewer – Meeting Defenses

The Forensic Interviewer Has Little or No Experience

Forensic Interviewer Not "State Certified"

Forensic Interview Faulty Due to Suggestive Questioning

Forensic Interview Faulty Due to Deviation From the Interview Protocol

Forensic Interviewer Demonstrates Bias

Direct Examination of the Child

Rapport Building Phase

Instructional Phase

Formatting of Questions for the Direct Examination

Question Formats to Avoid

Eliciting Sensory Details from the Child Victim/Witness

The Defense Case

Preparing for Defense Expert on Forensic Interviewing

Review of Defense Expert Resume

Review of Defense Expert Opinion Summary

Successful Cross Examination of the Defense Expert

Implications for Prosecutors

References

ADDENDUM A

Sample Direct Examination of Forensic Interviewer

ADDENDUM B

Sample Direct Examination of Child

ADDENDUM C

Essential Reading for Prosecutors on Court Preparation

ADDENDUM D

Essential Reading for Prosecutors on Suggestibility

Acknowledgements

Author Biographies

1 Newlin et al., 2015 (citing Saywitz, Lyon, & Goodman, 2011)

2 Newlin et al., 2015, p. 3

3 National Children's Alliance, 2016

4 Faller, 2014, p. 35

Introduction

Conducting forensic interviews of children who may have experienced abuse, neglect or witnessed the victimization of another person is a complex task. Familiarity with the principles and techniques of child forensic interviewing is a vital skill for prosecutors and will serve them in three ways. First, it can enable prosecutors to properly review a forensic interview and identify strengths and weaknesses. Second, knowledge of forensic interviewing assists prosecutors when preparing a forensic interviewer for both direct examination and withstanding a vigorous cross-examination. Finally, the use of evidence-based forensic interviewing techniques provides beneficial tools for prosecutors seeking to elicit accurate and truthful statements from children who serve as witnesses.

This document will provide information about child development, as well as the underlying concepts and methods of forensic interviewing. In addition, the materials presented, and prosecution strategies outlined here will enable prosecutors to assess the quality of the forensic interview, prepare and use the forensic interviewer at trial, question child witnesses more effectively, and increase their ability to cross-examine defense expert forensic interviewer witnesses and defend the forensic interview in court. Increased understanding and utilization of these valuable methods will assist prosecutors as they work to protect children from abuse and neglect.

Prosecution Strategy #1

Know as much as possible about the history and principles of forensic interviewing. A thorough knowledge of forensic interviewing is the foundation of an effective case assessment and for trial preparation.

Definition of a Forensic Interview

Forensic interviewing has been defined as “the process of eliciting accurate information from children regarding abuse and neglect”.¹ More specifically, “a forensic interview of a child is a developmentally-sensitive and legally-sound method of gathering information regarding allegations of abuse and/or exposure to violence. This interview is conducted by a neutral professional utilizing research and practice-informed techniques as part of a larger investigative process”.²

The National Children's Alliance (NCA), the accrediting agency for Children's Advocacy Centers in the United States, articulates the purpose of a forensic interview in their guidelines. The NCA states that “the purpose of a forensic interview in a Children's Advocacy Center is to obtain a statement from a child, in a developmentally and culturally-sensitive, unbiased and fact-finding manner that will support accurate and fair decision making by the involved multidisciplinary team in the criminal justice and child protection systems. Forensic interviews should be child-centered and coordinated to avoid duplication”.³

History of Forensic Interviewing

Just as case law on topics such as search and seizure has evolved over the years, so has the process of forensic interviewing. In response to new and innovative research in the field as well as clinical experience, methods of conducting forensic interviews will continue to change and develop.

Forensic interviewing in the field of child abuse has existed in some form for over forty years. In the middle of the 1970's, “the initial professional response was to gather information about sexual abuse of minors by any means necessary. The means included interviewing the child multiple times, asking leading questions, and using other suggestive techniques”.⁴

This legally insufficient approach to interviewing suspected child abuse victims came to a pivotal head in the 1980's. Across the United States there were several highly-publicized daycare cases in which the court found that the suggestive interviews of children led to claims of erroneous convictions of the accused. “As a result of the high-profile daycare cases of the mid-1980's, the United States

5 Vieth, 2009, p. 219

6 Vieth, 2009, p. 190

7 Faller, 2014, p. 42

8 <http://www.nationalchildrensalliance.org/our-story>

9 <http://www.nationalchildrensalliance.org/wp-content/uploads/2018/02/NCA-2016-Annual-Report-1.pdf>

10 National Children's Advocacy Center, 2013, p. 1

11 <https://calio.org/imagis/2016-fi-structure-english.pdf>

12 <http://www.gundersenhealth.org/ncptc/childfirst>

13 <http://nichdprotocol.com/training-material>

14 https://www.cornerhousemn.org/images/CornerHouse_RATAC_Protocol.pdf https://www.cornerhousemn.org/images/Anderson_2013_CornerHouse_Forensic_Interview_Protocol.pdf

15 www.apsac.org

16 <https://works.bepress.com/thomaslyon/5/http://www.westernregional-cac.org/download/tom-lyons-10-step-interview-process/>

17 National Children's Advocacy Center, 2013, p. 1

has moved rapidly towards the development of forensically defensible investigative interviews".⁵ There was movement to define structured, developmentally appropriate, and non-suggestive forensic interviewing approaches to better elicit detailed and accurate statements from children. Child interviewing protocols moved away from employing interviewing "practices that were highly suggestive and even coercive to the children".⁶

After the daycare cases of the 1980's, "hundreds of CACs were developed and several national and state forensic interview training programs were established".⁶ In the 1990's, "dozens of interview structures were developed, most with a focus on the mandated investigators-child protection and law enforcement, and on forensic interviewers at Children's Advocacy Centers".⁷

Today, in the United States, there are close to 800 Children's Advocacy Centers,⁸ which in 2016 provided services to over 324,602 children.⁹ A legally sound forensic interview of a suspected child victim or witness, conducted by a trained forensic interviewer in the child-friendly environment of a Children's Advocacy Center, with the involvement of a multidisciplinary team, is the current gold standard for effective child interviewing.

National Forensic Interviewing Programs

"There are multiple evidence-supported forensic interview models which are utilized throughout the United States, and all of these require the interviewer to adapt the model to the needs of each individual child based upon unique situational variables present".¹⁰ While there is no single recognized forensic interview model or training in the United States, these interview models make use of the same science and include similar phases.

Some of the established forensic interview models that exist today are the NCAC¹¹, Child First/Finding Words¹², NICHD¹³, CornerHouse¹⁴, APSAC¹⁵ and Lyon's 10-step.¹⁶ Prosecutors are advised to familiarize themselves with the nuances of the forensic interviewing approach used by the interviewers in their jurisdiction. Additionally, several states have developed their own models and guidelines.

Principles of Forensic Interviewing

"All protocols recommend an initial phase of rapport building, an introduction of guidelines to help the child witness understand the conversation, and an opportunity to provide a narrative description of an everyday event. Forensic interviewers are encouraged to use the most open-ended approach possible to address the allegations and to allow the child to describe their experiences in their own words".¹⁷

The forensic interviewer strives to strike a balance between the abilities and needs of the child witness and the forensic integrity of the conversation.

ATTENTION TO GOOD FORENSIC APPROACHES IS ESSENTIAL

Key elements include:

- *Use of recall-based questions and prompts*
- *Limited use of recognition-based questions*
- *Avoidance of suggestive questions*
- *Methods of scaffolding the conversation through the inclusion of words, people, and acts previously mentioned by the child in follow-up questions*

Recognition that the forensic interview of a child is only one component of an investigation and prosecution is important. A key goal of the forensic interview is to collect the child's unique and personal information, which can assist law enforcement and child protection in their investigations and decision making.

18 Malloy, La Rooy, Lamb, & Katz, 2011

19 Hershkowitz, Lamb, Orbach, Katz, & Horowitz, 2012

20 Lamb, Orbach, Hershkowitz, Horowitz, & Abbott, 2007

21, 22 Newlin et al., 2015, p. 7

23 Newlin et al., 2015, p. 8

Overview of Forensic Questioning and Prompts

Regardless of the event under discussion, the types of questions and prompts used to elicit children's information impacts both the quality and the quantity of the information gained.¹⁸ Types of forensic questions lie along a continuum with recall-based questions and prompts being the preferred method for requesting information and recognition-based prompts (multiple-choice, yes/no questions, and leading questions) least preferred. Research on questioning child witnesses supports the use of recall-based prompts and questions which encourage children to talk in detail, to provide information in their own words, and encourages a more robust memory search on the part of the child.¹⁹ Additionally, information provided by child witnesses in response to recall-based prompts has been shown to improve in accuracy.²⁰

Categories and types of questions used in forensic questioning are as follows.

Recall-Based Questions

Recall-based questions encourage multiple word answers from children. "Recall prompts are open-ended, inviting the child to tell everything he or she remembers in his or her own words". Recall-based questions are often open-ended questions.²¹ "Open ended questions encourage children to elaborate and to include salient details without significant input from the interviewer".²²

Example:

"Tell me everything that happened"

"And then what happened"

Open Narrative Questions or Prompts

Open Narrative Prompts are the most open-ended questions. "Open ended questions encourage children to elaborate and to include salient details without significant input from the interviewer."

Example:

"Tell me everything that happened"

"And then what happened"

"What else do you remember?"

Cued Narrative Questions or Prompts

Cued Narrative questions are open-ended questions that provide direction to the child without suggesting the answer. Interviewers should "use cued, open-ended questions that incorporate the child's own words or phrases to prompt the child to greater elaboration".²³

Example:

"You said daddy touched your pee-pee. Tell me all about daddy touching your pee-pee."

"WH" Questions

"WH" questions (who, what, when, where, how) are also recall-based, but focus on more specific details. This format of questioning would be useful for prosecutors when they question the child about missing elements in the child's narrative description of events. Even if the child does provide a one-word answer to the question during direct examination, responses from the child are still in their own words.

Example:

"Where is your pee-pee on your body?"

"What do you use your pee-pee for?"

24 Newlin et al., 2015, p. 8

25 Walker, 2013

26 Poole, 2016 and Powell & Snow, 2007

27 Lamb, Hershkowitz, Orbach, & Esplin, 2008

Recognition-Based questions

Recognition-based questions offer alternatives to the child witness.²⁴ Prosecutors must always be mindful of the rules of evidence concerning direct examination. If a question posed by the prosecutor to the child is leading or suggests an answer, it will draw an objection from defense. Recognition-based questions are useful to focus the child and typically offer options, but stop short of implying an answer. The goal of recognition-based questions is to cue children's memories to specific details or elements while still inviting their own unique elaborations.

Example:

"Did your daddy touch your pee-pee over your clothes or under your clothes or something else?"

"Did the touching happen one time or more than one time?"

"Did Daddy say something to you when he touched your pee-pee?"

Avoid: "Did it hurt when Daddy touched your pee-pee?" (leading)

Avoid: "Did Daddy tell you not to tell Mommy?" (leading)

Some children require scaffolding of their responses to be able to organize their accounts into a story model format and to be able to talk about embarrassing topics. Scaffolding is the conversational strategy of including words, people and acts previously mentioned by the child in follow-up questions.²⁵ A variety of responses can assist the prosecutor in encouraging elaboration and clarification from children, including non-verbal responses such as nodding and pausing, use of facilitators such as "OK" and "uh huh", open-cued questions, and focused-cued questions. Follow-up questions should incorporate a child's words or previous statements when requesting additional information or clarification.²⁶ Option-posing questions such as recognition-based questions may be needed as questioning moves to more difficult topics. A series of recognition-based questions should be avoided, as should suggestive questions, and the prosecutor should follow a direct question with an invitation to "tell me more".

Developmental Capabilities of Children

Children of all ages experience abuse and maltreatment; although children participating in the legal system are often school-age (6 to 12) or older. Professionals who question children, whether as a forensic interviewer, an investigator or prosecutor, are well served to develop familiarity with basic child development. The literature on developmental differences in physical, cognitive, linguistic, and socio-emotional functioning is extensive. This paper will only provide a brief overview of some of the key issues. For additional information, we recommend the 2014 edition of Anne Graffam Walker's *Handbook on Questioning Children: A Linguistic Perspective* published by the American Bar Association.

Age is the most important determinant of a child's memory capacity. While very young children are capable of providing accurate information, they attend to and understand less about the world and, thus, remember limited information. The child's age also impacts their receptive and expressive linguistic abilities.²⁷ This brief summary will address issues of memory, language, and developmental concerns.

Children can be grouped into three broad developmental categories: preschoolers, elementary age children, and adolescents; but differences in functioning vary greatly within each group. For example, elementary age children range from 6 to 12 years of age. As any parent knows, there are huge developmental accomplishments during this age span.

Preschool Children

Children as young as 3 years of age can recall and report on past events. However, the language of a preschooler may be understood by family members, but be unintelligible or appear nonsensical to a stranger.

Prosecutors should be mindful that the forensic interview is only one part of the investigation and serves as the gateway to the investigation.

Preschoolers:

- Are very concrete (objects and people are known exclusively by the child's name for each)
- May enjoy using new words even when do not they understand the meaning
- Do better with names, rather than pronouns
- Are overwhelmed and confused when adults use too many words
- Do best with simple sentence construction (one idea per sentence).
- Are unable to monitor their comprehension of questions or the accuracy of their responses
- May answer option-posing questions (yes/no and multiple-choice) by selecting one of the options provided when they do not know the answer

What preschoolers may be able to tell us:

- Who (in their own words)
- What (in their own words)
- Perhaps where (in their own words)

Elementary Age Children

Elementary age children benefit from their additional years of physical development, life experiences, and particularly the opportunity for their brains to “wire up” through the interaction between biology and experience. The horizons of these children have expanded beyond the home. School serves to increase knowledge, provide exposure to new adults and experiences, and opportunities for socialization into the larger community. Children of this age increase their understanding of appropriate behavior and everyday rules of communication. They develop greater comfort with strangers and new situations.

Latency-age children:

- Have longer attention spans and greater ability to regulate attention to a task
- Have language that is more easily understood by an unfamiliar adult
- Are concrete thinkers and still have difficulty with abstract concepts
- Have difficulty with complex or multi-part questions
- May be able to sequence from beginning to end
- Understand that since the adult was not present for the event, she/he does not know what happened
- Are challenged by questions about time (number of times, dating of individual episodes, etc.)
- May struggle with feelings of guilt, shame, and responsibility for their abuse

Adolescents

Prosecutors and jurors may not appreciate the great variation in the verbal and cognitive abilities of adolescents, as they often look physically mature. Often eager to appear grown-up, adolescents may be reluctant to admit a lack of understanding of words or questions, ask for clarification, or turn to adults for help. Indeed, adolescents often report to peers, rather than parents, adults, and authorities. Thus, establishing rapport with a teen victim is crucial and can be challenging. Adolescents are subject to the same biological, environmental, cultural, and historical factors that impact the functioning of all children; and prosecutors must look past surface appearances to determine the adolescent's abilities as a witness.

Adolescents:

- Are going through a period of physical and emotional development, influenced by hormones and the onset of puberty

- Are additionally experiencing a period of active brain development and reorganization in preparation for adulthood
- Maybe a challenge when it comes to building rapport and winning their trust
- May be reluctant to ask for clarification, acknowledge a lack of understanding, or ask for help
- Still benefit from the introduction of interview instructions and narrative practice
- Can be capable of abstract thinking
- May be able to identify distinct episodes and to provide a sequential description of those episodes

Issues of Memory and Suggestibility

Memory is the oldest and most studied aspect of children's cognitive development and a topic that is far beyond the reach of this document. We will only briefly address a few important elements that might clarify some of the challenges faced by child witnesses and the adults who question them. These elements include (1) memory storage, (2) implicit and explicit memory, (3) script and episodic memory, (4) meta-memory and source monitoring, and (5) issues of suggestibility.

A child's memory for any personal experience is influenced by development, culture, language, previous experiences and knowledge, and focus of attention. Memory is limited to the parts of the experience that was attended to, made sense, and was encoded, as well as how long the information was stored. Memory for an experience is not stored as a discrete and permanent trace like a photograph or video; rather, it is reconstructed by linking elements of the memory retrieved from different parts of the brain. Additionally, memory for an event is subject to being updated each time we access it with a tendency to fill in missing elements with new knowledge or understanding. No wonder children's memories for experiences often present some inconsistencies which is a common phenomenon in the realm of psychology, but viewed with suspicion by the legal world. Additionally, adults and children alike experience normal lapses in memory because of lack of attention to specific details, the passage of time, or failure of the memory probe to assist the person in recalling memory of the experience.

Stored memories are the product of right brain (implicit memory) and left brain (explicit memory) interaction, as well as input from other parts of the brain. Implicit memory refers to memories that are stored without words, as when a baby demonstrates a response to a person, a location or an object before they are able to talk. This kind of memory includes procedural skills (riding a bike) or emotional or behavioral responses (flinching or startling when encountering stimuli associated with a negative experience.) Explicit memory allows us to not only react, but to consciously recall, think about, and give words to our remembered experience. An explicit memory includes awareness of the event having happened personally and as a part of one's personal biography. Traumatic experiences often result in a combination of explicit and implicit memory where a child can tell about the event, but never capture the enormity of the entire experience. The child is able to put words to parts of the remembrance of the event with other parts only experienced through emotional and sensory reactions. Autobiographical memory comes into play when children can recall a specific event that they experienced in the past with awareness that it is part of their history. As children's memory abilities evolve, not only do they improve in their capacities to recall and provide details about events, they can also place them within the contexts of other memories. This ability develops through the elementary years and into adolescence, although even adults can be challenged to absolutely specify when some well-remembered events occurred.

Episodic and scripted/gist memory is tied to memory of past experiences. A child's memory for either a singular, one-time experience or for a particularly unique experience of repeated similar events is a memory for an episode. When similar events are repeated across time, children also form a script or gist memory for the elements that are consistent or similar across those repeated experiences (e.g., school day, eating at McDonald's, riding in the car with Mom). Many children who are abused or witness violence in the home have experienced or witnessed similar episodes many times and have formed a script or gist memories for the events. Children may be challenged to tease out distinct

28 State v. Michaels, 136 N.J. 299, 642 A.2d 1372, 1994 N.J. LEXIS 504 (N.J. 1994), Commonwealth vs. Gerald Amirault, 404 Mass. 221 (1997), Buckley vs. County of Los Angeles, 968 F.2d. 791 (1994), State v. Kelly, 456 S.E.2d 861 (N.C. Ct. App. 1995)

29 Poole, Dickinson, & Brubacher, 2014, p. 391

episodes with confidence, and confusion may occur between one episode and another, or between memory for an episode and script memory. The challenge of identifying and describing a specific episode is greater for young children and those who have experienced long-term abuse.

Young children remember information and experiences without much understanding of the process of remembering; fortunately, this capacity improves as they grow older. Meta-memory refers to a child's understanding about what memory is, how it works, and increasing strategies for remembering things (knowledge and experiences). Children begin to better understand that they may or may not know the answers to questions, that they may have known something previously and then forgotten it, and that they may or may not be able to recall that information at another time. As children move through the elementary years and into adolescence, they become able to actively participate in strategies for recovering memories and are aware of their own limitations.

Source monitoring is the process of knowing how and where a particular bit of information was obtained (such as from personal experience, hearing information from another person, or even thinking and wondering about a possible event). Preschool children are not able to identify the source of their knowledge and memory, often responding to an inquiry with "I just knowed it." As children move into early school age and beyond, they grow in ability to recall the sources of their information.

Suggestibility

The daycare cases of the early 1990's heightened our awareness of the dangers of suggestive and/or coercive questioning of children and led to extensive research and improvements in child forensic interviewing practices.²⁸

Children and adults can be susceptible to assenting to false information about an event. "Child witness experts always think in terms of Brain + Context. On the Brain side, we have children's ages and information about abilities and conditions associated with performance during memory interviews. On the Context side, we have evidence of adult influence, the types of questions interviewers ask, and other environmental factors that influence accuracy".²⁹ Individual child characteristics such as young age, extreme compliance, limited cognitive skills or narrative ability, anxiety, and even disorientation in the courtroom can contribute to heightened vulnerability to suggestion about elements of an event. Conversely, contextual influences such as interviewer bias, poor questioning, repeated questions, interrogative style and focus on details that were not meaningful or important to the child provide a suggestive influence. Influence from adults can occur at any juncture along the investigative and legal process.

Children and adults are more susceptible to suggested misinformation related to elements of the event that were peripheral (not meaningful or salient) and not central to the story line of the experience as perceived by the child. Suggested misinformation is more readily accepted when it provides information that fills in the gaps in a child's memory.

Evidence-based protocols encourage an expedient interview by an appropriate interviewer, the use of predominantly recall based questions to facilitate narrative responses, thorough investigative approaches, careful case processing and avoidance of interviewer or investigator bias as leading to better case decisions. In the courtroom arena, the use of developmentally appropriate questioning of children by all parties allows the greatest opportunity for them to provide substantive information. Declarative questions (statements used as a question) and tag questions ("Isn't it true that.....?") should be avoided to reduce confused or misled responses.

A related concept to suggestibility is that of compliance. When pressured to provide an answer to a question or to change a response, some children may acquiesce or comply with the adult even while fully knowing the true response. Evidence-based protocols for interviewing children caution against the use of leading (and particularly misleading) questions, and communicate to children that it is permissible to correct the adult or to provide a "don't know" or "don't remember" response.

Child Witnesses and Time

Research has shown that children can remember events well but still perform poorly when asked to recall when in time they occurred.³⁰ In addition, memory for the timing of an abusive incident decreases at a higher rate than memory for other more salient details. This weakness poses a challenge for prosecutors who seek information about the date of an offense in order to meet charging or indictment requirements.

Research recommends that interviewers avoid asking children how many times an event occurred. For children who have experienced many episodes of abuse, the request for a specific or approximate number of abusive events encourages them to guess. Additionally, the question about number of times risk the child answering that the abuse happened "a zillion times". Such answers can damage the child's credibility with the jury. Forensic interview techniques, mindful of always formulating questions to allow free recall from the child witness, would suggest that interviewers ask about time issues in a more direct, but non-leading manner by focusing the child on particular recalled episodes of abuse.

Example:

"Did Daddy touch your pee-pee one time or more than one time?"

"Tell me all about the first time you remember Daddy touching your pee-pee." "Tell me all about the first time"

"Tell me about the last time you remember Daddy touching your pee-pee." "Tell me all about the last time."

"Tell me about the time [an episode mentioned by the child, such as at a birthday party, etc.]"

"Tell me all about [the birthday party time]."

Avoid:

"Can you tell me if Daddy touched your pee-pee a long time ago or a short time ago?" The terms "long time ago" and "short time ago" are subjective, abstract and not likely to be helpful.

Prosecution Strategy #2

Thoroughly assess the quality of the forensic interview. Review the forensic interview for instances of suggestibility by the interviewer, adherence to interview structure protocol as well as signs that the child may have been coached.

Assessing the Forensic Interview for Prosecutorial Purposes

During case assessment, charging decisions and trial preparation, prosecutors will review the forensic interview and should develop a strategy for the case that includes decisions about the recording as evidence at trial. Depending on a state's laws, prosecutors may call a forensic interviewer to the witness stand in their case in chief and question the interviewer to authenticate the forensic interview in question. Prosecutors should be mindful of their state's specific requirements that must exist before the recording may be shown to the jury during the State's case in chief. Such factors that the court may take into consideration include the age of the child, whether the child has been made available to both parties to testify and the circumstances surrounding the child's statement concerning allegations of abuse.

To do an adequate review of a recorded forensic interview, a prosecutor should be knowledgeable about both nationally recognized standards of practice and the specific protocol implemented by the forensic interviewer. Most of the nationally recognized and state protocols are guided by extensive research on obtaining the best information from child witnesses. Failure to include the steps below can become an area of attack by a knowledgeable defense attorney or defense expert. Some of the basic recommendations routinely included are:

- The interviewer should build rapport with the child by using open questions to inquire about topics which are comfortable and interesting to the child.

- The interviewer should provide interview instructions to all ages of children. With preschool children instructions may be omitted or limited. For children younger than 12, an opportunity to practice each rule can help to insure understanding.
- The interviewer should include an opportunity for narrative practice / episodic memory training, thus helping to increase the child's understanding of the level of detail sought during the interview. The interviewer asks the child to describe in detail a neutral or fun event from the beginning to end. Narrative practice with preschoolers should not include a request for sequence and interviewers should expect less detail.
- The interviewer should begin the transition to the topic of concern / allegation with the most open prompts possible. More prompts which may be necessary with a reluctant child should be carefully selected.
- The interviewer should use a preponderance of recall-based questions to gather the description of the event(s) in the child's words. The interviewer may find it necessary to use closed questions when seeking clarification but should return to open questions to seek more description.
- Reluctant children may require greater focusing by the forensic interviewer, but the interviewer should avoid the use of suggestive questions (questions which provide or imply the answer to the question.)

Additional Considerations

Were standard procedures routinely implemented at the CAC followed in this investigation and interview?

- Scheduling of the FI
- Set-up of FI room
- Observers present in the observation room
- Pre-interview preparation (share information, consider alternative hypotheses, investigative concerns, etc.)
- Opportunity to consult with investigator observers during the interview
- Interview was recorded following routine practice
- Standard procedures following the forensic interview were followed

Did the forensic interviewer follow good practice? If the interviewer made accommodations, can they provide an explanation and reasoning for those accommodations?

- Followed the FI protocol routinely used
- Asked a majority of recall-based questions?
- Maintained a child-friendly, neutral, and consistent demeanor throughout the FI
- Incorporated the child's words and statements in follow-up questions
- Followed up on statements by the children that indicated a possible alternative explanation (other than abuse) for the allegation

Were there indications of coaching or suggestion by someone prior to the interview? If so, did the interviewer explore those statements or behaviors with the child?

ASSESSING FORENSIC INTERVIEWS FOR SIGNS OF COACHING

- *Use of words that seemed developmentally unusual or adult-like rather than typical of this child*
- *Made limited and repeated statements about abuse without being able to answer follow-up questions or provide any context for the statements*
- *Make spontaneous statements about adult statements and questions or opinions.*
- *Tendency by child to use overstatement and interpretation about all behaviors from the accused (negative characterization) throughout the interview*

Prosecutors should be mindful that the forensic interview is only one part of the investigation and serves as the gateway to the investigation. Any concerns about coaching, suggestibility, adult influence on the child to disclose or to withhold information should also be explored by the investigators in conversations with parents, other witnesses, the person receiving the original outcry from the child, and through searching for evidence that corroborates or contradicts statements from the child. Children may receive additional interviews if information arises during the investigation that indicate additional conversation with the child about those issues is warranted.

As prosecutors you want to assess the quality of the forensic interview and the forensic interview process. To do so effectively, particular attention should be paid to the pre-forensic interview process, forensic interview structure, non-verbal cues of forensic interviewer, interview room set-up, and post forensic interview process.

Pre-forensic Interview Process

Depending on your jurisdiction, this segment of the forensic interview process may be named the pre-Team meeting or a similar title. Prosecutors need to ascertain who was present at that meeting and the substance of the meeting. If there was a written report of the pre-Team meeting it should be produced for the prosecutor.

Prosecutors need to know what, if any, information about the allegations did the forensic interviewer know before the interview began. Was there a police report prepared by a member of the MDT that was given to the forensic interviewer to read at the pre-Team meeting? Prosecutors need to obtain that report.

What the forensic interviewer knew about the allegations before the interview commences is often a defense line of questioning. Though rarely would a forensic interviewer go into an interview blind and devoid of any prior information, what information that they did possess and how it may have colored their formulations of questions to the child is a common defense strategy and the prosecutor should anticipate this.

Forensic Interview Structure

Prosecutors need to receive a copy of the recorded forensic interview and analyze it for any potential issues concerning proper protocol and structure. It is imperative that the prosecutor know as much as possible about the forensic interview structure and protocol that the forensic interviewer was trained on. To do this competently, the prosecutor may consider attending training in the interview protocol that is widely used in their community as well as to seek information about the particular protocol from the interviewer themselves as well as their local Children's Advocacy Center. As mentioned previously in this monograph, there are several well established and widely used interview protocols that exist today in the United States.

For a prosecutor to assess the quality of the forensic interview, they must have an understanding of the training that the forensic interviewer has had. In fact, one way to start to effectively assess the quality of the forensic interview is to ask the interviewer if there are any issues that may have come up during the interview that may be a cause for concern. For instance, since there exists no perfect forensic interview, the recording may reveal that the interviewer skipped a segment of the interview structure that they were following, for instance, skipping the rapport building segment. The prosecutor must determine why that happened and if the interviewer can articulate why there was a deviation in interview structure.

In addition, the prosecutor should analyze the forensic interview for any signs of suggestive questioning by the forensic interviewer. Were the questions asked structured in a way to invite a narrative by the child in their own words? The prosecutor should pay particular attention to any questions by the interviewer that suggests an answer or are multiple choice questions.

In assessing the forensic interview, particular attention should be paid to the pre-forensic interview process, forensic interview structure, non-verbal cues of forensic interviewer, interview room set-up, and post forensic interview process.

There may be times that a child wishes to leave the interview room, maybe to use the restroom or to see their parent. The prosecutor should make note that the recording stayed on during that break in the interview and that there was no unrecorded conversation between the child and the interviewer during that time.

The prosecutor should make note of the length of the interview. If the interview was extended, the reasons why should be evaluated. Reasons for an extended interview will vary. It could be that the allegations are so complex as to require an extended interview. In addition, there may be more than one interview in the matter that the prosecutor is analyzing. If there was more than one forensic interview of the child, the prosecutor should find out why from the interviewer. In many cases, an additional interview is appropriate if there are additional allegations or the child was resistant to speak at the first interview.

Non-Verbal Cues of Forensic Interviewer

In analyzing the quality of the forensic interview, the prosecutor should review not only what was said in the interview but how it was said. The prosecutor should make note of any non-verbal cues that the interviewer may have made. Such non-verbal cues may be nodding their head at the child, smiling at the child or changes in tone with the child. Though unlikely since forensic interviewers are highly trained, prosecutors need to anticipate that a defense strategy of highlighting suggestive non-verbal cues made by the interviewer could be very effective.

Signs of Coaching

Prosecutors should scrutinize the forensic interview for any signs that the child may have been coached by anyone to make certain statements. Though each interview is unique, particular attention must be paid to any aspects of the interview where the child reveals a propensity or reluctance to disclose certain information at the direction of another. Also, depending on the age and developmental abilities of the child, the prosecutor should assess whether the child is using terms that would be appropriate for their age and developmental ability. In addition, the prosecutor should assess if any promises or threats to disclose certain allegations were communicated to the child by another.

Interview Room Set-up

Prosecutors need to be familiar with the interview room set-up. What is present in the room at the time of the interview and for what purpose is integral to the integrity of the interview. For instance, was the child told about the recording equipment in the room? If crayons, markers or Play Doh are present and used in the interview, were they properly used per the protocol that the interviewer was trained on. Oftentimes, Play Doh or crayons are used by both the child and interviewer as a tool to reduce anxiety of the child as they reveal sensitive information about abuse. Prosecutors need to anticipate the defense that the Play Doh, for instance was utilized in a manner to unduly distract the child.

Many forensic interview protocols do not recommend the use of anatomical drawings/human figure drawings, finding that most terminology can be clarified without the use of a concrete tool. However, this varies with the community and protocol followed. The prosecutor should be aware of protocol recommendations and issues that may have occurred in their state. If, how and when human figure drawings are used is dependent on the protocol followed by the interviewer. For instance, the human figure drawings may only be used in some protocols for clarification purposes only with the child and not in the general structure of the interview. The prosecutor, to effectively analyze the quality of the interview, must ascertain if the drawings were used properly and in accordance with the interviewer's protocol. Any drawings used in the interview should be clearly displayed on the interview recording and given to law enforcement as evidence.

Post-Forensic Interview Process

It is important for the prosecutor to know what happens directly after the forensic interview. Who escorts the child from the interview room and out of the advocacy center should be noted. If the advocacy center that the interview is held in does participate in a process where the child is given a toy

or stuffed animal or any other treat upon completion of the interview, it is crucial that the prosecutor know who gave the child the item and what the item was. To anticipate a defense line of questioning of the interviewer that the child was induced to make statements at the interview, the prosecutor needs to evaluate when the child was told they would be receiving an item. Obviously, if the child had no knowledge before the start of the interview that they would be receiving a teddy bear at the conclusion of the forensic interview, it would not influence their disclosure.

Prosecution Strategy #3

If the case will move forward to trial, decide what would be the most effective use of the forensic interviewer at trial. Make a determination whether the forensic interviewer will testify as a lay witness, an expert witness, or both.

Forensic Interviewer as Lay or Expert Witness

Prosecutors need to assess for what purpose they are utilizing the forensic interviewer at trial. Depending upon the state, forensic interviewers may provide testimony in court as lay witnesses, expert witnesses or both. Lay witnesses may testify to their direct personal involvement in the forensic interview. Expert witnesses (as outlined in Federal Rule of Evidence 702 below) may testify as to scientific, technical or specialized knowledge, skill, experience or training or education that will assist the trier of fact. The prosecutor may consider utilizing a forensic interviewer at trial to explain the definition of a forensic interview or the basic principles and structure of a forensic interview. At times, the defense may utilize a forensic interviewer or researcher to critique the forensic interview offered by the prosecution.

FRE 702 A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The expert has reliably applied the principles and methods to the facts of the case

Example of State's Direct Examination of Forensic Interviewer for purposes of authentication of forensic interview tape:

Ms. Smith, what is your educational background?

Where are you presently employed?

In what capacity are you now employed?

What is a forensic interview?

How is a forensic interview conducted?

What are the steps of a forensic interview?

What is the purpose of each of those steps?

As a forensic interviewer, what are your work responsibilities?

What, if any, specialized training do you have in the field of forensic interviewing?

Ms. Smith, directing your attention to January 15, 2016, where you working as a forensic interviewer on that day?

At approximately 2:00pm on that day, were you involved in a particular interview?

With whom did you conduct that forensic interview?

Ms. Smith, I am showing you what is marked State's Exhibit #1 and ask you if you can identify it?

Is it a fair and accurate representation of the forensic interview you conducted with Suzie on January 15, 2016?

Your Honor, I move for State's Exhibit #1 to be entered into evidence and I ask that the video be shown at this time to the jury.

Prosecutors may choose to call the forensic interviewer to testify in the case in chief for the purpose of informing the jury about the role, responsibilities and training required of a forensic interviewer. In addition, prosecutors should consider calling a forensic interviewer to the witness stand to educate the jury about common aspects of child abuse disclosure, such as recantation and delayed disclosure.

Example:

Ms. Smith, what is your educational background?

Where are you presently employed?

In what capacity?

What is a forensic interview?

As a forensic interviewer, what are your work responsibilities?

Do you have any specialized training in the area of forensic interviewing?

How, if at all, do you keep current in the field of forensic interviewing?

Can you explain the term "recantation" to the jury?

Based on your clinical experience as a forensic interviewer, your educational background and your continuing education in the field of forensic interviewing, please explain to the jury the role recantation may play, if any, in a child's disclosure of abuse?

*Prosecutors need to keep in mind that the 2005 ruling in the United States Supreme Court case of **Crawford v. Washington**, changed the way prosecutors assess trial strategy in child abuse prosecutions. It is imperative that prosecutors review in detail their state specific statute concerning admissibility of a recorded statement of a child witness.*

Prosecution Strategy #4

Forensic interviewers are often highly trained. Witness preparation is an excellent opportunity for the prosecutor to learn further about the nuances of forensic interviewing. Engage the forensic interviewer in a discussion of what issues or concerns the interviewer may have with the forensic interview in question. Inquire of the forensic interviewer what questions may be appropriate to ask at trial of the interviewer to give the jury a clear understanding of the principles and structure of forensic interviewing.

Preparing the Forensic Interviewer for Direct Examination

It is vital that prosecutors meet with the forensic interviewer before trial to prepare for direct and cross-examination. Prosecutors should:

- Review with forensic interviewers their curriculum vitae to ensure that it is current and includes all prior work, education, publishing, awards, professional associations, continuing education, and specialized training in the forensic interviewing field.
- Discuss with the forensic interviewers their online presence. What may be posted on social media sites can often be fodder by defense to undermine a witness's credibility.
- Stress to forensic interviewers that they should be familiar with the protocol in which they were trained, when and where they were trained and how they followed that forensic interview model during the interview in question.
- Highlight with forensic interviewers that they must be prepared to answer questions about how they conducted any interview in question.
- Advise forensic interviewers that they need to be prepared to explain any changes in protocol since they were trained and why there were changes. It is imperative that forensic interviewers be able to explain the evolving nature of the field and how they incorporate research-based findings into their practice.

- Watch the forensic interview with the witness and discuss any issues or questions that the witness may have.
- Forensic interviewers are highly trained. The prosecutor should learn as much as they can about forensic interviewing from the interviewer. Witness preparation is an excellent opportunity for the prosecutor to enhance their knowledge about forensic interviewing.

Prosecution Strategy #5

Common defense strategies are to attack the qualifications, motive, bias and competency of the forensic interviewer. Anticipate those defenses and thoroughly prepare the forensic interviewer for that line of defense questioning.

Preparing for Cross Examination of the Forensic Interviewer – Meeting Defenses

Prosecutors must anticipate defenses and prepare for them before trial. Listed below are some of the most common challenges and suggestions for responding.

The Forensic Interviewer Has Little or No Experience

Meet this defense by offering testimony of the interviewer's specialized training in the field, observation of forensic interviews and participation in mock interviews that were peer-reviewed. In addition, offer testimony that the interviewer followed protocol for the interview in question and is familiar with peer-reviewed articles and journals in the field.

It is unlikely that any forensic interviewer will be familiar with every research article written in the field of forensic interviewing but every forensic interviewer should be familiar with the work of the leading researchers in the field.

Forensic Interviewer Not "State Certified"

Meet this defense by offering testimony that there is no official licensing agency at present in any state to certify an individual as a forensic interviewer. The witness can explain that there are several nationally-recognized organizations that provide quality training on the principles of forensic interviewing. Such testimony could be offered by an expert witness, such as an individual who trains nationally in the field of forensic interviewing, or by the witness's personal knowledge.

Forensic Interview Faulty Due to Suggestive Questioning

Meet this defense by offering testimony through the interviewer that one must look at the forensic interview as a whole and not in a piecemeal fashion. The structure of each question is certainly one element for consideration, but communication occurs through language, behavior and emotion. In focusing upon the whole versus the parts, the end product is presented as non-leading, non-suggestive and legally sound. It is imperative that prosecutors review the recorded forensic interview in detail in preparation for trial. While reviewing, look for any questions asked by the interviewer that may be considered suggestive or problematic, examine how the child responded, and note any follow up questions that invited the child's narrative or otherwise rehabilitated the interaction. The recorded interview will speak for itself. Acknowledge that there is no perfect forensic interview.

Forensic Interview Faulty Due to Deviation From the Interview Protocol

Meet this defense by offering testimony through the interviewer that the protocol allows for flexibility to respond to the needs of individual children. Perhaps there were multiple short interviews or one that is unusually long. The prosecutor needs to elicit testimony from the forensic interviewer that explains the sound basis for any apparent deviation. For example, children are interviewed across multiple sessions for any number of reasons, including limited attention span, emotional distress, or discovery of additional facts in investigation. Conversely, an interview may be especially lengthy if a child is in active disclosure and has experienced years of abuse.

- 31 Wood & Garven, 2000, p. 112
- 32 Stolzenberg & Lyon, 2014, p. 1
- 33 Stolzenberg & Lyon, 2014, p. 1

Remember that since every child is unique, no two forensic interviews will look exactly the same. It is the responsibility of the prosecutor to offer evidence at trial, whether through the interviewer or a separate expert, about the flexible parameters of protocols and acceptable justifications for so-called deviations.

Forensic Interviewer Demonstrates Bias

Meet this defense by offering testimony through the interviewer about training and compliance with a neutral fact-finding protocol. The forensic interviewer may be asked questions by defense designed to elicit subjective bias, such as a trust in children's statements or a desire to advocate for abused children. Prosecutors can combat this attack by eliciting testimony that the interviewer is trained to be a neutral fact-finder who considers alternative hypotheses, keeps personal opinions out of the process and adheres to a protocol.

Prosecution Strategy #6

Utilize forensic interview techniques and formulate non-suggestive and age-appropriate questions of the child during direct examination.

Direct Examination of the Child

While knowledge of the foundations and components of direct examination are essential skills for a prosecutor, what is oftentimes lacking is specific training on adapting the prosecutor's general knowledge and techniques about direct examination of adults to child witnesses. We must remember that children are not miniature adults. Implementation of the principles and techniques of child forensic interviewing can enable prosecutors to successfully tailor their questions to the appropriate level for the child witness.

Importantly, "Research has shown that improper and clumsy interviewing can negatively affect the accuracy of children's statements regarding abuse."³¹ Prosecutors are officers of the court and seekers of justice. The goal of a prosecutor in a criminal case is not to win at all costs, but rather to seek the truth. To attain that goal, forensic interviewing techniques seek to elicit the clearest and most concise narrative of the child's disclosure in a non-leading format.

It is the prosecutor who must call a child to testify on the witness stand and elicit information. Because of this responsibility, prosecutors must take time to build rapport with the child, working to establish comfort and trust. Additionally, jurors respond to hearing the child disclose any abuse in their own words. When prosecutors ask closed-ended questions during direct examination, children are not free to recall the details of abuse in their own words. A recent study by Thomas Lyon and Stacia Stolzenberg illustrated the need for attorneys to receive specific training in asking children questions in the courtroom. This study looked at seventy-two criminal cases of sexual abuse involving children under 13. The study revealed that "attorneys exhibited little sensitivity to the age of the child in selecting their questions"³² and that "prosecutors' questions were more open-ended than defense attorneys, but most questions asked by either attorney were yes/no questions, and children tended to provide unelaborated answers".³³

Rapport Building Phase

Meeting with the child for trial preparation purposes provides an ideal time to establish rapport. Building rapport with the child will strengthen the trust and confidence the child has in the prosecutor and will allow both the prosecutor and child to get to know each other in a non-threatening environment. Since the basic foundation of the forensic interviewing method is to tailor the questioning of the child to the child's developmental and emotional stage, it is crucial that the prosecutor begin to know as much about the child as possible at the outset.

34 Ahern, Stolzenberg, & Lyon, 2015

35 Ahern, Stolzenberg, & Lyon, 2015.
p. 2

36 Ahern, Stolzenberg, & Lyon, 2015.
p. 2

37 Ahern, Stolzenberg, & Lyon, 2015.
p. 2

38 Ahern, Stolzenberg, & Lyon, 2015,
p.16

39 Newlin et al., 2015, p. 8

40 Newlin et al., 2015, p. 8

A recent study conducted by Ahern, Stolzenberg, and Lyon examined how well prosecutors give instructions and build rapport with child witnesses in the courtroom prior to a direct examination.³⁴ The study analyzed courtroom transcripts involving 168 child witnesses from the ages of 5 to 12 who testified in child abuse cases in the 1990's.³⁵ The results of the study indicated that "prosecutors failed to effectively administer key interview instructions, build rapport, or rely on open-ended narrative producing prompts during the early stage of questioning".³⁶ The implications for prosecutors from this study would suggest that failure to properly instruct the child and build rapport prior to conducting the direct examination of the child could lead to "children not as prepared"³⁷ as they should be for trial and that the child witnesses are then "underperforming"³⁸ in the courtroom.

During preparation meetings, prosecutors should employ forensic interviewing techniques and become aware of the child's "developmental, emotional and cultural needs".³⁹ Through these meetings, prosecutors glean insight into how children respond and what challenges may arise in eliciting testimony in court. For example, a child may not make eye contact or have difficulty speaking above a whisper. Depending upon the issue, a prosecutor may benefit from consulting with the child's therapist or other trusted adult for ideas or suggestions on how to help the child cope with anxiety, shyness, embarrassment or stress. In addition, during trial preparation meetings, prosecutors should get to know as much as they can about the child's individual needs and challenges by speaking to family members or disability specialists, if need be.

Instructional Phase

During trial preparation, prosecutors should instruct the child that it is ok to correct them, as well as to say if they do not understand a question or instruction.⁴⁰ For younger children it is helpful to practice each instruction to insure understanding and comfort.

Example of instructional phase:

If I ask you something and you don't know the answer, it is okay to say you don't know.

If I ask you something and you do know the answer, I want you to do your very best to tell me what you know.

Johnny, it is ok to tell me if you do not understand a question I am asking you.

It is ok to correct me Johnny, if I make a mistake when I am asking you questions.

Formatting of Questions for the Direct Examination

When questioning children, prosecutors should remember that they are seeking narratives expressed in the children's own words. Prosecutors should ask one question at a time and be clear and concise. Prosecutors should avoid double negatives or compound questions as they can cause confusion on the part of the child and lead to inconsistencies. A hallmark of forensic interviewing is to structure the least leading and least suggestive questions possible.

Prosecutors may feel a pressure in the courtroom to keep the case moving. In some instances, prosecutors may be tempted to break the silence with another question if a child witness is slow to respond. Silence during the direct examination of the child is not the enemy of the prosecutor. In fact, allowing children to gather their thoughts before answering is recommended in the forensic interview process.

Question Formats to Avoid

Prosecutors should avoid the use of pronouns when questioning their child witnesses. Depending on the age and developmental stage of the child, pronouns can be confusing.

Example:

"Tell me everything your mother said."

Avoid:

"Tell me more about what she said."

Avoid compound sentences and double negatives.

Example:

"Tell me what you told your mother."

"Tell me what you told your sister."

Avoid:

"Can you tell me about what you told your mother and then tell me what you told your sister?"

Example:

"Tell me more about feeling happy." (Assuming the child previously has used the word happy).

Avoid:

"Tell me more about not feeling bad."

Prosecutors should avoid questions that contain words or concepts that are not developmentally appropriate for the particular child with whom they are working. For example, many children do not know or feel comfortable with such words as vagina, oral sex, penis, ejaculation, sexual intercourse and penetration. It is incumbent upon the prosecutor to know about the child's developmental stage and use of language.

In addition, prosecutors should resist the urge to sanitize the child's language to make it more generally acceptable to the adult jurors. In the courtroom, prosecutors should use the language that the child has used in their prior disclosures. For example, if the child has referred previously to her vaginal area as her "flower", prosecutors should format questions on direct examination using that terminology. In addition, as the child testifies on direct examination, prosecutors must be attentive and focused, continuing to adapt their prepared direct examination questions using the terminology that the child uses from the witness stand.

Prosecution Strategy #7

Assess the compelling sensory details of the child in the forensic interview. Highlight those sensory details in the opening statement, child's testimony and the closing argument.

Eliciting Sensory Details from the Child Victim/Witness

Sensory details provide compelling support for children's allegations. For some, it can be useful for the prosecutor to craft questions that are anchored to specific senses. Though a six-year-old, for example, may not fully understand ejaculation, it can nonetheless be powerfully described by eliciting testimony about its color, smell, feeling or taste.

Example:

"You told me that stuff came out of daddy's pee-pee into your mouth. Tell me more about what came out of daddy's pee-pee."

"Tell me everything you saw/felt/tasted/heard"

"Did you see it?"

"What did it look like?"

"Did you feel it?"

"What did it feel like?"

"Did you taste it?"

"What did it taste like?"

Prosecution Strategy #8

Assume the defense attorney is well versed in the tenets of forensic interviewing and has prepared a vigorous cross examination strategy for the forensic interview prosecution witness. Particularly prepare the forensic interviewer for defense questioning concerning any particular issues with the forensic interview in question such as a deviation from protocol or suggestible questioning.

⁴¹ Leichtman & Ceci, 1995

⁴² Ceci, Huffman, Smith, & Loftus, 1994

The Defense Case

One of the more common defense strategies is to attack the credibility of children in general. For example, the defense may ask the forensic interviewer the following questions on cross examination:

Example:

Kids lie, don't they?

Your kids have lied to you in the past, correct?

Kids lie to get out of trouble, yes or no?

Prosecution response: It is the role of the jury to assess credibility of witnesses. The opinion of the forensic interviewer as to children's credibility generally is not relevant and should be objected to. In addition, any direct question by the defense that asks the interviewer if they believe the child's disclosure is also not relevant and certainly not the role of a neutral professional forensic interviewer.

Another line of questioning on cross examination by the defense is to suggest that the child in question who participated in the forensic interview is not credible due to the suggestive nature of the interviewer's questions.

Prosecutor Response: Prosecutors should be familiar with two of the more prominent early studies on children's memory and suggestibility, commonly referred to as the Sam Stone Study⁴¹ and the Mousetrap Study.⁴² The Sam Stone study involved over 170 preschoolers who were subjected to highly suggestive questioning by the interviewer as well as stereotyping (of Sam Stone) by the interviewer. This research study is widely cited as revealing results that indicate that the younger the child, the more susceptible the child is to stereotypical and highly suggestive questioning.

The Mousetrap Study also involved questioning of preschoolers. In this study the preschoolers were subjected to repeated questions by the interviewer. Results of the study indicated that repeated questioning by the interviewer can lead to children believing they experienced an event when they did not.

The recorded forensic interview speaks for itself. The prosecutor, if allowed to play the recorded interview in court, should highlight the fact that the interview was conducted per the particular protocol and free of any suggestive, stereotypical or repetitive questioning (in contrast to above studies). In addition, the prosecutor should note certain aspects of the interview, for example, where the child corrected the interviewer as an example that the child was disclosing their own narrative. If, in fact, a suggestive question was asked by the interviewer, the prosecutor should, on direct examination, question the interviewer about that event and how, if at all, the interviewer attempted to rephrase the questions. For example, if the interviewer mistakenly used the name of the alleged perpetrator before the child disclosed that name, what steps did the interviewer then take to explain to the child that the child can correct the interviewer if the interviewer had made an error in using that certain name.

Another defense tactic may be to diminish the forensic interview by claiming that the forensic interviewer interviewed the child for a lengthy amount of time or on more than one occasion.

Prosecutor response: The prosecutor should anticipate this line of questioning and elicit on direct examination why the child was interviewed for a considerable length of time or for multiple interviews. Review during witness preparation with the interviewer the reasons for the lengthy interview. Reasons for a lengthy forensic interview can vary but may include complex allegations, multiple alleged perpetrators, or developmental or physical issues with the child. In addition, multiple interviews may occur for a variety of reasons that may include new allegations or the child was not ready emotionally at the first scheduled interview.

Prosecution Strategy #9

Contact the Association of Prosecuting Attorneys to obtain any transcripts or materials concerning the defense expert to assist in preparing to cross examine the defense expert.

Preparing for Defense Expert on Forensic Interviewing

Review of Defense Expert Resume

The defense may use an expert witness who is a forensic interviewer or researcher to critique the forensic interview in question. A defense strategy may be to attack the question structure of the interview or the qualifications of the interviewer. The defense may also attack the state's forensic interviewer on motive or bias grounds. The prosecutor should review the defense expert's credentials in advance to ascertain whether the defense expert has sufficient training and experience to be qualified as an expert witness in the field of forensic interviewing.

Review of Defense Expert Opinion Summary

If the prosecutor's state discovery laws allow, the prosecutor should receive a pre-trial summary of the defense expert's opinion of the forensic interview. That summary should be reviewed by the prosecutor in conjunction with the state's forensic interview witness before trial to ascertain any inconsistencies or issues in the defense expert opinion summary to properly prepare for cross-examination.

Successful Cross Examination of the Defense Expert

There is no substitute for a thorough pre-trial preparation by the prosecutor in anticipation of a vigorous cross-examination of the defense expert. Potential areas of cross-examination of the defense expert may be:

Inaccuracies or errors in defense expert resume / cv:

- Prosecutors should review the defense expert resume (or curriculum vitae) for errors, experience and lack thereof
- For example, if the expert has no forensic interview training in the last ten years, that would be an important deficit to highlight

Lack of experience with children or forensic interviewing:

- Defense expert may be a researcher who has never evaluated a child for clinical or forensic purposes
- Defense expert may be a clinician with no experience in forensic interviewing

Lack of knowledge concerning child in question:

- Defense expert has never met nor interviewed the child in question
- Defense expert is not part of the multidisciplinary team and knowledge is only secondhand

Lack of expertise in the field of forensic interviewing:

- Defense expert relying on outdated research in the field
- Defense expert has not received any current education in the field of forensic interviewing
- Last training defense expert attended in area of forensic interviewing was many years ago.
- This knowledge is insufficient due to the evolution of forensic interviewing techniques based upon new research.

Comparison of defense expert testimony in cases is inconsistent:

If available, prosecutors should obtain transcripts in which the defense expert has testified in similar cases. It is very powerful testimony if a prosecutor can impeach a defense witness with inconsistencies using the expert's own words from previous trials. The Association of Prosecuting Attorneys can be a useful resource for prosecutors seeking expert witness information and transcripts.

Prosecution Strategy #10

Recognize that the area of forensic interviewing is a fluid one and ever changing. Continue to keep abreast of the latest research and clinical changes in forensic interviewing.

Implications for Prosecutors

The techniques and principles of forensic interviewing will continue to evolve through research and its application to practice. It is vital for prosecutors to embrace the tenets of forensic interviewing, utilize them with child witnesses and keep current with the field. For their efforts, prosecutors will understand their evidence, elicit optimal testimony from children, and by extension create safer communities through successful prosecutions. We must collaborate with our Children's Advocacy Centers to ensure that the forensic interviewer, as well as the child, is prepared for testimony at trial.

References

- Ahern, E. C., Stolzenberg, S. N., & Lyon, T. D. (2015). Do prosecutors use interview instructions or build rapport with child witnesses? *Behavioral Sciences & the Law*, 33(4), 476-492.
- Ceci, S. J., Huffman, M. L. C., Smith, E., & Loftus, E. F. (1994). Repeatedly thinking about a non-event: Source misattributions among preschoolers. *Consciousness and Cognition*, 3(3-4), 388-407.
- Hershkowitz I., Lamb M., Orbach Y., Katz, C. & Horowitz, D. (2102). The development of communicative and narrative skills among preschoolers. *Child Development*, 83(2), 611-622.
- Faller, K. C. (2014). Forty years of forensic interviewing of children suspected of sexual abuse, 1974–2014: Historical benchmarks. *Social Sciences*, 4(1), 34-65.
- Lamb, M. E., Hershkowitz I., Orbach Y., & Esplin, P. (2008). Factors affecting the capacities and limitations of young witnesses. In *Tell Me What Happened: Structured Investigative Interviews of Child Victims and Witnesses* (pp. 19-61). Chichester, West Sussex, UK: Wiley-Blackwell.
- Lamb, M. E., Orbach, Y., Hershkowitz, I., Horowitz, D., & Abbott, C. B. (2007). Does the type of prompt affect the accuracy of information provided by alleged victims of abuse in forensic interviews?. *Applied Cognitive Psychology*, 21(9), 1117-1130.
- Leichtman, M. D., & Ceci, S. J. (1995). The effects of stereotypes and suggestions on preschoolers' reports. *Developmental Psychology*, 31(4), 568-578.
- Malloy, L. C., La Rooy, D. J., Lamb, M. E., & Katz, C. (2011). Developmentally sensitive interviewing for legal purposes. In M. E. Lamb, D. J. La rooy, L. C. Malloy, & C. Katz (Eds.), *Children's Testimony: A Handbook of Psychological Research and Forensic Practice* (2nd ed) (pp. 1-13). Chichester, West Sussex, UK: Wiley-Blackwell.
- National Children's Alliance. (2016). *Standards for Accredited Members*, 2017 ed. Washington, DC: Author.
- National Children's Advocacy Center. (2013). Position Paper on the Introduction of Evidence in Forensic Interviews of Children. Huntsville, AL: Author.
- Newlin, C., Cordisco Steel, L., Chamberlin, A., Anderson, J., Kenniston, J., Russell, A., Stewart, H., & Vaughn-Eden, V. (2015). *Child Forensic Interviewing: Best Practices*. *Juvenile Justice Bulletin*, NCJ 248749. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- Poole, D. A. (2016). *Interviewing Children: The Science of Conversation in Forensic Contexts*. Washington, DC: American Psychological Association.

Poole, D. A., Dickinson, J., & Brubacher, S. (2014). Sources of Unreliable Testimony from Children. *Roger Williams University Law Review*, 19, 382-410.

Powell, M. B., & Snow, P. C. (2007). Guide to questioning children during the free-narrative phase of an investigative interview. *Australian Psychologist*, 42(1), 57-65.

Stolzenberg, S., & Lyon, T. (2014). How attorneys question children about the dynamics of sexual abuse and disclosure in criminal trials. *Psychology, Public Policy and Law*, 20(1), 19-30.

Vieth, V. (2009). The forensic interview at trial: Guidelines for the admission and scope of expert testimony concerning an investigative interview in a case of child abuse. *William Mitchell Law Review*, 36(1), 186-219.

Walker, A.G. (2013). *Handbook on Questioning Children* (3rd ed.). Washington, DC: ABA Center on Children and the Law.

Wandrey, L., Lyon, T. D., Quas, J. A., & Friedman, W. J. (2012). Maltreated children's ability to estimate temporal location and numerosity of placement changes and court visits. *Psychology, Public Policy, and Law*, 18(1), 79-104.

Wood, J., & Garven, S. (2000). How sexual abuse interviews go astray: Implications for prosecutors, police, and child protection services. *Child Maltreatment*, 5(2), 109-118.

ADDENDUM A

Sample Direct Examination of Forensic Interviewer

A. Foundation

Please state your name.

What is your occupation?

How long have you been employed as a forensic interviewer?

What is a forensic interview?

What is your educational background?

What is your work background?

What, if any, specialized training do you have in forensic interviewing?

In what specific forensic interviewing protocol were you trained?

Please relate to the court the principles of this protocol.

Prior to your interview of Suzy in this case on January 15, 2016, how many forensic interviews had you observed, if any?

Prior to January 15, 2016, how many forensic interviews had you conducted, if any?

How many of these forensic interviews were peer reviewed, if any?

Prior to January 15, 2016, how many mock forensic interviews did you conduct, if any?

What, if any awards have you received in this field?

What, if any, materials have you published in this field?

What professional groups do you participate in, if any, in this field?

What, if any, continuing education do you participate in in this field?

B. Core of Direct Examination

Directing your attention to January 15, 2016, were you working on that day?

Where were you working?

In what capacity were you working?

What were your work responsibilities at that time?

At approximately 2:00PM on January 15, 2016 were you assigned a particular task, if any?

What was that task?

Who, if anyone, was present during this interview?

Where did this interview take place?

Please describe the interior of the interview room.

Please describe any protocol, if any, that you follow when conducting a forensic interview?

What are the components of the forensic interview in which you have received training specialized training?

What happened, next?

How long did the interview last?

What happened then?

Who was present at the Team Meeting?

At the conclusion of the Team meeting, what, if anything did you do?

ADDENDUM B

Sample Direct Examination of Child

Rapport Stage:

"Hello, what is your name?"

"How old are you?"

What is your address?

"Who do you live with?"

"Tell me some things about your family."

"What do you like to do for fun?"

"Tell me about []."

"Do you go to school?"

"What grade are you in?"

"Tell me about [] grade."

Instructional Stage:

"When we talk in the courtroom, it is important to tell me what really happened."

"If I ask you a question that you do not understand, it is ok to say that you do not understand and I will ask you the question in a different way."

"If I say something that is wrong, it is ok for you to correct me."

Transition questions

"Tell me what you are here to talk about today."

"Did someone tell you why you were coming to the courtroom to talk to me today?"

"Tell me about that."

Core of Direct Examination:

"Tell me about what Daddy did to you."

"You just told me that Daddy touched your private."

"Tell me more about Daddy touching your private."

"Tell me more about how Daddy touched your private."

"What did it feel like when Daddy touched your private?"

"Where is your private on your body?"

"What do you use that part of the body for?"

"You told me that daddy asked you to touch his private."

"Tell me more about that."

"What does daddy's private look like?"

"Where on Daddy's body is his private?"

ADDENDUM C

Essential Reading for Prosecutors on Court Preparation

Irvine, B., Jack, F., & Zajac, R. (2016). Preparing children for cross-examination: Do the practice questions matter?. *Psychology, Crime & Law*, 22(9), 858-878.

Katz, C. (2015). 'Stand by me': The effect of emotional support on children's testimonies. *British Journal of Social Work*, 45, 349-362.

Lyon, T. D., Saywitz, K. J., Kaplan, D. L., & Dorado, J. S. (2001). Reducing maltreated children's reluctance to answer hypothetical oath-taking competency questions. *Law and Human Behavior*, 25(1), 81-92.

Nathanson, R., & Saywitz, K. J. (2003). The effects of the courtroom context on children's memory and anxiety. *The Journal of Psychiatry & Law*, 31(1), 67-98.

Nathanson, R., & Saywitz, K. J. (2015). Preparing children for court: Effects of a model court education program on children's anticipatory anxiety. *Behavioral Sciences & the Law*, 33(4), 459-475.

Rainville, C. (2012). Preparing children with post-traumatic stress disorder for court: A multidisciplinary approach. *ABA Child Law Practice*, 31(10), 129, 134-137.

Walker, J. (2012). If I'm the party, Where's the cake?: The need for comprehensive child-witness court preparation programs. *Centerpiece*, 3(1), 1-6.

ADDENDUM D

Essential Reading for Prosecutors on Suggestibility

Almerigogna, J., Ost, J., Bull, R., & Akehurst, L. (2007). A state of high anxiety: How non-supportive interviewers can increase the suggestibility of child witnesses. *Applied Cognitive Psychology*, 21(7), 963-974.

Ceci, S. J., & Bruck, M. (1993). Suggestibility of the child witness: A historical review and synthesis. *Psychological Bulletin*, 113(3), 403-439.

Connolly, D. A., & Price, H. L. (2006). Children's suggestibility for an instance of a repeated event versus a unique event: The effect of degree of association between variable details. *Journal of Experimental Child Psychology*, 93(3), 207-223.

Eisen, M. L., Goodman, G. S., Qin, J., Davis, S., & Crayton, J. (2007). Maltreated children's memory: Accuracy, suggestibility, and psychopathology. *Developmental psychology*, 43(6), 1275-1294.

Eisen, M. L., Qin, J., Goodman, G. S., & Davis, S. L. (2002). Memory and suggestibility in maltreated children: Age, stress arousal, dissociation, and psychopathology. *Journal of Experimental Child Psychology*, 83(3), 167-212.

Hritz, A. C., Royer, C. E., Helm, R. K., Burd, K. A., Ojeda, K., & Ceci, S. J. (2015). Children's suggestibility research: Things to know before interviewing a child. *Anuario de Psicología Jurídica*, 25(1), 3-12.

Imhoff, M. C., & Baker-Ward, L. (1999). Preschoolers' suggestibility: Effects of developmentally appropriate language and interviewer supportiveness. *Journal of Applied Developmental Psychology*, 20(3), 407-429.

Lyon, T. D. (1998). New wave in children's suggestibility research: A critique. *Cornell Law Review*, 84, 1004-1087.

Lyon, T. D. (2002). Applying suggestibility research to the real world: The case of repeated questions. *Law and Contemporary Problems*, 65(1), 97-126.

Ogle, C. M., Block, S. D., Harris, L. S., Goodman, G. S., Pineda, A., Timmer, S., ... & Saywitz, K. J. (2013). Autobiographical memory specificity in child sexual abuse victims. *Development and Psychopathology*, 25(02), 321-332.

Poole, D. A., Dickinson, J., & Brubacher, S. (2014). Sources of unreliable testimony from children. *Roger Williams University Law Review*, 19, 382-410.

Quas, J. A., Davis, E. L., Goodman, G. S., & Myers, J. E. (2007). Repeated questions, deception, and children's true and false reports of body touch. *Child Maltreatment*, 12(1), 60-67.

Richardson, G., & Kelly, T. P. (2004). A study in the relationship between interrogative suggestibility, compliance and social desirability in institutionalized adolescents. *Personality and Individual Differences*, 36(2), 485-494.

Roebers, C. M., & Schneider, W. (2005). Individual differences in young children's suggestibility: Relations to event memory, language abilities, working memory, and executive functioning. *Cognitive Development*, 20(3), 427-447.

Acknowledgements

The Association of Prosecuting Attorney's Child Abuse Prosecution Project would like to thank the following individuals for their edits and review of this monograph. It is much appreciated.

Allison M. Foster, Ph.D., Licensed Clinical Psychologist

Muriel K. Wells, M.Ed., MLIS, Digital Information Librarian, National Children's Advocacy Center

Erin O'Brien, Prosecutor, Chester County, PA

Author Biographies

Linda Cordisco Steele, M.Ed, LPC is Curriculum Chair and Senior Trainer for the National Children's Advocacy Center (NCAC). As a trainer for the NCAC, Linda has conducted more than 450 trainings across the U.S. and abroad. She has presented workshops at local, regional, state, national, and international child abuse conferences. Her areas of expertise include child forensic interviewing, child development, victim advocacy, and working within the multidisciplinary team setting. In addition to training, Linda currently serves as a Child Forensic Interview Specialist at NCAC and provides supervision and consultation on forensic interviews locally and nationally. Linda previously conducted forensic interviews at four other children's advocacy centers: Prescott House Children's Advocacy Center in Birmingham, Alabama, The Safehouse in Albuquerque, New Mexico, the CAC of the Bluegrass in Lexington, KY, and Gateway CAC in Kentucky. In addition to providing forensic interviews, Linda served as Clinical Director for the Prescott House, NCAC, and The Safehouse of Albuquerque. Additionally, while in New Mexico, Linda served as the Project Director of the Mobile Interviewing Project, which serves the Navajo Nation and Zuni Pueblo, as a program of All Faiths Receiving Home in Albuquerque. She has also served as Clinical Director, Director of Victim Services, and Acting Executive Director of the Crisis Center of Jefferson County in Alabama. Linda has 30 years of experience in therapy and advocacy work with victims and extensive training experience regionally, nationally, and internationally. Linda received her Master's in Education from the University of Pittsburgh and is a Licensed Professional Counselor.

Mary Sawicki is a senior attorney at the Association of Prosecuting Attorney's Child Abuse Prosecution Project. In this position, Ms. Sawicki provides technical assistance, resources, and training on contemporary child abuse legal issues at local, state and national speaking engagements for child abuse prosecutors and allied professionals. She brings to this position twenty-three years as a prosecutor in the Worcester County, MA District Attorney's Office. For a majority of those twenty-three years, Ms. Sawicki was the Chief of the Child Abuse Prosecution Unit, prosecuting and supervising the prosecution of crimes against children and persons with disabilities. Most recently, Ms. Sawicki was a Practitioner in Residence at Suffolk University Law School in Boston, MA teaching child welfare law and developing internship placements for law students in the child advocacy field. Ms. Sawicki has authored several articles on current child abuse prosecution topics and co-authored two United States Supreme Court amicus briefs on child abuse prosecution confrontation clause issues. She is a recipient of the Access to Justice Prosecutor Award given by the Massachusetts Bar Association. She received her law degree from New England School of Law in Boston, MA.



ASSOCIATION OF PROSECUTING ATTORNEYS
11 DUPONT CIRCLE NW, 5TH FLOOR
WASHINGTON, DC 20036
childabuseprosecution.APAinc.org