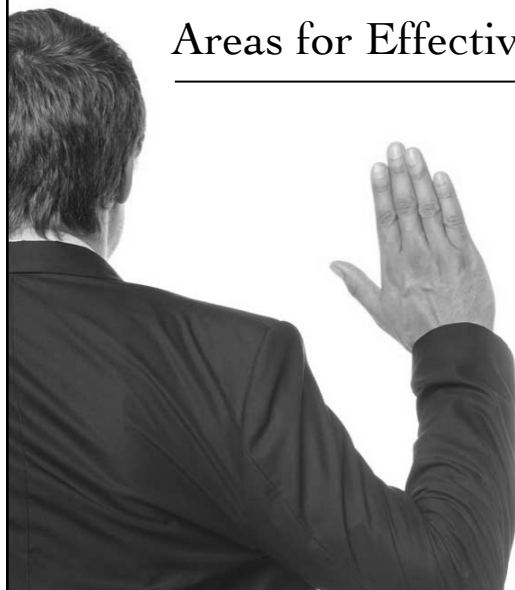


# Defending the Forensic Interview:

## Areas for Effective Direct & Cross



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ASSOCIATION of  
PROSECUTING  
ATTORNEYS



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## Learning Objectives

- Suggestibility
- Lying Kids
- Coaching
- Other Common Defenses
- Trial Tips

## Memory & Suggestibility

Defending the Interview



## Defining Suggestibility

- Clinical Definition:
  - The degree to which one's memory or recounting of an event is influenced by suggested information or misinformation.
  - Can be result of:
    - Being told what to say
    - Asked questions in way that alters recollection

How would you define  
Suggestibility for a jury?



## Areas of Defense Attack

Two main ways defense will introduce suggestibility:

1. Interviewer
2. Before and/or After Interview
  - Even if person was well-meaning

## Defense Attacks on Suggestibility



<https://www.youtube.com/watch?v=Qv9hvon7DDk>



## Mouse Trap Study

Ceci, S.J., Huffman, M.L.C., Smith, E., & Loftus, E.F. (1994). Repeatedly thinking about a non-event: Source misattributions among preschoolers. *Consciousness & Cognition*, 3, 388-407

- Routinely used by defense experts
- Essential premise is that repeated questioning can lead kids to falsely believe that event happened to them
- This is used to attack forensic interviewers as well as other individuals
- Children susceptible to “source misattribution”
  - Forget source of their memory & start to believe as true

## Mouse Trap Study

- Children were 3-6 years old
- Questioned over a 10 week period
- Asked different questions each week, except the following question which remained the same:
  - “Have you ever got your finger stuck in a mouse trap and had to go to the hospital?”
- But defense experts will repeatedly get the results of the study WRONG

## Mouse Trap Study

- Experts will claim that **REPEATED QUESTIONING** leads to false reporting
  - More kid questioned – worse it is. So X number in this case was terrible.
- Researchers:
  - “While it is possible to mislead young children into claiming that they experienced nonevents, **the frequency of doing so does not increase over time.**”
- In fact, the number of false reports didn’t always go up with more questioning
  - With both older & younger groups, went down by week 7

## Mouse Trap Follow-Up

Huffman, M.L., Crossman, A.M. & Ceci, S.J. (1997) Are false memories permanent? An investigation of the long-term effects of source misattributions. *Consciousness and Cognition*, 6, 482-490

- 22 children from the original study were reinterviewed 2 years later to determine if “false memories” were permanent
- Children recalled 77% of all true events
- Only consented to 13% of all false events, compared to previous 22% false consent rate
- Children “recanted” their earlier false consents 77% of the time, after the 2-year delay.
- Question defense expert about this!
  - How long does it take case to get to trial??

## When Attacking Interview

- If defense is attacking forensic as being suggestible, must talk about how study conducted versus how interview conducted:
  - Kids not asked same question over 10 week period
  - Kids not asked deliberate misleading questions
  - Kids not asked leading question introducing facts
  - Did interviewer ask Source Monitoring questions?

## Attacking Outside Influence

- If defense is saying improper questioning or influence from others outside forensic interview affecting statements:
  - Always look at age of child
  - Level of detail given by the child
  - Whether child was gently challenged on claims
  - Questioned vs. Telling

## What Constitutes Questioning?

- Are the parents really questioning the child, or simply asking “What happened?”
  - Nature of talking to the child
  - Number of time discussed facts with child
  - May need to present this evidence at trial
- Interviews versus Conversations
  - Are studies like mouse trap really all that applicable if they means are different?

## Extent of Questioning

- If parents are talking to child, how much detail are they really asking, and asking REPEATEDLY:
  - Example: Parent asked the child if it hurt, and the child said yes.
    - Is the parent going to ask for detailed information on how exactly it hurt?
    - Is the parent going to ask whether it hurt over and over to the point where child suffers “source misattribution?”

## The Methods Matter

- How the researchers were able to get the child to assert false information as true was extremely important
  - Not necessarily reflective of the real world
  - Forensic Interviewers / Investigators not going to these extreme measures
  - Parents (without ill intent) aren't going to these lengths

## The Methods Matter

### **Jury Must Understand:**

The whole purpose of the forensic interview protocols is to minimize to the greatest extent any possibility of suggestibility

## Sam Stone Study

- Another study heavily relied upon by the defense
  - Will say things like 72% of kids gave false reports
- Stereotype Induction
  - Negative things like you'd say about an ex-spouse
  - Told children 12 misdeeds that researcher saw Sam do
  - Visited child for 4 weeks prior to kids seeing Sam

Michelle D. Leichtman & Stephen J. Ceci, The Effects of Stereotypes and Suggestions on Preschoolers' Reports, 31 DEVELOPMENTAL PSYCHOL. 568 (1995).

## Sam Stone Study



Park Productions: <https://www.youtube.com/watch?v=Q-B4AsF1ma0>

## The Methods Matter

- After Sam's Visit ~
- Interviewers used HIGHLY SUGGESTIVE questions when interviewed the children four times over an eight week period:
- First Interview:
  - Interviewer showed child soiled teddy bear & ripped book
  - Asked child to speculate as to who did it

## The Methods Matter

Next Three Interviews:

Interviewers asked series of highly suggestive questions that presupposed Sam did the misdeed

Ex: "Did Sam Stone rip the book with his hands, or did he use scissors?"

Ex: "When Sam Stone got the bear dirty, did he do it by accident, or on purpose?"

- Asked regardless of child reporting misdeeds

## The Methods Matter

- 10 weeks later, children interviewed again in non-leading fashion
  - 72% of the 3-4 year-old children falsely reported
  - This is where some defense experts will want to stop
  - Must be explain further

## What's Often Overlooked

- “Dramatic Developmental Trends”
  - Authors recognize this
  - False reports for 5 & 6 year olds 1/2 of younger kids
  - School aged children even less likely
- Subject Matter of Study
  - Ripping book / soiling bear drastically different than sexual abuse



## Persistence of “False Reports”

- “Counter-Suggestibility”
  - Final interview contained 2 questions mildly skeptical of the false claims
  - Asked children if they saw misdeeds
    - Cut false reports by half
  - “You didn’t really see him rip book (or soil bear), did you?”
    - Cut number by another half

## Persistence of “False Reports”

- The Final Numbers
  - Always keep in mind the extreme suggestive techniques used over extended period of time
  - 21% of 3 & 4 year olds maintained misdeeds occurred
  - 5% of the 5 & 6 year olds maintained misdeeds occurred
- So NOT the 72% the defense will say

## What This Means...

- Is it possible for young children to be suggestible?
  - Yes
- But is it probable if we follow protocols?
  - NO

## Evaluating Higher Risk Cases

- Following circumstances should be evaluated as potentially being higher risk for suggestibility:
  - Custody / Divorce cases
  - Multiple victims still in contact with each other
  - Children who disclose after being in therapy
  - Children who have been questioned extensively before the forensic interview
  - Interviewer veered severely off protocols
  - Possibly interviews with neglected children
    - Benedan, L. et al (2018). Suggestibility in neglected children: The influence of intelligence, language, and social skills. *Child Abuse and Neglect*, 51-60.

## Gail Goodman Studies



### **THE CLOWN STUDY** (1991)

Rudy, L., & Goodman, G. S. (1991). Effects of participation on children's reports: Implications for children's testimony. *Developmental Psychology*, 27(4), 527-538.

## The Clown Study

- Pairs of kids, ages 4-7, were sent into a trailer where there was a man dressed as a clown
- One child interacts with the clown, while the other child watches and does not interact
  - Activities involved some physical contact, like helping child dress in clown suit, lifting child up to take pictures, painting child's face, and making balloon animals

## The Clown Study

- 10-12 days later: kids are individually asked misleading questions such as:  
“He took your clothes off, didn’t he?”
- Also asked open-ended, non-misleading questions

## The Clown Study

- Results:
  - Not one of the kids who interacted with the man made a false report
  - Only one 4 year old bystander made a false report of abuse claiming he and participant were spanked by the clown

## Gail Goodman Studies



### PHYSICAL EXAM STUDY (1991)

Karen J. Saywitz, Gail S. Goodman, Elisa Nicholas &  
Susan F. Moan, Children's Memories of a Physical  
Examination Involving Genital Touch: Implications for  
Reports of Child Sexual Abuse, Journal of Consulting &  
Clinical Psych., 1991, Vol. 59, No. 5

## Physical Exam Study

- 72 non-abused females between 5-7 years old
- 50% had standard check up with vaginal & anal exam
- 50% had standard check up with scoliosis exam
- Then interviewed 1 week or 1 month later
  - Free-recall, direct, and misleading questions

## Physical Exam Study

- Sample Questions:
  - “Did the doctor put something inside your mouth?”
  - “Think about...” “Tell me everything you remember about...”
  - “Did he take your clothes off?”
  - “How many times did the doctor kiss you?”
  - “Did the doctor touch you there?” (pointing to doll)
  - “Did the doctor ever touch you before that day?”

## Results of Questions

### Genital Exam Group

- Frequently didn’t discuss touches at all in free recall
- More children reported with direct questions
- 5 year olds more likely to disclose genital contact
- No sexually explicit behavior exhibited with dolls

### Scoliosis Exam Group

- NO false reports in response to free-recall
  - NO false reports from 7-year-olds from leading questions
  - 5-year olds:
    - 3 errors in direct questions
    - 4 errors in misleading / abuse related questions
- out of 215 questions**

## Other Reading

- **Child Forensic Interviewing: Best Practices**, Chris Newlin, Linda Cordisco Steele, Andra Chamberlin, Jennifer Anderson, Julie Kenniston, Amy Russell, Heather Stewart, and Viola Vaughan-Eden; Office of Juvenile Justice and Delinquency Prevention (2015).
  - <https://www.ojjdp.gov/pubs/248749.pdf>
- **Lyon, T. D.** (2001, Fall). Let's not exaggerate the suggestibility of children. *Court Review*, 38, 12-14.
  - <https://works.bepress.com/thomaslyon/14/>
- Poole, D. A., & Lindsay, D. S. (2002). Reducing child witnesses' false reports of misinformation from parents. *Journal of Experimental Child Psychology*, 81, 117-140.
  - <http://web.uvic.ca/~slindsay/publications/2001PooleLind.pdf>
- **Question Types in Forensic Interview of Children: A Selected Bibliography** (updated 2017). National Children's Advocacy Center
  - <https://calio-org.calio.idm.oclc.org/images/question-types-forensic-interviews.pdf>

## Dolls & Drawings

- Dolls and Drawings
  - Are they used?
  - Under what circumstances used?
  - When during interview are they used?
  - How were they used?
- Bibliography Summarizing All Research:
  - <https://calio-org.calio.idm.oclc.org/images/01use-of-media-in-forensic-interviews-of-children.pdf>

## In Summary

- Focus the jury to:
  - Protocols, and how they were followed
  - Single interview, versus repeated questioning
  - Lack of factors needed to produce results in Sam Stone and Mouse Trap
  - Age of children
  - Lack of external influences (if possible)
  - Looking at the big picture





## The Child is Lying

- Lying child is different from suggestible child
  - A child who was subject to suggestibility and source misattribution would believe what they are saying is the truth
  - This can be an important distinction for the jury
  - A lying child would have a motivation to do so

## Prevalence of Lying or Exaggeration

Statistically small percentage (2% - 10%)

- Mikkelsen, E. J., Gutheil, T. G., & Emens, M. (1992). False sexual-abuse allegations by children and adolescents: Contextual factors and clinical subtypes. *American Journal of Psychotherapy*, 46(4), 556-570.

Study: Prepubescent children who tested positive for STD (and no prior allegation of abuse).

- Only 43% gave verbal confirmation of sexual abuse

Studies have shown that more than 1/2 of children who participate in investigative interviews do not disclose abuse, even when there is evidence supporting a high probability of abuse

Hershkowitz, I., Orbach, Y., Lamb, M. E., Sternberg, K. J., & Horowitz, D. (2006). Dynamics of forensic interviews with suspected abuse victims who do not disclose. *Child Abuse & Neglect*, 30, 753–769.

Katz, Carmit, Hershkowitz, Irit, Malloy, Lindsay C., Lamb, Michael E., Atabaki, Armita, & Spindler, Sabine



## Children & Lying

- A primary motive for young children's lies is to avoid punishment for misdeeds
- But by 5 years old, children understand that lying itself can be punished
- So even at young ages, children appear to evaluate the consequences of their disclosures, which affect their behavior

- Lyon, T., Malloy, L., Quas, J., Talwar, V. (2008). Coaching, Truth Induction, and Young Maltreated Children's False Allegations and False Denials. *Child Dev.* 914 - 929

## How to Address Lying

- First and Foremost:
  - Forensic Interviewers are not truth detectors
  - Role of interviewer is not to determine if child telling the truth
  - Important to explain the role of forensic interview to jury
  - Also, limited information FI likely has about the case

## Behaviors

- Importance of demeanor
  - Children respond differently to trauma
  - Explore the various affects
  - Does demeanor and age of child matter?
    - Teens
- Human communication is more than just words
  - Studies show can't necessarily determine truthfulness from transcript.



## Age of Children

- Younger kids can certainly lie, but difficult to maintain false story due to cognitive limitations
  - Lyon, T., Malloy, L., Quas, J., Talwar, V. (2008). Coaching, Truth Induction, and Young Maltreated Children's False Allegations and False Denials. Child Dev. 914 - 929
- Devil is in the details
  - Sensory details are extremely important
  - Let's us know that child experienced abuse, versus told or imagined

## “I Don’t Know”

- Look for times where child says “I don’t remember” or “I don’t know”
  - If child lying, not likely to decrease or diminish what happened
  - How can child/teen anticipate all the other moving parts of the investigation?
- Would have to be a Really Good Actress



## Coaching

## What is Coaching?

- Encouragement and/or Rehearsal of False Reports
  - Can be thought of an offshoot of both Suggestibility and/or Lying
- Two Types of Coaching:
  - To make false allegations
  - To hide true instances of abuse

## Promise to Tell the Truth

- Even younger children understand morality, developing in the preschool years
  - Lyon, T., Malloy, L., Quas, J., Talwar, V. (2008). Coaching, Truth Induction, and Young Maltreated Children's False Allegations and False Denials. *Child Dev.* 914 - 929
- Promise to tell the truth has been shown to increase honesty among children
  - Talwar et al. (2002, 2004). Children's conceptual knowledge of lying and its relation to their actual behaviors: Implications for court competence examinations. *Law & Human Behavior.* 395-415.
  - Lyon, T. (2011). Assessing the competency of child witnesses: Best practice informed by psychology and law. *Children's Testimony: A handbook of psychological research and forensic practice*, Second Edition.

## Keep An Eye Out

- Asking child if they know why there are there
  - If kid doesn't know, may decrease likelihood of coaching
- Young kids don't always know they are supposed to hide that they were coached
- Using words outside their vocabulary
- Inability to provide developmentally-appropriate contextual details
- Younger kids engaging in negative stereotyping
  - Ex: "We don't call him daddy anymore. We call him Steve."

## Topics to Discuss with Expert

- Discuss the following with expert on stand:
  - What is coaching?
  - Examples they have encountered!!
  - Part of training is to spot coaching
  - Indicators they look for
  - Difficulty of coaching younger children
  - Difficulty of remembering details over time



## Use of Expert

Which expert should you use?

- Forensic Interviewer
- Outside expert
- Other expert
  - Ex: expert in child development, memory, etc.



## Daubert / Frye Challenges

- Challenge whether the research the defense wants to use is relevant to the facts of the case
  - Ex: Victim is 9 years old. Defense wants to discuss suggestibility and will rely on research of pre-school aged children
  - Argument is that experts should only be allowed to talk about research that closely matches age of victim
- Pre-Trial motions also help educate the judge

## Overall Interview

- Must continue to stress that jury must evaluate interview as a whole
  - Does a “bad question” affect the rest of the interview?
- Admit mistakes, but be able to explain why overall interview still ok



## Edward Chase

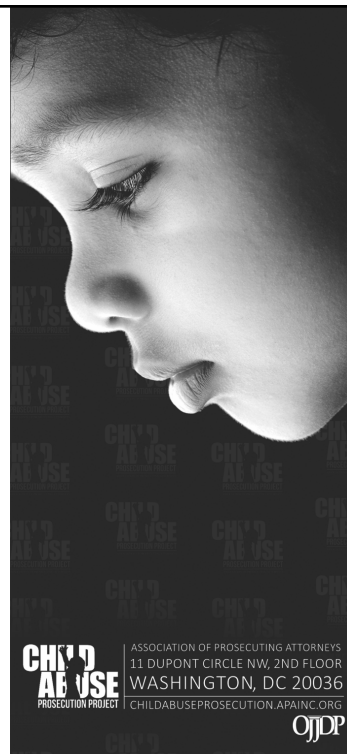
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