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Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony

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TABLE OF CONTENTS

I. INTRODUCTION	6
II. MEMORY AND SUGGESTIBILITY: IMPLICATIONS FOR INVESTIGATIVE INTERVIEWING AND COURTROOM TESTIMONY	7
A. <i>Children's Memory Ability</i>	7
1. <i>Free Recall, Cuing, and Memory Prompts</i>	11
a. <i>Free Recall</i>	11
b. <i>Cuing and Memory Prompts</i>	13
2. <i>Memory Fade Over Time</i>	14
3. <i>The Vocabulary of Interviewing: "Open-Ended," "Focused," "Suggestive," and "Leading" Questions</i>	15
4. <i>The Effect of Multiple Interviews on Memory</i>	17
5. <i>Repeating Questions Within a Single Interview</i>	23
6. <i>Stress and Memory</i>	23
7. <i>Childhood Amnesia</i>	25
8. <i>The Debate Over "Repressed" Memories of Abuse</i>	25
9. <i>Summary</i>	26
B. <i>Suggestibility</i>	27
1. <i>Selected Research Findings Regarding Children's Suggestibility</i> ..	27
2. <i>Suggestibility Is Multiply Determined</i>	29
3. <i>Recreating the Context of the Event; Use of Props</i>	29
4. <i>Anatomically Detailed Dolls</i>	30
5. <i>Suggestibility Regarding Central Details vs. Peripheral Details</i> ..	33
6. <i>The Effects of Stereotypes and Accusatory Atmosphere</i>	33

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7. *The Interviewer's Dilemma: "Should I Ask Only Open-Ended, Minimally Suggestive Questions and Risk Missing Evidence of Abuse, or Should I Ask Suggestive Questions and Risk Increased Inaccuracy?"* 35

 a. *Generally Accepted Interviewing Techniques* 35

 b. *The Psychological and Developmental Justifications for Cautious Use of Specific Questions During Investigative Interviews* 44

 i. *The Disclosure Process in Sexual Abuse* 45

 ii. *Developmental Justification for Suggestive Questions* ... 48

 iii. *Children's Emotional Development and the Need for Specific and Focused Questions* 49

 c. *Innovative Interview Techniques* 49

 d. *Summary* 51

III. CHILDREN'S COMMUNICATIVE COMPETENCE 52

 A. *Linguistic Complexity* 52

 B. *Children's Limited Understanding of Legal Terms* 53

 1. *Words That Kindergartners Understand to Some Degree* 54

 2. *Words That Most Sixth Graders Do Not Understand* 54

 C. *Questions About Time, Date, and Distance* 55

 D. *Children's Limited Ability to Monitor How Well They Understand Questions* 55

 E. *Children's Inconsistency* 56

 1. *The Disclosure Process* 57

 2. *Developmental Reasons for Children's Inconsistency* 57

 F. *Summary* 59

IV. CHILDREN IN COURT 59

 A. *The Need for Judicial Control When Children Testify* 59

 B. *Case Law Concerning the Court's Authority to Accommodate Child Witnesses* 60

 C. *Establishing Ground Rules for Attorneys* 63

 D. *Preparing Children to Testify* 64

 E. *Children's Limited Understanding of the Legal System* 67

 1. *Three- to Seven-Year-Old Children* 68

 2. *Eight- to Eleven-Year-Old Children* 69

 3. *Twelve- to Fourteen-Year-Old Children* 69

 4. *Summary* 69

 F. *Children's Fears About Testifying* 69

 G. *Recesses During Child's Testimony* 70

 H. *Scheduling a Child's Testimony* 71

<i>I. Allowing a Child Witness a Comfort Item</i>	71
<i>J. Support Person for a Child Witness</i>	71
<i>K. Tone of Voice, Objections, Argument</i>	73
<i>L. Psychological Research on the Effects of Testifying</i>	73
V. CONCLUSION	76
VI. APPENDIX	78

I. INTRODUCTION

Judges and attorneys who question children in court often have apprehensions about young witnesses. For instance, legal professionals wonder how well children can provide accurate eyewitness testimony, how easy or difficult it is to mislead children into false reports, how to optimize children's accuracy, how to prepare a child for court, how to question children, and how to determine if special courtroom procedures are warranted. Judges and attorneys can profit from knowledge gained through recent psychological research on children's memory and suggestibility, as well as research focused on children's performance on the witness stand.

Beginning in the mid-1980s, the psychological study of children as witnesses in court and as subjects of pretrial investigative interviews grew at an impressive rate.¹ Entire books and journal issues are devoted to these topics.² Important research and publication is underway in the United States, England,³ Scotland,⁴ New Zealand,⁵ Australia,⁶ Canada,⁷ and elsewhere.⁸

1. The increase in psychological research on children as witnesses was influenced by several factors, including a dramatic increase in the reporting of child abuse during the 1970s and 1980s. *See, e.g.*, DAVID WEISE & DEBRA DARO, CURRENT TRENDS IN CHILD ABUSE REPORTING AND FATALITIES: THE RESULTS OF THE 1994 ANNUAL FIFTY STATE SURVEY (1995).

2. *See, e.g.*, STEPHEN J. CECI & MAGGIE BRUCK, JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY (1995) [hereinafter JEOPARDY IN THE COURTROOM]; CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY (Gail S. Goodman & Bette L. Bottoms eds., 1993) [hereinafter CHILD VICTIMS]; CHILDREN AS WITNESSES (Helen Dent & Rhona Flin eds., 1992); CHILDREN'S EYEWITNESS MEMORY (Stephen J. Ceci et al. eds., 1987); JAMES GARBARINO & FRANCES M. STOTT, WHAT CHILDREN CAN TELL US (1989); INTERNATIONAL PERSPECTIVES ON CHILD ABUSE AND CHILDREN'S TESTIMONY (Bette L. Bottoms & Gail S. Goodman eds., 1996) [hereinafter INTERNATIONAL PERSPECTIVES]; LUCY S. MCGOUGH, CHILD WITNESSES: FRAGILE VOICES IN THE AMERICAN LEGAL SYSTEM (1994); MEMORY AND TESTIMONY IN THE CHILD WITNESS (Maria S. Zaragoza et al. eds., 1995); JOHN E.B. MYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT CASES (1992); NANCY W. PERRY & LAWRENCE S. WRIGHTSMAN, THE CHILD WITNESS: LEGAL ISSUES AND DILEMMAS (1991); PERSPECTIVES ON CHILDREN'S TESTIMONY (Stephen J. Ceci et al. eds., 1989); JOHN R. SPENCER & RHONA FLIN, THE EVIDENCE OF CHILDREN: THE LAW AND THE PSYCHOLOGY (2d ed. 1993); THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS: IMPLICATIONS FOR EYEWITNESS TESTIMONY (John Doris ed., 1991) [hereinafter THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS]; Symposium, *International Perspectives on Children's Testimony*, 23 CRIM. JUST. & BEHAV. 260-422 (1996).

3. *See, e.g.*, GRAHAM DAVIES & ELIZABETH NOON, AN EVALUATION OF THE LIVE LINK FOR CHILD WITNESSES (1991); HOME OFFICE & DEPARTMENT OF HEALTH, MEMORANDUM OF GOOD PRACTICE ON VIDEO RECORDED INTERVIEWS WITH CHILD WITNESSES FOR CRIMINAL PROCEEDINGS (1992).

4. *See, e.g.*, KATHLEEN MURRAY, LIVE TELEVISION LINK: AN EVALUATION OF ITS USE BY CHILD WITNESSES IN SCOTTISH CRIMINAL TRIALS (1995); Rhona Flin, Ray Bull, Julian Boon & Anne Knox, *Child Witnesses in Scottish Criminal Trials*, 2 INT'L REV. VICTIMOLOGY 309, 327 (1993) [hereinafter Flin et al., *Child Witnesses in Scottish Criminal Trials*] (finding that their "data indicate that the majority of children were able to give their evidence reasonably well in terms of providing at least some detail relatively fluently"); Rhona Flin, Ray Bull, Julian Boon & Anne Knox, *Children in the Witness-Box*, in CHILDREN AS WITNESSES, *supra* note 2, at 167.

5. *See* Margaret-Ellen Pipe, Susan Gee & Clare Wilson, *Cues, Props, and Context: Do They Facilitate Children's Event Reports?*, in CHILD VICTIMS, *supra* note 2, at 25.

6. *See* Kay Bussey, *Lying and Truthfulness: Children's Definitions, Standards, and Evaluative Reactions*, 63 CHILD DEV. 129, 135 (1992) (finding that "even preschoolers could differentiate between lies and truthful statements about misdeeds. Although the second and fifth graders were more accurate in their identification of both lies and truthful statements than preschoolers, the preschoolers' correct identifications were significantly above

Much of the recent psychological research focuses on two issues: (1) Children's memory and suggestibility as these characteristics pertain to investigative interviews of children, and, to a lesser extent, (2) children's performance on the witness stand. In this Article, we review psychological research on these issues.⁹ Additionally, we draw implications from the research to help judges and lawyers appreciate the practical realities of investigative interviews, and to assist the bench and bar in dealing effectively with young witnesses. Part II of the Article discusses research on interviewing children, with particular emphasis on children's memory and suggestibility. Part III addresses children's communicative competence, that is, children's language and communication abilities as they relate to children's testimonial competence and courtroom testimony. Part IV focuses on ways to improve the investigative and courtroom processes for children.

II. MEMORY AND SUGGESTIBILITY: IMPLICATIONS FOR INVESTIGATIVE INTERVIEWING AND COURTROOM TESTIMONY

The ability to provide accurate information during investigative interviews and courtroom testimony depends on the capacity to remember and communicate memories to others. Memory, in turn, is related to suggestibility.¹⁰ Thus, research on children's memory and suggestibility is highly relevant to the legal system.

A. Children's Memory Ability

A voluminous body of psychological research exists on children's memory.¹¹ Overall, research indicates that children, including preschool-age children, have good memory ability.¹² Children's memories, like adults', are not infallible. Contemporary

chance."); Kay Bussey, Kerry Lee & Elizabeth J. Grimbeek, *Lies and Secrets: Implications for Children's Reporting of Sexual Abuse*, in CHILD VICTIMS, *supra* note 2, at 147; Siobhan E. Martin & Donald M. Thomson, *Videotapes and Multiple Interviews: The Effects on the Child Witness*, 1 PSYCHIATRY PSYCHOL. & L. 119 (1994).

7. See LOUISE D. SAS, PAMELA HURLEY, ALISON HATCH, SUE MALA & TRISH DICK, THREE YEARS AFTER THE VERDICT: A LONGITUDINAL STUDY OF THE SOCIAL AND PSYCHOLOGICAL ADJUSTMENT OF CHILD WITNESSES REFERRED TO THE CHILD WITNESS PROJECT (1993); John C. Yuille, Robin Hunter, Risha Joffe & Judy Zaparniuk, *Interviewing Children in Sexual Abuse Cases*, in CHILD VICTIMS, *supra* note 2, at 95.

8. See INTERNATIONAL PERSPECTIVES, *supra* note 2, at 269-80.

9. This Article does not purport to cover the entire corpus of the literature.

10. Individuals are likely to be less suggestible for events that they remember well. By contrast, when an individual has a weak memory for an event, the individual may acquiesce more easily to suggestive questions about the event.

11. See, e.g., CHILD VICTIMS, *supra* note 2; KNOWING AND REMEMBERING IN YOUNG CHILDREN (Robyn Fivush & Judith A. Hudson eds., 1990); MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2.

12. See Robyn Fivush & April Schwarzmueller, *Say It Once Again: Effects of Repeated Questions on Children's Event Recall*, 8 J. TRAUMATIC STRESS 555 (1995). The authors wrote:

One consistent conclusion drawn from this research is that even very young children recount accurate information when asked open-ended free recall questions. The difficulty facing researchers and practitioners working in the legal system is that, while accurate, the free recall of very young children

research suggests that children are more reliable witnesses than previously presumed, but not without limitations that need to be considered.¹³ Although there are developmental differences between children and adults in terms of memory, children can provide information that is accurate and meaningful to an investigator or trier of fact.¹⁴

is often quite sparse.

Id. at 556; see Robyn Fivush, Jacquelyn T. Gray & Fayne A. Fromhoff, *Two-Year-Olds Talk About the Past*, 2 COGNITIVE DEV. 393 (1987); Robyn Fivush & Jennifer R. Shukat, *Content, Consistency, and Coherence of Early Autobiographical Recall*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2, at 22 [hereinafter Fivush & Shukat, *Content, Consistency, and Coherence*] (“Children between the ages of 3 and 6 years are able to give coherent, detailed accounts of past events after long delays. Thus, at least as far as basic memory abilities go, preschool children are competent to testify.”); Judith A. Hudson & Robyn Fivush, *As Time Goes By: Sixth Graders Remember a Kindergarten Experience*, 5 APPLIED COGNITIVE PSYCHOL. 347, 347 (1991) (“[C]hildren retain autobiographical memories for very long periods of time”); D. Stephen Lindsay & J. Don Reed, *Psychotherapy and Memories of Childhood Sexual Abuse: A Cognitive Perspective*, 8 APPLIED COGNITIVE PSYCHOL. 281, 293 (1994) (“It is important not to exaggerate the fallibility of human memory. Memory is often wonderfully detailed and accurate.”). This topic is discussed further in Gary B. Melton, Gail S. Goodman, Seth C. Kalichman, Murray Levine, Karen J. Saywitz & Gerald P. Koocher, *Empirical Research on Child Maltreatment and the Law*, 24 J. CLINICAL CHILD PSYCHOL. 47 (1995), where the authors reviewed the psychological literature and concluded:

Children as young as 2 or 3 years old can describe core features of some events with considerable accuracy. For example, even 2-year-olds sometimes can recall specific events that occurred 6 months earlier. Such recall by young children may be greatest for negative events that they have experienced. Young children also can retain distinctive novel events and the central features of repeated events, although they may be more likely than older children and adults to confuse similar events that they have experienced.

Although little research is available on that point, existing evidence suggests that memory for novel events can be sustained by children for many years, at least when they have been repeatedly questioned and cues are used as reminders—a process that may introduce some inaccuracies, particularly of details.

Some recent evidence suggests that children’s memory fades more quickly than does that of adults, but the matter is not settled. Regardless, events that are personally significant, emotion-laden, and rehearsed are less likely to be lost from memory. Although some professionals fear that repeated interviewing of children results in less accuracy, it can also help to maintain memory when a long delay between observation and recall would otherwise occur.

Id. at 58; see Gary B. Melton, *Children’s Competency to Testify*, 5 L. & HUM. BEHAV. 73, 77 (1981) (“In sum, the available data suggest that, given simple, supportive questions, even young children generally have sufficient memory skills to respond to the recall demands of testimony.”).

13. It is important to note that the vast majority of research on children’s eyewitness ability has been conducted with normative samples of children who are not known to have been abused nor exposed to violence or trauma. There is some evidence to suggest that early childhood traumas may influence the course of brain development itself. Hence, traumatized children may not process information in the same way as other children. Additionally, recent studies suggest that individual differences in the ways that children cope with the stress of trauma contribute significantly to the way they remember an event. Since the bulk of research to date has been conducted on nontraumatized children dealing with benign or mildly stressing events, the degree to which conclusions from research generalize to genuinely abused children is no doubt limited. It is not inconceivable that traumatized children’s memories are both better and worse than nontraumatized peers in some ways. These issues are discussed further in the section on memory and stress. See Bruce D. Perry, Ronnie A. Pollard, Toi L. Blakely, William L. Baker & Domenico Vigilante, *Childhood Trauma, the Neurobiology of Adaptation, and “Use-dependent” Development of the Brain: How “States” Become “Traits,”* 16 INFANT MENTAL HEALTH J. 271 (1995).

14. As children mature, they become more efficient at using their biologically determined memory capacity. See WOLFGANG SCHNEIDER & MICHAEL PRESSLEY, *MEMORY DEVELOPMENT BETWEEN 2 AND 20* (1989).

How do children's memories differ from those of adults?¹⁵ First, older children and adults use more complex memory retrieval strategies than younger children to increase the amount of information they recall. Preschoolers can employ memory strategies when such strategies are suggested to them by adults. Moreover, preschoolers can employ some memory strategies on their own, especially when they have a more developed knowledge base regarding an event. Young children, however, are not proficient at spontaneous use of such strategies. Generally, studies suggest that by third grade (eight to nine years of age) children generate and use a variety of retrieval strategies spontaneously. Still, complex heuristics resulting in exhaustive memory searches are rarely seen until the end of grade school and may not be mastered until adolescence. As they mature, children increasingly use memory retrieval strategies to recall more and more information independently. Consequently, as children grow, they are less in need of prompts or cues from adults to trigger memory.

A second difference between adult and child recall is that not all of the information available regarding an event is noticed, earmarked as important, and stored in memory. The information selected for remembering is determined by the child's level of knowledge and experience in the world, stage of cognitive development, ability to reason and draw inferences, and the specific way the child copes with the stress of trauma.¹⁶

Another factor contributing to differences between children's and adults' memories is young children's greater dependence on context. There is evidence to suggest that the context is not simply the place in which remembering occurs, but that context is part and parcel of the memory process itself. Certain characteristics of the setting and atmosphere can facilitate or undermine children's memory

15. Memories do not operate like video tape recorders. Individuals of all ages reconstruct what happened. This is a process influenced not only by their original perceptions of the event in question, but also by characteristics of the event itself that render it easier or more difficult to recall; how it was interpreted by the individual depending on their idiosyncratic view of the world; what inferences are drawn to fill in gaps; which memory-jogging strategies are employed to retrieve details; and with how much motivation and effort such strategies are applied; in addition, characteristics of the questioning context play a role in determining the reliability of children's memories.

16. In some situations, children can be expected to fail to notice information that is important to adults because the information is not significant or interesting to children. In one study, two- to four-year-olds remembered an event that was highly interesting to them (getting candy) much better than an uninteresting event. See Susan C. Somerville, Henry M. Wellman & Joan C. Cultice, *Young Children's Deliberate Reminding*, 143 J. GENETIC PSYCHOL. 87 (1983). What is significant to an adult witness, who understands the requirements and functions of the legal system, may not seem significant to a child with limited understanding of all the meanings and ramifications of what is occurring. For example, if children have not reached the stage of development where they have mastered telling time, and are unaware of the legal system's need to verify a suspect's alibi, then information about the timing of an event may not be remembered.

function. Although adults are also sensitive to context, they are less susceptible to contextual influences.¹⁷

Finally, children and adults differ in their ability to narrate a past event. Narration ability emerges during the preschool and early elementary school years. Children's early narratives are skeletal and loosely organized according to their own idiosyncratic and immature view of the world. With maturation and experience, children's narratives become more fully elaborated and relevant to the context at hand.¹⁸

Although there are differences between the memories of children and adults, these differences should not obscure the fact that even very young children have demonstrated a remarkable ability to provide both relevant and reliable information to decision makers. Generally, as children get older, they are able to provide more information about events they have experienced.¹⁹ Regarding children's general memory capability, Michael Lamb writes that "[d]espite frequent objections to the reliability and legal admissibility of children's testimony, it is clear that young victims are able to provide reliable and accurate accounts of events they have witnessed or experienced."²⁰ Robyn Fivush and Jennifer Shukat add that "[r]esearch over the last decade has amply demonstrated that even quite young children are able

17. In one study, children showed more impaired free recall when questioned in a courtroom mock trial setting than when questioned in a small private room. See Karen J. Saywitz & Rebecca Nathanson, *Children's Testimony and Their Perceptions of Stress In and Out of the Courtroom*, 17 CHILD ABUSE & NEGLECT 613 (1993). In another study, children were able to use memory strategies at home that they did not use on the same task in the laboratory. See Stephen J. Ceci, Urie Bronfenbrenner & Jacquelyn Baker, *Memory in Context: The Case of Prospective Remembering*, in MEMORY DEVELOPMENT: UNIVERSAL CHANGES AND INDIVIDUAL DIFFERENCES (Franz E. Wienert & Marion Perlmutter eds., 1988). In both studies, the authors speculated that the lab and courtroom induced anxiety incompatible with deployment of the necessary memory strategies under study. One implication of children's dependence on context is that their reports will be inconsistent across different contexts, even if completely honest and reliable.

18. Children develop mental representations from events (*scripts*) that guide attention, retention, and retrieval processes. Older children provide longer and more elaborate narratives with more spontaneity and less need for direct questions. Younger children benefit from cues and prompts from interviewers to report all that they know. Children's narratives improve as they learn which questions to ask themselves to search their memories efficiently and effectively.

19. See William S. Cassel & David F. Bjorklund, *Developmental Patterns of Eyewitness Memory and Suggestibility: An Ecologically Based Short-Term Longitudinal Study*, 19 L. & HUM. BEHAV. 507 (1995); Gail S. Goodman, Jodi A. Quas, Jennifer M. Batterman-Faunce, M.M. Riddlesberger & Jerald Kuhn, *Predictors of Accurate and Inaccurate Memories of Traumatic Events Experienced in Childhood*, 3 CONSCIOUSNESS & COGNITION 269 (1994) [hereinafter Goodman et al., *Predictors of Accurate and Inaccurate Memories*]; Gail S. Goodman & Rebecca S. Reed, *Age Differences in Eyewitness Testimony*, 10 L. & HUM. BEHAV. 317 (1986); Michael R. Leippe, Ann Romanczyk & Andrew P. Manion, *Eyewitness Memory for a Touching Experience: Accuracy Differences Between Child and Adult Witnesses*, 76 J. APPLIED PSYCHOL. 367 (1991); Barbara V. Marin, Deborah L. Holmes, Mark Guth & Paul Kovac, *The Potential of Children as Eyewitnesses*, 3 L. & HUM. BEHAV. 295 (1979).

20. Michael E. Lamb, *The Investigation of Child Sexual Abuse: An Interdisciplinary Consensus Statement*, 18 CHILD ABUSE & NEGLECT 1021, 1024 (1994).

to recall personally experienced events accurately over extended periods of time.”²¹ Finally, Lynn Baker-Ward and her colleagues write that “[r]ecent investigators of preschoolers’ long-term retention of selected personal experiences have successfully challenged earlier views of young children’s recall abilities as being quite restricted. . . . [Y]oung children’s reports of personally experienced events can be extensive and accurate.”²²

1. Free Recall, Cuing, and Memory Prompts

Human memory is wonderfully complex, and psychologists continue to unravel its mysteries. Today, there is general agreement that memory is not like a video tape that can simply be rewound and played again and again. Rather, memories for specific events appear to be reconstructed through complicated cognitive processes that mature and develop with age. When young children are interviewed, two aspects of their developing memory capacity stand out. First, young children are not as proficient as older children and adults at responding to open-ended questions that call for free recall. Second, when cues or prompts are provided to trigger retrieval, young children’s memory can be improved substantially.

a. Free Recall

An individual uses free recall when recalling an event without assistance from external cues or stimuli to trigger memory. With free recall, the person relies on internal memory strategies to bring forth the recollection. A pertinent example of free recall is a witness on direct examination. The direct examiner is typically limited to open-ended, nonleading questions, and the witness’s answers are a product of internally generated free recall.

Psychological research establishes that young children’s free recall of events can be quite accurate, but that free recall in young children is often incomplete. Because a young child’s memory is still developing, the child has yet to master the memory strategies used by older individuals, thus placing the young child at a relative

21. Fivush & Shukat, *Content, Consistency, and Coherence*, *supra* note 12, at 6. The authors continued: In fact, 4- and 5-year-old children are able to recall events that occurred 1 to 2 years in the past. . . . Children between the ages of 3 and 6 years are able to give coherent, detailed accounts of past events after long delays. Thus, at least as far as basic memory abilities go, preschool children are competent to testify.

Id. at 22.

22. Lynn Baker-Ward, Betty N. Gordon, Peter A. Ornstein, Deanna M. Larus & Patricia A. Clubb, *Young Children’s Long-Term Retention of a Pediatric Examination*, 64 *CHILD DEV.* 1519, 1520 (1993).

disadvantage in terms of free recall.²³ In sum, the value of free recall is its high rate of accuracy; the drawback is its incompleteness.²⁴

When an interviewer asks a child an open-ended question—requiring free recall—the information provided by the child must come mainly, if not completely, from the child's own mind and, ideally, from the child's own experience. Research consistently reveals, however, that young children's responses to open-ended questions vary greatly. They can be short—on the order of two or three words.²⁵ Margaret-Ellen Pipe and her colleagues observed that “[w]hen children are simply asked to describe something that has happened, their accounts are frequently very brief”²⁶ Although young children often provide frustratingly short answers to open-ended questions, the information they provide in response to such questions is usually quite accurate.²⁷

The dilemma caused by young children's brief answers to open-ended questions is particularly pronounced with some timid two- and three-year-olds. It is not unusual for a very young child to answer “Nothing” to the question “What happened?” even though the child remembers the incident. Some young children even say “Nothing” when they are questioned about significant real-life events that clearly happened.²⁸ The dilemma for interviewers is that it can be difficult to determine, based solely on a very young child's responses to open-ended questions, whether something occurred.

Although information provided in response to open-ended questions tends to be accurate, errors certainly occur.²⁹ In particular, free recall can be contaminated by

23. See MEMORY AND TRUTH (Steve Lynn ed., forthcoming) (discussing the reasons for children's incompleteness).

24. See *supra* notes 11-12 and accompanying text.

25. See Graeme D. Hutcheson, James S. Baxter, Karen Telfer & David Warden, *Child Witness Statement Quality: Question Type and Errors of Omission*, 19 L. & HUM. BEHAV. 631 (1995). The authors wrote:

[W]hen children are allowed to recall information “freely,” or when information is elicited through the use of general questions, even very young children can give evidence that is as accurate as that given by adults. However, general questions elicit less information from children than can be elicited with questions that are more specific.

Id. at 631.

As stated elsewhere in this Article, children's relative difficulty responding to open-ended questions often places interviewers in the uncomfortable position of having to ask rather suggestive, and, sometimes, mildly leading questions. Use of suggestive questions comes at a price, however. Hutcheson and colleagues wrote that specific questions result “in a decrease in children's overall accuracy.” *Id.* at 632.

26. Pipe et al., *supra* note 5, at 25.

27. See *id.* at 25 (“The advantage of such free-recall accounts is, however, that the information provided is typically very accurate”); see also Betty N. Gordon & Andrea Follmer, *Developmental Issues in Judging the Credibility of Children's Testimony*, 23 J. CLINICAL CHILD PSYCHOL. 283 (1994). The finding that answers to open-ended questions are often accurate applies to adults as well as children.

28. In one case, for example, a child who nearly died as a result of an homicidal attack responded with “Nothing” to open-ended questions about the incident.

29. For example, in a study by Gail Goodman and Christine Aman, one young boy who had played games with a man later reported in free recall a wild adventure story of how the man and he had played cowboys and Indians, how he had been tied up, and so on. The child appeared to make up the story out of whole cloth. See Gail

suggestive questioning.³⁰ Problems arise with children under five, with repeated suggestions, and with interviews that create an accusatory context regarding specific individuals.

b. Cuing and Memory Prompts

Young children often provide insufficient detail during free recall. Such children benefit from cues and prompts to trigger retrieval of additional details. Margaret-Ellen Pipe and her colleagues wrote that “[f]ree recall alone is therefore seldom likely to be a satisfactory basis for obtaining children’s testimony.”³¹ Many things, including questions, can cue memory.³² Of course, as questions become more focused and specific, they eventually cross the line into leading questions, raising issues of children’s suggestibility.

Children as young as three are often able to recall events when their memories are triggered with cues or prompts.³³ Although a young child may not respond to open-ended questions requiring free recall, the child may provide detailed information in response to focused questions that trigger memory.³⁴ The challenge for

S. Goodman & Christine Aman, *Children's Use of Anatomically Detailed Dolls to Recount an Event*, 61 CHILD DEV. 1859 (1991).

30. See Michelle D. Leichtman & Stephen J. Ceci, *The Effects of Stereotypes and Suggestions on Preschoolers' Reports*, 31 DEVELOPMENTAL PSYCHOL. 568 (1995); Debra A. Poole & Lawrence T. White, *Tell Me Again and Again: Stability and Change in the Repeated Testimonies of Children and Adults*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2, at 24 [hereinafter Poole & White, *Tell Me Again and Again*].

31. Pipe et al., *supra* note 5, at 26.

32. Memory can be refreshed by reinstating the context of the event under investigation. Thus, a child’s memory may be triggered by returning to the scene.

33. See *supra* notes 11-12 and accompanying text; *infra* note 35 and accompanying text.

34. Michael E. Lamb, Kathleen J. Sternberg & Phillip W. Esplin, *Making Children Into Competent Witnesses*, 1 PSYCHOL. PUB. POL’Y & L. 438 (1995). Lamb and his colleagues described some of the implications for investigative interviews of the difference between free recall and cued recall or recognition:

In general, young children tend to provide briefer accounts of their experiences than do older children and adults, but their accounts are quite accurate. . . . When prompted for more details (“Did he have a beard?”), however, a demand is placed on recognition memory rather than recall memory, and the probability of error rises dramatically, albeit alongside an increase in the number of details provided. . . . [C]hildren’s responses are often very brief, and interviewers must thus probe further to signal that they are interested in detailed descriptions of specific incidents. . . . Although open-ended questions are most likely to encourage accurate accounts of events children have experienced, these accounts are often incomplete, especially when preschoolers are being interviewed. As a result, it is often necessary to begin asking more focused questions quite early in the interviews of young children. . . . Although we clearly believe that open-ended prompts should be used more frequently than they typically are, it is important to recognize that even the most skillful investigators use direct and leading questions when interviewing young children and that the inclusion of such questions does not invalidate the testimony, provided that steps are taken to limit potential damage by framing focused questions carefully, avoiding coercive repetition, and by pairing direct or leading questions with open-ended prompts so as to return the child to recall (rather than recognition) memory. . . . Suggestive utterances should be avoided whenever possible. When a child does not address certain issues in response to open-ended and directive prompts, however, it may be necessary for investigators to ask leading or suggestive questions.

Id. at 439-40, 442-44.

interviewers is to find ways to improve children's memory without unduly influencing children's statements.

2. *Memory Fade Over Time*

It goes without saying that memory can fade over time—a fact of life for adults as well as children.³⁵ There is research indicating that young children's memory fades more quickly for some events than adult memory, although this finding is not definitive.³⁶ Moreover, it is important to add that “for salient features of an event to which children attend, consider important, and thus encode well, children may at times be no more susceptible to forgetting, memory impairment, and suggestibility effects than adults.”³⁷

Whatever the ultimate resolution of research on memory fade over time, there is general agreement on the wisdom of interviewing children (and adults) promptly. Moreover, although time takes its toll, children can accurately remember salient

35. See Gerald P. Koocher, Gail S. Goodman, C. Sue White, William N. Friedrich, Abigail B. Sivan & Cecil R. Reynolds, *Psychological Science and the Use of Anatomically Detailed Dolls in Child Sexual-Abuse Assessments*, 118 PSYCHOL. BULL. 199 (1995) [hereinafter Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*]; see also Cassel & Bjorklund, *supra* note 19. The authors wrote:

[A]lthough young children's free recall of events is typically low, it is usually accurate. In studies examining *incorrect* free recall, absolute levels were low and were not greater for younger than for older children. In fact, in the Poole and White . . . study [Debra A. Poole & Lawrence T. White, *Effects of Question Repetition on the Eyewitness Testimony of Children and Adults*, 27 DEVELOPMENTAL PSYCHOL. 975 (1991)], both accurate and inaccurate recall were greater for adults than for groups of 4-, 6-, and 8-year-old children. Moreover, correct free recall of central items—items immediately pertinent to an event—is usually high even for young children; in contrast, age differences in free recall are most dramatic for noncentral (peripheral) items.

Levels of recall for people of all ages usually decrease with delay, although no consistent pattern of developmental change as a function of delay has been reported. Some researchers have found greater loss of information over delays ranging from several weeks to two years for younger as compared to older children, whereas others have found no such age differences. One interesting finding is developmental differences in the recollection of factually erroneous information over delays. For example, at least two studies have reported 6-year-old children recalling more inaccurate information over extended delays than adults.

Id. at 508.

36. See Goodman et al., *Predictors of Accurate and Inaccurate Memories*, *supra* note 19, at 271. The authors wrote:

Current research also suggests that young children's memories often fade relatively quickly and thus are more fragile (e.g., open to false suggestions) than the memories of older children and adults. Nevertheless, some memories are retained well by children over long periods of time, and at least by the age of 4 or 5 years, children can often, although not always, resist some false suggestions about personally significant events.

Id. at 271; see Poole & White, *Tell Me Again and Again*, *supra* note 30, at 24, 27 (“We still should be concerned about the impact of long delays on children's testimonies.”); Debra A. Poole & Lawrence T. White, *Two Years Later: Effects of Question Repetition and Retention Interval on the Eyewitness Testimony of Children and Adults*, 29 DEVELOPMENTAL PSYCHOL. 844 (1993); Amye R. Warren & Peggy Hagood, *Effects of Timing and Type of Questioning on Eyewitness Accuracy and Suggestibility*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2, at 44.

37. Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 213.

events months and even years later.³⁸ Robyn Fivush and April Schwarzmuller wrote that “children as young as 2 ½ years of age are able to remember accurate details of their past experiences, and they can retain these memories even over a period of 1 to 2 years.”³⁹

3. *The Vocabulary of Interviewing: “Open-Ended,” “Focused,” “Suggestive,” and “Leading” Questions*

The literature on interviewing, including this Article, uses several adjectives to describe questions, including open-ended, focused, specific, suggestive, and leading, to name the most common. There is no universally agreed upon meaning of these terms. Nevertheless, it is useful to pour some content into the words. Since the greatest concern focuses on suggestive questions, we begin there. *Webster’s Dictionary* defines suggestive as “indicative,” “stimulating thought,” “stirring mental associations.”⁴⁰ Given this expansive definition, nearly any question can contain elements of suggestion. Much depends on how a question is asked, by whom, and where the question fits in the entire socio-psycho-linguistic context of the interview. Suggestiveness is plainly a matter of degree and context, with some questions highly suggestive, and others barely so.

It is useful to think of suggestiveness as a continuum, and to array our adjectives along this continuum. Open-ended questions reside at the least suggestive—and least worrisome—end of the continuum. Open-ended questions include general inquiries such as “Can you tell me about that?” and “Did anything happen?” Open-ended questions are often little more than invitations to speak.

The Continuum of Suggestiveness

Open-Ended → Focused → Specific → Leading

Moving along the continuum, we encounter focused questions. A focused question may be defined as one that focuses a child’s attention on a particular topic, place, or person, but that refrains from providing information about the object of the question. For example, “Shall we talk about preschool now?” focuses the child on preschool, but does not suggest that the questioner wants any particular information about preschool.⁴¹

38. See *supra* notes 11-12 (citing authorities).

39. Fivush & Schwarzmuller, *supra* note 12, at 563.

40. WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 1180 (1985).

41. We assume that the question about preschool is not embedded in a questioning context that renders it highly suggestive or leading. So much depends on the questions that lead up to the target question that, except in easy cases, it is seldom appropriate to evaluate a question in complete isolation and pronounce it suggestive or nonsuggestive. A question that appears benign may—in context—be suggestive, while a question that appears quite suggestive may—in context—be benign.

Many of the “Wh” questions common to investigative interviews are focused questions. Thus, questions such as “Where did that happen?” “Who was there?” and “When did that happen?” are often focused questions.⁴²

There is no bright line separating focused from specific questions. In many cases, a specific question is simply a question that probes for greater detail following a child’s answer to an open-ended or focused question. Frequently, although not invariably, specific questions have greater potential for suggestivity than questions that simply focus a child’s attention.

Specific questions sometimes call for short answers. Thus, “What color was his jacket?” is a specific question. Specific questions sometimes require “yes-no” answers, for example, “Was the jacket red?” Whether questions like these are suggestive or leading can depend on the context in which the questions are asked. If the child has not yet mentioned someone wearing a jacket, then such questions can suggest that someone was dressed in a jacket. By contrast, if the child has already mentioned someone in a jacket, questions like this are far less leading, and may not be considered suggestive.

A leading question is a question that, to one degree or another, suggests that the questioner is looking for a particular answer. The California Evidence Code definition is typical: “A leading question is a question that suggests to the witness the answer that the [questioner] desires.”⁴³ Of course, leading questions come in black and white and innumerable shades of gray. Few would disagree that “He touched your pee-pee, isn’t that right?” is not only leading, but highly so. Linguists use the term “tag question” to describe such questions. With tag questions, the question is essentially a statement of fact followed by a request for agreement. A further example is, “He took you there three times. Isn’t that right?” Separating this question into two sentences allows us to see quite readily the statement of fact followed by the request for agreement, “tagged” on at the end.

Compare the foregoing tag questions with a situation in which a child spontaneously describes an act of abuse, and the interviewer follows up with “How many times did that happen?” Clearly, this is not as suggestive as the tag questions. On that we can agree. Some might argue that the question is not suggestive at all. Others would disagree, however, arguing that the question is mildly leading because it suggests that the interviewer believes more than one episode of abuse occurred.⁴⁴ We do not purport to resolve this disagreement. Rather, we use the contrasting arguments to emphasize once again the tremendous variability of questions that may be characterized as suggestive. In the final analysis, labels such as “focused,” “specific,” and

42. When a child describes abuse, interviewers usually avoid “why” questions. From a child’s perspective, “why” questions often sound like attributions of blame. Although the interviewer may not see it that way, the child’s interpretation is reasonable. Place yourself in a child’s shoes and consider these “why” questions: “Why did you go with the man?” “Why did you get in his car?” “Why didn’t you ask him to stop?”

43. CAL. EVID. CODE § 764 (West 1995).

44. Another common interview question that sparks disagreement about its degree of suggestivity is, “Is there anything else?” Some argue that this question is not suggestive. Others contend the question is mildly leading.

“leading” provide little more than a starting place for analysis of suggestibility. Accurate analysis requires us to consider each question in turn, to examine the question in detail, and then to evaluate the question in light of the questions that precede it. Each question is a thread in a tapestry. To see the pattern, we must stand back and gaze upon the whole.

One useful method of evaluating questions is to ask whether the question follows up or builds on information provided spontaneously by the child. If so, concern about suggestibility may be lessened. On the other hand, if a question introduces new information, not previously mentioned by the child, concern about suggestibility may be increased.

4. *The Effect of Multiple Interviews on Memory*

Investigating allegations of child sexual abuse sometimes requires more than one interview of the child.⁴⁵ In recent years, considerable attention focused on improving the skills of interviewers and reducing the number of interviews.⁴⁶ Reducing interviews is important for two reasons. First, multiple interviews are thought to add stress to already vulnerable children. Second, the more interviews there are, the more likely one or more interviewers will ask unnecessarily suggestive questions.

A study by Stephen Ceci and his colleagues focused on the potential dangers of multiple interviews.⁴⁷ The study involved two groups of nonabused preschool age children: three- and four-year-olds in one group, and five- and six-year-olds in the other. The children were interviewed seven to ten times over a three month period about actual and fictitious events. During interviews, children were informed about “some things that may have happened to you, and I want you to think real hard about each one of them”⁴⁸ The researchers “suspected that simply asking preschoolers to think about the events so often might foster the conditions for fictitious ‘repressed memories.’”⁴⁹ The researchers reported that for both age groups, “true events were nearly always recalled accurately”⁵⁰ When children were asked over the series of seven to ten interviews to recall fictitious events, however, three- to four-year-olds assented more often than older children. Forty-four percent of the younger children

45. See discussion *infra* Part II.B.7.

46. For a discussion of efforts to reduce the number of interviews, see CALIFORNIA ATTORNEY GENERAL, CHILD VICTIM WITNESS INVESTIGATIVE PILOT PROJECTS: RESEARCH AND EVALUATION FINAL REPORT (1994).

For a discussion of efforts to improve the training and skills of interviewers see generally John Doris, Rosaleen Mazur & Marney Thomas, *Training in Child Protective Services*, 1 PSYCHOL. PUB. POL’Y & L. 479 (1995); John E.B. Myers, *Taint Hearings for Child Witnesses? A Step in the Wrong Direction*, 46 BAYLOR L. REV. 873 (1994).

47. Stephen J. Ceci, Mary Lyndia Crotteau Huffman, Elliott Smith & Elizabeth F. Loftus, *Repeatedly Thinking About a Non-Event: Source Misattributions Among Preschoolers*, 3 CONSCIOUSNESS & COGNITION 388 (1994) [hereinafter Ceci et al., *Repeatedly Thinking About a Non-Event*].

48. *Id.* at 394.

49. *Id.* at 394-95.

50. *Id.* at 395.

assented to a false event at the first interview, whereas twenty-five percent of the older children assented at the first interview. Interestingly, for younger children the rate of assenting to fictitious events went down slightly over time. For older children the rate of assenting increased slightly over time. The researchers wrote:

The results of this study demonstrate that while it is possible to mislead young children into claiming that they experienced nonevents, the frequency of doing so does not increase over time. Elsewhere, we have run a replication of this study, with an important modification: each week the interviewer informed the children that they had actually experienced the fictitious events and then asked them if they remembered having done so. . . . Under these conditions, there is a reliable increase in children's claims of having remembered the fictitious events over a 12-week period. By the penultimate (11th) interview, children's false assent rate had increased by over 80%.⁵¹

Even so, some children in this study steadfastly refused to give in to suggestion.

In the Ceci study, interviewers repeatedly discussed a fictitious event and asked children to "think real hard" about the "event." Such persistent questioning caused quite a few children to state that the event *may* have happened.⁵² It is difficult to determine whether the children in the Ceci study were complying with the social demands of the interview or whether their memories had actually changed.

The children in the Ceci study may have thought they were playing a game, and, for this reason, one should be cautious about generalizing Ceci's results to real-world investigative interviews about serious matters. Moreover, other research yields results that are inconsistent with the Ceci findings. Bhavna Shyamalan and her colleagues adopted Ceci's research design but added "an atmosphere of seriousness which more closely mimics real life questioning of sexual abuse and . . . asked children about an abusive act (*i.e.* yelling)."⁵³ Shyamalan wrote:

Four months before the repeated questioning sessions began, subjects individually interacted with a confederate named Jack O'Mack who posed

51. *Id.* at 397-98.

52. Why do young children make the kind of errors described by Ceci and other researchers? One hypothesis is that young children have more difficulty than older children and adults in determining the *source* of their memories. Thus, young children may confuse information that is told to them with information from personal experience. Moreover, young children may confuse two similar events, both of which actually occurred. These characteristics—sometimes called source misattribution occur with older children and adults as well, yet preschool-age children appear to be particularly vulnerable.

53. Bhavna Shyamalan & Sharon Lamb, *The Effects of Repeated Questioning on Preschoolers' Reports of Abusive Behavior*, Poster Presented at the Annual Meeting of the American Psychological Association (Aug. 1995).

Yelling is not abusive in the sense that sexual abuse is abusive. Researchers cannot—and have no desire to—sexually abuse children. The challenge for psychological researchers is to design experiments that approximate the "real world" as closely as possible without abusing children.

as a toy tester. He brought in a play pen full of plastic balls in which the children could play. He also tested three other kinds of balls by asking the children to individually play with each. In order to create a salient memory for the experience, he performed the unusual act of measuring their feet and painting a face on their toenails. The repeated questioning occurred once a week for approximately ten weeks and began, as stated above, four months after the Jack O'Mack visit.⁵⁴

During repeated interviews, children were asked about an event that Jack O'Mack actually performed, as well as "something potentially abusive that did not happen . . . 'Did Jack get angry and yell at you?'"⁵⁵ To create an aura of seriousness, children were told that "the interviewer was trying to help some people find out if Jack had done anything he was not supposed to do. Additionally, the seriousness of the issue and the importance of telling the truth were stressed."⁵⁶ The authors wrote:

In response to a general memory question, 92% of the subjects spontaneously remembered details about their visit with Jack O'Mack 4 months after the event. The remaining 2 subjects said they remembered the event but could not give details.

Only 1 subject (4.2%) said Jack yelled at him. The subject made this claim at the first session, but denied that Jack yelled for the 9 remaining sessions. Thus repeated questioning had a positive effect if any.

Only one child reported falsely that he remembered Jack O'Mack yelling. Repeated questioning did not result in any child making a false report. The results of this study are dissimilar to the effects found by Ceci et al. There are two possible explanations for the contradictory findings. First, the serious atmosphere and tone used for the questioning may have resulted in subjects being more careful about the accuracy of their answers in the present experiment. Second, consistent with previous studies referenced above, children may be resistant to making false reports about serious acts such as abuse-type behavior.⁵⁷

In view of psychological research and practical experience in the field, the goal seems obvious: Take all feasible steps to reduce the number of interviews, preferably to one. There appears to be little to lose and much to gain by eliminating multiple

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

interviews. Yet, few things are as simple as they first appear, and this is true with investigative interviews in child sexual abuse cases. In some—probably many—cases, more than one interview is necessary. As explained in subpart II.B.7.b.i., *infra*, many abused children reveal their abuse gradually over time, and many children cannot “tell the whole story” in one sitting. Moreover, although there is no gainsaying the risks of multiple interviews, there are potential benefits as well.⁵⁸ The potential benefits of additional interviews include: (1) Additional accurate information may be obtained from the child, and (2) the child’s memory may be strengthened through repetition.

Limiting the number of interviews can result in loss of information.⁵⁹ Children, like adults, do not necessarily recall all the information they have in memory in a single interview, and multiple interviews may yield additional details.⁶⁰

Children sometimes describe different aspects of a remembered event at different times.⁶¹ Of course, describing different aspects of a single event at different times can take on the appearance of inconsistency. The psychological reasons for children’s inconsistency are discussed in subpart III.E., *infra*. It will suffice at this juncture to say that it is rather common for young children to be inconsistent across interviews, and that inconsistency does not necessarily correlate with inaccuracy or insincerity. What looks like inconsistency may actually be a product of the child’s comfort with the interviewer, the interviewer’s developmental insensitivity, or the child’s ability to retrieve relevant information at a given moment in time. In a study by Jodi Quas and her colleagues, children who were telling the truth about being touched were actually more inconsistent than children who were coached to lie about being touched.⁶² In some cases memory is solidified by talking about an event more than

58. See Fivush & Schwarzmueller, *supra* note 12, at 573. The authors reviewed the literature on the influence of repeated questioning on children’s memory, writing:

Several threads run through the literature on children’s event memories during conversational remembering and across repeated interviews. First and foremost, children’s event memory remains quite accurate across multiple accounts. In the conversational remembering research, children can recall accurate details of experienced events after 1 to 2 years Of course, children and adults do report some inaccurate information, but the amount of inaccurate information does not seem to increase as a function of retention interval or number of intervening interviews.

Id. at 573.

59. See Mitchell L. Eisen, Gail S. Goodman, Jianjian Qin & Suzanne Davis, *Memory and Suggestibility in Maltreated Children: New Research Relevant to Evaluating Allegations of Abuse*, in TRUTH IN MEMORY (S. Lynn ed., forthcoming).

60. See Roberta L. Klatzky & Matthew H. Erdelyi, *The Response Criterion Problem in Tests of Hypnosis and Memory*, 33 INT’L J. CLINICAL & EXPERIMENTAL HYPNOSIS 246 (1985).

61. See Fivush & Shukat, *Content, Consistency, and Coherence*, *supra* note 12, at 17. The authors wrote that “children’s recall is extremely inconsistent over time. While the total amount of information recalled about specific events does not seem to change over time, children recall different information each time they recount an event.” *Id.*

Most of Professor Fivush’s studies of children’s memories do not include questioning children with misleading information.

62. Jodi Quas, *Consistency and Accuracy of Children’s True Versus Untrue Reports of Being Touched*, Address at the American Psychology Law Society Symposium (1996).

once.⁶³ From time immemorial, teachers have drilled children on their schoolwork, intoning the admonition so familiar to young scholars, "Remember class, the more you practice your spelling words, the better you'll remember them for the test." Debra Poole and Lawrence White stated that "[i]n terms of memory, however, there is little doubt that discussing an experience can dramatically improve the ability of children and adults to recall it at a later time."⁶⁴ Robyn Fivush and April Schwarzmuller wrote that "the more frequently a personally experienced event is recalled, the more easily that event can be recalled on subsequent occasions and the more information can be recalled about the event."⁶⁵ Amye Warren and Peggy Lane added that "[t]he beneficial effects of repeated interviewing also appear to hold for children's event memory."⁶⁶

How is children's accuracy affected by repeated questioning? The answer to this question depends in part on whether or not the repeated interviews involve sug-

63. See Poole & White, *Tell Me Again and Again*, *supra* note 30, at 24; see also Warren & Hagood, *supra* note 36, at 44, 45.

One consistent finding of repeated testing research in the laboratory has been that material not recalled on initial tests can be 'reminisced,' or recalled, on subsequent tests without additional study. In fact, sometimes the amount of information reminisced on later memory tests exceeds the amount forgotten, a phenomenon known as 'hypernesia.'

Id.

64. See Poole & White, *Tell Me Again and Again*, *supra* note 30, at 27. Poole and White continued: Studies of basic memory processes have identified three benefits of multiple testing.

First, testing shortly after exposure to the to-be-remembered material may attenuate forgetting during a delay. As Brainerd and Ornstein concluded, "perhaps the most fundamental principle of memory is that repetition facilitates performance." . . . Similarly, children who repeatedly discuss a salient event with their families are more likely to recall details about the event at a later time. . . .

A second benefit of multiple testimony is the possibility of reminiscence (i.e., the recall of previously unreported information). . . . Hence it is not surprising that police investigators often interview children numerous times in the hopes of eliciting additional information.

A final benefit of repeated testimony is that young children may learn through repeated conversations to engage in memory talk or, as Hudson described, to shift their focus from one of answering questions to actively remembering and spontaneously offering information. . . .

Findings from subsequent studies lead us to conclude that early interviews, if properly conducted, can consolidate memories for an event without introducing errors into testimony.

Although procedures that push witnesses to recall details may enhance later event reports, we cannot recommend the use of multiple interviews with specific questions, especially for children who will be testifying after relatively long delays. The major problem with specific questions, of course, is that they elicit more inaccurate information. This is partly because children and adults frequently attempt to answer specific questions even when they have not been exposed to the relevant information. In fact, young children rarely give "I don't know" responses, and instructing children that they can say "I don't know" does not always increase accuracy.

Id. at 27-30.

65. Fivush & Schwarzmuller, *supra* note 12, at 567. The authors continued:

[W]hile younger children generally recall less than older children, and children interviewed less frequently generally recall less than children interviewed more frequently, the absolute amount of incorrect information provided on these interviews remains low and stable across multiple interviews. Repeatedly interviewing children does not seem to increase error in memory reports.

Id.

66. Warren & Hagood, *supra* note 36, at 44, 46.

gestive questions. A number of studies indicate that repeatedly interviewing children in a nonsuggestive fashion has little detrimental effect on memory and may actually improve recall through rehearsal or reminiscence.⁶⁷ Inaccuracy may be more pronounced when repeated false suggestions are presented, especially to young children. Poole and Lindsay reported that when four-year-old children were repeatedly read a story by a parent that included misinformation about an event the children experienced three months earlier, a substantial number of the children later provided one or more inaccurate answers to memory questions.⁶⁸ In another study, when three- to four-year-olds were repeatedly asked to visualize and imagine false events, and were further told that their parents said the false events had actually occurred, a number of the children inaccurately affirmed having experienced one or more of the false events.⁶⁹ It should be added that in the latter study it is unclear whether the children formed false memories as a result of the repeated interviewing or whether the children merely complied with the social demands of the interview situation.

One finds inconsistent results across research studies. Such inconsistency is partly a function of differences in the ages of children used as research subjects, as well as the degree to which the research paradigm resembles real-world cases, and how the data are coded and analyzed. In the Poole and Lindsay study, referred to above, for example, the experimental procedures used to obtain the effects measured by the researchers would be uncharacteristic of typical child abuse investigations. Indeed, by using uncharacteristic procedures, some of the recent psychological research on suggestibility may exaggerate the problem of children's suggestibility during actual investigative interviews.

Some recent studies emphasize children's suggestibility. In some of these studies, the children's apparent suggestibility has to do with (1) The way the researchers code the children's off-task, irrelevant behavior, (2) how many questions are asked, and (3) how percentages are calculated. Some researchers, for example, place all children who make errors into one group and report the percent of children who err. Other researchers look at the differences in the average rate of error for different age groups. Different research methods can produce dramatically different interpretations of the same data. As is true with all statistically driven data, one is well advised to take a hard look at the numbers and the research methodology before accepting the researcher's conclusions.

67. See Charles J. Brainerd & Peter A. Ornstein, *Children's Memory for Witnessed Events: The Developmental Backdrop*, in THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS, *supra* note 2, at 10; Helen R. Dent, *Experimental Studies of Interviewing Child Witnesses*, in THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS, *supra*, at 138.

68. See Poole & White, *Tell Me Again and Again*, *supra* note 30, at 24.

69. See Stephen J. Ceci, Elizabeth F. Loftus, Michelle Leichtman & Maggie Bruck, *The Possible Role of Source Misattributions in the Creation of False Beliefs Among Preschoolers*, 42 INT'L J. CLINICAL & EXPERIMENTAL HYPNOSIS 304 (1994).

The discussion in this section is not meant to downplay the risks of multiple interviews.⁷⁰ Rather, the point is that there are benefits as well as downsides to multiple interviews.

5. Repeating Questions Within a Single Interview

Interviewing children who may be traumatized, frightened, confused, timid, or embarrassed requires skill and patience. Not infrequently, an interviewer must ask about something more than once. Perhaps the first time the question is asked the child does not understand, gives an ambiguous or partial answer, or simply declines to respond. Of course, there are risks in repeating questions. Children who are asked the same question more than once may assume they gave the “wrong” answer the first time, and feel pressure to provide the “right” answer when the question is repeated.⁷¹ It is useful to inform children that some questions may be repeated, and that repetition does not mean that the child’s first response was wrong.⁷²

In the final analysis, the danger of repetition lies not so much in covering the same territory twice, but in how the interviewer handles the situation. Experienced interviewers sometimes change the wording of questions, and the skillful interviewer takes care to ensure that the child does not feel pressure to change or invent an answer. Some interviewers give children express permission not to change answers, explaining that repeated questions may be due to the adult’s confusion or memory loss rather than a desire for a different answer.

6. Stress and Memory

Sexual abuse is stressful for children.⁷³ Moreover, questioning children in an intimidating environment may add stress. Thus, it is important to describe the impact of stress on memory.⁷⁴ Until recently, most psychological studies of children’s

70. See Ceci et al., *Repeatedly Thinking About a Non-Event*, *supra* note 47.

71. See Fivush & Schwarzmueller, *supra* note 12, at 573. The authors note that although repeating questions can strengthen memory of an experience, repetition during the same interview causes some children, particularly young ones, to change their answers due to the social demands of the interview: “When asked the same question within the same interview, young children seem to interpret the repetition as an indication that their initial response was wrong.” *Id.*

72. See Karen J. Saywitz & Susan Moan-Hardie, *Reducing the Potential for Distortion of Childhood Memories*, 3 CONSCIOUSNESS & COGNITION 408 (1994).

73. See Kathleen A. Kendall-Tackett, Linda M. Williams & David Finkelhor, *Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies*, 113 PSYCHOL. BULL. 164 (1993).

74. Some theorists believe that traumatic memories are processed in a different manner than memories for ordinary events. Bessell van der Kolk and Rita Fisler argued that trauma stems from experiencing a stressful event that overwhelms a person’s coping mechanisms, and that traumatic events are encoded differently in memory than ordinary events. For example, dissociation is a mechanism that may account for differential memory of traumatic versus nontraumatic experiences. According to this view, when children are confronted with the overwhelming stress of abuse or other trauma, they psychologically remove themselves from the abusive event and compartmentalize the trauma memory so that, although it continues to exist, it is inaccessible to ordinary memory.

memory did not examine the effects of stress. In the past few years, however, a small number of studies has examined children's and adults' memories for stressful events.⁷⁵

At one time the psychological lore was that stress had a debilitating effect on memory,⁷⁶ and some researchers remain committed to this view.⁷⁷ Recent research suggests, however, that core features of highly stressful events are often retained in memory with particular durability, whereas peripheral details may or may not be well-remembered.⁷⁸

Findings from several studies of children's memory for stressful events are consistent with the view that core features of such events are remembered especially well. Gail Goodman and her colleagues found that distress was associated with children's more complete recall and greater resistance to suggestion.⁷⁹ Amye Warren-Leubecker reported that children who were more upset about the space shuttle Challenger disaster remembered the event better than children who were less upset.⁸⁰ Margaret Steward and David Steward compared the memory reports of children who were less distressed during a painful medical procedure to memory reports of children who were more upset.⁸¹ As a group, children who were more upset reported a greater amount of and more accurate information at an interview six months after the event, although a few of the highly upset children were particularly inaccurate.

If traumatic memory is substantively different than nontraumatic memory, studies of memory for rather ordinary stressors or of more neutral events may not generalize to traumatic experiences such as child victimization. See Bessel A. van der Kolk & Rita Fisler, *Dissociation and the Fragmentary Nature of Traumatic Memories: Overview and Exploratory Study*, 8 J. TRAUMATIC STRESS 505 (1995).

Considerable debate continues regarding whether traumatic memories require special explanatory mechanisms, and a number of researchers argue that there is no special process involved in dealing with memories of trauma.

75. See *infra* notes 78-81 (citing authorities).

76. See ELIZABETH F. LOFTUS, *EYEWITNESS TESTIMONY* (1979).

77. See Stephen J. Ceci & Maggie Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis*, 113 PSYCHOL. BULL. 403 (1993) [hereinafter Ceci & Bruck, *Suggestibility of the Child Witness*].

78. See Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 213; see also van der Kolk & Fisler, *supra* note 74, at 505. The authors observed that "[t]he nature and reliability of traumatic memories have been controversial issues in psychiatry for over a century." *Id.* at 505. Van der Kolk and Fisler review literature on traumatic memory and write:

While people seem to easily assimilate familiar and expectable experiences, and while memories of ordinary events disintegrate in clarity over time, some aspects of traumatic events appear to get fixed in the mind, unaltered by the passage of time or by the intervention of subsequent experience.

Id. at 508.

79. See Gail S. Goodman, Jodi E. Hirschman, Debra Hepps & Leslie Rudy, *Children's Memory for Stressful Events*, 37 MERRILL-PALMER Q. 109 (1991) [hereinafter Goodman et al., *Children's Memory for Stressful Events*].

80. See Amye Warren-Leubecker, *Commentary: Development of Event Memories or Event Reports?*, in THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS, *supra* note 2, at 24.

81. See Margaret S. Steward & David S. Steward, *Interviewing Young Children About Body Touch and Handling*, in MONOGRAPHS OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT (forthcoming) (copy on file with John E.B. Myers).

On the other hand, some researchers report decrements in memory for stressful experiences.⁸²

Several researchers studied children's memories for horrifying events such as witnessing homicides of loved ones, kidnappings, and sniper attacks on schools.⁸³ As one would expect, children traumatized in these ways demonstrate both accuracies and inaccuracies of memory.

Researchers are just beginning to understand the important individual differences in children's response to stressful events.⁸⁴ Gail Goodman and her colleagues studied children's memory for a stressful medical procedure involving urethral penetration by a catheter.⁸⁵ In this study, in addition to age, the most important predictor of children's memory accuracy was parental support for the child. Thus, emotional, individual, and family factors may influence memory for highly stressful events.

7. *Childhood Amnesia*

Events that occur during the first and second years of life are often lost to later memory.⁸⁶ The term childhood amnesia is commonly used to describe this normal, developmental phenomenon of memory. Because of childhood amnesia, skepticism is warranted when adults or older children claim to remember incidents of abuse prior to age three.

8. *The Debate Over "Repressed" Memories of Abuse*

During the past few years, debate has flourished in the popular media and professional journals over the reliability of so-called repressed or recovered memories of child sexual abuse. The debate centers on the reliability of *adult* memories of abuse that allegedly occurred years earlier. In particular, controversy focuses on methods employed by some psychotherapists to help adult clients "recover" memories of abuse.

82. See Daphne Blunt Bugental, Jay Blue, Victoria Cortez, Karen Fleck & Altina Rodriguez, *Influences of Witnessed Affect on Information Processing in Children*, 63 CHILD DEV. 774 (1992); Kathy Ann Merritt, Peter A. Ornstein & Brenda Spicker, *Children's Memory for a Salient Medical Procedure: Implications for Testimony*, 94 PEDIATRICS 17 (1994); Douglas Peters, *The Influence of Stress and Arousal on the Child Witness*, in THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS, *supra* note 2, at 60.

83. See Robert S. Pynoos & Spencer Eth, *The Child Witness to Homicide*, 40 J. SOCIAL ISSUES 87 (1984); Robert S. Pynoos & Kathleen Nader, *Children's Memory and Proximity to Violence*, 27 J. AM. ACADEMY CHILD & ADOLESCENT PSYCHIATRY 567 (1988); Lenore Terr, *Childhood Traumas: An Outline and Overview*, 148 AM. J. PSYCHIATRY 10 (1991).

84. See L. Baker-Ward, B. Gordon & R. Merritt, Address at the Society for Research in Child Development Symposium (Mar. 1993) (transcript on file with Gail S. Goodman).

85. See Goodman et al., *Predictors of Accurate and Inaccurate Memories*, *supra* note 19.

86. See generally KNOWING AND REMEMBERING IN YOUNG CHILDREN, *supra* note 11.

The instant Article is not the place to discuss adult memory.⁸⁷ The focus here is *children's* memory for relatively recent events, not *adult* memory for events that may have transpired years earlier. It is important to separate the discussion of children's memory for recent events from discussion of recovered memory in adults. For the most part, the controversy swirling around adult recovered memories is not directly relevant to children's recall of recent events.

9. Summary

Memory is far from perfect, yet "[i]t is important not to exaggerate the fallibility of human memory. Memory is often wonderfully detailed and accurate."⁸⁸ Children as young as three have the capacity to remember events they have experienced. The worrisome issue is not so much children's basic memory capacity, as it is the possibility that children's memories are distorted by suggestive questioning.

87. Can a traumatic event such as child sexual abuse be inaccessible to consciousness for years, only to re-emerge vividly later? Freud and others believed that traumatic memories can be so distressing that psychic forces keep such memories out of consciousness. But some authorities doubt that repressed memories for entire traumatic events are likely to exist. Critics point to suggestive questioning as the basis for "repressed memory" reports. At present, we do not know how to distinguish true from false reports of repressed memories.

Even if false memories of abuse exist, the critical question remains as to whether actual abuse experiences can be lost from consciousness. Although most victims remember their abuse, sizable numbers of people report that incidents of childhood sexual abuse are forgotten temporarily or even permanently. John Briere and Jon Conte interviewed 450 women and men with alleged histories of child sexual victimization. See John Briere & Jon Conte, *Self-Reported Amnesia for Abuse in Adults Molested as Children*, 6 J. TRAUMATIC STRESS 21 (1993). More than 50% of the sample stated that, at least at some point in childhood, they had experienced periods of partial to total amnesia of the sexual assault. Shirley Feldman-Summers and Kenneth Pope surveyed 500 psychologists regarding their memories of childhood abuse. See Shirley Feldman-Summers & Kenneth S. Pope, *The Experience of "Forgetting" Childhood Abuse: A National Survey of Psychologists*, 62 J. CONSULTING & CLINICAL PSYCHOL. 636 (1994). Forty percent of the participants who reported having experienced some form of childhood abuse also reported that there was a period of time when they could not remember some or all of the abuse. Of the participants who reported forgotten abuse, 47% reported that they found corroboration for the memory.

Linda Meyer Williams published data from interviews of women who as children were treated at a hospital emergency room for sexual abuse. Linda M. Williams, *Recall of Childhood Trauma: A Prospective Study of Women's Memories of Child Sexual Abuse*, 62 J. CONSULTING & CLINICAL PSYCHOL. 1167 (1994). Approximately 38% of the women in Williams's study evidenced no memory for the earlier emergency room visit or for the sexual assault. Williams's study provides fascinating case examples, indicating that lost memory for traumatic events can occur, especially if a child is under seven years of age at the time of the trauma. *Id.*; see Linda M. Williams, *Recovered Memories of Abuse in Women with Documented Child Sexual Victimization Histories*, 8 J. TRAUMATIC STRESS 649 (1995). Moreover, based on clinical study, Lenore Terr theorized that memories of repeated traumas may become repressed, whereas one-time traumatic events tend to be retained with clarity. Terr, *supra* note 83. Unfortunately, at present, there are no adequate tests of whether "repression," in the Freudian sense, is involved in lost memory of abuse, or whether more normal processes of forgetting are involved.

88. Lindsay & Reed, *supra* note 12, at 293.

B. Suggestibility

The topic of children's suggestibility has concerned judges, lawyers, and psychologists for years.⁸⁹ Early in the twentieth century, European writers cast a dark shadow over children's credibility. In 1910, the German physician A. Baginsky opined "that children are the most dangerous of all witnesses."⁹⁰ Baginsky argued that children's "testimony be excluded from [the] court record whenever possible."⁹¹ In 1911, Belgian psychologist J. Varendonck asked "When are we going to give up, in all civilized nations, listening to children in courts of law?"⁹² Yet, occasional endorsements of children's testimony lie scattered through legal history. Blackstone himself wrote that "[i]nfants of very tender years often give the clearest and truest testimony."⁹³

Although a small amount of empirical study of children's suggestibility occurred during first half of this century,⁹⁴ it was not until the late 1970s that the modern era of psychological research on suggestibility commenced. What began as a small trickle of research grew into a sizable corpus of empirical research. Today, although much remains to be learned, significant strides have been made in our understanding of children's suggestibility.

1. Selected Research Findings Regarding Children's Suggestibility

Contemporary psychological research on children's suggestibility yields several relatively robust findings. First, by the time children reach age ten or eleven, they appear to be no more suggestible—as a basic psychological characteristic—than adults.⁹⁵ This is not to say, of course, that children of this age are not suggestible:

89. See Gail S. Goodman, *Children's Testimony in Historical Perspective*, 40 J. SOC. ISSUES 9, 9-10 (1984) [hereinafter Goodman, *Children's Testimony in Historical Perspective*]. Goodman wrote:

The credibility of children's statements has been a source of controversy for centuries. Some critics emphasize children's suggestibility and possible obliviousness to the meaning and purpose of legal trials. They argue that children's testimony may retard rather than advance the cause of justice. This is not a trivial matter: People have suffered the death penalty largely on the basis of children's testimony. But there are also proponents of children's testimony; they argue that children can remember and report at least some events quite accurately, and in some cases may be the key or the only eyewitness to a crime.

Id.; see Ceci & Bruck, *Suggestibility of the Child Witness*, *supra* note 77, at 403.

90. Guy M. Whipple, *The Psychology of Testimony*, 8 PSYCHOL. BULL. 307, 308 (1911).

91. *Id.*

92. Goodman, *Children's Testimony in Historical Perspective*, *supra* note 89, at 9.

93. 4 WILLIAM BLACKSTONE, COMMENTARIES *214.

94. See Goodman, *Children's Testimony in Historical Perspective*, *supra* note 89.

95. See Carole B. Cole & Elizabeth F. Loftus, *The Memory of Children*, in CHILDREN'S EYEWITNESS MEMORY, *supra* note 2, at 195 ("The developmental studies discussed so far have consistently demonstrated that by the age of 10 or 11 years, children are no more vulnerable to suggestion than adults."); Karen J. Saywitz & Lynn Snyder, *Improving Children's Testimony with Preparation*, in CHILD VICTIMS, *supra* note 2, at 120 [hereinafter Saywitz & Snyder, *Improving Children's Testimony*]. Older children can, of course, be suggestible. See JEOPARDY IN THE COURTROOM, *supra* note 2, at 236-38.

Given the right circumstances, everyone is suggestible to some degree.⁹⁶ The important point is that with older children and adolescents, concern regarding suggestibility need not be greater than concern with adult witnesses.

The second critical finding of psychological research is that young children, particularly preschool-age children, appear to be more suggestible—as a basic psychological characteristic—than older children and adults.⁹⁷ Before proceeding further with discussion of young children's suggestibility, however, it is important to emphasize that young children are not invariably suggestible. Indeed, youngsters are often able to resist being misled by suggestive questions.⁹⁸ In psychological studies that involve a single interview regarding potentially abusive actions, children who are five-years-old or older demonstrate considerable resistance to false suggestion.⁹⁹ Even when children are questioned twice with misleading questions about possibly abusive acts, inaccuracies do not necessarily increase.¹⁰⁰ Gary Melton and his colleagues wrote that “[a]ge does have some relation to suggestibility, but probably less than often has been assumed.”¹⁰¹ Although young children are suggestible, they do not deserve the epithet: “the most dangerous of all witnesses.”¹⁰²

96. See Ceci & Bruck, *Suggestibility of the Child Witness*, *supra* note 77, at 405. The authors wrote: [I]t is important to emphasize that we do not mean to imply that adults are not suggestible, that their memories are always reliable, or that their testimonies are highly reliable. These statements are clearly false. There is a sizable literature on the suggestibility of adults' memory.

Id.
97. See Ceci et al., *Repeatedly Thinking About a Non-Event*, *supra* note 47, at 388-89. Ceci and his colleagues wrote:

Although even adults are suggestible, there appears to be a reliable age-related vulnerability to suggestive post-event questioning, with preschoolers disproportionately more vulnerable to these forms of suggestion than older children and adults.

In short, there appears to be no useful purpose served by attempting to gainsay what is surely a scientifically robust conclusion, namely, that preschoolers present a special reliability risk if the post-event context has been riddled with repeated, erroneous suggestions. Young children's suggestibility proneness, while probably reduced for bodily events, is by no means nonexistent or negligible.

Having said the above, it is important for the sake of balance to also say that children, no matter how much more suggestible they are than adults, are nevertheless capable of recollecting large amounts of forensically accurate information when the adults who have access to them have not engaged in repeated erroneous suggestions. In many of the studies that have reported age-related differences in suggestibility, young children perform quite well—until and unless an interviewer persists in making repeated erroneous suggestions or subtly rewards the child for inaccurate answers. Short of this, the children do quite well.

Id. See generally Ceci & Bruck, *Suggestibility of Children's Memory*, *supra* note 77; Stephen J. Ceci, David F. Ross & Michael P. Toglia, *Suggestibility of Children's Memory: Psychological Implications*, 116 J. EXPERIMENTAL PSYCHOL. GEN. 38 (1987).

98. See Goodman & Aman, *supra* note 29.

99. *Id.* But see Stephen J. Lepore & Barbara SESCO, *Distorting Children's Reports and Interpretations of Events Through Suggestion*, 79 J. APPLIED PSYCHOL. 108 (1994).

100. Goodman et al., *Children's Memory for Stressful Events*, *supra* note 79.

101. Melton et al., *supra* note 12, at 59.

102. Whipple, *supra* note 90, at 308 (quoting Adolph Baginsky).

2. Suggestibility Is Multiply Determined

Suggestibility is not simply a matter of age.¹⁰³ Thus, it is wrong to conclude that a four-year-old is invariably more suggestible than a forty-year-old. Suggestibility on a particular occasion depends on a host of situational, developmental, and personality factors, including the type of event; how well it is remembered; the type of information sought by the interviewer (*e.g.*, central details vs. peripheral details); the way the interview is conducted, including the language used; and a host of other influences prior to and during the interview.¹⁰⁴

3. Recreating the Context of the Event; Use of Props

Recreating the context of an event can influence memory and suggestibility. Children's memories appear to be impacted more strongly by contextual factors than the memories of adults.¹⁰⁵ During interviews, it is sometimes useful to employ questions and props to create context and help children remember.¹⁰⁶ Gerald Koocher and his colleagues observed that "[i]t is well-known that young children's reports of events are often less complete than those of older children and adults. It is also well-known that cues and reenactment can at times result in elicitation of more complete information from children."¹⁰⁷ Margaret-Ellen Pipe and her colleagues added:

[C]ontext cues have been found to be effective in prompting children's recall in natural environments and may be especially important for very young children, for whom memory may be strongly tied to context. Taking children back into the situation in which an event occurred or providing very specific physical cues related to the event may therefore provide stimulus support for children's recall

Despite the potential benefits of cues and props, there may also be disadvantages when they are used to obtain testimony from children. In

103. See Melton et al., *supra* note 12, at 59 ("Like memory itself, suggestibility is multiply determined. Suggestibility about an event increases as memory fades, but many factors other than memory strength also affect suggestibility: for example, degree of coercion or intimidation, type of information suggested, participation in the event, age-appropriateness of language.").

104. See Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 213; see also Leichtman & Ceci, *supra* note 30, at 576 ("it is clear that children's suggestibility is best viewed as heavily reliant on the entire context in which event reporting takes place").

105. See MARGARET C. DONALDSON, *CHILDREN'S MINDS* (1979).

106. See Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 213. The authors wrote:

For both neutral and traumatic events, because children typically retain more information than they report in free recall, scientists and professionals who work with children have long relied on specific questioning and use of props, to help elicit more complete memory reports from children.

Id.

107. *Id.* at 200.

particular, there is the danger that irrelevant cues will have a suggestive function and mislead children into making errors in their reports.¹⁰⁸

After reviewing psychological research on props and cues with children, Pipe wrote:

In conclusion, there is now clear evidence that cues and props can help children provide more complete event reports than they would normally provide in a free-recall account. Cues and props may also help when children are questioned quite specifically if the questions relate directly to the cue items. Interviewers must, of course, always be aware of the risk that these retrieval techniques might reduce the accuracy of reports. The effect on accuracy appears to depend on the nature of the cues and props, the way they are presented, and how children are instructed to use them. We are cautiously optimistic that there will be few adverse effects on accuracy when children are interviewed with props in view or when props are used in conjunction with specific questions.¹⁰⁹

4. Anatomically Detailed Dolls

The interview prop that has generated the most concern is the anatomically detailed doll.¹¹⁰ There is agreement that anatomical dolls are not a test for sexual abuse. Guidelines on use of anatomical dolls published by the American Professional Society on the Abuse of Children (APSAC) state:

108. Pipe et al., *supra* note 5, at 26.

109. *Id.* at 42-43.

110. Courts routinely allow children to use anatomical and nonanatomical dolls, as well as other aids, to illustrate their testimony. *See, e.g.*, Phillips v. State, 505 So. 2d 1075, 1077 (Ala. Crim. App. 1986) (holding that "given the youthful age of victim, [seven-years-old] . . . her use of the doll was a proper basis for the jury to conclude that appellant touched an intimate part of her body" and that it was proper to permit child to use dolls to illustrate touching of "intimate parts"); State v. Durst, 879 P.2d 603 (Idaho Ct. App. 1994); People v. Hutson, 506 N.E.2d 779, 780 (Ill. Ct. App. 1987) (11-year-old child; proper to illustrate penetration with doll); State v. Hood, 846 P.2d 255 (Kan. Ct. App. 1993); Williams v. State, 539 So. 2d 1049, 1050 (Miss. 1989) ("The use of anatomically-correct dolls during a trial is a matter of discretion with the trial judge although . . . great care and caution should be exercised with making this determination."); State v. Culkun, 791 S.W.2d 803, 810 (Mo. Ct. App. 1990) ("Demonstrative evidence, such as anatomically correct dolls, which aid the testimony of the witness and aid the jury in arriving at a correct verdict, is admissible.")

In *Commonwealth v. Trowbridge*, 647 N.E.2d 413 (Mass. 1995), the Massachusetts Supreme Judicial Court wrote:

It was within the judge's discretion to allow the child to use the anatomically correct doll during her testimony. The use of the doll could have assisted the child in giving an anatomically correct description of the alleged abuse, as well as assisting the jury in comprehending the precise nature of the child's testimony. There was also no abuse of discretion in permitting the doll in the jury room during deliberations.

Id. at 419 (citations omitted).

The use of anatomical dolls as a diagnostic test for child sexual abuse is not supported by the empirical evidence. Specifically, it is not appropriate to draw definitive conclusions about the likelihood of abuse based solely upon interpretation of a child's behavior with the dolls. There is no known behavior with the dolls that can be considered a definitive marker of sexual abuse in the absence of other factors, such as the child's verbal account or medical evidence.¹¹¹

Gerald Koocher and his colleagues conducted a thorough review of the literature on anatomical dolls and concluded that "the requisite information is simply unavailable and not known to be forthcoming to allow [anatomical dolls] to be used as a test."¹¹²

The APSAC Guidelines quoted above summarize the primary concerns raised about anatomical dolls:

[C]oncern has been expressed about possible harm through the use of anatomical dolls [during interviews]. One concern is that anatomical dolls may suggest sexual material, encouraging false reports from non-abused children. Another is that the dolls may be overstimulating or even traumatizing to non-abused children by introducing them prematurely to sexual ideas and body parts. A final concern is that interviewers using the dolls may be poorly trained and overzealous in their search for sexual abuse, eliciting unreliable, if not erroneous, evidence of abuse.¹¹³

Clearly, anatomical dolls—like all props—can be misused.¹¹⁴ In the hands of well-trained interviewers, however, the dolls can be a useful adjunct to the interview process.¹¹⁵ In particular, anatomical dolls are sometimes useful to: (1) Stimulate memory, (2) allow children to demonstrate what they have difficulty putting into words,¹¹⁶ and (3) confirm that the interviewer correctly understands the child's vocabulary and meaning for various terms.

111. AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN, *USE OF ANATOMICAL DOLLS IN CHILD SEXUAL ABUSE ASSESSMENTS* (1995) [hereafter cited as APSAC GUIDELINES]. The complete APSAC Guidelines are reproduced at the end of this Article, beginning at page 78.

112. Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 202.

113. APSAC GUIDELINES, *supra* note 111, at 2.

114. See Barbara W. Boat & Mark D. Everson, *Concerning Practices of Interviewers When Using Anatomical Dolls in Child Protective Services Investigations*, 1 *CHILD MALTREATMENT* 96 (1996).

115. See Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 213; see also Barbara W. Boat & Mark D. Everson, *The Use of Anatomical Dolls in Sexual Abuse Evaluations: Current Research and Practice*, in *CHILD VICTIMS*, *supra* note 2, at 47.

116. See Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35, at 213.

The APSAC Guidelines state:

The majority of available research does not support the position that the dolls are inherently too suggestive and overly stimulating to be useful in sexual abuse investigations and evaluations. Specifically, there is little empirical evidence that exposure to the dolls induces non-abused, sexually naive children to have sexual fantasies and to engage in sex play that is likely to be misinterpreted as evidence of sexual abuse.¹¹⁷

In the only study to address the issue, parents of nonabused children interviewed with anatomical dolls did not report that their children were traumatized by exposure to the dolls.¹¹⁸

There is general agreement that caution is necessary before using anatomical dolls with children under age five.¹¹⁹ Indeed, many would suggest that the dolls not be used at all with children under age five. Very young children may be distracted by the dolls.¹²⁰ Additionally, it is often difficult to tell whether a young child is simply playing with a doll or is using the doll to describe an actual event. Moreover, many three-year-olds lack the cognitive sophistication required to use a doll to represent a person.¹²¹ Very young children's lack of "representational capacity" can lead to breakdowns in understanding between child and interviewer. Judy DeLoache, an expert on children's use of symbols, examined the research on use of anatomical dolls with young children and wrote:

Research on the use of anatomical dolls to interview young children should allay the worst fears of high rates of false negatives and false

117. APSAC GUIDELINES, *supra* note 111, at 2; see Goodman & Aman, *supra* note 29, at 1867 ("Overall, our findings support the view that anatomically detailed dolls do not in and of themselves lead 'nonabused' children to make false reports of sexual abuse.").

118. See Barbara W. Boat, Mark D. Everson & Judy Holland, *Maternal Perceptions of Nonabused Young Children's Behaviors After the Children's Exposure to Anatomical Dolls*, 69 CHILD WELFARE 389 (1990).

119. See APSAC GUIDELINES, *supra* note 111, at 5.

Interviewers should be cautious in using anatomical dolls as demonstration aids with children under approximately age 3½ years. This caution is based on questions about the cognitive ability of young preschoolers to use dolls to represent themselves in behavioral re-enactment and on concerns about the potential of the dolls to distract very young children. These concerns do not preclude other uses of the dolls with young children. Furthermore, young children may use an anatomical doll to represent someone other than themselves and may, for example, demonstrate with a doll on their own bodies what they experienced.

Id. (citations omitted); see Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35; see also Maggie Bruck, Stephen J. Ceci, Emmett Francouer & Ashley Renick, *Anatomically Detailed Dolls Do Not Facilitate Preschoolers' Reports of a Pediatric Examination Involving Genital Touching*, 1 J. EXPERIMENTAL PSYCHOL. APPLIED 95 (1995); Judy S. DeLoache, *The Use of Dolls in Interviewing Young Children*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2, at 160.

120. See Koocher et al., *Psychological Science and the Use of Anatomically Detailed Dolls*, *supra* note 35.

121. See DeLoache, *supra* note 119, at 168.

positives. However, the research offers meager support for the supposition that dolls enhance children's reports¹²²

Although anatomically correct dolls are widely believed to facilitate the investigation of child abuse, there is extremely meager empirical or theoretical support for using dolls to interview very young children, that is, children of 3 years of age or less.¹²³

5. *Suggestibility Regarding Central Details vs. Peripheral Details*

Children, like adults, are more likely to give incorrect reports and to be more suggestible about peripheral details of events than about central, salient, memorable details.¹²⁴ Abusive genital contact is often very salient, and a child questioned about such an event is likely to be less suggestible than a child questioned about an innocuous or poorly remembered event.¹²⁵

6. *The Effects of Stereotypes and Accusatory Atmosphere*

An interviewer can create an atmosphere that is accusatory regarding a particular person, typically a suspect.¹²⁶ Additionally, an interviewer might describe an individual, again, usually a suspect, in terms of a negative stereotype. It comes as no surprise that stereotypes and an accusatory atmosphere cause some interviewees—children and adults—to be suggestible regarding the object of the unflattering commentary.

In a study by Ann Tobey and Gail Goodman, the researchers examined the effect on nonabused four-year-old children of questioning by a research assistant posing as a police officer.¹²⁷ The children experienced a staged benign event at a university research facility. The children played with a research assistant who was described to

122. *Id.* at 167.

123. *Id.* at 177.

124. See Melton et al., *supra* note 12, at 59 (stating that “[g]enerally, children are more resistant to suggestion about salient actions than peripheral details, including abuse-related events like physical assault or removal of clothes”).

125. In some laboratory studies, three-year-old children appear to conform to suggestive questions relating to possible abuse more often than older children. Perhaps these very young children do not yet fully realize the impropriety of most genital touching and thus are not as taken aback by such questions as older children seem to be. By age four or five, many nonabused children show signs of surprise or embarrassment when asked whether a stranger removed the child's clothes or was naked.

Intimidation can add to young children's suggestibility about abuse-related events, and younger children appear to be more easily intimidated. A supportive context may be especially important in bolstering young children's resistance to suggestive misinformation about abuse. See Goodman et al., *Children's Memory for Stressful Events*, *supra* note 79; *infra* notes 133-37 and accompanying text.

126. See *State v. Michaels*, 642 A.2d 1372, 1385-91 (N.J. 1994) (appendix in which the court reproduces portions of several interviews).

127. See Ann E. Tobey & Gail S. Goodman, *Children's Eyewitness Memory: Effects of Participation and Forensic Context*, 16 *CHILD ABUSE & NEGLECT* 779 (1992).

the children as a “babysitter.” Eleven days later, the children were interviewed about the experience. Some of the children were interviewed in a neutral fashion by a research assistant, while other children were interviewed by a research assistant posing as a police officer. Moments prior to the interview, a real police officer spoke to the children and said, “I am very concerned that something bad might have happened the last time that you were here. I think that the babysitter you saw here last time might have done some bad things, and I am trying to find out what happened the last time you were here when you played with the babysitter.” The researchers then compared the two groups of children in terms of their answers to interview questions put by the research assistant or the “police officer.” Questioning by the “police officer” had a deleterious impact on some children’s accuracy, although “[i]t is worth noting that only two children in the police condition seemed to be decisively misled by the police officer’s suggestion that the babysitter may have done some bad things.”¹²⁸

Michelle Leichtman and Stephen Ceci conducted research designed to highlight some of the dangers of negative stereotypes during interviews of young children.¹²⁹ In their study of nonabused preschool-age children, one group of children was told on several occasions about a man named Sam Stone, who, according to the story, was very clumsy.¹³⁰ Thus, the children were inculcated with a stereotype of a clumsy Sam Stone. Other children in the study did not receive this stereotyping information. Some time later, Sam Stone visited the children’s preschool classroom. He stayed about two minutes, but did nothing clumsy or unusual. Following Sam Stone’s uneventful visit to the classroom, the children in both groups were interviewed once a week for four successive weeks—some with leading questions—about Sam Stone’s visit. The leading questions contained an implication that Sam ripped a book and soiled a teddy bear. Finally, at a fifth interview, the researchers examined the impact of leading questions on the children who had been told that Sam Stone was clumsy. Children who received the stereotyping message about Sam were more likely than other children to provide inaccurate information in response to leading questions.¹³¹

128. *Id.* at 790.

129. See Leichtman & Ceci, *supra* note 30.

130. Leichtman and Ceci wrote:

[C]hildren in the *control* group received no information about Sam Stone before his visit and were questioned once a week during the 4 weeks immediately following this visit in a neutral manner.

....

Children in the *stereotype* condition, in contrast, received considerable information about Sam Stone’s personality before his visit to their school. Each week, beginning a month before the visit, research assistants went to the children’s day-care centers, and in the course of playing with them, presented 3 different scripted stories about Sam Stone In each of these stories, Sam Stone was depicted as a kind, well-meaning, but very clumsy and bumbling person.

Id. at 570.

131. During the fifth interview, children were asked a free-recall question about Sam Stone’s visit to their classroom. Forty-six percent of the three- to four-year-olds and 30% of the five- to six-year-olds inaccurately recalled that Sam did clumsy things. When probed further, up to 72% of the three- to four-year-olds made errors. However, only 21% of the younger children and less than 10% of the five-year-olds made the same type of claims

This study underscores the importance of avoiding questions that stereotype possible perpetrators.

7. *The Interviewer's Dilemma: "Should I Ask Only Open-Ended, Minimally Suggestive Questions and Risk Missing Evidence of Abuse, or Should I Ask Suggestive Questions and Risk Increased Inaccuracy?"*

Police officers, social workers, and other professionals who interview children regarding sexual abuse are on the horns of a dilemma. If they limit themselves to open-ended questions, some abused children will not disclose their abuse. On the other hand, as interviewers proceed along the continuum to focused, specific, and leading questions, interviewers run increased risks of obtaining incorrect information and being criticized for "improper" interviewing. There is no escaping the risk-benefit calculation inherent in asking suggestive questions.¹³² Reduced to its essentials, the question is: Which risk is more tolerable? Is it better to ask some specific and potentially suggestive questions so that sexually abused children are discovered and protected? Or, should specific and potentially suggestive questions be avoided in order to reduce the number of inaccurate accusations of sexual abuse? Put another way, is society concerned more about false denials of abuse or false allegations? We answer this question by rejecting the either/or dichotomy. Obviously, society is concerned about false allegations *and* false denials, and steps should be taken to reduce both. Interviewers should strive to create an opportunity for children to provide the most accurate, complete, and honest account possible, given the unique circumstances of each case. Fortunately, the past decade witnessed advances in interviewing, and we discuss these below.

a. *Generally Accepted Interviewing Techniques*

Experts on interviewing generally agree that interviewers should begin by building rapport with children.¹³³ Children should be made to feel as comfortable as

when gently challenged about what they really had seen.

Note that this study involved children who were bystanders to a neutral, brief event, and that neither the questions asked nor the statements made by the children concerned acts of abuse. Moreover, there were no anticipated consequences for the children of being accurate or not. Despite these facts, the study demonstrates that if young children are interviewed repeatedly with false suggestions in an accusatory context, false information may intrude into their recall. Of course, the findings can also be interpreted to suggest that for preschoolers who actually suffered abuse, repeated suggestions that abuse did *not* occur might result in recantation.

132. See Thomas D. Lyon, *False Allegations and False Denials in Child Sexual Abuse*, 1 PSYCHOL. PUB. POL'Y & L. 429 (1995).

133. See AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN, GUIDELINES FOR PSYCHOSOCIAL EVALUATION OF SUSPECTED SEXUAL ABUSE IN YOUNG CHILDREN (1990); Barbara W. Boat & Mark D. Everson, *Interviewing Young Children with Anatomical Dolls*, 67 CHILD WELFARE 337 (1988); Ray Bull, *Innovative Techniques for the Questioning of Child Witnesses, Especially Those Who Are Young and Those with Learning Disability*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2, at 179; Karen J. Saywitz & R.

circumstances allow. Research discloses that children are more likely to perform well when the interviewer is kind.¹³⁴ “Social influences, such as ‘reinforcement’—which presumably make the interviewer less intimidating—can have an important effect in optimizing children’s performance.”¹³⁵ Young children may actually be less suggestible when the interviewer is friendly and supportive, yet professional.¹³⁶

Cathleen Carter and her colleagues conducted research on questioning five- to seven-year-old children about a play event. The researchers wrote:

Children interviewed in a supportive manner were more accurate about non-abuse-relevant [sic] details than children interviewed in an intimidating context; however, support had no effect on accuracy in response to abuse questions. Even when questioned by an intimidating interviewer, children did not report that abusive events had taken place during the play event.

When given social support, children were better able to resist suggestions, making more correct responses and fewer errors in response to leading questions. Responses to specific questions, however, were unaffected by the support manipulation. . . .

. . . [C]hildren who were interviewed in a warm, supportive environment were more likely to resist misleading suggestions than were those who were interviewed under intimidating circumstances. Social support did not lead to the increase in suggestibility feared by some critics of socio-emotionally supportive interviewing techniques.

What is the mechanism for this specific cognitive effect? Past research has illustrated that social support decreases anxiety and increases self-confidence in subjects facing a complex cognitive task, and that decreased intimidation leads to increased resistance to suggestion. Thus, we believe that perceived social support led children in our study to feel less anxious, more empowered, and in turn, less intimidated and better able to resist misleading suggestions from the interviewer.¹³⁷

Although the interviewer strives for an objective, neutral stance toward the veracity of the allegations, there is no evidence to suggest that an effective interviewer cannot be kind and understanding towards the child. A matter-of-fact tone of voice can be used when delivering empathic comments, such as, “I can

Edward Geiselman, *Interviewing the Child Witness: Maximizing Completeness and Minimizing Error*, in MEMORY AND TRUTH, *supra* note 23 [hereinafter Saywitz & Geiselman, *Interviewing the Child Witness*].

134. See Goodman et al., *Children’s Memory for Stressful Events*, *supra* note 79.

135. Gail S. Goodman & Beth M. Schwartz-Kenney, *Why Knowing a Child’s Age is Not Enough: Influences of Cognitive, Social, and Emotional Factors on Children’s Testimony*, in CHILDREN AS WITNESSES, *supra* note 2, at 15, 22.

136. See *supra* note 134 and accompanying text.

137. Cathleen A. Carter, Bette L. Bottoms & Murray Levine, *Linguistic and Socioemotional Influences on the Accuracy of Children’s Reports*, 20 L. & HUM. BEHAV. 335 (1996).

understand how it might be hard to talk to a stranger.” “Thank you for working so hard at something that was hard for you to do.” Although it would not be proper to praise a child for providing specific content, it is appropriate to praise children for trying their hardest or doing their best. These simple compliments—which are completely normal, indeed, expected, in any other child-adult interaction—do not undermine the integrity of the interview. Of course, any questioning technique can be abused. Thus, it is improper to praise a child only when the child gives answers the interviewer wants to hear. Moreover, interviewers should not criticize children’s answers. A condescending attitude or comments such as “I bet you don’t remember the color of his hair,” undermine children’s confidence unnecessarily. The point is that children should be treated like children, not miniature adults, even in so important a context as investigative interviews.

Once rapport is established, children can be instructed regarding the interviewer’s expectations, limits on confidentiality, and the task demands of the interview. For example, Karen Saywitz and her colleagues conducted a series of studies indicating that motivating instructions (“Try your hardest, do your best”) aid children’s recall performance in an interview.¹³⁸ Similarly, instructing children to tell the interviewer when they do not understand a question and to ask for a rephrase by saying “I don’t get it” or “I don’t know what you mean” improved children’s interview performance in Saywitz’s studies.

Once rapport is established and instructions given, initial questions should be as nonsuggestive as possible. Interviewers typically begin with open-ended questions that invite narrative responses. Helen Dent wrote that “[w]hen accuracy is the prime consideration, an interviewer should make use of free-recall or general questions at least in the first instance.”¹³⁹ When a child does not respond to open-ended questions—and many children do not—the interviewer moves cautiously to more focused questions. With focused questions, the interviewer proceeds along a continuum, usually starting with questions that focus the child’s attention on a particular topic, and then, when necessary, moving gradually to more specific questions, some of which cross the line into suggestive and, occasionally, mildly leading questions.

In a review of the literature, Karen Saywitz and Edward Geiselman wrote:

A number of researchers have advocated that interviewers avoid specific questions completely, which they define as inherently leading. Unfortunately, the exclusive use of general questions does not guarantee accuracy

138. See Karen J. Saywitz & Lynn Snyder, *Narrative Elaboration: Test of a New Procedure for Interviewing Children*, J. CONSULTING & CLINICAL PSYCHOL. (forthcoming) (copy on file with Karen J. Saywitz); Karen J. Saywitz, Lynn Snyder & Vivian Lamphear, *Helping Children Tell What Happened: A Follow-Up Study of the Narrative Elaboration Procedure*, 1 CHILD MALTREATMENT 200 (1996) [hereinafter Saywitz et al., *Helping Children Tell What Happened*].

139. Helen Dent, *The Effects of Age and Intelligence on Eyewitnessing Ability*, in CHILDREN AS WITNESSES, *supra* note 2, at 1, 11.

any more than using leading questions guarantees contamination. For example, in the study of children's recall for a physical examination . . . , children were asked if the doctor put something in their mouths. Many incorrectly answered, "No." When asked more specifically if the doctor put a thermometer in their mouths to take their temperature, the same children answered, "Yes," offering the correct response. The more general question was perhaps less leading, but it also elicited the greater number of incorrect responses.¹⁴⁰

Saywitz and Geiselman suggested that:

interviewers begin with open-ended questions and proceed with the most nonleading approaches first. Then, . . . specific follow-up questions begin with category questions, then short answer questions regarding facts revealed in the initial narrative. . . . Category questions focus children's attention on the kind of information that is relevant to the forensic context. They include questions beginning with Who, What, When, Where, or How. Studies of the development of organizational strategies, cuing, and story recall suggest that categorical prompts might focus children's attention on the forensically relevant categories and increase memory performance. Particularly useful might be 'wh' questions regarding the participants (e.g., "What clothes were the people wearing?" "What did their hair look like?"), the setting (e.g., "What was the weather like that night?" "Was it inside or outside?"), and the conversations (e.g., "What did he say?"). . . . These category questions can be followed with requests for elaboration ("Tell me more"), clarification ("I do not understand"), or justification ("What makes you think so?"). Such prompts elicit additional information from the child's perspective rather than the adults'.

Finally, . . . the interviewer turns to short answer questions (e.g., "What color was it?") to elicit further details about information provided in the initial narrative. In the real world, the use of specific, short answer questions is often guided by practical considerations of risk assessment. In cases with significant corroborative evidence that raises the concern over a child's immediate safety, there is greater justification of the use of specific questions in comparison to cases that lack such corroborative evidence or when children are already in a safe place.¹⁴¹

Questions in the "yes-no" and multiple choice formats are not always highly suggestive, although they can be. Moreover, answers to "yes-no" and multiple choice

140. Saywitz & Geiselman, *Interviewing the Child Witness*, *supra* note 133.

141. *Id.*

questions are often difficult to interpret. Children's answers to such questions should be clarified by asking children to elaborate in their own words or to explain their responses.

Figures 1 through 4 below provide useful, practical information for communicating effectively with children and avoiding misinterpretation of children's answers.¹⁴²

142. The suggestions contained in Figures 1 through 4 are derived from MARK BRENNAN & ROSLIN E. BRENNAN, *STRANGE LANGUAGE: CHILD VICTIMS UNDER CROSS EXAMINATION* (3d ed. 1989); Ellen Mathews & Karen J. Saywitz, *Child Victim Witness Manual*, 12 CENTER FOR JUD. EDUC. & RES. J. 5 (1992); Karen J. Saywitz, *Improving Children's Testimony: The Question, the Answer, and the Environment*, in *MEMORY AND TESTIMONY IN THE CHILD WITNESS*, *supra* note 2, at 113 [hereinafter Saywitz, *The Question, the Answer, and the Environment*]; and Karen J. Saywitz, *Questioning Child Witnesses*, 4 VIOLENCE UPDATE 3 (1994).

FIGURE 1
QUESTIONING CHILD WITNESSES

Too often questions are phrased in grammar and vocabulary too advanced for children to comprehend. The form of the question must be well matched to the child's stage of language development. Below are simple guidelines for talking to children under seven to eight years of age, extrapolated from the research on child development:

- Use short questions and sentences.
Avoid long, compound utterances.
- Use one to two syllable words. (point to)
Avoid three to four syllable words. (identify)
Avoid jargon. (petition, allegation)
- Use simple grammatical constructions.
Avoid complex constructions, such as embedded clauses, double negatives.
- Use simple tenses. (-ed, was, did, has) ("What happened?")
Avoid multi-word verbs. (might have been) ("Might it have been the case that . . . ?")
- Use concrete, visualizable terms. (gun)
Avoid hierarchical, categorical terms. (weapon)
- Use the common meaning of the term. ("strike" means to hit, "charges" are something you do with a credit card)
Avoid the uncommon usage found in legalese. (striking words, filing charges)
Ask children to define or use the term to check their understanding.
- Use proper names. (Mary, Joe)
Avoid pronouns. (him, her, they, he, she)
- Use active voice. ("Did Mary hit Joe?")
Avoid passive voice. ("Was Mary hit by Joe?")
- Repeat the name of the antecedent. ("When did *that* happen?")
Avoid unclear references. (those things, this, it, that) ("When did Jill come home?")
- Use stable terms. (in the front of the room, in the back of the room) (a lot, a little)
Avoid words whose meaning varies with time or place. (here, there, yesterday, tomorrow)
Avoid relational terms. (more, less) ("Did it happen more or less than two times?")
- Use several short questions to replace one overloaded question.
Avoid questions that list several previously established facts before asking the question at hand. ("When you were in the house, on Sunday the third, and Sam entered the bedroom, did Mary say . . . ?")

Adapted from Karen J. Saywitz, *Children in Court: Principles of Child Development for Judicial Application*, in A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE (ABA Center on Children and the Law 1994)

FIGURE 2
AVOIDING MISINTERPRETATION OF CHILDREN'S WORDS AND BEHAVIORS

Too often children misunderstand adults' questions because the questions involve abstract concepts children do not understand. Similarly, adults too often misunderstand children's responses because they fail to interpret words or behaviors from the child's point of view.

- Match question content to children's level of cognitive development. Do not ask questions that require skills children have not yet mastered. For example, do not ask a child who cannot count how many times something happened. Children may try to answer without the requisite skill, resulting in irrelevant, inconsistent, misleading, or erroneous responses.
- With children under seven to eight years of age, avoid questions using conventional systems of measurement for telling time (minutes, hours, calendar dates), describing physical appearance (feet, inches, pounds, years) or distances (miles). Even older children have not mastered many of these concepts. Also, children are not familiar with many conventional names for ethnicity.
- Talk to children under seven years of age in terms of pictures rather than ideas. Describe the concrete and observable, not the hypothetical or abstract.
- Avoid misinterpreting certain emotional reactions or psychiatric symptoms as indicators of reliability. Symptoms of depression (indecisiveness, indifference, poor concentration, long pauses before answering) and Post-Traumatic Stress Disorder (avoidance, dissociation) can be mistaken as indicators of confabulation or insincerity. These children can appear uncooperative or incompetent for reasons having nothing to do with the reliability of their testimony.
- Consider the ways in which emotional reactions and psychiatric symptoms may affect a child's presentation in a pretrial interview or during courtroom testimony. Children who experience attentional deficits, flashbacks, psychic numbing, social withdrawal, and feelings of hopelessness, self-hatred, or helplessness can appear to be highly reluctant, uncooperative witnesses who provide little information.

Adapted from Karen J. Saywitz, *Children in Court: Principles of Child Development for Judicial Application*, in *A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE* (ABA Center on Children and the Law 1994)

Children should not be coerced, frightened, or threatened into answering questions. For example, telling a child that she cannot have a break until she answers certain questions can be construed as coercive. Interviewers should take care to avoid rewarding or punishing children for revealing certain types of content. It is usually improper for an interviewer to vilify the person suspected of abuse (*e.g.*, referring to a suspect as a bad man who did bad things). Of course, interviewers must be permitted to discuss specific individuals, including suspects. The critical point is not whether the interviewer discusses particular individuals, but how the interviewer approaches the subject. Some researchers have suggested that individuals not mentioned by the child, but who are critical to a complete understanding of the case, be introduced by the interviewer at the end of the interview with a relatively open-ended, or short-answer question rather than a yes-no or multiple choice question

(e.g., “Was someone else there? Yes. Who?” Rather than “Was John there?” Or “John was there, wasn’t he?”).¹⁴³

In certain situations it is necessary to ask children focused and specific questions. Moreover, it may be necessary to ask suggestive and even mildly leading questions in order to make decisions of risk assessment. However, it behooves the interviewer to consider the rationale for the use of such questions. It would be difficult under any circumstances to justify highly leading questions such as “He touched your private parts, didn’t he?”¹⁴⁴

143. See Saywitz & Geiselman, *Interviewing the Child Witness*, *supra* note 133.

144. It is interesting to note that in court, no one doubts the propriety of a cross-examiner asking, “He didn’t touch your private parts, did he?” The potential of this highly leading question to mislead a child is thought to be counterbalanced by the capacity of cross-examination to uncover the truth.

FIGURE 3
REDUCING THE POTENTIAL FOR DISTORTION OF CHILDREN'S STATEMENTS

- Interviewers can maintain an objective, neutral stance. They can keep their presuppositions based on information provided by other individuals in check. Interviewers can use a matter-of-fact tone of voice and underreact to children's reports.
- Interviewers can avoid creating an accusatory context in which suspects are labeled as "bad people" who did "bad things."
- Interviewers can consider alternative explanations for children's statements.
- Interviewers can begin with general open-ended questions and use more specific questions only after nonleading approaches fail. Communities can develop local guidelines for interviewers regarding the use of leading questions (*e.g.*, greater justification for using leading questions when there is corroborating evidence indicating imminent risk).
- Children's responses to yes-no questions are often difficult to interpret. Such questions can sometimes be turned into "wh" questions that possess less potential for distortion (*e.g.*, "Did he hit you?" becomes "What did he do with his hands?"). If yes-no questions are used, they can be followed by questions that invite children to elaborate ("Tell me more"), justify, ("What makes you think so?"), or clarify ("I'm confused") their answers in their own words.
- After children provide a brief narrative in response to open-ended questions, interviewers can help children expand on their initial narratives, with follow-up questions focusing on information from the child first and from other sources afterwards. Interviewers can avoid interrupting children's narratives.
- Interviewers can consider experimental techniques (*e.g.*, cognitive interview, narrative elaboration) that help children provide more complete descriptions independently.

Adapted from KAREN J. SAYWITZ & DIANA ELLIOTT, INTERVIEWING CHILDREN IN THE FORENSIC CONTEXT (forthcoming)

FIGURE 4
INSTRUCTIONS THAT MAY CLARIFY INTERVIEW TASK
DEMANDS FOR SCHOOL-AGE CHILDREN

Researchers have begun to study the effects of instructions on children's statements. Below are listed some of the individual instructions that have been suggested in the literature and are beginning to be tested in separate studies. This list is not intended to be read to children as a script. Future research is needed to clarify the full effects of instructions.

- "Your job is to tell what you remember the best you can—to tell the truth." "Tell what you saw and what you heard."
- "Tell me everything, even the little things that you might not think are very important."
- "You may not understand all the questions. Some may be easy and some may be hard to understand. I am used to talking to other adults, not children. When you don't understand a question, tell me that you don't understand. You can say, 'I don't get it' or 'I don't know what you mean.'"
- "I may ask you some questions more than once. Sometimes I forget that I already asked you that question. You don't have to change your answer, just tell me what you remember the best you can."
- "Sometimes you may not know the answer to a question. That's okay. No one can remember everything. If you don't know the answer, then say, 'I don't know,' but do not guess or make anything up. It is very important to tell only what you really remember, only what really happened. And if you know the answer; tell the answer."
- "I want to write down what we say because what you're telling me is important. Later, if I forget what we said, I can look it up."

Adapted from Karen J. Saywitz & R. Edward Geiselman, *Maximizing Completeness While Minimizing Error in Children's Recall for Events*, in *MEMORY AND TRUTH* (Steve Lynn ed., forthcoming)

Beyond the guidelines outlined above, it is difficult to prescribe a list of "proper" interview techniques. Creativity and flexibility are the order of the day when talking to young children, and competent interviewers are continually conducting a cost-benefit analysis for using different question types over the course of the interview.

b. The Psychological and Developmental Justifications for Cautious Use of Specific Questions During Investigative Interviews

Suggestive questions should be avoided when possible. When it comes to interviewing children about possible sexual abuse, however, there are reasons that support cautious and sparing use of focused and specific questions.¹⁴⁵ The first reason relates to the psychological dynamics of sexual abuse, and the impact of these

145. See *Kavanagh v. Berge*, 73 F.3d 733, 736 n.1 (7th Cir. 1996) ("It is . . . not entirely clear that leading questions are always inappropriate in dealing with young children.").

dynamics on disclosure of abuse. The second reason interviewers sometimes ask suggestive questions relates to young children's developing memory capacity. A third reason is related to children's emotional development and the psychological sequelae of trauma.

i. The Disclosure Process in Sexual Abuse

The first justification for specific and focused questions relates to the psychological pressures felt by victims; pressures that often result in halting, piecemeal disclosure. Gail Goodman and Beth Schwartz-Kenney observed:

Children who suffer sexual abuse may fail to report it for many reasons; for example, they may be embarrassed about what happened, they may not remember the event or may not have interpreted it as abuse, or they may have been instructed not to tell. For such children, an open-ended, free-recall question may fail to elicit a report.¹⁴⁶

Some abused children are threatened into silence.¹⁴⁷ Others are too embarrassed to tell. Some abused children suffer serious psychological trauma that can interfere with disclosure.

Teena Sorensen and Barbara Snow studied the disclosure process in 116 allegedly sexually abused children.¹⁴⁸ During early therapy interviews, nearly eighty percent of the children denied their abuse or were tentative about disclosing.¹⁴⁹

In contrast to the high rate of denial and tentative disclosure documented in Sorensen and Snow's research, April Bradley and James Wood evaluated disclosure in 234 sexual abuse cases and found:

Ninety-six percent of victims in the present study made a partial or full disclosure of abuse during at least one interview with [CPS] or police. . . . Six percent of victims initially denied to [CPS] or police that abuse had occurred. . . . Ten percent of victims in the present study displayed reluctance to discuss the topic of abuse, or specific aspects of the abuse, during one or more interviews with [CPS] or police. . . . Three percent of victims in the present study recanted their allegations.¹⁵⁰

146. Goodman & Schwartz-Kenney, *supra* note 135, at 15.

147. See Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 *CHILD ABUSE & NEGLECT* 177 (1983).

148. See Teena Sorensen & Barbara Snow, *How Children Tell: The Process of Disclosure in Child Sexual Abuse*, 70 *CHILD WELFARE* 3 (1991).

149. See *id.* at 11.

150. April B. Bradley & James M. Wood, *How Do Children Tell? The Disclosure Process in Child Sexual Abuse*, 20 *CHILD ABUSE & NEGLECT* 881, 885 (1996).

In another study, Louanne Lawson and Mark Chaffin evaluated twenty-eight children with sexually transmitted diseases.¹⁵¹ The children were interviewed by a social worker who was “trained in abuse disclosure techniques.”¹⁵² Only forty-three percent of the children “made a verbal disclosure of sexual abuse in the initial interview.”¹⁵³ Lawson and Chaffin wrote:

Surveys of adult survivors indicate that they rarely reported sexual abuse when they were children, and the child abuse field has continued to struggle with questions regarding “hidden victims.” The present findings provide additional reason to be concerned about underidentification of sexual abuse in the current generation of young child victims. Even when directly interviewed by a trained specialist who was sure the child had been molested, the majority of these . . . victims did not make even minimal disclosure¹⁵⁴

A study by Karen Saywitz and her colleagues illustrates the value of direct questions when interviewing young children about embarrassing topics such as genital touching.¹⁵⁵ The researchers studied nonabused five- and seven-year-old girls who experienced a routine medical examination by a pediatrician. As part of the examination, half the girls received an external inspection of the vaginal and anal areas. The other half did not receive the vaginal and anal examination. Some time later, all the children were questioned about the entire examination. Questioning began with open-ended questions like “What happened?” Then the children were asked focused and mildly suggestive questions, including questions about whether their vaginal and anal areas were examined.

Most of the children who experienced the vaginal or anal examination did not disclose the examination in response to open-ended questions such as “What happened?” The majority of children revealed the vaginal or anal examination only when they were asked mildly suggestive questions such as, “Did the doctor touch you there?”

Of the children in the study who did not receive a vaginal or anal examination, the great majority (ninety-two percent) resisted suggestive questions about such an examination. Only three children (eight percent) said they received a vaginal or anal examination when they did not. This research supports the conclusion that although

151. See Louanne Lawson & Mark Chaffin, *False Negatives in Sexual Abuse Disclosure Interviews: Incidence and Influence of Caretaker's Belief in Abuse Cases of Accidental Abuse Discovery by Diagnosis of STD*, 7 J. INTERPERSONAL VIOLENCE 532 (1992).

152. *Id.* at 536.

153. *Id.* at 537.

154. *Id.* at 539.

155. See 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*, 59 J. CONSULTING & CLINICAL PSYCHOL. 682 (1991) [hereinafter Saywitz et al., *Children's Memories*].

there is a risk of obtaining inaccurate information when mildly suggestive questions are asked, there is a greater risk that potentially embarrassing but truthful information will not be disclosed.

In a similar study involving reports of genital contact, and use of leading questions, Maggie Bruck and her colleagues reported that two- and three-year-old children produced a rate of false reports of genital touch that was higher than the number of false reports found in older children by Saywitz and her colleagues.¹⁵⁶

It should be noted that neither the Bruck study nor the Saywitz study included an accusatory context, actual sexual abuse, highly leading questioning, secrecy, or repeated interviews, any of which could have changed the results. Nevertheless, these studies indicate a marked increase in resistance to suggestion as children transition from the two- to three-year-old age range to the five- to seven-year-old age range.

The secretive and often embarrassing nature of child sexual abuse inhibits disclosure. John Spencer and Rhona Flin remind us that "child witnesses in particular, do not voluntarily recite full and spontaneous accounts of their experiences and observations without some degree of prompting."¹⁵⁷ Judges routinely allow leading questions during direct examination of timid children,¹⁵⁸ and similar flexibility should be extended to professionals conducting investigative interviews. In every case, interviewers balance the risk of a false allegation against the risk of failing to detect genuine abuse to justify the use of focused, specific, and leading questions. Fortunately, a number of appellate decisions recognize the practical realities faced by interviewers.¹⁵⁹ In *Idaho v. Wright*,¹⁶⁰ the Court noted that leading questions during interviews do not necessarily undermine children's credibility.¹⁶¹ In *People v. Edwards*¹⁶² the Illinois Court of Appeal observed that "the mere fact that the testimony was obtained as a result of questioning does not alone render it inadmissible. To hold otherwise would leave unprotected those children who do not

156. See Bruck et al., *supra* note 119.

157. J.R. SPENCER & RHONA FLIN, *THE EVIDENCE OF CHILDREN: THE LAW AND PSYCHOLOGY* 276 (1st ed. 1990).

158. See MYERS, *supra* note 2, § 5.7 (collecting numerous cases).

159. See *People v. March*, 620 N.E.2d 424, 436 (Ill. Ct. App. 1993). The court wrote:

However, we should not expect a perfect record in a situation where the victim is a two-year-old child. Given the inherent difficulties in conducting an interview of this nature, we should not expect consistent repetition and must make some allowance for the limited use of leading questions. Fazio was dealing with a very young child who could not be expected to consistently recite the abuse which allegedly took place. It is illogical to assume a child will sit down with a complete stranger, such as a police officer, and begin relating a bad experience. If a child did so perform, one might conclude he or she did so as a result of specific coaching. Furthermore, any investigation of sexual charges of this nature will require some specific questions.

Id.

160. 497 U.S. 805 (1990).

161. *Wright*, 497 U.S. at 819; see *State v. Grego*, 648 So. 2d 743 (Fla. Dist. Ct. App. 1994) (use of leading questions does not necessarily render hearsay unreliable).

162. 586 N.E.2d 1326 (Ill. Ct. App. 1992).

come forth of their own volition to complain about the abuse.”¹⁶³ In *State v. Free*,¹⁶⁴ the Louisiana Court of Appeal wrote:

A young child abused by an adult in the position of a parent, family member, caretaker or friend cannot be expected to come forward immediately with a complete and exact report of the event. The courts have recognized that the child may be unable to speak about the incident until she considers herself safely in the presence of a compassionate adult whom she can trust. Because the child may not have a clear understanding of what has been done to her, an “original complaint” often consists of responses to the questioning of a patient, persistent adult who draws the child’s story from her.¹⁶⁵

In summary, a few carefully considered specific questions do not undermine a child’s entire statement. The responses to these questions should be carefully scrutinized and requests for clarification in the child’s own words are often necessary. However, on the whole, the research suggests that there is much to be gained by the judicious use of focused and specific questions with young children, especially with children over the age of six or seven where the risk of contamination is relatively low. Studies are also clear that there is much to lose from the use of highly leading questions and accusatory contexts, especially with children under five years of age where the risks of distortion may be relatively high.

ii. Developmental Justification for Suggestive Questions

The second reason that suggestive and mildly leading questions are sometimes used during interviews of young children concerns the fact that young children’s spontaneous free recall is often incomplete and insufficient for evaluating suspicions of abuse. More information is forthcoming in response to focused and specific questions that serve as external supports to help children search their memories in a systematic, organized, and efficient fashion.¹⁶⁶ Although preschool-age children have impressive memory ability, they are not adept at free recall. They do not independently generate and employ retrieval strategies to recall as much information as older children and adults. As a result, they often need specific questions to trigger retrieval of additional information stored in memory. In fact, in research studies, young children seldom provide more than the bare minimum that is asked for by the researcher.

Young children frequently provide very little information in response to open-ended questions such as “Can you tell me about that?” Young children often need

163. *Edwards*, 586 N.E.2d at 1334.

164. 643 So. 2d 767 (La. Ct. App. 1994).

165. *Free*, 643 So. 2d at 776.

166. *See supra* notes 23-30 and accompanying text.

“many questions and prompts in order to recall both recently and distantly experience events.”¹⁶⁷ Thus, during interviews of young children, it is often necessary, for developmental reasons, to ask specific questions in order to retrieve information that has been encoded but not yet accessed. Depending on the context, some of these questions may be considered suggestive and mildly leading.

iii. Children’s Emotional Development and the Need for Specific and Focused Questions

A third reason that specific and focused questions can be useful with young children relates to their emotional development. Karen Saywitz and Diana Elliott noted that the interviewer’s difficulties are compounded by the fact that avoidance is a common strategy for coping with anxiety among young children.¹⁶⁸ As children mature, they learn to use more adaptive methods of coping with stress. With young children, avoidance is often the first inclination in response to an unfamiliar adult who raises anxiety provoking topics. The more painful the topic, the more effort to avoid it. This problem is compounded when children suffer Post-Traumatic Stress Disorder, a disorder not uncommon among victims of crime. One of the hallmarks of the disorder, for children and for adults, is a persistent avoidance of any reminder of the trauma. Child victims may use silence, distraction, or other methods of evading the very purpose of the interview.

c. Innovative Interview Techniques

The “cognitive interview” has received considerable attention because of its potential for obtaining detailed information from children in a nonleading format.¹⁶⁹ The cognitive interview is a collection of memory enhancement techniques that are based on principles of cognitive psychology. The cognitive interview method has been shown to elicit thirty-five percent more information from adults than standard police interviews.¹⁷⁰ The four basic memory retrieval aids that comprise the bulk of the cognitive interview are: (1) Mentally reconstructing the context at the time of the event; (2) reporting even partial information, regardless of perceived importance; (3)

167. Robyn Fivush, *Developmental Perspectives on Autobiographical Recall*, in CHILD VICTIMS, *supra* note 2, at 1, 6.

168. KAREN J. SAYWITZ & DIANE ELLIOTT, *INTERVIEWING CHILDREN IN THE FORENSIC CONTEXT* (forthcoming 1997).

169. See Ronald P. Fisher & Michelle R. McCauley, *Improving Eyewitness Testimony With the Cognitive Interview*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS, *supra* note 2, at 141; R. Edward Geiselman, Karen J. Saywitz & Gail K. Bornstein, *Effects of Cognitive Questioning Techniques on Children’s Recall Performance*, in CHILD VICTIMS, *supra* note 2, at 71.

170. See R. Edward Geiselman & Ronald P. Fisher, *The Cognitive Interview Technique for Victims and Witnesses of Crime*, in PSYCHOLOGICAL METHODS IN CRIMINAL INVESTIGATION AND EVIDENCE 191 (David C. Raskin ed., 1989).

recounting the event in a variety of orders; and (4) reporting events from a variety of perspectives. Karen Saywitz and Edward Geiselman revised the cognitive interview for use with children. In their study, seven- to twelve-year-olds demonstrated a twenty-six percent improvement over standard police interviews, and a forty-five percent improvement when children were given practice using the retrieval aids prior to the interview.¹⁷¹

Another new questioning technique, "narrative elaboration," is designed to increase the detail and relevance of information children provide, without reliance on leading questions.¹⁷² Before being asked to provide a narrative account of what happened, children are taught that their narrative should include a high level of detail regarding the following categories of information: (1) Participants, (2) setting, (3) actions, and (4) conversation/affective states. Each of these categories is represented by a simple drawing on a card.¹⁷³ Children practice using the cards to remind themselves to include details from each category while retelling routine events. Following this practice, the children are asked to describe the event under investigation, and are given an opportunity to elaborate upon their description using the cards to trigger recall of additional details.

In one study, seven- to eleven-year-olds trained in this technique provided fifty-three percent more accurate information in a narrative report of a past school activity than children who received no such training. Because incompleteness and suggestibility are problems with the recall of younger children, it is important to note that the memory performance of the younger children who received the experimental intervention (seven to eight years) was comparable to that of the older children in the control group (ten to eleven years). This reduction in developmental difference was accomplished without the use of focused, specific, or leading questions that could distort children's reports. Preliminary analyses from a third study suggest that a modified version of the procedure helps improve the recall of preschoolers as well, again without the use of leading questions.

Although research on the cognitive interview and narrative elaboration techniques hold promise, these techniques remain to be tested on reports of traumatic events, on events children are hesitant to report, and on events that occurred a significant time in the past. Still, the development of these techniques demonstrates that we are beginning to find ways to improve children's recall without jeopardizing accuracy. Such efforts maximize children's strengths and minimize their weaknesses, as researchers adapt the knowledge of the laboratory to the needs of the forensic interviewer.

171. See Karen J. Saywitz, R. Edward Geiselman & Gail Bornstein, *Effects of Cognitive Interviewing and Practice on Children's Recall Performance*, 77 J. APPLIED PSYCHOL. 744 (1992).

172. See Saywitz & Snyder, *supra* note 138; Saywitz et al., *Helping Children Tell What Happened*, *supra* note 138.

173. For example, the "who" card depicts a stick figure person, while the "where" card contains a simple drawing of a house and yard.

d. Summary

Investigative interviewing regarding child sexual abuse is complicated by many factors, particularly the tender age of some children, their suggestibility, the nature of the crime, and the skill of the interviewer. David Marxsen and his colleagues observed that the psychological literature “has tended to concentrate on the suggestibility of children and to neglect other topics relevant to those who investigate suspected cases of child sexual abuse.”¹⁷⁴ Describing what they call “the over concentration on children’s suggestibility,” Marxsen and his colleagues wrote:

That young children are more suggestible than adults is well-established. This does not mean that the investigative interviewing of children is impossible, only that it requires skill and care. However, the literature’s overemphasis on suggestibility can give the police, the judiciary, the media, and the general public the mistaken impression that children are inherently unreliable. . . . The suggestibility problem is a complex one, but the literature . . . give[s] the impression that children are simply untrustworthy witnesses. This is simply not true.¹⁷⁵

Michael Lamb and his colleagues added equally valuable insight into the difficult practical realities faced by professionals who talk to young children:

Suggestive utterances should be avoided whenever possible. When a child does not address certain issues in response to open-ended and directive prompts, however, it may be necessary for investigators to ask leading or suggestive questions. . . . [W]e cannot continue holding children to a higher standard than adult witnesses The demonstrable fact that investigative interviews with young children can be rendered worthless by inept practice should not blind us to the substantial literature demonstrating that reliable information can be elicited from young children who are competently interviewed.¹⁷⁶

In the final analysis, there are no easy answers to the dilemma faced by interviewers. Specific questions are often useful with very young children who, because of their youth, are at the greatest risk of being misled by suggestive questions. The goal should be lowering the number of suggestive questions while, at the same time, respecting the need to ask them. Innovative interview protocols, tested first in the laboratory, may help to accomplish these goals. It is unlikely,

174. David Marxsen, John C. Yuille & Melissa Nisbet, *The Complexities of Eliciting and Assessing Children’s Statements*, 1 PSYCHOL. PUB. POL’Y & L. 450, 450 (1995).

175. *Id.* at 451.

176. Lamb et al., *supra* note 34, at 446.

however, that any single protocol will emerge as useful in all cases. The interviewer's judgement and experience will always be necessary to choose the best approach for a given case.

III. CHILDREN'S COMMUNICATIVE COMPETENCE

In this section we examine children's developing communication skills. Of course, it is through the spoken word that children typically express their memories during interviews and court testimony. Although a child's memory of an event may be strong, efforts to elicit an accurate report can be frustrated by developmental limitations on communication.

Only gradually do children master articulation, vocabulary, grammar, and conversational rules of everyday speech. From birth to ten years of age, children learn to discriminate and articulate sounds, comprehend increasingly more complicated questions, and produce increasingly more complex and intelligible responses. Many of the difficulties encountered with child witnesses are a function of miscommunication between adults and children.

To learn to communicate, children rely on familiar adults to structure conversations. Children depend on familiar environments to give meaning to language. Initially, language serves a limited number of functions, such as identifying objects and locations. With maturation and experience, however, language comes to serve a wide array of functions, including the exchange of information via question-answering.

A. *Linguistic Complexity*

Many grammatical constructions that are beyond children's understanding are common in the courtroom. Several examples from actual transcripts illustrate the point:

Question to a four-year-old:

Q: On the evening of January third, you did, didn't you, visit your grandmother's sister's house and didn't you see the defendant leave the house at 7:30, after which you stayed the night?¹⁷⁷

Which question is the child supposed to answer? Despite the stunning developmental inappropriateness of this question, the child's inability to respond "was misinterpreted as a lack of both competence and credibility."¹⁷⁸

177. Saywitz & Snyder, *Improving Children's Testimony*, *supra* note 95, at 117.

178. *Id.*

Consider these questions put to English children:

Q: I must suggest that whether Dr. Printer ever put his hand on your knee—and my instructions are he has no recollection of doing that—but certainly he did not move his hand up your leg?¹⁷⁹

Question to another child:

Q: Well, I have jumped ahead a bit, so you will have to go back to what you were telling us about before that first incident. You told us of what you did and what he did to you. On the next occasion you went there, what kind of thing happened between you?¹⁸⁰

Questions to a third child:

Q: Now on that day when your mother and Shelly came up where you were when your mother was discussing a possible job up in the North of England with Esther?

A: I am not sure.

Q: Was there a time when you suffered from eczema?¹⁸¹

Moving from the courtroom to the psychology lab, researchers in one study evaluated the ability of young research subjects to repeat questions that had been asked of actual child witnesses.¹⁸² Children in the study misunderstood many common courtroom questions. The legalese of the courtroom contains lengthy compound sentences fraught with independent and embedded clauses, as well as grammatical constructions that are beyond the ken of many children under age eight. Miscommunication is inevitable when children are asked questions they cannot understand.

B. Children's Limited Understanding of Legal Terms

The language of the law is a foreign tongue to young children.¹⁸³ Adult questioners—particularly attorneys—commonly make two mistakes with young witnesses. First, attorneys use words—particularly legal terms—that children do not understand. Second, attorneys use linguistically complex sentences that go sailing

179. Vicky K. Kranat & Helen L. Westcott, *Under Fire: Lawyers Questioning Children in Criminal Courts*, 3 EXPERT EVIDENCE 16, 21 (1994).

180. *Id.*

181. *Id.*

182. See BRENNAN & BRENNAN, *supra* note 142; see also ANNE G. WALKER, HANDBOOK ON QUESTIONING CHILDREN (1994).

183. See Karen Saywitz, Carol Jaenicke & Lorinda Camparo, *Children's Knowledge of Legal Terminology*, 14 L. & HUM. BEHAV. 523 (1990).

over children's heads. This section discusses children's difficulty understanding legal terms. Although children of any particular age differ in their word comprehension, research discloses fairly consistent age-related trends in understanding.

1. *Words That Kindergartners Understand to Some Degree*

By the time they are in kindergarten, most children have some understanding of the following terms: lie, police, remember, promise, and judge. Of course, the fact that a kindergartner or first grader knows that a judge is someone who dresses in black and sits in court does not mean the child knows what a judge does. Many young children have little idea of the judge's role.

2. *Words That Most Sixth Graders Do Not Understand*

Some technical legal terms are lost on most children entering the teenage years, including: allegation, petition, minor, motion, competent, hearsay, strike, charges, defendant, and jury.

It is virtually never safe to assume that children understand legal terms.¹⁸⁴ It is not enough to ask a child, "Do you know what that word means?" An affirmative response does not mean the child and the adult share the same understanding. Better to ask the child to use the word in a sentence. Correct usage points toward comprehension.

Some words have more than one meaning: one legal, one common usage. A child may know the common meaning but be oblivious to the legal definition. When a child hears the word "minor," for example, the child may assume that the adult's definition coincides with the child's. To a child, a "miner" is someone who digs coal, not a person under age eighteen. When a child hears the word "allegation," she may think of "alligators," and when she hears "jury," she may think "jewelry" or "journey." In one juvenile court case a child sat in the back of the courtroom, anxiously awaiting the judge's decision about where she would live for the next six months. The judge rendered a decision from the bench, but the child remained in the dark. She turned to the social worker sitting next to her and asked, "What did the judge decide?" The social worker replied, "Didn't you hear what the judge said? He said the minor will live with grandmother." With tears in her eyes, the child responded, "I heard him say the miner is gonna to live with grandma, but where am I going to live?"

Psychological research illustrates the potential for misunderstanding when "simple" legal terms are used. In Karen Saywitz's research, children provided the following definitions:

184. It is worth remembering that even first year law students—college graduates—are seldom without a legal dictionary.

Court is a place to play basketball.
Charges are what you do with your credit card.
Hearing is what you do with your ears.
Date is what you do with a boyfriend.
Case is what you carry papers in.
Parties are for getting presents.
Swear is like cursing.
Strike is when you hit somebody.

With children's limited understanding in mind, consider this question, put to a six-year-old:

Q: In this case the parties contest whether you were present when
Strike that, your honor.

The child may think the attorney is talking about a party, and that, at the party, the children participate in a contest. There are cases of presents for the children. But then, the attorney abruptly stops talking about the party and tells the judge to hit (strike) somebody!

C. Questions About Time, Date, and Distance

Questions in court often require witnesses to pinpoint time, date, location, distance, height, or weight. These conventional systems of measurement are learned gradually over the course of the elementary school years.¹⁸⁵ It is common for young children to be asked the time of events before they can tell time; a skill they do not master until age seven or eight.¹⁸⁶

D. Children's Limited Ability to Monitor How Well They Understand Questions

Children's ability to monitor how well they understand questions—comprehension-monitoring—develops gradually.¹⁸⁷ Children are not particularly good at evaluating what they do *not* know, thus young children sometimes mistakenly believe they understand questions. Moreover, children often try to answer questions

185. See WILLIAM J. FRIEDMAN, *THE DEVELOPMENTAL PSYCHOLOGY OF TIME* (1982); John C. Brigham, Mary Van Verst & Robert K. Bothwell, *Accuracy of Children's Eyewitness Identifications in a Field Setting*, 7 *BASIC & APPLIED PSYCHOL.* 295 (1986); Graham Davies, Yvonne Stevenson & Rhona Flin, *Telling Tales Out of School: Children's Memory for an Unexpected Event*, in *PRACTICAL ASPECTS OF MEMORY* 122 (M. Gruenberg, P. Morris & R. Sykes eds., 1988); Saywitz et al., *Children's Memories*, *supra* note 155.

186. See FRIEDMAN, *supra* note 185.

187. The information in subpart III.D. is adapted from Karen J. Saywitz, Rebecca Nathanson & Lynn Snyder, *Credibility of Child Witnesses: The Role of Communicative Competence*, 13 *LANGUAGE DISORDERS* 59 (1993).

they do not fully comprehend.

Although a child may not understand a question, she knows it is her turn to speak, and she knows the adult is waiting—perhaps impatiently—for an answer. The social pressure to answer may be irresistible. Children often try to answer by focusing on a fragment of the question they comprehend—typically the beginning or the end.

Unfortunately, children seldom spontaneously ask for clarification.¹⁸⁸ It is difficult to imagine a five-year-old interrupting direct or cross-examination with, “Pardon me counsel, but I don’t understand.” The responsibility to ensure understanding falls squarely on the adults, not the child.

Researchers are developing techniques to improve children’s ability to respond accurately to questions.¹⁸⁹ Karen Saywitz and Lynn Snyder conducted a study that suggests that preparation helps children take the initiative to indicate their lack of understanding and to ask that questions be rephrased.¹⁹⁰ In this study, six- to eight-year-old children participated in a scripted activity at school. Later, the children were questioned about the activity. Prior to the questioning, one group of children was instructed to tell the questioner when they did not understand a question. Children who received this instruction were more accurate than children who were simply told to do their best. A third group of children was given practice sessions in which they practiced asking for clarification. The children in this final group were more accurate than the children in the first two groups when they were interviewed about the staged event.

E. Children’s Inconsistency

Children are often inconsistent, and judges and attorneys are anxious to know why.¹⁹¹ One explanation, of course, is prevarication. Some children, like some adults, lie. When it comes to inconsistency among young children, however, deliberate falsehood is not the most likely explanation. Among young children, inconsistency is normal. Inconsistency is caused by numerous factors, including: (1) The nature of disclosure among abused children, and (2) developmental immaturity.

188. Children seldom ask for clarification when they do not understand a question, although they can be taught to say, “I don’t understand.” See Carter et al., *supra* note 137 (in this research study, very few children asked for clarification of complex questions).

189. See Saywitz & Snyder, *Improving Children’s Testimony*, *supra* note 95.

190. See *id.*

191. See Robyn Fivush, Nina R. Hamond, Nicole Harsch, Naomi Singer & Anne Wolf, *Content and Consistency in Young Children’s Autobiographical Recall*, 14 DISCOURSE PROCESSES 373, 383 (1991) (“These results indicate that children are highly inconsistent in what they recall about the same events from one recall conversation to another.”).

1. The Disclosure Process

Among children who have been sexually abused, there are powerful psychological reasons for inconsistency. As discussed in subpart II.B.7.b., *supra*, many abused children disclose their abuse gradually, and each telling is a little different. For example, a trusted interviewer may be able to elicit information the child is unwilling to share with less trusted adults. Moreover, some abused children recant, and some recant their recantation.¹⁹² Children who have been molested repeatedly for months or years have understandable difficulty remembering particular episodes,¹⁹³ and when the child is asked to do so—as is likely in legal proceedings—the child may become confused and, as a result, inconsistent. Thus, the nature of the disclosure process can lead to inconsistency.

2. Developmental Reasons for Children's Inconsistency

There are developmental reasons for inconsistency in young children, particularly preschoolers.¹⁹⁴ Five reasons for young children's inconsistency are discussed below.

1. Little children are not proficient at monitoring their communications for error, omission, inconsistency, or contradiction. Thus, children may not realize they are “not making sense.” Adults, by contrast, continuously monitor their speech to ensure a smooth, coherent narrative. Children's relative deficit in self-monitoring can cause inconsistency.
2. A second developmental reason for young children's inconsistency is that children have difficulty monitoring how well they understand what adults say. Thus, as explained earlier, a young child may mistakenly think she understands a question. Even when a child knows she does not understand, she is unlikely to request clarification or confess confusion. Children often try to answer questions they do not fully understand. Again, the result can be confusion and inconsistency.
3. Third, young children are still learning the linguistic convention of describing events from beginning to middle to end. Thus, it is not uncommon for three- and four-year-olds to appear confused,

192. For a discussion of the disclosure process, including recantation, see subpart II.B.7.c.

193. See Fivush & Shukat, *Content, Consistency, and Coherence*, *supra* note 12, at 18 (“Everything we know about personal memories, from childhood through adulthood, would suggest that, the more frequently one experiences an event, the more difficult it is to recall a single specific experience of that event.”); Judith Hudson, *The Emergence of Autobiographical Memory in Mother-Child Conversation*, in *KNOWING AND REMEMBERING IN YOUNG CHILDREN*, *supra* note 11, at 166, 168 (“There is also evidence that highly routine episodes of familiar events are extremely difficult to recall because they have become fused into the generalized event representations and are no longer available to recall as distinct episodes.”).

194. See Gordon & Follmer, *supra* note 27, at 284 (“Developmental research suggests that young children may be less consistent than older children in what they remember over a series of interviews.”).

disorganized, and inconsistent as they “tell what happened.” Young children’s narratives rarely maintain chronological order until seven to ten years of age.

4. Because young children have difficulty taking the adult’s perspective, they are unlikely to notice when adults misinterpret their meaning.
5. A final developmental explanation for inconsistency relates to memory development. Robyn Fivush and Jennifer Shukat wrote:

Even when no misleading or suggestive information is provided, preschoolers are remarkably inconsistent in the information they recall on multiple trials even after relatively short delays. . . .

Why might preschool children be so inconsistent in their recall? One possibility that has been suggested in the literature is that young children rely on adults’ questions to guide their recall. Thus, if adults ask the same questions over time, young children will provide the same information, but if adults ask different questions over time, children’s recall will seem inconsistent. While it certainly may be the case that young children will answer the same question in the same way across recall trials, their inconsistent recall cannot be completely attributed to inconsistent questions. In [the research described by the authors], children were inconsistent in the spontaneous recall of the same event on two different occasions.

Another possibility is that preschool children are inconsistent because their memories are not well organized. In particular, it has been argued that personal experiences are organized as canonical narratives and these narrative forms are learned during the preschool years. Before children have control over these narrative forms, their memories will not be coherently organized and therefore they will be inconsistent.

. . . .

. . . [C]hildren’s recall is extremely inconsistent over time. While the total amount of information recalled about specific events does not seem to change over time, children recall different information each time they recount an event.¹⁹⁵

When evaluating a child’s credibility, it is important to understand the psychological reasons for children’s inconsistency, and not to assume that consistency is an indicator of reliability. Inconsistencies are to be expected from children, including victims of child abuse.

195. Fivush & Shukat, *Content, Consistency, and Coherence*, *supra* note 12, at 12-13, 17.

F. Summary

The quality of a child's testimony often depends more on the communicative competence of the adults than the child. In particular, it is key that lawyers ask questions children can understand.

IV. CHILDREN IN COURT

Children's increased participation in the legal system has brought considerable attention not only to children's memory and suggestibility but also to the emotional impact of testifying. Courtrooms are austere, formal settings, capable of intimidating adults, not to mention children. What do children know about the legal system, how does participation in litigation affect children, and what can be done to aid children while, at the same time, preserving the rights of defendants?

A. *The Need for Judicial Control When Children Testify*

The trial judge has considerable authority regarding the presentation of evidence and interrogation of witnesses.¹⁹⁶ Normally, judges allow counsel fairly wide latitude to shape their cases according to their own lights. When child witnesses are involved, however, there is sometimes greater need for judicial oversight. The necessity of enhanced judicial involvement derives from the factors discussed below.

First, testifying is very difficult for some child witnesses. Testifying is anxiety-producing for most *adult* witnesses. Adults, however, are sufficiently knowledgeable about the legal system to place their testimony in context. Adults understand—at least in general terms—what happens in court and what is expected of them. This knowledge helps adults manage the stress of testifying. By contrast, many children have little idea of what to expect in court. Some young children believe that they will go to jail if they give the “wrong answer,” or that the defendant will yell at them.¹⁹⁷ Children's relative lack of knowledge regarding the legal system, along with embarrassment and fear of public speaking, can fuel stress and anxiety, with deleterious consequences for performance on the witness stand.¹⁹⁸ As the Utah Supreme Court observed in *State v. Loughton*,¹⁹⁹ “[a] young child may not be able or willing to testify when placed in a stressful courtroom situation.”²⁰⁰

The second reason for enhanced judicial involvement in the management of child witnesses pertains to children's difficulty with the language of the law. With

196. See, e.g., *State v. Hoyt*, 806 P.2d 204, 209 (Utah Ct. App. 1991) (“The trial judge has great discretion in the management of a trial . . .”).

197. See subpart IV.E. *infra* for a discussion of children's knowledge of the legal system.

198. See Saywitz, *The Question, the Answer, and the Environment*, *supra* note 142, at 115 (“Fears of public speaking, the unknown, embarrassment, and recrimination may interfere with communication efforts.”).

199. 747 P.2d 426 (Utah 1987).

200. *Loughton*, 747 P.2d at 429.

measured understatement, Melton and his colleagues noted that “[a]ttorneys do not distinguish themselves with appropriately simple vocabulary and syntax when they question children.”²⁰¹ The linguistic complexity of courtroom banter surpasses anything children hear at home or school. Legal terms that are second nature to attorneys are completely beyond children. Considering children’s relatively unpolished language skills, opportunities for miscommunication abound, and the court is in a good position to ensure that attorneys ask comprehensible questions.

B. Case Law Concerning the Court’s Authority to Accommodate Child Witnesses

The trial judge has substantial authority to control the proceedings and accommodate child witnesses.²⁰² For example, in *Maryland v. Craig*,²⁰³ the Court approved limited use of closed-circuit television with child witnesses. The Court recognized that the State has a compelling interest in protecting abused children from additional trauma and embarrassment.²⁰⁴ In *Commonwealth v. Amirault*,²⁰⁵ the Massachusetts Supreme Judicial Court considered a trial judge’s decision to alter the courtroom for young witnesses in a preschool child sexual abuse case. The Supreme Judicial Court wrote:

At trial, the judge allowed the child witnesses to testify from a child-sized table and chair placed in front of the jury box. The judge and questioning attorneys sat around the table. The defendant sat at counsel

201. Melton et al., *supra* note 12, at 66.

202. See *In re Amber S.*, 15 Cal. App. 4th 1260, 19 Cal. Rptr. 2d 404 (1993) (juvenile court dependency proceeding).

We hold that the juvenile court had the inherent power to order use of one-way closed-circuit television to take the testimony of the minors outside the presence of their parents, in order to ensure its truthfulness, notwithstanding the absence of any express statutory authorization for the procedure in dependency proceedings.

Id. at 1262, 19 Cal. Rptr. 2d at 405; see *People v. Sharp*, 29 Cal. App. 4th 1772, 36 Cal. Rptr. 2d 117 (1994), *cert. denied*, 115 S. Ct. 2006 (1995); *Rural Hicks-Bey v. United States*, 649 A.2d 569, (D.C. 1994) (despite lack of statutory authority, the trial judge had inherent authority to allow child to testify via closed-circuit television). “[T]he trial court has inherent authority, unless otherwise specifically precluded, to control the conduct of the proceedings before it” *Id.* at 575; see *Commonwealth v. Brusgulis*, 496 N.E.2d 652, 656-57 (Mass. 1986).

Judges have considerable latitude in devising procedures and modifying the usual rules of trial to accommodate child and other witnesses with special needs, so long as the defendant’s fair trial rights are not violated. Where such procedures may be necessary, they should be discussed in pretrial conference so that the defendant has adequate notice and so that potential problems can be considered with greater deliberation than when they arise mid-trial.

Id.; see *In re Stradford*, 460 S.E.2d 173, 174 (N.C. 1995) (“Our courts have systematically recognized that special exceptions to general courtroom procedures are often required to more effectively question child witnesses in sexual abuse cases.”).

203. 497 U.S. 836 (1990).

204. *Craig*, 497 U.S. at 852.

205. 535 N.E.2d 193 (Mass. 1989).

table. The child was allowed to bring a toy into the courtroom and had a parent sit behind him or her. The judge instructed the attorneys to make objections quietly into a microphone during a child's testimony. The judge ruled on the objections immediately and heard arguments based on the objections after the testimony.

On appeal, the defendant makes a broad objection to the inability of counsel effectively to register valid objections and the prejudicial nature of the courtroom set-up, and argues that he was thereby deprived of his rights to effective assistance of counsel and to a fair trial. . . . We find no error.

A judge is afforded wide discretion in fashioning procedures and modifying standard trial practices to accommodate the special needs of child witnesses. . . . We have recognized the plight of child sexual abuse victims, and the difficulties a particular child may face in trying to testify in a traditional courtroom setting. . . . "[A] judge may require that the environment in which a witness is to give testimony may be made less formal and intimidating. . . ."

The judge here protected the child witnesses to the extent possible while also safeguarding the defendant's rights. The judge permitted defense counsel to confer with each other and with the defendant and then to return to the witness with additional questions following the conferences. Furthermore, the judge explained the special practices to the jury to avoid any possible prejudice to the defendant. The defendant's right to a fair trial and assistance of counsel were not compromised.²⁰⁶

In *State v. Ford*,²⁰⁷ the Florida Supreme Court discussed the admissibility of a child's videotaped testimony. The child had witnessed her mother's murder. Although the Florida court concluded that the videotape lacked reliability, the court described the authority of trial judges to accommodate children:

A trial court may implement a procedure not expressly authorized by this Court or otherwise authorized by law if the procedure is necessary to further an important public policy interest. The policy reason in this case is the State's interest in protecting a child witness from the trauma of testifying in the presence of a defendant accused of killing her parent. We conclude that the trial court did not commit a per se reversible error by resorting to an unauthorized procedure to protect the child witness.

In addition, we note that the trial court had the inherent authority to act to protect the child witness. . . . A court's inherent powers include its ability to protect witnesses. Thus, the trial court could have relied on its inherent

206. *Amirault*, 535 N.E.2d at 207 (citations omitted).

207. 626 So. 2d 1338 (Fla. 1993).

powers to use an unauthorized procedure that would have protected the child witness in the instant case.²⁰⁸

In juvenile court nondelinquency proceedings, the trial judge has ample authority to accommodate child witnesses while, at the same time, preserving the parents' rights to counsel, cross-examination, and fairness.²⁰⁹ The Alaska Supreme Court described the need for flexibility in juvenile court proceedings:

Cases involving the sexual abuse of children present very difficult evidentiary issues for the courts. Despite the adoption of procedures making the process of testifying less intimidating for a young child, the fact remains that many children are not able to discuss incidents of abuse even in a modified courtroom setting. . . . Generally speaking, the rules of evidence were not developed to handle the problems presented by the child witness. Therefore our courts must be free to adapt these rules, where appropriate, to accommodate these unique [circumstances]. However, this increased flexibility places a proportionately greater burden on the trial judge²¹⁰

Of course, there are limits on accommodating child witnesses. In *Duffitt v. State*,²¹¹ the Indiana Supreme Court disapproved a trial judge's decision to place several posters on the walls of the courtroom. The supreme court wrote that "the practice of decorating in deference to [a] certain witness is altogether inappropriate. . . ." ²¹² In *State v. Michaels*,²¹³ the Appellate Division of the New Jersey Superior Court reversed the sexual abuse conviction of a nursery school teacher. The children testified via closed-circuit television from the judge's chambers. The appellate division wrote:

[T]he in-chamber proceedings were conducted in a manner so far removed from proper standards of impartially presenting the testimony of the children witnesses that the defendant was denied a fair and impartial trial.

The trial judge, in his zeal to make the children feel at ease so that their testimony might be obtained, failed to recognize that he could be perceived as crossing the line between an impartial judge and the prosecution. The judge, in the televised-view of the jury, played ball with the children, held them on his lap and knee at times, whispered in their ears and had them do the same, and encouraged and complimented them. [citations omitted]. The

208. *Ford*, 626 So. 2d at 1345 (citations omitted).

209. *See In re Amber S.*, 15 Cal. App. 4th at 1262, 19 Cal. Rptr. 2d at 405.

210. *In re T.P.*, 838 P.2d 1236, 1240-41 (Alaska 1992).

211. 525 N.E.2d 607 (Ind. 1988).

212. *Duffitt*, 525 N.E.2d at 608.

213. 625 A.2d 489 (N.J. Super. 1993), *aff'd*, 642 A.2d 1372 (N.J. 1994).

judge also unduly interfered with defense counsels' cross-examination of the children and often took charge of the questioning, which in many instances was overly suggestive. For all appearances, the State's witnesses became the judge's witnesses. The atmosphere became such, after this manner of presentation of testimony from nineteen children, that a jury considering a verdict in favor of the defendant might feel that it was personally offending the judge. The required atmosphere of the bench's impartiality was lost in this trial.

We do not question the integrity of the trial judge, who otherwise did a commendable job in a very long and difficult case. He clearly felt he was doing the right thing by assisting in the search for "the truth." This case demonstrates the critical need for the judge to be impartial in an adversary proceeding, and it highlights how difficult a task it is in many instances.²¹⁴

Maintaining judicial impartiality while, at the same time, accommodating the unique needs of some child witnesses is a challenge, but a proper middle position is attainable.

C. Establishing Ground Rules for Attorneys

At the outset of a trial, ground rules for questioning child witnesses can be established by the judge to facilitate children's testimony. Predetermined ground rules underscore the court's control and educate counsel. Based on child development research, we suggest the following ground rules:

- Questions should be asked of children in a form that is developmentally appropriate to their ages. Attorneys should spell out what steps they will take to ensure that questions are developmentally appropriate. A simple guideline with children under age eight is to use short sentences, one to two syllable words, simple grammar, and concrete, visualizable words.
- Continuances and delays, if granted, should be as brief as possible to preserve memory for details and minimize legal intervention into children's lives.
- Questioning of children should occur at an age-appropriate time of day: during school hours, before or after nap time, or at times that do not interfere with cherished activities.
- Attorneys should not raise their voices when questioning a child witness and should argue objections out of the child's hearing. Young children over-per-

214. *Michaels*, 625 A.2d at 507-08 (citations omitted).

sonalize courtroom procedures, assuming that arguments occur because they have done or said something wrong.

- Attorneys should generally question children from a single, neutral location. Walking around the room creates a changing visual backdrop that distracts children. Standing near the defendant creates emotional factors that could hamper the child's ability to testify to the best of his or her ability.
- Children need regularly scheduled, frequent breaks (e.g., every twenty minutes). Children have difficulty focusing attention on verbal questioning for long periods of time. It is unrealistic to rely on children to monitor their own behavior and notify the court when they need a break.

D. Preparing Children to Testify

Preparing witnesses to testify is part of the lawyer's stock-in-trade. With adult witnesses, preparation is typically limited to acquainting the adult with likely questions and with the nature of cross-examination. With child witnesses, by contrast, preparation requires more. Although adults vary in their knowledge of the legal system, nearly all adults have at least a rudimentary understanding of the judicial system and the roles of the professionals within it. Most children, however, have limited knowledge of the legal system and the role of judge, jury, attorney, bailiff, and others. Ask a young child to define "court" and the answer may well be "A place to play basketball."²¹⁵ When asked who is in charge of the courtroom, many children do not know. One youngster replied, "Judge Wapner" from television's *The People's Court*. Amye Warren-Leubecker and her colleagues wrote that "[c]onsidering that children know little about the legal system, and that what they learn from school and television may be misleading or incomplete, the assumption that child witnesses are largely unprepared for testimony is probably correct."²¹⁶

Outside the legal arena, preparing children for novel or stressful experiences is routine. Indeed, preparation is expected. In the medical arena, preparation is important for children who are about to undergo unfamiliar medical or surgical procedures. Karen Saywitz and Lynn Snyder observed that "[p]reparation of children for painful medical procedures has proven successful in lowering children's perceptions of pain and raising their level of cooperation."²¹⁷ Testifying in court is difficult for many

215. See Karen J. Saywitz, *Children's Conceptions of the Legal System: "Court Is a Place to Play Basketball,"* in INTERNATIONAL PERSPECTIVES, *supra* note 2, at 136 [hereinafter Saywitz, *Children's Conceptions of the Legal System*].

216. Amye Warren-Leubecker, Carol S. Tate, Ivora D. Hinton & I. Nicky Ozbek, *What Do Children Know About the Legal System and When Do They Know It? First Steps Down a Less Traveled Path in Child Witness Research,* in INTERNATIONAL PERSPECTIVES, *supra* note 2, at 158, 180.

217. Saywitz & Snyder, *Improving Children's Testimony,* *supra* note 95, at 119.

children, and youngsters entering a courtroom are as deserving of preparation as children entering a hospital.

Preparing children to testify serves three inter-related goals. First, preparation may reduce children's stress to more manageable levels. Second, preparation appears to increase some children's capacity to answer questions, promoting a situation in which children can perform optimally. Third, preparation helps children understand the nature and seriousness of the proceeding.

It goes without saying that preparation does not include teaching a child—or any other witness—what to say in court. The Utah Supreme Court has warned against preparation or, more accurately, coaching that intentionally or unintentionally creates a story in a child's mind "in such a way that it is likely the child is only parroting what others have said about the relevant facts."²¹⁸ Much preparation can be accomplished without discussing the facts of the case. However, very young or highly traumatized children may harbor unrealistic and realistic fears that require discussion of the facts before they can testify.

Preparing children to testify does not eliminate their fear and anxiety, but preparation affords children a more accurate and less frightening picture of what to expect. Children who are prepared have a better chance of performing at their maximum efficiency.

What role should the court play in preparing children to testify? Needless to say, the court should avoid favoritism toward a particular witness, including a child. Ensuring that children are adequately prepared, however, is not favoritism or bias. Children who are prepared are in a better position to testify fully and honestly, thus assisting the search for truth.

Prior to the trial, it is often useful for the child to meet a judge. Many "court schools" include a meeting with a judge as part of their curriculum. When Saywitz asked children what court and judges reminded them of, children commonly reported that the judge reminded them of a priest or a witch because of the robe. Children said that the courtroom reminded them of church because there were pews, silence, and rules (*e.g.*, no chewing gum). A face-to-face meeting with a judge, even if little more than a brief introduction, helps the child understand that the judge is "a real person" wearing a costume or uniform, and not some mysterious, and perhaps fearsome, unknown.

In judicial districts with more than one judge, it may be preferable to introduce the child to a judge who is not assigned to the child's case. When this is not feasible, a brief introduction to the assigned judge is within the court's discretion as long as the meeting takes place outside the presence of the jury and there is no discussion of the case. In situations where the court is the trier of fact, it is probably wise to refrain from meeting the child prior to the child's testimony. A child can learn a great deal

218. *State v. Fulton*, 742 P.2d 1208, 1218 n.15 (Utah 1987).

from other adults who put on and take off the robe and inform children that the judge's job is to be in charge of the courtroom. Children respond well to comparisons with familiar ideas. A judge can be likened to a teacher. Both are in charge of the room, and both enforce rules of behavior and fairness.

Research discloses only one appellate decision on the propriety of judicial participation in preparing children for court. In *State v. Carlson*,²¹⁹ the defendant was convicted of child molestation. The case was tried in King County, Washington, the location of Seattle. Following his conviction, the trial judge granted defendant's motion for a new trial. The prosecution appealed the new trial order to the court of appeal, which reversed and reinstated the jury verdict of guilty. The defendant then filed a motion for reconsideration in the court of appeal and, while that motion was pending, defendant learned that one of the appellate judges, Judge Susan Agid, had on two occasions participated as a judge in "Kids Court," a trial preparation program operated by the King County District Attorney's office. The defendant moved to disqualify Judge Agid, vacate the court of appeal's decision, and appoint a new appellate panel. The court of appeal ruled against the defendant, writing:

Kid's Court is a program designed to prepare children who are alleged victims of sexual abuse and assault for their appearance in a courtroom trial setting. The program includes elements of role playing involving a judge, prosecutor, and other courtroom personnel. There is no discussion of the facts about any particular child's case. The focus of the program is to demystify the courtroom for young children who will be required to testify. Judge Agid participated as a judge in the program during two 2-hour sessions. There is no indication whatsoever that the victim in this case participated in the program, or that Judge Agid ever had any direct contact with her.

Carlson's argument is that any judge who has participated in the Kid's Court program has, of necessity, compromised his or her ability impartially to decide issues of credibility and reliability of testimony from any child witness. This is an absurd argument, and we reject it totally. Reduced to its most simple formulation, Carlson's argument is that whenever a judge has received special training or participated in the presentation of programs as to any given legal subject, the judge must be disqualified from sitting on any case in the future involving such issues. . . .

Carlson confuses a judge's efforts to improve the legal system with an assumption of biased advocacy which prevents a judge from exercising the independent judgment and consideration required in the exercise of the judge's professional responsibilities.²²⁰

219. 833 P.2d 463 (Wash. Ct. App. 1992).

220. *Carlson*, 833 P.2d at 464-65.

If children arrive at the courtroom unprepared, a judge or an attorney can prepare a child briefly using the practical suggestions in Figure 5.

FIGURE 5
PREPARING CHILDREN FOR COURTROOM TESTIMONY

Children have a limited context for understanding the purpose of questioning, the functions of the various professionals, or the rules by which people interact in the legal setting. Their misunderstandings can result in heightened and unrealistic fears, failure to recognize the significance or consequences of their testimony, and failure to use the "big picture" to put their feelings in perspective and cope with the stress of testifying.

- Children may benefit from understanding the functions of the various professionals in the courtroom. For example, young children may not know that the judge is in charge of the courtroom. When asked "What is the job of the judge in court?" in research studies, young children under seven typically respond, "He wears a robe and sits up high, that's it, he watches." Children need to be instructed not only that the judge is in charge, but that he or she will ensure that no one gets hurt, that the proceeding is fair, and that the bailiff will help keep order.
- Children need to understand why they are in court and how the proceeding relates to the previous investigation. They need to understand the flow of information from the investigation to trial. Young children may believe that a courtroom is merely a room you pass through on the way to jail. They may have no concept of a trial. They are surprised that information provided to investigators in perceived confidence is now public information in court.
- Children need to know what will happen in the courtroom. Advance preparation makes the unfamiliar more familiar and less threatening. Preparation keeps children from operating under misplaced perceptions.
- Children may benefit from a brief outline of what will happen in the courtroom, including instructions about the mechanics of testifying (e.g., "Talk into the microphone," "You cannot nod your head; you must say yes or no out loud," etc.). Even so, they may need reminders throughout their testimony if it extends over hours and days rather than minutes.
- Children need to understand their own role as a witness, that they will be questioned regarding events they have seen or heard. Children also need to be instructed, in language they can understand, regarding the obligation to testify truthfully. The specific explanation will differ depending on the type of case.
- Children need to understand that they are a team player, that their testimony is only one piece of information to be considered, and that many factors are beyond their control. Children should not be made to feel responsible for the outcome of the case. A child needs to hear that the adults, and not the child, have the responsibility and authority to make decisions.

Adapted from Karen J. Saywitz, *Children in Court: Principles of Child Development for Judicial Application*, in *A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE* (ABA Center on Children and the Law 1994)

E. Children's Limited Understanding of the Legal System

Adult witnesses understand that testimony is scrutinized and used to resolve disputes. Adults appreciate the jury's role in decision making. Moreover, adults understand the representational responsibilities of attorneys. Because adults under-

stand the “big picture,” they are in a good position to provide “‘audience-adapted,’ and convincing accounts.”²²¹ Young children, by contrast “know very little about courtroom personnel and procedures.”²²² For example, children as old as ten may be unaware of the jury’s role in decision making, erroneously believing that jurors are spectators or friends of the defendant. Children’s lack of knowledge places them at a relative disadvantage vis-à-vis adult witnesses.

Awareness of children’s developing knowledge of the legal system helps judges evaluate children’s credibility and interpret their behavior in court. This section summarizes findings of psychological research on children’s understanding of the legal system.

1. *Three- to Seven-Year-Old Children*

Children in this age group are just beginning to understand the court process and the roles of professionals in the legal system. In a Montana case, for example, a five-year-old boy was escorted into the courtroom. He looked around and “stated that he thought he was in a police station and the robed judge was a karate expert.”²²³

In a study by Karen Saywitz, many young children confused the roles of the police, courts, and prisons.²²⁴ Children as old as six and seven reported that “Court is a room you pass through on your way to jail.” Other children believe “The policeman decides if somebody did it or not and whether they should go to jail for the rest of their life.” Regarding the judge, most young children in this study had a visual image of the judge, but few understood the judicial role. Young children may not realize that the judge is in charge of the courtroom. One youngster said, “The judge is there to talk and listen, nothing else, he sits in a high desk and bangs a hammer, I don’t know why.” In a study by Amye Warren-Leubecker and her colleagues, eighty-two percent of three-year-olds responded incorrectly to the question, “Who is in charge of the courtroom?” The three-year-olds provided understandably child-like answers such as “A manager,” “A teacher,” and “The guy who owns it.” By the time children reach age eight, most know the judge is in charge.

The majority of children under seven have little or no idea what lawyers do and, when they venture a guess, young children are usually wrong, mentioning such things as “‘loans money,’ ‘writes down everybody who’s bad,’ and ‘makes sure nobody gets in a fight’ or ‘decides who’s guilty.’”²²⁵ Some children are closer to the mark, mentioning that lawyers “play golf” and “sit around a lot.”

221. Warren-Leubecker et al., *supra* note 216, at 175.

222. *Id.* at 179.

223. *State v. Phelps*, 696 P.2d 447, 453 (Mont. 1985).

224. See Saywitz, *Children’s Conceptions of the Legal System*, *supra* note 215.

225. See Warren-Leubecker et al., *supra* note 216, at 168.

For many young children court has negative connotations, perhaps because children learn on television that “bad” people go to court to be punished.²²⁶ Young children may believe that if they give the “wrong” answer, they will be sent to jail. In Karen Saywitz’s research “[t]he majority of four- to seven-year-olds demonstrated no awareness that a goal of the court process is to gather evidence and determine whether or not it is truth.”²²⁷

2. *Eight- to Eleven-Year-Old Children*

Eight- and nine-year-old children—third grade—begin to comprehend the legal system. By this age children begin to understand the concept of rights, and gradually appreciate that litigation is a system for resolving disputes. “Gradually, the judge’s role in determining guilt or innocence and in deciding the punishment [are] realized within this age group. Generally, children in the eight- to eleven-year-old group showed substantial increases in differentiating between people, social roles, processes, and functions. For example, they no longer confused the judiciary with the role of the police.”²²⁸ Despite their increasing sophistication, however, many eight- to eleven-year-olds remain confused about what goes on in court.

3. *Twelve- to Fourteen-Year-Old Children*

As children enter adolescence, their knowledge of the legal system approaches adult levels.

4. *Summary*

Children’s lack of knowledge of the legal system can interfere with their ability to testify fully and effectively. Fortunately, relatively simple steps can be taken to increase children’s understanding, and these are described in subpart IV.D.

F. *Children’s Fears About Testifying*

Children’s limited knowledge of the legal system can lead to unrealistic fears and false expectations about testifying. As explained earlier, some children believe that if they make even a minor mistake they will go to jail. Some children are concerned that they might be assaulted by the defendant. On a more realistic level, children

226. Amye Warren-Leubecker and her colleagues asked children “Is court a good place or a bad place?” Eighty-two percent of the three-year-olds said “Bad,” while 38% of the five- and seven-year-olds and 35% of the six-year-olds gave this response. *Id.* at 169. Older children tended to say that court was neither good nor bad. *Id.* at 170.

227. Saywitz, *Children’s Conceptions of the Legal System*, *supra* note 215, at 148.

228. *Id.* at 150-51.

express fear of the unknown, of public speaking, embarrassment, loss of control, being yelled at in court, and facing the defendant.

[Such fears] can make some children tearful, ill, or inarticulate in the courtroom. Children have difficulty using the “big picture” to put their feelings in perspective. Under the stress of testifying, some children may regress to a more immature level of behavior. A child who is intelligent, articulate, and self-confident at home may show immature language and memory difficulties in the formal environment of the courtroom.²²⁹

G. Recesses During Child’s Testimony

Teachers know that for children to perform well at school, they need recesses. How much more do children need recesses during the highly stressful and unfamiliar experience of testifying in court? The trial judge has discretion to recess the proceedings during a child’s testimony, and should do so when a child shows signs of fatigue, loss of attention, or unmanageable stress.²³⁰ Ellen Matthews and Karen Saywitz described the response of some children to testifying:

Sometimes a child’s way of coping with overwhelming emotion is to shut down during testimony, to fall into silence or into a series of “I don’t know” and “I don’t remember” responses. Attorneys and judges may interpret these responses as evidence of denial or recantation. While this is a possible explanation, judges should consider other explanations as well. It is equally likely that children are overwhelmed with the stress and emotion of the moment at hand²³¹

The Massachusetts Supreme Judicial Court noted that “[a]lthough a court need not tolerate excessive and repeated delays, judges must be sensitive to a child’s limited stamina.”²³² It is not sufficient to tell a child, “If you want a break, just ask.” Most children *cannot* take the initiative to request a recess. Moreover, young children have difficulty monitoring their own needs. A five-year-old is more likely to stop answering questions or cry than interrupt the attorneys with a request to go to the bathroom or rest. The responsibility falls on the court and counsel to monitor the child’s needs, and take the initiative.

229. Karen J. Saywitz, *Children in Court: Principles of Child Development for Judicial Application*, in A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE 15, 18 (1994).

230. See *State v. Kallin*, 877 P.2d 138, 144 (Utah 1994) (trial court called recess to allow child to compose herself).

231. Matthews & Saywitz, *supra* note 142, at 1, 28.

232. *Commonwealth v. Brusgulis*, 496 N.E.2d 652, 656 (Mass. 1986).

Periodic recesses during direct examination pose few problems. Although interruptions during cross-examination are another matter, it is during cross-examination that children are often most uncomfortable and in need of rest. The court has authority to recess the proceedings at reasonable intervals, even during cross-examination. To avoid the complaint that recesses interfere with cross-examination, the court may inform counsel ahead of time that recesses will occur at regular intervals, *e.g.*, every twenty minutes.

H. Scheduling a Child's Testimony

Young children perform best when they are rested. Up to the age of five, many children nap in the afternoon, and, as any parent will testify, a child deprived of her nap is not at her best, behaviorally or intellectually. Whenever possible, therefore, a young child's testimony should be scheduled to accommodate nap time. Testifying in the morning is a good solution for many young children.

With school age children, it is usually best to schedule testimony during school hours. Few children are dismayed at the prospect of missing a little school. More importantly, however, a child who testifies following a full school day is a tired child and a child who has spent the better part of the day worrying about going to court. It is better to take the child's testimony early in the day.

I. Allowing a Child Witness a Comfort Item

Many children derive comfort from a favorite toy or stuffed animal. A child witness should be permitted to bring their particular favorite object with them. "These comforting objects are more than mere toys. They symbolically represent a little bit of a mother's ability to soothe the child when frightened or nervous. Their presence helps children calm themselves when parents are not immediately on hand."²³³

J. Support Person for a Child Witness

Testifying is difficult for young witnesses. The Utah Supreme Court aptly noted that "[a] young child may not be able or willing to testify when placed in a stressful courtroom situation."²³⁴ To facilitate children's testimony, the trial judge has discretion to allow the child to be accompanied by a trusted adult.²³⁵ In *State v. Hoyt*,²³⁶

233. Matthews & Saywitz, *supra* note 142, at 1, 34. *But see* *State v. Palabay*, 844 P.2d 1 (Haw. Ct. App. 1992) (In a decision that sets an unduly harsh standard, the court ruled that it was error to allow a 12-year-old child to hold her teddy bear while testifying, absent a showing of compelling need for such accommodation.).

234. *State v. Loughton*, 747 P.2d 426, 429 (Utah 1987).

235. For cases approving a support person for child witnesses, see *United States v. Johnson*, 15 M.J. 518 (A.C.M.R. 1983); *People v. Lord*, 30 Cal. App. 4th 1718, 36 Cal. Rptr. 2d 453 (1994); *People v. Adams*, 19 Cal. App. 4th 412, 23 Cal. Rptr. 2d 512 (1993); *State v. Menzies*, 603 A.2d 419 (Conn. App. Ct. 1992); *Baxter v. State*, 522 N.E.2d 362 (Ind. 1988); *Stanger v. State*, 545 N.E.2d 1105 (Ind. Ct. App. 1989); *State v. Rowray*, 860 P.2d

the Utah Court of Appeal approved a trial judge's decision to allow a representative of the Victim Assistance Program to sit near the nine-year-old victim. "The representative did not coach or actively encourage the witness, but remained silently at her side as a referent of familiarity and unbetrusted trust."²³⁷

When a support person is used, the court instructs the individual not to coach or prompt the child.²³⁸ Moreover, the jury may be instructed not to draw any inferences from the presence of the support person.

The location of the supportive adult should be dictated by the needs of the child rather than rigid rules. In some cases, it is enough for the adult to sit near the child. With younger children and those who are particularly anxious, the adult may need to hold the child's hand or the child may need to sit on the adult's lap.²³⁹ The child should not sit on the prosecutor's or judge's lap while testifying.²⁴⁰

The adult should be someone with whom the child has a relationship of trust. Thus, a stranger will not do. In many cases, the child's parent or another loved one is the most logical and appropriate support person.²⁴¹ If the supportive adult is also a witness, the court may require the adult to testify prior to the child.

Psychological research by Gail Goodman and her colleagues provides empirical support for the use of support persons with child witnesses.²⁴² Goodman studied 218

40, 44 (Kan. Ct. App. 1993) ("[W]hen the accompanying party does not speak, prompt the witness, or in any manner attempt to disrupt or influence the trial, the trial judge's discretion is not abused in permitting an adult support person to be in close proximity to a minor while the minor testifies."); and *Commonwealth v. Meadows*, 553 A.2d 1006, 1011-12 (Pa. Super. Ct. 1989) (trial court did not err in refusing to grant mistrial when rape counselor who was familiar with child comforted child while judge and attorneys adjourned to adjacent room for legal argument; child, who was deaf and mute, was confused about why judge and attorneys left). See 18 U.S.C.A. § 3509(i) (West 1996) (providing that in federal court "[a] child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child"); Carol A. Crocca, Annotation, *Propriety and Prejudicial Effect of Third Party Accompanying or Rendering Support to Witness During Testimony*, 82 A.L.R. 4TH 1038 (1990).

236. 806 P.2d 204 (Utah Ct. App. 1991).

237. *Hoyt*, 806 P.2d at 210.

238. See *Sharp v. Commonwealth*, 849 S.W.2d 542 (Ky. 1993) (conviction reversed in part because adult in courtroom gestured supportively as child testified).

239. See *Commonwealth v. Pankraz*, 554 A.2d 974 (Pa. Super. Ct. 1989) (not abuse of discretion to permit young child to sit in grandmother's lap while testifying); *State v. Jones*, 362 S.E.2d 330, 332 (W. Va. 1987) (defendant was not prejudiced by trial court's decision permitting seven-year-old witness to sit in foster mother's lap while testifying; child was extremely anxious; no evidence that foster mother prompted child; "The court may have allowed Rachel to sit on her foster mother's lap to keep the child from being distracted.").

240. See *Sexton v. Howard*, 55 F.3d 1557 (11th Cir. 1995) (harmless error for child to sit on prosecutor's lap while testifying); *State v. Michaels*, 625 A.2d 489 (N.J. Super. Ct. App. Div. 1993) (error for judge to hold young child witnesses on his knee while they testified via a video link from the judge's chambers).

241. See *Tidwell v. State*, 464 S.E.2d 834 (Ga. Ct. App. 1995) (not error to allow child's mother to remain in courtroom with apprehensive child); *Commonwealth v. Amirault*, 535 N.E.2d 193, 207 (Mass. 1989) (court permitted parent to attend child); *State v. Pollard*, 719 S.W.2d 38, 42 (Mo. Ct. App. 1986) (not error to allow six-year-old's mother to sit near counsel table).

242. See Gail S. Goodman, Elizabeth P. Taub, David P.H. Jones, Linda K. Port, Leslie Ruby & Lydie Prado-Estrada, *Testifying in Criminal Court*, 57 MONOGRAPHS OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT 1 (1992) [hereinafter Goodman et al., *Testifying in Criminal Court*].

child witnesses as their cases worked their way through Denver's criminal justice system. In Goodman's study, the presence of a supportive adult helped children respond to the prosecutor's questions on direct examination. Support also helped children cope with cross-examination.

K. Tone of Voice, Objections, Argument

The court may instruct counsel not to raise their voice when questioning a child, or when making or arguing objections. Children can be quite frightened by raised voices and animated argument. Legal argument that seems quite normal and restrained to the professionals may sound like an angry confrontation to the child. Moreover, because young children view the world from an egocentric perspective, they are likely to assume that arguments between attorneys are a sign that they—the child—did something wrong.

L. Psychological Research on the Effects of Testifying

There is a small body of psychological research on the effect on children of testifying.²⁴³ From existing research "it cannot be stated conclusively that testifying is either harmful or beneficial to sexually abused children."²⁴⁴ Research by Desmond Runyan and his colleagues reveals that testifying in juvenile court may actually "exert a protective effect on the child victim."²⁴⁵ Runyan concluded that juvenile court "[t]estimony may improve the child's sense of control and treat the sense of powerlessness induced by the abuse."²⁴⁶ Research by Gail Goodman and her

243. See DEBRA WHITCOMB, *THE CHILD VICTIM AS A WITNESS RESEARCH REPORT* (1994).

244. Debra Whitcomb, Gail S. Goodman, Desmond K. Runyan & Shirley Hoak, *The Emotional Effects of Testifying on Sexually Abused Children*, in NATIONAL INSTITUTE OF JUSTICE: RESEARCH IN BRIEF 1 (1994); see Kim Oates, Deborah L. Lunn & Ann E. Stearn, *The Criminal Justice System and the Sexually Abused Child: Help or Hindrance?*, 70 *MED. J. AUSTRALIA* 435 (1995). This study focused on Australian child victims and their involvement in the criminal justice system. Fifty-five percent of the children's parents expressed dissatisfaction with the legal system, and indicated that the system was stressful for their child. The researchers compared children who testified and those who did not in terms of depression, self-esteem, and behavior. There were no statistically significant differences between the two groups. The authors concluded that, for most children, the stress of testifying is transient.

245. Desmond K. Runyan, Mark D. Everson, Gail A. Edelson, Wanda M. Hunter & Martha L. Coulter, *Impact of Legal Intervention on Sexually Abused Children*, 113 *J. PEDIATRICS* 647 (1988). The authors wrote:

We hypothesized that a child's testimony would result in greater harm to the mental health status of the child. This hypothesis was refuted in the context of juvenile court testimony. Our findings lend support to the assertion that the opportunity to testify in juvenile court may exert a protective effect on the child victim. This "average" effect is obviously modified by specifics in each case.

Id. at 652.

246. Desmond K. Runyan, *The Emotional Impact of Societal Intervention into Child Abuse*, in *CHILD VICTIMS*, *supra* note 2, at 263, 270.

colleagues provides insight into the emotional effects of criminal court testimony.²⁴⁷ Goodman wrote:

The main goal of the present study was to determine whether testifying in criminal court is deleterious or beneficial for children. On average, the short-term effects on the children's behavioral adjustments, as reported by their caretakers, were more harmful than helpful. In contrast, by the time the cases were resolved, the behavioral adjustment of most, but not all, children who testified was similar to that of children who did not take the stand. The general course for these children, as for the control children, was gradual improvement.²⁴⁸

Debra Whitcomb and her colleagues wrote that, across research studies, "[v]irtually all of the children improved emotionally, regardless of their experiences in court. At worst, testifying may impede the improvement process for some children . . . ; at best, it may enhance their recovery"²⁴⁹ In a similar vein, Julie Lipovsky noted that:

many (but not all) children find the court process distressing. Effects do not appear to be long lasting and children's functioning tends to improve over time regardless of their court-related experience, although children who testify may improve at a slower pace than those who do not. . . . [T]estimony, in and of itself, does not appear to be associated with negative consequences²⁵⁰

Although every child witness is unique,²⁵¹ certain factors appear to be associated with psychological recovery. In Goodman's study, child witnesses who received maternal support were likely to improve, "whereas lack of [maternal] support was

247. See Goodman et al., *Testifying in Criminal Court*, *supra* note 242. Dr. Goodman and her colleagues followed 218 children over a two-year period in Denver, Colorado's criminal justice system.

248. *Id.* at 114-15.

249. Whitcomb et al., *supra* note 244, at 1; see Goodman et al., *Testifying in Criminal Court*, *supra* note 242, at 45. The authors stated that "the children's behavioral adjustment improved rather than deteriorated over 3 months regardless of whether they had testified." *Id.*

250. Julie A. Lipovsky, *The Impact of Court on Children: Research Findings and Practical Recommendations*, 9 J. INTERPERSONAL VIOLENCE 238, 245-46 (1994).

251. See Flin et al., *Child Witnesses in Scottish Criminal Trials*, *supra* note 4, at 327. The authors wrote that: [c]hildren's experiences while giving evidence in court are dependent on a host of internal and external factors including the circumstances of the case, the measures taken to help alleviate stress, the personalities of all involved, and what the child has said in evidence at each successive stage in the proceedings.

Id.

associated with continued distress.”²⁵² Testifying multiple times interfered with some children’s recovery.²⁵³ Existence of evidence to corroborate the child’s testimony was correlated with recovery.²⁵⁴ Lipovsky wrote that testifying multiple times and particularly harsh questioning may impair recovery in some children.²⁵⁵

Nearly all children are apprehensive about testifying, and the prospect of face-to-face confrontation with the defendant is particularly daunting.²⁵⁶ Kathleen Murray wrote of Scottish children “that before the trial the majority of children are haunted by fear of confronting the accused in the court room.”²⁵⁷ Nevertheless, most children are able to testify in the traditional manner, especially when they are prepared and supported while on the stand. Rhona Flin and her colleagues reported that the majority of Scottish children in their study “were able to give their evidence reasonably well in terms of providing at least some detail relatively fluently.”²⁵⁸ Once off the

252. Goodman et al., *Testifying in Criminal Court*, *supra* note 242, at 116. The authors wrote: The role of maternal support as a protective factor in coping with the stress of legal involvement is consistent with the literature on the buffering effects of maternal and social support generally. Our findings establish that, when mothers react to the disclosure of abuse with hostility, distance, or preoccupation with others’ needs (i.e., not the child’s needs), their children have more difficulty dealing with the additional stress of legal involvement. . . . This combination of factors points to a subgroup of children—particularly, incest victims—as being particularly at risk of traumatic effects of testifying, although any child who lacks maternal support should probably be considered at risk.

Id. at 117.

253. *See id.* (“Children who testified more than once tended not to improve as much as children who testified only once or not at all.”).

254. *See id.* at 118. The authors wrote:

Another factor that is particularly important within the context of the legal system is the presence or absence of corroborative evidence. The absence of corroborating evidence was related to distress at the 7-month follow-up. Presumably, when corroborating testimony is lacking, greater emphasis is placed on the children’s testimony and credibility. Adult rape victims as well as child sexual abuse victims have noted the particular stress associated with being the sole witness to their assaults and the resultant fear of not being believed.

Id.

255. *See* Lipovsky, *supra* note 250.

256. *See* Goodman, *Testifying in Criminal Trials*, *supra* note 242, at 74. The authors wrote that “the children generally expressed negative feelings about testifying, about talking to the defense attorney, and especially about having to see the defendant again.” *Id.* The authors stated further that “[i]t is clear from these findings that the children initially feared the courtroom and were apprehensive about testifying.” *Id.* at 76; *see* Ann E. Tobey, Gail S. Goodman, Jennifer M. Batterman-Faunce, Holly K. Orcutt & Toby Sachsenmaier, *Balancing the Rights of Children and Defendants: Effects of Closed-Circuit Television on Children’s Accuracy and Jurors’ Perceptions*, in *MEMORY AND TESTIMONY IN THE CHILD WITNESS*, *supra* note 2, at 214, 221. The authors wrote:

At least two studies concerning actual child witnesses indicate that facing the defendant is especially intimidating to children. . . .

Not only may many children experience emotional distress when facing the defendant, but their reports may be compromised as well. Several experimental studies support the notion that confrontational stress has a negative effect on the accuracy and completeness of children’s reports.

Id.

257. MURRAY, *supra* note 4, at ii.

258. Flin et al., *Child Witnesses in Scottish Criminal Trials*, *supra* note 4, at 327.

stand, many children express relief, and not a few confide that testifying was not as bad as they expected.²⁵⁹ Goodman wrote:

[A]lthough children expressed apprehension about testifying, they emerged from the courtroom feeling better about the experience than they had expected. In particular, they felt better about testifying, about the judge, and even about the defense attorney (although the defense attorney was still seen in a negative light). Some of the positivity expressed related to relief that the event was over. The children's feelings about testifying in front of the defendant did not change, however. They expressed very negative feelings about testifying in front of the defendant both before and after they entered the courtroom.²⁶⁰

Some children in Goodman's study were upset that they did *not* get to testify.²⁶¹

In the final analysis, although testifying is a difficult experience, children weather the storm. The fact that most children who testify improve psychologically with time supports the continued use of their testimony. All child witnesses are entitled to humane and developmentally appropriate treatment at the hands of the legal system, and special accommodations must be made for children at risk of lasting trauma. The overriding theme of the research, however, is that children are strong and resilient. They bounce back. Because children's testimony is indispensable to their protection, the fact that testifying does not appear to cause permanent harm is very reassuring. Provided steps are taken to support children, judges and attorneys can feel comfortable asking them to testify.

V. CONCLUSION

Children are a challenge.²⁶² In the bustle of their daily lives at home and school, children find innumerable ways to delight their parents and teachers while, at the same time, keeping them just slightly off balance. If children are a challenge in normal, day-to-day circumstances, how much more so are they a challenge when they become caught up in the tumult of the adversary legal system?

In meeting the challenge of children as victims of crime, interviewees, and witnesses in court, the search should not be for simple or categorical answers. There are none. Rather, the judges, legislators, and lawyers who make and administer the

259. See Goodman, *Testifying in Criminal Court*, *supra* note 242, at 121; see also MURRAY, *supra* note 4, at ii (writing that "[t]he majority of children emerged from the trial believing that the process had been fair and just, the exception being cases that resulted in an acquittal and those where witnesses had wrongly believed that they would be allowed to give their evidence by means of live television link").

260. Goodman, *Testifying in Criminal Court*, *supra* note 242, at 121.

261. See *id.* at 120.

262. This sentence is derived from the Rudolf Dreikurs's classic book for parents titled CHILDREN: THE CHALLENGE (1967).

law should acknowledge the complexity that comes with young witnesses. Professionals trained in law can benefit from closer alliances with mental health professionals conducting research on memory, suggestibility, interviewing, the impact on children of testifying, and related forensic issues. Enhanced communication between mental health and legal professionals will increase fairness for defendants, will facilitate compassionate and age-appropriate treatment of young witnesses, and, in the final analysis, will further the ultimate goal of discovering the truth.

VI. APPENDIX

APSAC

AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN
PRACTICE GUIDELINES[†]

Use of Anatomical Dolls in Child Sexual Abuse Assessments

I. USES AND LIMITATIONS OF GUIDELINES

These Guidelines have been developed to reflect current knowledge and generally accepted practice concerning the use of anatomical dolls in interviewing children during assessments of suspected child sexual abuse. The Guidelines are offered to encourage appropriate use of anatomical dolls and to provide direction in the development of training for professionals. The Guidelines are not intended to establish a legal standard of care or a rigid standard of practice to which professionals are expected to adhere. Interviewers must have the flexibility to exercise judgment in individual cases. Laws and local customs may influence accepted methods in a given community. Professionals should be knowledgeable about various constraints on practice and prepared to justify their decisions about particular practices in specific cases. As experience and scientific knowledge expand, further revision of these Guidelines is expected.

These Guidelines apply to the use of anatomical dolls in investigative and diagnostic interviews of children in cases of alleged or suspected child sexual abuse. Such interviews are designed to determine whether an allegation is likely true, and if so, the nature of the abuse. Investigative interviews are typically conducted by child protective services and law enforcement professionals and by child interview specialists in specialized child abuse programs. Diagnostic interviews are typically conducted by mental health or health care professionals as a part of psychological or medical evaluations (American Medical Association, 1985). Diagnostic interviews often go beyond the focus of investigative interviews in also assessing the child's psychological status and the possible need for psychological treatment.

These Guidelines are not designed to address the use of anatomical dolls in psychotherapy. Furthermore, these Guidelines do not address the broad issue of questioning techniques during investigative or diagnostic interviews. These Guidelines have the narrower purpose of providing direction on the use of dolls

[†] Copyright © 1995 by the American Professional Society on the Abuse of Children. All rights reserved. Reprinted by Permission. A number of clinicians and researchers (including an author of this Article) do not believe it is necessary to use anatomical dolls. The APSAC Guidelines are one of several and the authors present them without advocating them.

as an adjunct to the questioning process. It is also not the purpose of these Guidelines to provide a comprehensive discussion of the clinical and empirical rationale for the use of anatomical dolls in child sexual abuse assessments.^{††}

II. INTRODUCTION

Anatomical dolls are widely used as interview aids by professionals involved in the investigation and evaluation of child sexual abuse (Boat & Everson, 1988a; Conte, Sorenson, Fogarty & Dalla Rosa, 1991; Kendall-Tackett & Watson, 1992). Nevertheless, concern has been expressed about possible harm through the use of anatomical dolls in this context. One concern is that anatomical dolls may suggest sexual material, encouraging false reports from non-abused children. Another is that the dolls may be overstimulating or even traumatizing to non-abused children by introducing them prematurely to sexual ideas and body parts. A final concern is that interviewers using the dolls may be poorly trained and overzealous in their search for sexual abuse, eliciting unreliable, if not erroneous, evidence of abuse.

Research does not support the concern that anatomical dolls are inherently too suggestive or sexually stimulating (Everson & Boat, 1994). Follow-up interviews of parents whose young children had previously been exposed to anatomical dolls do not support the concern that the dolls are traumatizing to non-abused children or may induce them to become preoccupied with sexual issues (Boat, Everson, & Holland, 1990; Bruck, Ceci, Francoeur & Renick, 1995; Dawson, Vaughn & Wagner, 1992). Research suggests that the level of training among interviewers using the dolls has increased substantially over the last several years (Boat & Everson 1988a; Kendall-Tackett & Watson, 1992). The actual skill level of interviewers, however, has only recently become the focus of systematic study and empirical findings on this topic are still limited (Boat & Everson, 1995).

When used by a knowledgeable and experienced professional, anatomical dolls can be an effective tool to aid in interviewing children to determine (1) whether an allegation of sexual abuse is likely true, and (2) if so, the nature of the abuse. Anatomical dolls are, however, only one of many useful interview tools (e.g., drawing materials, puppets, anatomical drawings) and cannot take the place of sound, child-sensitive interview skills and reasoned clinical judgment. Professionals should be able to describe how the dolls were used in the particular case and how this use conforms to accepted practice (Myers & White, 1989). Professionals should also be familiar with current research on the dolls.

^{††} For such a discussion, the reader is referred to the final report of the American Psychological Association's Task Force on Anatomical Dolls (Koocher, G.P. et al., 1995).

III. SUMMARY OF RESEARCH FINDINGS

A. SUGGESTIBILITY

1. The majority of available research does not support the position that the dolls are inherently too suggestive and overly stimulating to be useful in sexual abuse investigations and evaluations (see review by Everson & Boat, 1994; Everson & Boat 1990). Specifically, there is little empirical evidence that exposure to the dolls induces non-abused, sexually naive children to have sexual fantasies and to engage in sex play that is likely to be misinterpreted as evidence of sexual abuse.
2. Although analogue studies of children's memory and suggestibility find children four and younger more suggestible than older ones (see review by Ceci & Bruck, 1993), anatomical dolls have not generally been found to be a significant source of increased suggestibility and recall error. Three studies using anatomical dolls as interview aids with children in the 3- to 7-year-old range have found that the dolls increased recall accuracy with little or no increase in false reports of genital touching (Katz, Schonfeld, Carter, Leventhal & Cicchetti, 1995; Saywitz, Goodman, Nicholas & Moan, 1991; Steward & Steward, in press). In contrast, one study reported high rates of false assertions and false denials of genital touching among children under age 3-1/2 years when the dolls were used as interview aids in conjunction with direct, leading, and misleading questions (Bruck et al., 1995).

B. INTERPRETING BEHAVIOR WITH DOLLS

Young children suspected or known to be sexually abused are statistically more likely than presumably non-abused children to engage in explicit sexualized interactions with dolls. However, many victims of sexual abuse do not display such behavior, and some non-abused children may display such behavior (White, Strom, Santilli & Halpin, 1986; Jampole & Weber, 1987; August & Forman, 1989). Following are empirical findings that provide some guidance for interpreting sexual behavior with the dolls:

1. Explicit sexual positioning of dolls (e.g., penile insertion in vaginal, oral, and anal openings) is uncommon among non-referred, presumably non-abused young children (see review by Everson & Boat, 1990). When allowed to manipulate the dolls, especially in the absence of adults, a small percentage of presumably non-abused children demonstrate explicit sexual intercourse between dolls or, more rarely, attempt to enact apparent sexual acts between themselves and a doll. Such behavior with the dolls appears to be related to prior sexual exposure (Glaser & Collins, 1989; Everson & Boat, 1990) and to age, gender, socioeconomic status, and possibly race,

with four- and five-year-old boys from lower socioeconomic status families somewhat more likely to enact explicit sexual acts with dolls than younger children, girls, or children from higher socioeconomic status families (Boat & Everson, 1994; Everson & Boat, 1990). Therefore, while explicit demonstrations of sexual intercourse with anatomical dolls always deserve further exploration, such activities among younger children and children without known prior sexual exposure are of particular concern.

2. Among non-referred, presumably non-abused children, mouthing or sucking a doll's penis is very rare prior to about age four and infrequent after age four (Sivan, Schor, Koepl & Noble, 1988; Glaser & Collins, 1989; Everson & Boat, 1990). This finding suggests that penises on dolls do not encourage most young children to seek oral gratification by sucking them. Sucking a doll's penis therefore should raise serious concerns about possible prior sexual exposure.
3. When a young child's positioning of the dolls indicates detailed knowledge of the mechanics of sexual acts, the probability of sexual abuse is increased, and further investigation of the source of the child's sexual knowledge is warranted. This is especially true for children under approximately four years of age and for children displaying knowledge of oral and anal intercourse (Everson & Boat, 1990).
4. Manual exploration of a doll's genitalia, including inserting a finger into doll's vaginal or anal openings, is fairly common behavior among young, presumably non-abused children (Boat & Everson, 1994; Glaser & Collins, 1989). Such behavior is likely to be more concerning if it is accompanied by distress reactions (e.g., anxiety, fear), behavioral regression, or displays of anger and aggression (Gordon, Schroeder, & Abrams, 1990a, 1990b), or by obsessive repetition (Terr, 1981).

C. THE EFFICACY OF ANATOMICAL DOLLS

1. When compared to reliance solely on verbal communication, the use of anatomical dolls has been shown to enhance children's ability to recall and describe events (Katz et al., 1995; Leventhal, Hamilton, Rekedal, Tebanao-Micci & Eyster, 1989; Saywitz et al, 1991; Steward & Steward, 1995). However, the dolls may not necessarily be superior to other interview aids such as anatomical drawings or regular dolls (Britton & O'Keefe, 1991; Goodman & Aman, 1990; Steward & Steward, in press). Additional research is needed, especially examining the various functions anatomical dolls can serve in the assessment process among children of different developmental levels.

IV. APPROPRIATE USES

- A. No predetermined amount of time must expire before dolls are introduced, nor must a predetermined number or type of questions be asked before using dolls. Every child is unique and interviewers should use their judgment to determine when, and if, dolls may be useful.
- B. If possible, the interviewer should be aware of the extent and nature of the child's possible prior exposure to anatomical dolls. This information is important for assessing the likely usefulness of the dolls in the current interview and for better understanding the child's reaction to and behavior with the dolls. Such information is especially important in cases in which children may have had multiple, prior doll interviews or may have been exposed to the dolls in a play therapy format in which fantasy play was encouraged.
- C. The number of dolls presented (e.g., individual dolls vs. set of two, three, or four) depends upon their specific use in the interview.
- D. When sexual abuse is suspected, dolls can be used as part of the assessment process in the following ways (Everson & Boat, 1994):
 1. **Anatomical Model:** The dolls can function as anatomical models for assessing a child's labels for parts of the body, understanding of bodily functions, and possible precocious knowledge of the mechanics of sexual acts. The interviewer may point to sexual and non-sexual body parts and ask questions like, "What do you call this part?," "What is it for?," and, "Is it for anything else?"

The dolls can also serve as visual aids for direct inquiries about the child's personal experiences with private parts. This may include questions such as, "Do you have one (vagina)?," "Has anything ever happened to yours?," and "Has it ever been hurt?"

If the child uses a nonstandard term, such as "kitty cat," to refer to a body part, the dolls can be used to clarify the child's meaning. It is appropriate to use the child's terms for body parts.

2. **Demonstration Aid:** The dolls can serve as props to enable children to "show" rather than "tell" what happened, especially when limited verbal skills or emotional issues, such as fear of telling or embarrassment about discussing sexual activities, interfere with direct verbal description. This function of the dolls also includes their use to clarify a child's statement after a disclosure of abuse has been made. Whether or not a child

experiences difficulty communicating about sexual abuse, dolls are sometimes useful to confirm an interviewer's understanding of a child's description of abuse and to reduce the likelihood of miscommunication between the child and the interviewer.

Interviewers should be cautious in using anatomical dolls as demonstration aids with children under approximately age 3½ years. This caution is based on questions about the cognitive ability of young preschoolers to use dolls to represent themselves in behavioral reenactments (DeLoache, 1995) and on concerns about the potential of the dolls to distract very young children (e.g., Goodman & Aman, 1990). These concerns do not preclude other uses of the dolls with young children. Furthermore, young children may use an anatomical doll to represent someone other than themselves and may, for example, demonstrate with a doll on their own bodies what they experienced.

3. **Memory Stimulus:** Exposure to the dolls, and especially to such features as secondary sexual characteristics, genitalia, and articles of clothing, may be useful in stimulating or triggering a child's recall of specific events of a sexual nature. Supporting this use is research suggesting that props and concrete cues may be more effective in prompting memories in young children than are verbal cues or questions (e.g., Nelson & Ross, 1980). To encourage recall, it may be appropriate for the interviewer to ask questions such as, "Have you seen one (penis)?" or "Do the dolls help you remember anything else that happened?"
4. **Screening Tool:** This function, which sometimes overlaps with the Memory Stimulus use, is based on the premise that exposure to the dolls in a non-threatening setting may provide an opportunity for the child to spontaneously reveal his/her sexual interests, concerns, or knowledge. Typically, the child is given the opportunity freely to examine and manipulate the dolls while the interviewer observes the child's play, reaction, and remarks. The interviewer can be either present or absent (observing through a one-way mirror) during this time, although children are likely to be less inhibited in their manipulations of the dolls without an adult present. After a period of uninterrupted manipulation and exploration of the dolls without an adult present, the interviewer asks follow-up questions about the child's behavior with, or reaction to, the dolls (e.g., "What were the dolls doing?" "Where did you learn about that?"). Graphic sexual behavior, unusual emotional responses, as well as spontaneous "suspicious" statements made by the child (e.g., "Daddy's pee-pee gets big sometimes.") should be the focus of follow-up questions to the child.

5. Icebreaker: The dolls can serve as a conversation starter on the topic of sexuality by focusing the child's attention in a non-threatening, non-leading manner on sexual issues and sexual body parts. This may be especially important in the case of younger children and children with less well developed language skills who may require very direct cueing to understand what, from the universe of possibilities, the interviewer wants the child to talk about (Steward & Steward, in press). Dolls can also be useful in helping a child feel comfortable about talking about body parts, sexuality, etc., and in conveying tacit permission for the child to describe or demonstrate sexual knowledge and experience.
- E. Sexually abused children are not always able to give a coherent verbal account of sexual abuse for a variety of reasons, including developmental level, language limitations, fear, embarrassment, and guilt. When a child's characteristics allow it, however, interviewers should generally attempt to obtain a verbal description from the child before asking the child to demonstrate with the dolls.
- F. Generally accepted practice is to present the dolls clothed, but exceptions exist. For example, it may be appropriate to present the dolls unclothed when they are being used as a demonstration aid with a child who has already indicated that the individuals in his/her account were naked.
- G. Depending upon individual child characteristics, anatomical dolls can be appropriately used in interviews with children from a wide age range, including with some adolescents. Some uses, however, such as screening tool and icebreaker, are less common among older children (Boat & Everson, 1995; Kendall-Tackett & Watson, 1992).

V. INAPPROPRIATE USES

- A. The use of anatomical dolls as a diagnostic test for child sexual abuse is not supported by the empirical evidence (Everson & Boat, 1994). Specifically, it is not appropriate to draw definitive conclusions about the likelihood of abuse based solely upon interpretations of a child's behavior with the dolls. There is no known behavior with the dolls that can be considered a definitive marker of sexual abuse in the absence of other factors, such as the child's verbal account or medical evidence (Everson & Boat, 1990; Realmuto, Jensen & Wescoe, 1990; Boat & Everson, 1994).
- B. Interviewers should refrain from making statements that might encourage the child to view the dolls as toys or objects for fantasy play. This includes the use of words such as "play," "pretend," or "make believe." Interviewers

should also be cautious in the use of conjecture in questioning with dolls because of the possibility of encouraging fantasy (e.g., "If someone were to touch a girl in a way she didn't like, show me how they would do it."). The interviewer should consider giving the child the clear admonition that the dolls are used to help talk about and show "things that really happened."

- C. The practice of the interviewer placing the dolls in sexually explicit positions and asking the child to relate the depiction to the child's experience (e.g., "Did this ever happen to you?") is leading and should be avoided.
- D. Like any interview tool or technique, anatomical dolls can be misused. For example, dolls can be used in conjunction with inappropriately suggestive questions. Interviewers should monitor themselves to avoid improperly suggestive use of dolls (White & Quinn, 1988; Quinn, White & Santilli, 1989).

VI. DOLL SPECIFICATIONS

- A. The utility of dolls in the interview process depends in large measure on the presence of certain physical features of the dolls. The following are considered to be important features:
 - 1. Genitalia and breasts that are proportional to body size and appropriate to the gender and age of the given doll.
 - 2. Oral, vaginal, and anal openings that will accommodate the adult male doll's penis.
 - 3. Facial expressions that are at least reasonable attractive and devoid of negative emotions, such as fear or anxiety.
 - 4. A size that can reasonably be manipulated by young children.
 - 5. Sturdy construction that can withstand rough handling.
 - 6. Clothes that can be easily removed.
 - 7. Clothes, including underwear, that are appropriate to the doll's represented age and gender.
- B. The impact of the racial features and skin color of the dolls on the child's response has not been empirically examined. Preferred practice is to match the dolls with the race of the child. If it is likely that the alleged perpetrator

is a different race from the child, the interviewer should consider presenting dolls of both races or a set of race nonspecific dolls with neutral skin tones.

VII. TRAINING AND SKILL LEVEL OF INTERVIEWERS

- A. Professionals using dolls should possess the training and/or knowledge and experience required to conduct forensic investigative or diagnostic interviews with children suspected of having been sexually abused. Refer to the APSAC Guidelines for Psychosocial Evaluation of Suspected Sexual Abuse in Young Children for general requirements regarding training, skill level, and supervision for interviewers.
- B. Before using the dolls, the interviewer should acquire the requisite skills through familiarity with the research literature and applicable guidelines, consultation with colleagues, and/or clinical supervision. The interviewer should be familiar with developmental issues in the use of the dolls, appropriate and inappropriate uses of the dolls, and potential problems caused by using leading questions or other suggestive techniques with the dolls.
- C. A formal, structured protocol detailing the use of dolls in interviews is not required and, given the state of our knowledge and the need for flexibility in individual cases, rigid protocols are probably not advisable. However, these guidelines and other general guidelines on the use of anatomical dolls in sexual abuse evaluations are available and may be helpful (e.g., Boat & Everson, 1986, 1988b; Levy, Kalinowski, Markovic, Pittman, & Ahart, 1991; Morgan, 1995; White, 1991).

VIII. DOCUMENTATION

- A. Detailed documentation of the interview process should be provided. Because of the potential subtlety and richness of the child's behavior with anatomical dolls, videotape recording of the interview may offer advantages. If videotaping is impracticable or contraindicated, the interviewer's questions and the child's verbal, nonverbal, and affective responses regarding sexual abuse allegations or concerns should be documented. This can be done in writing or using a combination of audiotape and written notes.
- B. It is desirable to prepare a verbatim record of all portions of the interview specifically relating to the issue of possible sexual abuse. This includes a description of the child's behavior with dolls, including the child's positioning of the dolls, critical verbal statements, and any verbal, nonverbal, or affective behavior with the dolls, such as avoidance, anxiety, fear, anger, or regression.

IX. CONCLUSIONS

- A. Anatomical dolls are a useful and accepted tool for investigative and diagnostic interviews of children in cases of possible abuse.
- B. Professionals using anatomical dolls in child sexual abuse assessments should be knowledgeable and experienced in conducting forensically sound interviews with children and in the specific use of anatomical dolls.
- C. Interviewers should be prepared to describe how they used anatomical dolls in each specific case and how this use conforms to accepted practice.
- D. Interviewers should be aware of the limitations in the use of anatomical dolls. Specifically, anatomical dolls should not be considered to be a diagnostic test of sexual abuse, nor be over-emphasized in the assessment process to the exclusion of broader interview techniques and sound clinical reasoning.

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APPENDIX A ADDITIONAL RESOURCES ON INTERVIEWING

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These Guidelines will be updated periodically. Any comments or suggestions should be directed to Mark D. Everson, Ph.D. through APSAC, 407 South Dearborn, Suite 1300, Chicago, IL 60605.

