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B. Core of Direct Examination

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

Where were you working?

In what capacity were you working?

What were your work responsibilities at that time?

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

What was that task?

Who, if anyone, was present during this interview?

Where did this interview take place?

Please describe the interior of the interview room.

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

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

What happened, next?

How long did the interview last?

What happened then?

Who was present at the Team Meeting?

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

ADDENDUM B

Sample Direct Examination of Child

Rapport Stage:

"Hello, what is your name?"

"How old are you?"

What is your address?

"Who do you live with?"

"Tell me some things about your family."

"What do you like to do for fun?"

"Tell me about []."

"Do you go to school?"

"What grade are you in?"

"Tell me about [] grade."

Instructional Stage:

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

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

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

Transition questions

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

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

"Tell me about that."

Prosecution Strategy #10

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

Implications for Prosecutors

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

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41 Leichtman & Ceci, 1995

42 Ceci, Huffman, Smith, & Loftus, 1994

The Defense Case

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

Example:

Kids lie, don't they?

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

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

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

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

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

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

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

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

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

Prosecution Strategy #9

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

34 Ahern, Stolzenberg, & Lyon, 2015

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

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

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

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

39 Newlin et al., 2015, p. 8

40 Newlin et al., 2015, p. 8

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

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

Instructional Phase

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

Example of instructional phase:

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

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

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

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

Formatting of Questions for the Direct Examination

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

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

Question Formats to Avoid

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

Example:

"Tell me everything your mother said."

Avoid:

"Tell me more about what she said."

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

Prosecution Strategy #5

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

Preparing for Cross Examination of the Forensic Interviewer – Meeting Defenses

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

The Forensic Interviewer Has Little or No Experience

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

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

Forensic Interviewer Not "State Certified"

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

Forensic Interview Faulty Due to Suggestive Questioning

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

Forensic Interview Faulty Due to Deviation From the Interview Protocol

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

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

Prosecution Strategy #3

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

Forensic Interviewer as Lay or Expert Witness

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

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

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

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

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

Ms. Smith, what is your educational background?

Where are you presently employed?

In what capacity are you now employed?

What is a forensic interview?

How is a forensic interview conducted?

What are the steps of a forensic interview?

What is the purpose of each of those steps?

As a forensic interviewer, what are your work responsibilities?

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

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

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

With whom did you conduct that forensic interview?

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

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

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

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

Pre-forensic Interview Process

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

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

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

Forensic Interview Structure

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

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

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

Child Witnesses and Time

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

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

Example:

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

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

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

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

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

Avoid:

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

Prosecution Strategy #2

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

Assessing the Forensic Interview for Prosecutorial Purposes

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

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

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

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

Issues of Memory and Suggestibility

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

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

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

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

24 Newlin et al., 2015, p. 8

25 Walker, 2013

26 Poole, 2016 and Powell & Snow, 2007

27 Lamb, Hershkowitz, Orbach, & Esplin, 2008

Recognition-Based questions

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

Example:

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

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

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

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

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

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

Developmental Capabilities of Children

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

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

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

Preschool Children

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

5 Vieth, 2009, p. 219

6 Vieth, 2009, p. 190

7 Faller, 2014, p. 42

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

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

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

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

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

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

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

15 www.apsac.org

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

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

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

After the daycare cases of the 1980's, "hundreds of CACs were developed and several national and state forensic interview training programs were established".⁷ In the 1990's, "dozens of interview structures were developed, most with a focus on the mandated investigators-child protection and law enforcement, and on forensic interviewers at Children's Advocacy Centers".⁸

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

National Forensic Interviewing Programs

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

Some of the established forensic interview models that exist today are the NCAC¹¹, Child First/Finding Words¹², NICHDI¹³, CornerHouse¹⁴, APSAC¹⁵ and Lyon's 10-step.¹⁶ Prosecutors are advised to familiarize themselves with the nuances of the forensic interviewing approach used by the interviewers in their jurisdiction. Additionally, several states have developed their own models and guidelines.

Principles of Forensic Interviewing

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

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

ATTENTION TO GOOD FORENSIC APPROACHES IS ESSENTIAL

Key elements include:

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

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

The Defense Case

Preparing for Defense Expert on Forensic Interviewing

Review of Defense Expert Resume
Review of Defense Expert Opinion Summary
Successful Cross Examination of the Defense Expert
Implications for Prosecutors

References

ADDENDUM A

Sample Direct Examination of Forensic Interviewer

ADDENDUM B

Sample Direct Examination of Child

ADDENDUM C

Essential Reading for Prosecutors on Court Preparation

ADDENDUM D

Essential Reading for Prosecutors on Suggestibility

Acknowledgements

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