

The Successful *Barlow* Defense
Examining Investigative Techniques With Child Witnesses

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Abstract

Barlow v. State decided by the Georgia Supreme Court in 1998 establishes the right of the defendant to introduce expert testimony at trial regarding proper techniques for interviewing children. Thus, when preparing a child molestation case for trial, it is vital to examine the investigative interview techniques used with suspected child victims/witnesses. In the fields of social science, psychology and linguistics, substantial credible research has contributed to a new understanding of the potentially serious consequences of improper interview techniques on the ultimate reliability and credibility of children's statements. Drawing on this research, case studies and experiences at trial, this paper sets forth the key elements to effectively presenting a *Barlow* defense that consists of (1) collaboration with a credible expert in forensic interviewing; (2) meticulous preparation; (3) cogent and concise presentation of the science; and (4) direct application of the science to the facts of the case as the key elements of the successful *Barlow* defense.

Children's memory and suggestibility have been the focus of research for more than a hundred years. During the last decade of the twentieth century, substantial new research in this area has been published. This research addresses the issue of the whether or not, and under what circumstances, a child's memory of a *personally salient event* can be influenced. In sum, this body of research concludes that children, especially young children, are more suggestible than older children and adults and points to specific techniques that, when employed, contribute to undermining the reliability and credibility of child witnesses. (Bruck, Ceci, Hembrooke, 1998) In Georgia, *Barlow v. State* has clearly established the defendant's right to present evidence at trial regarding the appropriateness of the interview techniques used with child witnesses. Since that decision, attorneys have used this defense with varying degrees of success. Review of the relevant research and examples from actual Georgia cases makes it possible to delineate the key elements of the successful *Barlow* defense as (1) collaboration with a credible expert in forensic interviewing; (2) meticulous preparation; (3) cogent and concise presentation of the science; and (4) *direct* application of the science to the facts of the case. Attention to each of these elements not only insures that jurors will understand the evidence being offered to them, but can actually change the entire architecture of the State's case.

First Things First: A Brief Understanding of the Science

If an attorney intends to use evidence concerning appropriate and inappropriate interview techniques, then he or she, not just the expert, needs to have a basic grasp of the research regarding the suggestibility of child witnesses. Providing a full elaboration of that information is not the focus of this article, and three publications (one article and two books) are suggested sources. First, *Investigative Interviews With Children* (APA, 1998) by Debra Poole and Michael Lamb is a comprehensive grammar of information about forensic interviewing of children. Second, *Jeopardy In the Courtroom* (APA, 1995) by

Stephen J. Ceci and Maggie Bruck addresses the scientific analysis of children's testimony. Finally, *Reliability and Credibility of Young Children's Reports: From Research to Policy and Practice* (American Psychologist, 2/1998) by Maggie Bruck, Stephen Ceci and Helene Hembrooke surveys over a hundred years of research on children's memory and suggestibility and discusses specific interview techniques that contribute to suggestibility. These three resources are recommended for attorneys and other non-mental health professionals because each essentially summarizes and distills the dozens of studies that have been done in this area.

In brief, the term *suggestibility* refers to the degree to which an individual is susceptible to verbal or nonverbal cues regarding the appropriate or acceptable response to a question or series of questions. Researchers have identified investigative/interview techniques that tend to contribute to suggestion. Some of these are errors of *commission*, while others are errors of *omission*. (See Tables 1 and 2)

INAPPROPRIATE INTERVIEW TECHNIQUES <i>ERRORS OF COMMISSION</i>
INFLUENCE OF HIGH STATUS ADULTS
INVESTIGATIVE BIAS
LEADING QUESTIONS
REPETITIVE INTERVIEWS
REPETITIVE QUESTIONING IN ONE INTERVIEW
USE OF ANATOMICALLY CORRECT DOLLS OR DRAWINGS
SELECTIVE POSITIVE REINFORCEMENT
PEER PRESSURE
CO-OPTING
VILIFICATION OF THE SUSPECT
USE OF PRETENDING, SPECULATION OR FANTASY

Table #1
(Poole and Lamb, 1998; Bruck, Ceci and Hembrooke, 1998)

INVESTIGATIVE MISTAKES <i>ERRORS OF OMISSION</i>
FAILURE TO OBTAIN CURRENT TRAINING AND SUPERVISION
FAILURE TO OBJECTIVELY DOCUMENT ALL INTERVIEWS
FAILURE TO DO DEVELOPMENTAL SCREENING
FAILURE TO ESTABLISH CHILD'S COMPETENCY
FAILURE TO RULE OUT POSSIBILITY OF SECONDARY GAIN
FAILURE TO SCREEN FOR LIKELIHOOD OF COACHING
FAILURE TO EXAMINE <i>CONTEXT</i> OF THE TIMING OF THE DISCLOSURE
FAILURE TO RULE OUT POSSIBILITY OF SPECIFIC PSYCHIATRIC DISORDER THAT IMPAIRS PERCEPTION OF REALITY
FAILURE TO RULE OUT POSSIBILITY THAT A BENIGN ACTIVITY WAS MISINTERPRETED
FAILURE TO RULE OF THIRD PARTY INFLUENCE
FAILURE TO RULE OUT IMPACT OF FAMILY DYSFUNCTION
FAILURE TO EXPLORE UNUSUAL OR IMPROBABLE ELEMENTS
FAILURE TO TAKE STEPS TO REDUCE POTENTIAL COERCIVE ELEMENTS
FAILURE TO EXPLORE MOTIVATIONS SUCH AS ANGER OR DESIRE TO RETAILIATE AGAINST SUSPECT
FAILURE TO CONSIDER CHILD'S HISTORY OF TRUTHFULNESS OR DISHONESTY

Table #2
(Carnes, 2000)

Essentially, tainting of an individual's statements and, at times, the actual memory of an event can occur when inappropriate suggestive techniques are used with an individual who is vulnerable to suggestion. When multiple inappropriate techniques are used, the risk of suggestion intensifies and a child can enter what has been referred to as "a state of false belief." In this instance, the child can come to believe a story that is actually false but that is so real to them that the child's statements do not carry the normal markers of lies, because the child does not believe they are lying. (Bruck, 1998) Because everyone, even adults, is somewhat vulnerable to suggestion, it is considered essential to avoid investigative techniques that tend to enhance suggestion. (Loftus) Appropriately used, the Barlow defense exposes any inappropriate techniques that were used in a particular case and provides the jury with an explanation of the detrimental impact of such techniques on vulnerable child witnesses. Accordingly, the jury is offered a

plausible alternative explanation for why the child may be saying that they have been abused.

Collaboration With a Credible Expert in Forensic Interviewing

Child molestation cases often involve the use of several different experts. If there appear to be substantial problems with the investigative techniques in a particular case, then it is essential to hire an expert in forensic interviewing of children. In many ways, the success of a Barlow defense hinges on the selection and appropriate use of this expert. In addition to a background in a mental health discipline, the expert must have specific training and experience in *forensic* interviewing and evaluations of *children*. A forensic interview or evaluation differs from a clinical interview in several important ways. In a forensic interview, the interviewer's alliance is with the *truth* whereas in a clinical interview, the alliance is with the patient. (Poole and Lamb, 1998) Generally, training in forensic interviewing is obtained *in addition* to masters or doctoral level coursework, and individuals are also expected to have *supervised* experience in conducting these interviews. (APSAC, *Practice Guidelines*) Even individuals who are trained in forensic interviewing may not be trained to work with children, and so it is important to ask the potential expert about their specific experience with children.

Credibility in part hinges on the expert's training and experience, but other factors also enhance or detract from credibility. Besides obvious issues such as choosing a person of good character and reputation who has no history of malpractice, criminal charges, or public board orders there are several other items the attorney will need to examine. First of all, because the prosecution will paint the expert as a "hired gun", it is important that the expert have a background that can be viewed as neutral. It is helpful if the expert has also testified for the prosecution on occasion, and it is essential that the expert have an active clinical practice rather than simply being a professional witness. On the other hand, it is important to choose someone who has *some* courtroom experience, and it is helpful if the expert does not have a basic fear of lawyers. In early conversations with the expert, gauge whether or not it appears that he or she will be able to communicate well with the jury. To be effective the expert must be able to put the science and the problems with the case into plain English that the average juror can understand and apply. Finally, the expert must thoroughly prepare the case and be very familiar with all of the discovery material. If the expert trips on the facts of the case, the expert's credibility will be undermined with the jury.

In *voir dire* of the expert, the defense has the opportunity to begin to establish the expert's credibility with the jury. It is important to present the relevant information about the expert's educational background and to emphasize any special training in forensic interview. Experience working with and evaluating children, training other professionals, and publishing in the area is important. Actually experience *doing* forensic interviews should be emphasized. Included in Appendix "B" are sample questions and answers that have been used effectively in *voir dire*.

Because effective collaboration between the attorney and the expert is essential in an effective Barlow defense, it is important to choose an expert who fits well with an attorney's own style of preparing and trying cases. Other than the attorney's own fee, the cost for experts may well represent the most significant expense to the defendant. There

is no point in spending the money to hire the expert if the attorney does not fully use them in his case preparation. There is no greater nightmare for an expert witness, or greater waste of the client's money, than for an attorney to never talk to the expert until ten minutes before they take the witness stand. A good expert can assist the attorney as he or she prepares the case for trial and can often offer insight that helps to avoid trial all together. Further, the expert can not only help the attorney develop their own direct testimony, but can assist with questions for the prosecution experts and the child that will help to set up the defense expert's testimony. (Examples of questions for the State's experts are included in Appendix "A.") Please consider the following case example:

Case #1

A preschool boy is visiting at this mother's work and makes an allegation that another man who works at the office molested him while the child was there. In the presence of the mother, a videotaped interview is done with a DFCS investigator. In that interview, which includes many improper techniques, the boy reasserts that the man touched him. The defense hired an expert in forensic interviewing of children, and that expert reviewed the tape and other discovery material and subsequently testified at trial. At trial, during the *voir dire* on the expert, the defense attorney is able to establish for the jury that the expert has specific training in the area of forensic interviewing, that the expert has trained law enforcement and DFCS workers in how such interviews should be conducted and that the expert has testified for the prosecution on similar cases. Other than the defendant, and character witnesses, the expert is the only defense witness. With the expert's credibility firmly established for the jury, the defendant was acquitted.

Meticulous Preparation

A.K.A.

The Devil is in the Details, and the State Doesn't Want You to Know the Details

When the attorney works with the expert to thoroughly prepare the case, the result often is that the case is resolved short of trial or that the entire architecture of the state's case is so altered that the defense gains an advantage at trial. Part of the effort to thoroughly prepare the case involves careful attention to the discovery process. Never assume that the state has provided all discoverable information to the defense. To develop the Barlow defense, it is essential to catalogue, to the extent possible, from the point of initial outcry to the time of the child's testimony at trial, each and every conversation that the child had regarding the allegation. This includes not just conversations with professionals, but also with parents, other adults and children. Consider the potential sources of information in Table #3.

POTENTIAL SOURCE OF INFORMATION REGARDING THE CHILD
School Records: Including Special Education Records, Evaluations, Testing, Disciplinary Record, Attendance and School Counselor's Logs
DFCS Records: Child Protective Services and Foster Care
Day Care Records: Discipline Record, Attendance Record, Sign In/Out Sheets
Medical Records: Evaluations re: accusations <i>and</i> previous medical history
Law Enforcement Records: Responding officer often talks with the child.
Counseling Records: If counselor testifies at trial, records should be admissible. Privilege cannot be partially waived. Counseling provides opportunity for multiple interviews often in a suggestive atmosphere.

Table #3

Often, the goal of the State is to present to the jury a pristine videotape of one interview where the child discloses abuse. Because it is never, ever that simple, it is essential that the defense draw for the jury a much broader picture of the child's disclosure, providing the context for the disclosure and underscoring that interviews with the child both *predated* and *postdated* the videotape. In fact, in most cases, it is appropriate to characterize the discussion of the allegations with the child as multiple, ongoing streams of conversation that merge into the story that the jury hears at trial. Often one of the last interviews with the child is that of the prosecutor prior to trial.

In addition to gathering information about the child and the child's statements, it is important to gather information about the State's experts. Sometimes, in addition to the DFCS and law enforcement personnel involved in the investigation, the State will include on their witness list a mental health professional who has worked with the child. Regarding that person's participation as a witness, please note, that the codes of ethics for all mental health disciplines require that the professional *not* assume the dual role of being both the treating therapist and a forensic evaluator. These two roles are mutually exclusive. Accordingly, the treating therapist may provide the court with information about the child's treatment and the child's statements, but may not render an opinion regarding the veracity of those statements. Specifically, the treating therapist may not render an opinion about whether or not the child has been abused. To do so would not only violate this ethical guideline, but would place the therapist in the position of reaching a conclusion regarding the behavior of an individual they have likely never met or evaluated (the defendant). (Dominguez, 1999)

Accordingly, if the State chooses to call the child's treating therapist as a witness, the defense should be able to either limit his or her testimony as indicated or impeach the witness with the ethical code for their particular profession. The defense should also be

able to frame the sessions as interviews by asking the therapist how many times he or she has seen the child and inquiring about what techniques were used in therapy. For example, therapy with children who may have been abused is often done in a play therapy or group modality and each of these has been shown to be highly suggestive. It is also helpful to explore the therapist's background to determine their level of training and experience. For example, in several recent cases, therapists who worked for nonprofit agencies and who had done extensive work with the child were found to have been unlicensed. Following in Table #4 are some potential sources of information about mental health professionals.

Sources of Information on Professionals
Georgia Secretary of State Website: www.sos.state.ga.us Go to: Professional Licensure Search Also: Board Rules for Each Profession and Links to Related Law
American Association of Marriage and Family Therapists www.aamft.org Go to: "Therapist Locator" Also: Articles Available in Public Archives Code of Ethics Available on Line
American Psychological Association www.apa.org No publicly available directory Articles Available In Public Archives Code of Ethics Available
State of Georgia Composite Board for Professional Counselors, Marriage and Family Therapists and Clinical Social Workers 237 Coliseum Drive Macon, Georgia 31217 Maintains Information on Licensure of Professionals, Complaints Filed, and Applications for Licensure
American Academy of Child and Adolescent Psychiatry www.aacap.org Go to: "Clinical Practice" Also Available: Links to purchase <u>Practice Parameters</u> , Code of Ethics, Research

<p>General Web Search Engines</p> <p>www.google.com</p> <p>www.yahoo.com</p> <p>www.infoseek.com</p>
<p>Newspaper Archives</p> <p>www.50states.com/news</p>

Table #4

By using all available tools to investigate the case more thoroughly than the State has, the defense has the opportunity, often even before trial, to present the prosecution with an alternative theory of the case that is compelling. The following cases exemplify the potential impact of thorough preparation.

Case #2

Following a dispute with her father regarding schoolwork, a thirteen-year-old girl alleges to the school counselor that her paternal uncle who is his mid-twenties and who is currently living in her home and her paternal grandfather who is currently living in a Middle Eastern country have molested her. Significant family dynamics include a long history of animosity between the maternal grandparents and the child's mother, who is American and the father, who is of Middle Eastern descent. Further, DFCS records from prior years revealed that several years ago the same child, with the support of her maternal grandparents had falsely accused her father of molesting her. (The trial judge did not allow this information to be admitted at trial.) After the allegation regarding the uncle and grandfather is made, an investigation begins and the child is initially interviewed by the school counselors, and then by DFCS and law enforcement. The child is removed from her parents' home and placed with the maternal grandparents. This occurred not because the parents were accused of molesting or abusing the child but because they did not believe the allegations. Ultimately, the child is subjected to a five session "Extended Forensic Evaluation" with a therapist at a local child advocacy agency. Finally, the child is referred to a psychologist for treatment and further assessment. That psychologist actively and zealously expressed his belief that the child had been molested and went so far as to send letters to the investigators regarding that belief and his faith in the conclusions of the State's forensic evaluator.

When preparing the case for trial, the attorney hired both an expert in forensic interviewing and a psychologist to review the case for the defense. Both experts were prepared to testify at trial. When developing the case, the attorney learned that the therapist who had evaluated the child at the advocacy center was unlicensed at the time she conducted the evaluation. The attorney was also able to get a copy of the manual delineating the protocol for the extended forensic evaluation that she performed. The defense forensic expert developed a written report regarding the problems with the interview techniques in the case and provided it to the attorney who provided it to the prosecution in the course of discovery. As a result of thorough preparation, the defense attorney was able to alter the way the State presented their case. Even though the court

qualified her as an expert, the State's forensic evaluator, who was unlicensed at the time of her evaluation, essentially limited her testimony to a repetition of the statements the child had made to her. This apparently occurred primarily because that expert knew what material the defense had and did not want to open the door for questions regarding her conclusions. Further, the defense attorney was able to use her own manual to effectively cross-examine her regarding her interview techniques. Rather than put the treating psychologist up in their case, the prosecution held him back to rebut the defense experts. Essentially, the prosecution rested with no expert opinion presented regarding the child's statements or the investigative techniques used in the case.

In the defense case, after the child's parents testified, it became apparent that the State intended to put the treating psychologist up for rebuttal if the defense experts testified. The defense attorney, in consultation with the client and the experts elected to put the defendant on the stand before making a final decision regarding the use of the experts' testimony. The defendant's testimony went very well, and the defense rested without presenting the expert testimony. The defendant was acquitted.

Case #3

The preschool daughter of a man accuses him of molesting her after her mother left the child alone overnight with him for the first time. The initial interview with the child occurs in the child's home and in the presence of the mother who is the complaining witness. The defense attorney is involved early in the case and hires an investigator and ultimately three experts in forensic interviewing who were prepared to testify at trial. The result of thorough discovery and investigation produced information regarding the mother's history of such allegations in the past as well as other information regarding her conduct with neighbors that tended to call into question her credibility. Over the course of several months, the case was thoroughly prepared for trial with every piece of discovery combed for relevant information. On the day of trial, the defense continued to request access to certain DFCS records that were finally produced on the first day of an *in camera* review by the judge. After reviewing the records, the judge encouraged the two sides to reach an agreement in the matter. The defendant entered an Alford plea to a misdemeanor charge of sexual battery and received probation.

Case #4

An elementary school-age boy is caught touching another child sexually. Subsequently, the mother has the child evaluated by a forensic psychiatrist and at that time expresses her concern about possible abuse by the child's father. The mother and father are divorced and have a tumultuous relationship. Over the course of several months in therapy, the child discloses that his older teenage brother, who lives nearby, has molested him on an ongoing basis for a period of two years. The abuse by the brother allegedly included force and anal sodomy. The family, including the two children, the mother and a stepfather are in counseling at the same agency. When the younger child disclosed about his older brother, there was initially no report made to DFACS or law enforcement. When confronted, the older child admitted to the molestation but initially said he did it because the younger child wanted him to and ultimately said he did it

because "this is what his stepfather had done to him." Soon, the younger child joined the older child in this accusation. The older brother was placed in treatment eventually plead guilty in juvenile court to a lesser charge and received no time in detention.

The initial report regarding the alleged molestation by the father was made to law enforcement by the therapist. The therapist adopted an advocacy role, insisting that she talk with the officers prior to their interview with the child. She was present at the police station when the child was being interviewed and the officer allowed the child to talk with the therapist during the course of the interview.

When preparing the case for trial, the defense hired an expert on forensic interviewing who reviewed the videotaped interview and the discovery material. As a result of the collaboration between the attorney and the expert, the defense was able to gain access to extensive school records on both children, including special education records that were exculpatory. The defense was also able to learn that the treating therapist had not been licensed at the time she provided the therapy and the defense was also able to gain access to records held by the State Composite Board regarding that therapist's license application and that of her agency supervisor who had provided treatment to the older brother. At trial, the defense was provided with a copy of the therapist's resume that revealed her use of a number of controversial therapeutic techniques. Further, despite repeated requests prior to trial, the therapist had only provided a one-page summary of her case notes. On the second day of trial, the prosecutor provided the defense with a facsimile sent the day before by the therapist referencing other notes she had maintained on the child and the family and noting over one hundred contacts. The defense moved for a mistrial, which was granted. The therapist was ordered to provide the notes to the court for an *in camera* review. The case is not yet resolved.

Each of these four cases had different results, but in each case the defense reaped the benefits of the meticulous preparation.

Cogent and Concise Presentation of the Science

When presenting the science that supports a Barlow defense, the attorney and the expert must walk a thin line between telling the jury too much and not telling them enough. This is the second portion of the expert's testimony, following the *voir dire* and is a second opportunity to underscore the expert's knowledge in the specific area of forensic interviewing of children. It is also an opportunity to let the jury know that the opinions provided by the expert are not simply the result of his or her own subjective experience, but that they also reflect the latest and most relevant research. While going piece by piece through the research will undoubtedly bore the jury, failing to present any of the research will reinforce the opinion that is generally held by jurors that psychology is "junk science" or "pseudo-science." It is a good idea to either reference one of the articles or books that present the collected research in the area or to reference one or two studies that are particularly on point in the case at hand. In Appendix "C", an outline of possible questions and answers for this portion of the testimony is included. As an example of the impact of appropriate presentation of the scientific evidence, please consider the following case:

Case #5

A three-year-old child's babysitter reports that the child has made statements suggestive of abuse. The investigation begins, and the child eventually participates in a videotaped interview with a social worker. In preparing his case, the defense attorney hires an expert in forensic interviewing of children who reviews the tape and the other discovery material. Based on the expert's assessment, the defense attorney files a Motion in Limine with the court alleging that the improper interview techniques have irreparably tainted the child's testimony and yielded non-credible statements. The defense asks that the court exclude the testimony of the child, the videotape and the testimony of the social worker regarding the interview. The defense expert testified at the hearing on the Motion in Limine and carefully went through the scientific foundation of the testimony for the judge. Following a hearing, the court grants the defense's motion leaving the babysitter as the only prosecution witness regarding the child's statements. The defendant was acquitted at trial.

Direct Application of the Science to the Facts of the Case

In a child molestation case, the defense generally must answer two questions for the jurors: (1) did the child say what they say he/she said? and (2) if it's not true, why did the child say it? For younger children, the defense must also offer an explanation for how the child obtained the requisite knowledge to form the allegation since the events described are most often outside the realm of what a child would generally be exposed to. When using the Barlow defense, the attorney through the expert, offers answers to all of these questions. After presenting the science, the expert may then respond to a question asking whether he or she was able to identify any problems with the investigative interviews in the case at hand. It is important to choose the most significant investigative errors- the ones that are most likely to have actually made a difference in the outcome of the child's statements. Picking through every single word is something that the expert should do in preparation, but not in testimony. When the expert focuses too much on the minutia of the case, the jury will think that the defense is simply grasping at straws. One good rule of thumb is to categorize the problems in three or four broad categories and then provide the jury with examples. At the end of the testimony ask the expert to briefly summarize the problems with the investigation and to offer an opinion about the probable impact of the improper techniques. Appendix "D" provides an example of case specific questions for use in direct examination of the expert. The following case illustrates the value of the application of the science to the facts of the case.

Case #6

A teenage boy, under the age of seventeen, is charged with child molestation after a three-year-old child his mother was caring for said that the boy "hurt her bottom." After being interviewed by her parents, her pediatrician and the DFCS investigator, the allegation grew to include digital penetration. The interview with the DFCS worker was videotaped. The teenager was, with the consent of his parents interviewed by the sheriff's

department. That interview was audiotaped and during the course of a rather coercive interrogation, the defendant "confessed" to all of the elements of the alleged offense. Relevant facts include that the child had a history of urinary tract infections and that the defendant was an exemplary student who had never been in any disciplinary trouble at school and who had no juvenile record. At trial in juvenile court, the defense called an expert on forensic interviewing and a forensic psychologist who had examined the defendant. The videotaped interview of the child by DFCS documented a number of grossly improper interview techniques. The prosecution did not put the tape into evidence, but did call the child as a witness. At trial, the child actually testified that the abuse was more extensive than originally reported, arguably rising to the level of an aggravated charge. The defense asked to put the tape into evidence in order to impeach the child and to set up the testimony of the defense experts. Over the objection of the prosecution, the court allowed the tape into evidence. The defense offered testimony not only about the improper techniques used with the child, but also about the impact of the improper techniques used with the defendant. (The defense argued that the interrogation of the defendant was so leading and coercive that the defendant ultimately simply agreed with the officer's allegations in order to end the interview.) At the conclusion of the case, the court found the teenager guilty of a lesser offense, misdemeanor sexual battery, and he received a probated sentence of one year. (To reach this decision, the judge had to discount most of the child's testimony and much of what the teenager "confessed" to when he was interrogated.)

Conclusion

The Barlow defense does not apply in every child molestation case. Mental health professionals have an ethical obligation to be careful when they present their opinion in court, and they should not participate in this defense strategy unless it is likely that the State's investigative methods polluted the child's testimony. (AAMFT Code of Ethics) Hopefully, the time will come that investigators will abandon improper techniques and thus render the defense unnecessary. There is a right way to do these interviews, but the right way is harder and produces results less quickly. Because of that, investigators are often tempted to resort to improper, suggestive techniques. It's up to you to keep them honest.

Appendix "A"

Potential Questions for State's Investigators and Experts

Questions

The following are general areas that might be helpful to explore with the children's therapists, social workers or law enforcement who do interviews with children.

1. What percentage of your center's income is derived from referrals from the Department of Family and Children Services or law enforcement?
2. What training have you had in the area of appropriate investigative techniques for use with children who are suspected to be victims of abuse?
3. Do you consider your role to be that of an investigator?
4. Do you consider yourself to be an unbiased person who simply seeks to find the facts?
5. How does your affiliation with law enforcement/ DFCS impact your ability to remain unbiased?
6. Have you ever offered testimony in court where you said that you believed that a child you interviewed had not been molested?
7. Do you believe that children ever lie about having been sexually abused?
8. Are you familiar with the term "state of false belief?"
9. If so, tell us what that term refers to.
10. Are you familiar with the work of Dr. Stephen Ceci, Dr. Maggie Bruck and Dr. Helene Hembrooke?
11. Are you familiar with their article that appeared in the American Psychologist in February of 1998? The article's title is "Reliability and Credibility of Young Children's Reports."
12. If so, can you provide us with a synopsis of the findings of that research?
13. If not, you may ask "So, then, are you are unaware of the most recent research in the area of reliability and credibility of children's reports of sexual abuse?"
14. What kinds of interviewing or investigative techniques, in your opinion, tend to make a child's ultimate statements less reliable?
15. Ask him/her about: repetitive interviewing, repetitive questioning, leading questions, selective reinforcement, use of anatomically correct dolls or drawings, influence of high status adults.

16. Can you give me a list of rules that a forensic interviewer should always do when interviewing a child? How about things the interviewer should never do? (Compare with actual interviews and see if the various people who "professionally" interviewed the children disagree with each other about protocol or if they follow their own "best practice.")
17. What impact would bias on the part of the interviewer have on the reliability of the child's statements?
18. When this child was first brought to you, what was your hypothesis about what might have happened to her?
19. Did this theory affect the type of interview you did or what you focused on?
20. Did you videotape or audiotape your sessions with this child? Why or why not?
21. Can you explain the term "selective reinforcement"?
22. If someone who interviewed this child selectively reinforced certain statements the child made, what impact could that have on the child's statements?
23. Did you use guided imagery, play therapy or fantasy work in your therapy with this child? Can you describe what you did?
24. Did you use anatomically correct dolls in your work with this child? Can you describe what you did? Are you familiar with the research regarding the relationship between the use of such dolls and ultimately false allegations of abuse?
25. Did you ever consider the possibility that the abuse did not occur? What did you do to try to discover if this was the case?
26. Isn't it true that the group most susceptible to suggestive interviewing techniques are young children?
27. In your work with this child did you review any previous mental health records?
28. Can you describe what "receptive language skills" are?
29. How would a deficit in such skills affect a child's ability to accurately understand what an adult was asking?
30. Can you explain the term "source monitoring" and tell us how you did that in this interview?
31. Hypothetically, if you were working with a child who had previously made a false allegation of sexual abuse, would that tend to make the child's statements about current abuse more, or less, credible?
32. Can you describe what specific training in the area of child sexual abuse you have had?
33. In your work with this client, has her story about what happened to her ever changed at all?
34. Did any of your work with this client include you offering her rewards for talking to you or cooperating in session?

35. Did she ever get candy, drinks or food at your office?
36. Did you conduct any of your interviews with this client in front of anyone else?
37. You interviewed the children alone, without adults or other children present. Why was that important?
38. Isn't it true that when the children were initially questioned by _____ and other adults that they were together?
39. What is the impact on the ultimate credibility of children's statements when they are initially questioned with other children who are also making allegations? If you could have controlled the situation, would you have preferred that the children be questioned together or separately?

**If he/she cites research about delayed disclosure (Sorenson and Snow) or Gonzalez, you may want to point out that neither of these studies even considered the possibility that the children's statements were false, and that the Gonzalez study was done with the children who were involved in the McMartin Preschool investigation where the defendants were ultimately acquitted.

Appendix "B"

Sample Questions and Answers for Voir Dire on Defense Forensic Expert

*This outline applies directly to me, but the categories of questions can be applied to other experts as well.

I. Voir Dire

Q: Ms. Morton, where are you currently employed?

A. Current Employment

*Licensed marriage and family therapist in private practice in Macon, Georgia.

Q: How long have you been in practice?

*First licensed in 1994/ Began practice with supervision in 1991.

Q: Can you describe the nature of your practice?

*In the course of my practice I regularly see families, individuals and children including children who report being abused.

Q: In the course of your practice do you have occasion to conduct forensic interviews with children?

*In the course of my practice I do conduct forensic interviews with children including providing psychosexual evaluations for the Georgia Department of Juvenile Justice.

*I also currently provide treatment for children referred by the Georgia Department of Juvenile Justice.

*I also have in the past and currently am treating abused children whose treatment is paid for by the Georgia Bureau of Investigation's Victim Assistance Program.

*I am frequently called upon by judges in both superior court and juvenile court to provide family counseling, evaluations and treatment recommendations in matters involving allegations of abuse.

*More than 60% of my practice is with children under the age of ten.

B. Educational Background

Q: Could you please describe your educational background?

(Formal)

*Graduated from Mars Hill College in 1981 with a B.A. in religion and philosophy.

*Interned in 1981 as a Chaplin at the Veteran's Administration Hospital in Ashville, North Carolina

*Attended the Southern Baptist Theological Seminary from 1981-1985 in the Masters of Divinity program concentrating in Pastoral Care and Counseling.

*Interned at the Baylor University School of Medicine in Louisville, Kentucky from 1985-1986 as a Chaplin in their Department of Pastoral Care and Counseling.

*Attended Mercer University from 1989-1991 and earned a Masters Degree in Family Studies concentrating in Family Therapy

*1991-1994: Completed 3000 hours of supervised therapy with children and families while interning at The Methodist Home for Children and Charter Lake Outpatient Center in Macon.

*In 1996: Attended the Mercer University School of Medicine/Family Therapy Program and completed course in Supervision of Psychotherapy.

Q: After completing your formal training have you participated in any continuing education?

(Continuing Education)

*Thirty Hours of continuing education every two years is required by the Georgia Composite Board of Social Work, Marriage and Family Therapists and Professional Counselors.

*Examples of continuing education I have received include:

1. ***The Knoxville Institute of Sexual Abuse Treatment Training*** (40 Hours) "**Certified Child Sexual Abuse Treatment Trainer**" (Included training in forensic interviewing techniques)
2. *The Assessment and Treatment of Childhood Sexual Abuse* (16 Hours) Presented by Dr. Suzanne Segroi and Dr. Nicholas Growth (included training in forensic interviewing techniques)
3. *The Assessment and Treatment of Adolescent Sexual Offenders* (40 Hours) Presented by Jonathon Ross and Peter Loss
4. ***The Georgia Council on Child Abuse Annual Seminar*** (120 Hours) (six years) (included training in forensic interviewing techniques)
5. ***NNCAN Annual Symposium on Child Maltreatment*** (40 Hours) (included training in forensic interviewing techniques)
6. ***Georgia Council on Child Abuse: Training of facilitators for group therapy for Adult Survivors of Sexual Abuse.***
7. ***Georgia Department of Human Resources/GPS MAPP Training*** (80 hours) **Certified MAPP Trainer** (I was certified as a trainer of prospective foster and adoptive parents.) 1992
8. *Evaluating and Treating Victims of Sexual Trauma* (16 Hours) Masters and Johnson Training Series
9. *The Georgia Association of Marriage and Family Therapists Annual Conference* (160 Hours) (eight years)
10. *The American Association of Marriage and Family Therapy Annual Meeting* (1992, 1997*) Included training in forensic interviewing. (50 Hours)

Q: How were you employed prior to going into private practice?

C. Employment Background

- **The Rainbow House in Warner Robins:** Coordinator from 1986-1988: Employed by the Houston County Child Sexual Abuse Task Force.
-Hired by virtue of a Victims of Crime Act Grant

- Rainbow House was where all children who had alleged or were reported to have been sexually abused were interviewed.
- Interviews were normally conducted by teams of detectives and DFCS protective service caseworkers.
- I worked to coordinate the efforts of law enforcement, DFCS, the District Attorney and Peachbelt Mental Health, and I had a supervisor from each agency.
- Was responsible for assuring that cases moved appropriately through the system and did not "fall through the cracks."
- Was formally trained as the investigators were to conduct forensic interviews (Knoxville training) and was responsible for setting up the interview rooms, viewing the interview while in progress and assuring that protocols were adhered to.
- Interview rooms were set up with video cameras, and I could communicate with the investigators via headsets.
- Participated in over two hundred interviews
- Conducted training for professionals in several South Georgia counties who were attempting to develop their investigative protocol for child abuse cases as required by law. Trained DFCS, law enforcement agencies.
- Provided over thirty community lectures for civic clubs, churches and organizations on the subject of child sexual abuse.

- **The Methodist Home for Children**

- Unit Director for youngest boys and girls cottages; as such was responsible for providing treatment for those children and supervising staff in the cottages.
- Developed, Implemented and was Director of the STARS program (Specialized Treatment for Abuse Reactive Syndrome. This was a treatment program for boys between the ages of 6-12 who had both been sexually abused and had acted out sexually inappropriate behavior with other children. This program was funded through a Georgia's Children's Trust Fund Grant and in its third year was recognized by the Trust Fund Board as one of the three most promising prevention efforts in the state. I conducted all of the forensic interviews/assessments with children admitted to this program.
- Conducted forensic interviews with children who made allegations of abuse while in care at the Methodist Home.
- Provided training for Methodist Home staff, other area children's home staff, the Georgia Association of Home for Children, area DFCS, law enforcement, Mercer University School of Medicine, Charter Lake Hospital and the school system in the area of intervention in cases of child sexual abuse. Training addresses forensic interviewing techniques as well as other issues.

Q: So, in addition to being trained yourself to conduct forensic interviews, you have also trained others?

D. Training Provided (Examples)

- **VOCA Training Regarding Protocol Development**
- **Children's Trust Fund Grant Related Training**
- **"Evaluating and Treating Child Sexual Abuse" Charter Lake Hospital Spring Conference for Professionals: 1991**
- **"Emerging from Domestic Violence" Charter Lake Hospital: 1992**

- **"Family: Drawing the Circle Wide" 1993***
"Bringing up a Moral Child" 1994*
"Effective Discipline" 1996*
"Divorce Support and Recovery Workshop" 1996*
***Presented Through Martha Bowman United Methodist Church**
- **"Child Sexual Abuse Evaluation and Treatment" Training for Ministers of the South Georgia Conference of the United Methodist Church (1994-1995)**
- **"When Child Abuse Comes to Church" First United Methodist Church, Americus, Georgia 1990**
- **"Responding to Child Sexual Abuse" First Baptist Church, Macon, Georgia 1989**
- **"Responding to Childhood Trauma" Heart of Georgia Council on Child Abuse's Annual Lecture Series.**
- **"A Coordinated Approach to Child Sexual Abuse Evaluation and Treatment" The Middle Georgia Chapter of the Georgia Association of Marriage and Family Therapists 1991**

Q: Have you had occasion to publish any articles?

E. Publications (Examples)

***"Georgia Family Magazine"**

More than a dozen articles on all aspects of children and families

Q: Have you received any awards related to your work with children?

F. Awards (Examples)

- **"Friend of the Children Award" 1990 The Methodist Home for Children and Youth.**
- **Outstanding Young Women of America**

Q: Are you involved in any related community activities or boards?

G. Other Relevant Activities

- **Served on the boards for the battered women's shelter in Bibb and Houston County**
- **Bibb County Drug Court Oversight Committee: 1999-Present**
Appointed by Judge Walker Johnson/Chaired by Judge Tommy Day Wilcox.
- **Georgia Association of Marriage and Family Therapists**
- **Coalition for Juvenile Justice**

Appendix "C"

General Questions for the Defense Expert Regarding The Science of Forensic Interviewing of Children

General Information About Forensic Interviewing Techniques

Q: Can you explain to us exactly what a forensic interview is?

- Forensic interviewing is a unique skill requiring special and extensive training.
- Forensic interviewers questions are asked for the purpose of finding *facts*.
- Therefore, Forensic evaluator *must* behave as a *neutral unbiased finder of fact*.
- Unlike a clinical interview where the goal is to understand, support and evaluate a client, the forensic interview sole focus is determining *truth*.

Q: Do any standards exist for how forensic interviews with children should be conducted?

- Standards exist on many levels. Each county in Georgia, by law must have a written protocol for how investigative interviews should be conducted in cases involving allegations of child abuse.
- Research-based protocols have been developed by many different organizations including The American Academy of Child and Adolescent, The American Academy of Pediatrics, and the American Professional Society on Abused Children.

Q: What type of training is required for forensic evaluators of children?

- Protocols from child advocacy agencies like the American Professional Society on Abused Children recommend that a minimum of a Masters degree in a related area with specific course work in child development plus two years of supervised experience.

Q: In your opinion, why is it important to have written protocols for how these interviews should be conducted?

- Children are not little adults and their special needs must be taken into account and accommodated if the investigators hope to find out not only what the children are saying but also why they are saying it.

- Children, especially young children, are especially prone to suggestion, especially suggestion by adults of high status like parents, teachers and police.
- Substantial research has been done in the last ten years regarding children's memory and suggestibility. This research addresses children's ability to recall and accurately relay information about events they have personally experienced, including experiences involving body touching.
- Consequently, we know that while children, even very young children, are capable of providing forensically valuable information, they can also provide inaccurate or misleading information.
- The use of certain improper techniques in investigative interviews may greatly enhance the chances of children providing inaccurate information.
- Children who are exposed to multiple inappropriate techniques can actually develop a false belief that certain events occurred. If this occurs, when the child tells the story, the child's demeanor and choice of words does not indicate that the child is lying because the child actually believes he is telling the truth.
- Common sense alone is not enough to rely on, and in fact many of these techniques that are now thought to be improper were once how investigators were trained to conduct interviews. Research has shown, for example that even highly trained, experienced investigators at times use improper techniques.
- So, written protocols and training are necessary to insure that we have the best chance of finding the truth.

Q: So, what do these protocols have to say about how these interviews should be conducted?

- Interviewer should be well trained.
- Interview should be videotaped. (Objective documentation)
- Interviewer should ask open-ended non-leading questions. Non-leading questions are questions that do not contain part of the answer, suggest an answer or infer what the child might be thinking or feeling.
- Interviewer should check for understanding rather than assuming he understands what the child means.
- Interviewer should ask if the child knows why they are there and what has been said to them by others.
- The setting should be neutral and child friendly, but not a play-room.
- Interview should be child-centered with the interviewer taking cues from the child about the direction of the interview.
- Interviewer should evaluate the developmental level of the child and assure that the child is competent to answer questions truthfully.

-Colors, numbers, letters, spatial relationships, time and date.

-Understanding of truth/lie (check for understanding and have the child recount an event that is known to both the evaluator and the child, like something that happened in the waiting room before the interview).

- Interviewer should take the time to establish rapport with the child.
- Interviewer should use language that the child can understand. (Developmentally appropriate)
- Interviewer should ask the child for information about what he/she has actually experienced rather than what the child has told someone else (Source Monitoring).
- Interviewer must adopt a hypothesis testing approach.
- Interviewer should be objective and unbiased.
-

Q: Likewise are there things that investigators should never do?

- Ask leading and/or suggestive questions.
- Conduct repetitive interviews
- Co-Opt the child into the role of "helping" the investigators
- Use Peer Pressure to encourage the child to disclose... "Your friends have already told..."
- Use Anatomically correct dolls and drawings *unless* the child has already disclosed.
- Ask repetitive questions within one interview or over the course of several.
- Vilify the suspect. (We're the good guys/He's the bad guy.)
- Use Selective Positive Reinforcement

Q: In your opinion what is the potential impact of using these improper techniques?

- The use of any of these techniques can taint the reliability and credibility of the child's statements. Repetitive errors raise the chances that the child may come to falsely believe what the interviewer believes has happened. In short improper techniques undermine the overall credibility and reliability of the child's statements.
- Use of improper interview techniques can create a situation where it is simply impossible, even for those highly trained, to tell whether the child's statements reflect real events or whether the statements have been tainted by poor investigative techniques.

Q: Do concerns about negative impact of these improper techniques only apply to the police and others investigating the case?

- No. The standards apply to anyone who questions the child about the allegations, even if they are unaware of the standards and even if they have *no intent* to influence the child. Parents, for instance are often the first people to question children, and if their questions are leading or inappropriate, that can effect the child's belief about what happened. Parents are often the adults who have the highest status for children.
- Few adults set out to unduly influence children. Most operate out of concern for the child, though sometimes that concern is misplaced. Lack of intent to influence the child and lack of knowledge or training does not mediate the impact of improper techniques.

Appendix "D"

Case Specific Questions

*The following is an example of an outline for questions for the defense forensic expert. This outline was prepared for a specific case, but provides a guideline for structuring testimony.

The first section is an example of a condensed outline prepared to give the attorney an easy to review summary of the issues that were important for the expert to address:

Issues to Address in My Testimony

1. **You need to qualify me as an expert in *the forensic interviewing of children or the forensic interviewing of children who may have been sexually abused.***
2. **Other areas you may qualify me in are: Marriage and Family Therapy (per my license) or Child Sexual Abuse. This is not necessary, but is possible if needed.**
3. **You want me to tell the jury:**
 - **What a forensic interview of a child is, how it differs in scope and practice from other kinds of interviews.**
 - **What suggestibility is.**
 - **That children, particularly young preschool children are more vulnerable to suggestion than older children and adults, though those groups are also vulnerable.**
 - **That because of the vulnerability of children, care must be taken to avoid the use of certain techniques that have been shown to increase the risk of suggestion.**
 - **That children can be vulnerable to the influence of high status adults who they may fear, respect or wish to please.**
 - **That very young children tend to accept what adults say as truth even if they have no empirical basis for believing them. For example, a child might believe in Santa, the Easter Bunny or leprechauns not because they have seen evidence of these, but simply because an adult has told them they exist.**
 - **That this potential to be influenced by adult's beliefs and statements has been shown to extend to events that are personally salient to the child including events involving events they have witnessed and the actual touching of their own bodies.**
 - **That forensic evaluators must take care not to be biased since a confirmatory bias can influence the architecture of the interview and ultimately the statements of the child. Forensic evaluators must be unbiased finders of fact.**
 - **That it is the job of the forensic evaluator to determine not only *what* the child is saying but why the child might be saying it.**

- **What techniques are improper: (1) leading and suggestive questions; (2) repeated interviewing; (3) repetitive questioning; (4) Use of play speculation and fantasy; (5) Peer Pressure; (5) Co-Opting; (6) Use of Anatomically Correct Dolls or Drawings at least prior to disclosure; (7) Stereotyping; (8) Selective Positive Reinforcement; (9) Influence of High Status Adults.**
- **That this is not just my personal opinion, but it is supported by the research in this field.**
- **That when any one of these inappropriate techniques is used the reliability and credibility of the child's statements are potentially compromised.**
- **That when these techniques are used in combination the risk of suggestion increases dramatically.**
- **That the first responsibility of a forensic evaluator is to conduct a developmental assessment of the child.**
- **Such an assessment is necessary because it provides the evaluator with important information about the child understanding and ability to use language, the child's understanding of the difference between truth and lie/ reality and fantasy, the child's understanding of colors, dates, times, spatial considerations.**

This section provides a more detailed question and answer format for the direct testimony on the case specific facts:

IV. This Situation

Q: Have you had the opportunity to review any information related to this case?

- *Transcript of child's interview with the police on 5/11/99
- *Medical Records from County Rape Crisis Center 5/12/99
- *Transcript of child's interview with police 5/18/99
- *Videotape of child's 5/18/99 interview with police
- *Divorce Petition/Custody and Financial Demands
- *Child's school records
- *Analysis of physical evidence
- *Warrant, Indictment
- *Witness statements provided by investigator: mother, counselor, and observations of grandparents regarding Mother's Day weekend 1999
- *"The Bernstein Bears Book"

Q: What, if any, concerns did you have about the investigative methods in this case?

The first and most important concern that I have with this case is that despite the fact that many inappropriate, suggestive and leading interview techniques are used, the child, in the interviews that are documented never once used the word "touch" in reference to herself. *Over the course of the two interviews, in response to over five hundred questions, she only used the word "touched" one time and it is in reference*

to the doctor touching her brother, and never in relation to her self or her father.

When questioned very directly, she denies, multiple times, that anyone has touched her private in an inappropriate way, but the investigator refuses to accept her answers. Ultimately, even in the face of very leading and direct questions, all she says is that her father touched her on her foot and one time with one finger that did not move on her private area. Despite her denials and the inconsistencies between interviews the investigator makes no apparent attempt to discover whether the touch really occurred and if it did whether it was accidental or something that happened in the course of her father taking care of her when she was ill. He simply assumes from early on that what the mother reported did occur and that the touch was sexual.

- **Delay Problems:** More than two months lapsed between the time the touching was alleged to have occurred and the beginning of the investigation. Two months is a very long time in the life of a four year old and can contribute to confusion of memories.
- **Multiple Interviews:** *There should never have been an interview conducted at this child's home with her seated on her mother's lap.* The first interview should have been at a neutral location, outside the direct presence of the mother and it should have been fully documented. The way this initial interview was conducted was entirely unnecessary. If the goal was to establish rapport with the child, that could have been accomplished without questioning the child about the allegation. If the goal was to protect the child, the detective, based on the report of the mother asked that the mother and children temporarily stay at another location. If time was of the essence, the detective could have asked the mother to bring the child to the facility where these interviews are normally conducted so that it could be videotaped. The detective conducts the first interview on May 11, 1999, but he waits until May 18, a full week, and then conducts another interview. The child was exposed to a genital exam at Rape Crisis *prior* to the third interview. Such exams are generally outside of the child's experience and are suggestive because they focus the child's attention on the genital area. Apparently there was another interview on May 12, 1999, but there is no objective documentation of that interview. Multiple interviews are inappropriate because each interview can be traumatic for the child and repeated interviewing can suggest to the child that there is more to tell, when there may not be.

Examples: Interview #3 pg. 2 Q. 14 (evidence of preparation) also pg. 5 Q. 47 (no documentation of him ever talking to her about truth/lie. this is evidence of an interview that was not documented.

Interview #3 Q. 99 "you already told me once"

- **Documentation Problems:** Only the third interview is videotaped. The first is audiotaped, and the second is not documented at all. The record suggests that the detective was at the child's home much longer than the first tape suggests, so his entire interaction with the child is not documented. There is a reference in the third interview to the child and the detective having a picnic lunch together that the victims advocate prepared. This encounter is not documented. Because of the

significant relationship between the behavior of the investigator and the ultimate reliability of the child's statements, it is important to fully document *all* conversations with the child, not just the portion that one might expect to show in court.

Examples: Interview #1: page 3 Q. 28

Interview #3: page 13 Q. 120

- **Failure to Accept Child's Answer/Failure to Source Monitor:** The child initially, in both interviews denies that anyone has touched her private area;
Examples: Interview #1; page 7 Questions 66-68 (denials)
Interview #1; pg. 8 Questions 69 (Assumes actual event rather than just a repetition of what the child told her mother; Assumes it made her sad;
Interview #1: pg. 9, Question 85 (Detective formalizes the story and moves to more specific questions.)
Interview #3; page 19 Questions 197-212 (denials)

In the first set of questions, the child initially says that no one touched her private and that she has not told anyone that her private was touched. Then she describes a doctor touching her brother's private. Ultimately the detective asks her not to describe what happened to her but to tell him what she had told her mother. Now the memory requested is not what the child experienced with her father, but what she *told her mother*.

- **Vilification of the Suspect:** Treating the suspect as if he is the bad guy. Children are familiar with the concept of "police" from television. Most children see police as powerful; children want to be associated with the 'good guys' so they will tend to align themselves in that way. In this case, the detective vilifies the father.
Example: Interview #1, Pg, 10 "We're the good guys."
"Good to Tell."
- **Co-Opting:** Asking the child to help the adults makes her feel important and increases the risk that she will seek to provide answers that please the adult.
Examples: Interview #3: pg. 226 & 229
- **Repeated Questioning:** Within each documented interview, the detective asks repetitive questions. When children are asked a question repeatedly, they get the idea that their first answer was incorrect, and they may change the answer until the adult authority figure appears satisfied. Children look to adults to tell them what is real and what is not real in the world and to help them interpret the events in their lives.
Examples: Interview #3: pg. 19 Q. 198-211 (In this sequence the child never says that her dad touched her; she never even uses the word touch; the detective assumes touching) pg. 22 Q. 221-232
- **Disclosure Problems:** Child reportedly made a statement to her mother about father touching her private area, but this happened while mother was correcting the child for touching her own private. This type of correction can make a child

feel embarrassed and ashamed. It was when she was corrected that she indicated that dad had touched her. Also, the child had also been previously exposed, apparently repeatedly to a Bernstein Bears book about strangers that addressed the issue of no one touching privates, so she had a context for this allegation. The detective does not explore this issue and in fact refers to the Bernstein Bears book in the first documented interview.

- **Suggestive and Leading Questions:** Both documented interviews contain questions that are inherently leading and suggestive. For example:

Examples: Interview #1 pg.5 Q.46: Provides the label "private body parts; note how child adopts his word in her response to Q. 48. (Um, privates) Asking her to label body parts is really in and of itself suggestive. Pg. 7 Q. 59: leading and fails to define "bad way." Also Q. 66-69 are very leading. Pg. 9 Q. 85: very suggestive and leading because of giving the child two answers to choose from rather than asking an open-ended question. (could have said "so, you were sitting on your dad's lap; what happened next?" pg. 11 Q. 99 "two times the same day" provides information. Q. 106 and 107 provide information Q. 115 "you've got to talk to me."

Interview #3: pg. 9 Q. 83 Introduces concept of private parts again. Interview #3: pg. 17 Q. 175-176 Reminding; pg. 18; Q 183-185 provides names; suggests answer. pg. 20 Q. 202-205

reminding/repetitive questioning/either/or question

Pg. 21, Q. 21 "Did one of those four..."Very leading and specific. Note child's demeanor: giggling, is she kidding now?

*Playing and pretending all though the third interview is a problem.

- **Problem of Bias:**

-The detective in this case should have, upon getting the report, formulated a plan for finding out not only what the child was saying, but why she might be saying it.

-One of the many things that he should have considered was whether this child could have been under undue influence from her mother. At this child's age, children want to please adults and are especially subject to influence from adults of high status. No one is more high status than mother. He not only fails to consider this, he conducts the initial interview when the child sitting on her mother's lap.

-He also fails to explore contradictory or inconsistent statements made by the child.

-He fails to explore the possible impact of the child's illness on her memory of the events. He fails to even look at her and say, "It is very important that you only tell me the truth. Are you sure that what you are saying is the truth?"

-He improperly and prematurely assumes that the touching occurred and the touch was sexual.

Examples:

Interview #1, pg. 6, Q. 55-57 (fails to indicate that a father might also have a legitimate reason for touching) Interview #3: pg. 25 Q 253 and pg. 34 Q. 351-354 (footies or shorts?)

- **Failure to Properly Qualify the Child:** In the first interview, the detective does not even discuss with the child the importance of telling the truth or check to see if the child understands the difference in telling the truth and telling a lie. And at times during both documented interviews seems to play games and kid with the child, which is a tempting thing to do to make a child feel at ease, but the child cannot necessarily tell when it is time to kidding and tell the truth.

Example: *Interview #3 Q. 99-103 , pg. 15 Q. 154-156, pg.29 Q.290*

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