MEMORY & SUGGESTIBILITY
& DEFENDING THE
FORENSIC INTERVIEW

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TOPICS TO COVER

- History
- Memory & Suggestibility
  - Early Research
  - Legal Fallout
  - Recent Research
- Research and the Real World
- Anatomical Dolls and Drawings
- Credentials for Forensic Interviewers
- Protocols
- Defending Questions to Child
DEVELOPING THE SKILLS TO DEFEND A FORENSIC INTERVIEW

- Memory & suggestibility attacks
- Finding corroborating evidence
- Know your case/interview
- Training
- Protocols
- Are you an expert?

Friday, August 3, 2012
CHILDREN AND HISTORY

- Highly suggestible
- Wholly unreliable
- Pop psychology
- Salem witch trial 1692
The history of psychology in the past 100 years has been filled with theories that deny sexual abuse occurs, that discounts the responsibility of the offender, that blame the mother and/or child when it does occur, and that minimize the impact.

ANNA C. SALTER, PH.D, PREDATORS 57 (2003)
It constitutes a sorry chapter in the history of psychology, but it is not only shameful, it is also puzzling. Hostility toward child victims leaks through the literature like poison.

ANNA C. SALTER, PH.D, PREDATORS 57 (2003)
“The prevailing legal attitude for the following 300 years has been one of skepticism about the testimony of child witnesses”

“[P]rosecutors are reluctant to bring to court cases that rely primarily on a young child’s eyewitness testimony, presumably because of burden-of-proof problems and a suspicion that jurors have negative stereotypes about children’s memories”

WHAT IS SUGGESTIBILITY?

- The degree to which one’s memory or recounting of an event is influenced by suggested information or misinformation.

- Can be the result of:
  - Being told what to say
  - Being questioned in a way that alters your recollection of the event
CHILDREN 10 AND OVER ARE NO MORE SUGGESTIBLE THAN ADULTS

By the time children reach approximately age 10 to 12, they appear to be generally no more suggestible than adults (Saywitz & Snyder, 1993; Saywitz, Goodman, & Lyon, 2002; Cole & Loftus, 1987).
Children 10 and over are no more suggestible than adults

CHILDREN 10 AND OVER ARE NO MORE SUGGESTIBLE THAN ADULTS

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Prior to 1979 shortage of research

From 1979 to 1990 over 100 studies, much pro-child
THE CLOWN STUDY

- Pairs of kids, ages 4 - 7 sent into a trailer

- One child interacts with the clown while the other watches

- Kids asked leading questions like “he took you clothes off didn’t he”

Not one of the kids who interacted with the clown made a false report.

Only one of the “bystander” kids made a false report of abuse (spanking).

THE MEDICAL EXAM STUDY

- Goodman & colleagues study 100’s of kids having a medical exam

THE MEDICAL EXAM STUDY

- 5 and 7 year old girls
- ½ had a scoliosis exam & ½ had an external genital exam

The Medical Exam Study

Interviewers used free recall, anatomical dolls, direct, and misleading questions

“Did the doctor put something in your mouth?”

“Did you take your clothes off?”

“How many times did the doctor kiss you?”

“Did the doctor touch you there?” (while pointing to vagina on doll)

“Did the doctor ever touch you before that day?”

Only 3 to 5% of the children made a false report

14 to 31% failed to reveal genital touching

5 years olds were more likely to reveal genital contact than 7 year olds

Children reported twice as much correct information when demonstrating on dolls

None of the children demonstrated sexually explicit behavior with the dolls

MEDICAL EXAM STUDY
RESULTS

- Not one of the seven year old children made a false report.

- Only 3 out of 215 of the five year old children made a false report.

- False security

CASES THAT CHANGED HOW WE DO BUSINESS

- *State of New Jersey v. Michaels*
- The McMartin Preschool Case – Manhattan Beach, CA
- Little Rascals Day Care – Edenton, NC
- Fells Acres Day Care – Malden, MA
STATE V. MICHAELS
136 N.J. 299; 642 A. 2D 1372 (1994)

- Multiple pre-school victims
- Michaels convicted of 131 counts
- Convictions reversed
THE INVESTIGATION

- 4 1/2 year old told “lots of other kids” revealed abuse.
- Child told the interview would end once the child “cooperated”.
- When child announced he “hated” the investigator, the investigator told the child he “secretly” liked the interviewer.
- “Do you want to help us keep her in jail”.

Friday, August 3, 2012
The cat’s out of the bag. Child testimony viewed with suspicion

In a child abuse case, it is reversible error not to allow a defense expert to testify “regarding the techniques employed by (the police officer) and the prosecutor in their examinations of the child.” *Pyron v. State*, 237 GA. App. 198, 514 S.E. 2d 51, 1999

http://www.law.umkc.edu/faculty/projects/ftrials/mcmartin/salemparallels.htm
The Second Wave of Research

- Research reflects high profile cases.
- Research is given great weight by some courts.
“SAM STONE STUDY”
LICHTMAN & CECI,
THE EFFECT OF STEREOTYPES AND SUGGESTIONS ON PRESCHOOLERS’ REPORTS,
DEVELOPMENTAL PSYCHOLOGY 31(4) (1995)
Researchers “tell” 3-6 year old kids about Sam Stone.

Stereotype SS as “clumsy”.

SS visits the classroom.

The next day, kids given fictitious evidence.

- Kids interviewed for 2 minutes once a week for 4 weeks after the visit.

- Kids asked “leading” questions such as “I wonder is SS was wearing long pants or short pants when he ripped the book” and “I wonder if SS got the teddy bear dirty on purpose or by accident.”

- Children told 27 lies in interviews.

- First interview: 25% surmised SS did it.

10 weeks after the visit, a “new” interview.

- 46% of 3-4 year olds inaccurately recalled that SS did clumsy things.

- 30% of 5-6 year olds inaccurately recalled that SS did clumsy things.

- Only 21% or 3-4 and under 10% of 5-6 year olds made the same claims when gently challenge.

Ceci & Liechtman stated “these results indicate that not only do young children form stereotypes but that stereotype formation interacts with suggestive questioning to a greater extent for younger than older children”

Ceci & Leichtman concluded, “[W]hen the context of a child’s reporting of an event is free of the strong stereotypes and repeated leading questions that may be introduced by adults the odds are tilted in favor of factual reporting”

MOUSETRAP STUDY

THE MOUSETRAP

- Children ages 3 to 6

- 12 interviews of 30 minutes each

- Children told about a fictional event and then told to picture it in their head

- Initially 23% remembered the fictional event

- By interview 12, 43% remembered the fictional event

THE INOCULATION STUDY

THE INOCULATION STUDY

- Kids (ages 4-5) receive a medical exam by pediatrician.
- After exam, researcher stays during oral vaccine and inoculation.
- RA removes child and plays.
- 11 months later, kids interviewed.

INOCULATION STUDY
RESULTS

- Kids interviewed four times over a two week period.

- Kids are lied to about RA and pediatrician duties.

- In the 4th interview, 40% of kids falsely reported the duties of one of the players.
MEMORY/SUGGESTIBILITY
THE JACK O’MACK STUDY

Bhavna Shyamalan & Sharon Lamb, The Effects of Repeated Questioning on Preschoolers’ Reports of Abusive Behavior
THE JACK O’MACK STUDY

- Jack “tested” toys, measured feet, and painted faces on toenails
- Four months later, kids were told to take the process seriously
- After ten suggestive interview sessions, not one child falsely accused Jack of yelling
- Serious atmosphere/Serious allegation

Shyamalan & Lamb, The Effects of Repeated Questioning on Preschoolers’ Reports of Abusive Behavior
RECENT RESEARCH

- Study examines children’s ability to maintain a false statement about body touch

FALSE TOUCHES STUDY

- 1 to 3 weeks later the children are interviewed

- Children who lied about being touched were able to accurately maintain the lie during repeated, direct questioning

- Children who lied were less accurate than truth tellers when answering questions not related to the lie

Children who answered truthfully about not being touched were both accurate and consistent in their statements.

Average age of victims is 10 years old

Most interviews occur soon after disclosure

Interviewers use non-suggestive techniques

Victims are most often abused by close family members

Majority of children did not adopt suggestive question
• Real World: Children interviewed after they reveal abuse

• Research World: Children interviewed repeatedly after they deny an event
WHAT WE LEARNED

- Do not “tell” children the answer
- Do not stereotype the perpetrator
- Do not treat any aspect of the interview as a game
- Even very young children can lie
- Younger children are more suggestible than older children
- The majority of children “stuck to their guns”-only a minority made a false report
OTHER READING


ANATOMICAL DOLLS AND DRAWINGS

- Not Diagnostic
- Not unduly suggestive
ANATOMICAL DOLLS AND DRAWINGS ARE USEFUL TO:

- Stimulate the memory of a child
- Allow the child to demonstrate
- Confirm the interviewer’s understanding
DOLL PROTOCOL

- Only after verbal disclosure
- Not a play toy
- Dolls are always fully clothed
- Representational shift determination
- Have child define conduct verbally while demonstrating
- Remove dolls when not needed
ATTACKS ON USE OF DOLLS

- If used with children who can’t make the representational shift or when accompanied with abusive questioning, appellate errors arise.

- Research condemning the use of dolls employs these practices.


Having a forensic interview protocol is necessary to successfully defend you forensic interviews

Know what your protocol says so that you can describe how you followed it in this case

Also know what your investigative protocol requires and how you followed it or why you had to deviate in this case
PROTOCOL TYPES

- National Protocols
  - NCAC
  - Child First/RATA
  - NICHD
  - Tom Lyon’s 10 Step
  - Childhood Trust
States with their own protocols

- Michigan
- Texas
- California
- New York
DEFENDING YOUR DECISIONS

- If you have to deviate from your protocol know why, document that reason and be prepared to defend that decision

  - Multiple interviews
  - Medical exam: yes or no
  - Use of interpreter
  - Recording v. no recording
DEFENDING YOUR QUESTIONS

- No perfect interview
- Developmentally appropriate language
- Leading, directed, multiple choice, Yes/NO
- Narrative invitation
- Review your interview
- Look at questions in full context of interview
CREDENTIALING:

- Who is behind it?
- What is it?
- What does it mean for forensic interviewing?
- I’m not credentialed, now what???
WHO IS BEHIND IT?

Certification Board Members
Hector M. Campos MSW, LCSW
Joan Carter JD, MSW
Naomi Lau MSW, LCSW
Kelly Bober, BA
Dr. Barbara Craig, MD, FAAP
Kirsten E. Webb MSW, LCSW-C
Lisa Milton MSW, LCSW
Daryl Leach MSW, LCSW
James Laster, BA

National Association of Certified Child Forensic Interviewers
**Qualifications:** All standards are subject to change per approval of the Certification Board.

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<th>Credentialing Tier</th>
<th>Credentialing Classification</th>
<th>Exam Required</th>
<th>Educational Requirements</th>
<th>Interviews Completed</th>
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<td>32-40 hrs</td>
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The Credentialing Tiers

- *Basic Child Forensic Interviewer (BCFI)* Entry Level Intern (Registration).
- *Certified Child Forensic Interviewer (CCFI)* Experienced Practitioner Certification.
- *Advanced Child Forensic Interviewer (ACFI)* Advanced Level Practitioner Certification.
- *Diplomate Child Forensic Interviewer (DCFI)* Expert Level Practitioner Certification.
### Processing Fee Schedule

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<td>Competency Examination Proctored Site Scheduling Fee</td>
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WHAT DOES IT MEAN FOR FORENSIC INTERVIEWING:

Pro’s:

- Implementation of Forensic Interviewing Ethical Standards
- Expectation to create interviewers with greater experience
- Standardized testing for all those certified
- National requirements for ongoing training
WHAT DOES IT MEAN FOR FORENSIC INTERVIEWING:

Con’s:

- Costs more money for strapped public agencies and non-profits
- Takes focus away from child’s statement
- Creates additional fodder for cross-examination
- Does not assure a level of quality practice
WHAT CAN HAPPEN WHEN AN INTERVIEW GOES BAD
WHO ARE THESE PEOPLE?
CONCLUSION

- Be confident
  - In yourself
  - Your interview
  - Your investigation
  - Your case
YOU ARE CHANGING THE WORLD ONE CHILD AT A TIME
Perhaps we cannot make this a world where children are not tortured but we can lessen the number of tortured children.

Allbert Camus, The Plague
REFERENCES

- Victor Vieth, *Memory and Suggestibility Research: Does the Surreal World of the Laboratory Apply to the Real World?* NDAA

- Thanks to Victor Vieth, Laura Rogers, Angela Scott and NCPCA

- Linda Steele, National Children’s Advocacy Center