



*SUPPLEMENTAL CHILD FORENSIC
INTERVIEWS: A CROWN ATTORNEY
AND FORENSIC INTERVIEWER
PERSPECTIVE*

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Historical context

Child forensic interviewing in the 1980's and 1990's

- multiple interviews
- repeated, suggestive, leading questions

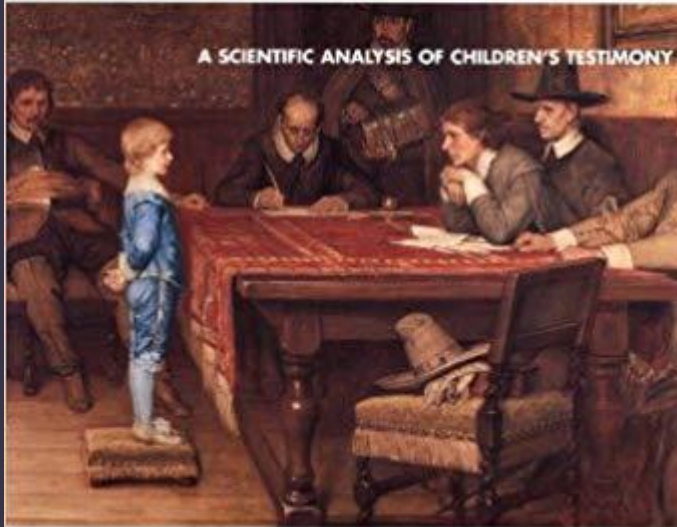
Can children
be reliable
witnesses?



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Jeopardy *in the* Courtroom

A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY



Stephen J. Ceci and Maggie Bruck

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The accuracy of most children's testimonies can be compromised when interviewers ask misleading, leading questions or provide social feedback that favors a particular answer.

30 years of practice and research have taught us.....

Our forensic interviews should be

- non biased, utilizing a hypothesis testing approach
- emphasis on open ended questioning techniques to solicit narrative accounts from children and avoidance of leading or suggestive questioning to produce the most complete and reliable information that children can offer and to ward off suggestibility, social desirability and interviewer bias
- a single interview ?



Single forensic interview approach

- Limited opportunity for interviewer bias / suggestibility / misleading questions
 - Minimize possible trauma / distress for child recollecting experiences
 - Avoid inconsistencies between / among child's statements
 - Accommodates limited resources



Admissibility of Videotaped Statements

- Section 715.1 of the *Criminal Code* provides a statutory exception to the common law rule against hearsay evidence by allowing for the admissibility of out-of-court statements.
- 715.1 allows for the admission of statements made by a victim/witness under the age of 18 provided that:
 - (i) the victim or witness was under the age of 18 at the time of the offence;
 - (ii) the video recording was made within a reasonable time after the alleged offence in which the victim or witness describes the acts complained of; and
 - (ii) the victim or witness, while testifying, adopts the contents of the video recording

Objectives of 715.1 of the *Criminal Code*

This section has two primary purposes:

- (i) It enhances the truth-seeking role of the courts by creating a record of the best recollection of the events surrounding the offence.
- (ii) It reduces the likelihood of inflicting further injury/re-victimization on a child as a result of involvement in the criminal process.

R. v. C.C.F. [1997] S.C.J. No. 89 at paragraph 29; *R. v. L.(D.O.)* [1993] S.C.J. No. 72 at paragraphs 34 and 35.

s.715.1 Videotaped Statements: The Residual Discretion to Exclude Statements

There is a discretion to exclude a complainant's statement if the Court determines that its admission will interfere with the proper administration of justice.

Some of the factors to be taken into account in exercising the discretion to exclude are:

- the form of questions used by any other person appearing in the videotaped statement (ie. leading questions);
- the interests/motives of persons involved in obtaining the statement;
- the quality of the video and audio reproduction

Admissibility of Videotaped Statements at a Preliminary Inquiry

A preliminary inquiry justice may admit a videotaped statement that is determined to be credible and trustworthy in the circumstances of the case.

Whether a statement is credible or trustworthy depends on the contents of the statement and the circumstances surrounding the taking of the statement itself.



vs.

Multiple

interviews

“A problem.....seems to be that researchers have used designs in which they have mixed multiple interviewing with suggestible questioning, thereby confounding conclusions regarding which manipulation resulted in response errors. Thus, the effect of repeated interviews may have been wrongly interpreted in earlier studies and baseline conditions including only neutral questioning varied with multiple interviewing generally have not been tested.”

Goodman & Melinder, 2010

Field studies with supplementary forensic interviews

Hershkowitz & Turner, 2007

- 40 children, 6 – 13 years alleged victims of sexual abuse
- At end of interview, children told they would be re-interviewed but first given a 30 minute break to draw
- To begin the second interview children were asked to tell everything that happened as if they had not been asked before
- Information disclosed in second interview was:
 - 25% new
 - more central details vs. peripheral details disclosed
 - proportion of information repeated in both interview was low and most original information not reported in the second interview

First interview.....



Think back to July 1, 2018 and try to remember everything about that day from the beginning to the end.

Please jot down what you remember.

Field Studies with second forensic interviews

Hershkowitz and Katz, 2012

- 56 children, 5 – 14 years, suspected sexual abuse
- NICHD trained interviewers
- Forensic Interview:
 - introductory, rapport, open ended invitations related to the allegations then interview ended.
 - 7 – 10 minute break with child remaining in room with interviewer.
 - “You’ve told me what happened to you then you played and rested. Now, please tell me again, everything that happened to you from the beginning to the end as best as you can.”
- Results: 58% of information provided in second interview was NEW

Field Studies with second forensic interviews

Cederborg, LaRooy & Lamb, 2008

- 19, 4 – 18 year olds with intellectual disability with concerns of sexual and / or physical abuse
- Initial and second interviews completed
- Of the information provided in the second forensic interview:
 - Elaborated responses 42%
 - New Information 39%
 - Repeated from first interview 17%
 - Contradicted 2%

Field Perspective



Video clip



Annoying Things Kids
Do That Are Actually
Good for Them

Supplementary interview candidates

Single interviewing approach may be most challenging for children with:

- Limited attention span
- Trauma impacts
- Reluctance
- Limited cognitive and language abilities
- Mental health problems
- Poly victimization
- Multiple offenders

Evidence based risk factors for non disclosure

- Younger age
- Close relationship with the offender
- Less cooperative and less informative responses from the start of the interview
- Male gender
- No prior disclosure of abuse (outcry)
- Unsupportive caregiver

Hershkowitz et al., 2005, 2007; Lippert et al., 2009; Pipe et al., 2007



s.715.1 Videotaped Statement Are Multiple Video Statements Admissible?

- Multiple videotaped statements may be admitted: *R. v. J.M.* [1998] O.J. No. 5504 (Prov.Div.) at paras 18 to 29.
- Limiting admissibility to one recording might prevent the presentation of a full account and may deprive a trier of fact of valuable information.: *R. v. Mulder* [2008] O.J. No. 345 (S.C.) at para 47.

Disclosure as an ongoing process

- Sexual Abuse Accommodation Syndrome (R. Summit, 1983)
 - Secrecy
 - Helplessness
 - Entrapment and accommodation
 - Delayed disclosure
 - Retraction
- Initial clinical opinion and debated over the years

Disclosure as an incremental process

Delayed disclosure common

- ONLY 25 – 40 % of child victims disclose during childhood

False negatives common (non disclosure)

- When formally interviewed, approximately a half to a third of victims will fail to disclose or will provide false negatives

Hébert, Tourigny, Cyr, McDuff, & Joly, 2009; London et al. 2005

Lyon, 2007; Olafson & Lederman, 2006

Why children fail to disclose?

- Shame, guilt
- Self-blame
- Embarrassment
- Fear of consequences, repercussions and reprisals
- Not being believed – “I’m a kid, he’s an adult.”
- Mixed loyalties - effective grooming – positive aspects of offender
- Unsupportive caregiver – perceived intolerance for disclosure

Trauma Impact

- Hyper arousal – difficulty concentrating, hyperactivity, hyper vigilance, dysregulation
- Avoidance – “I don’t want to talk about it.” “I don’t remember”, restricted affect, withdrawn
- Re-experiencing of the event - headaches / stomach aches, anxiety, dissociation



Video clip

DELAYED AND INCREMENTAL DISCLOSURE

Pursuant to the Supreme Court of Canada's decision in *R. v. D.D.*, [2000] 2 S.C.R. 275, expert evidence is not necessary or appropriate to explain delayed disclosure in sexual assault cases.

Justice Major wrote:

A trial judge should recognize and so instruct the jury that there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one circumstance to consider in the factual mosaic of a particular case. A delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant.

DELAYED/INCREMENTAL DISCLOSURE

Incremental disclosure may be seen as a type of delayed disclosure and therefore dealt with in the same way – with a proper instruction to the jury.

R. v. L.K., [2011] O.J. No. 2553 (SCJ) at para 24.

R. v. D.P., [2017] ONCA 263 (CanLii).

DELAYED/INCREMENTAL DISCLOSURE

Inconsistencies and recantations by a complainant may form a basis for rejecting the witness's evidence. However, expert evidence may be admitted to account for these apparent difficulties, restoring the trier of fact's confidence in the credibility and reliability of the witness. An expert may be able to place inconsistencies and recantations in context.

Reminiscence

- The process of remembering, especially the process of recovering information by mental effort
- An initial scan of memory does not collect all stored memories
- Additional memory sweeps will provide additional memory recollections as the repeated retrieval attempts act as a form of review, further consolidating memories





Considerations for conducting supplementary forensic interviews

- ❑ Stretch protocol over more than one interview without re-doing the first interview
- ❑ Review information obtained in the first or initial interview before proceeding with an additional one.
- ❑ Ensure a short period of time in between interviews to capitalize on rapport, process of reminiscence
- ❑ If disclosure in second interview, ask child about their decision to report then. “What made you decide to tell today?”
- ❑ Follow best practice forensic interviewing guidelines (repeated open ended questions)

Considerations for reluctant children

First forensic interview

- introductions
- interview instructions
- practice interview / rapport



Considerations for reluctant children



“If during the pre-substantive phase, the child is not cooperative and remains reluctant, end the interview....and schedule an additional interview for continued rapport building.”

NICHD Revised Protocol, 2014 found on:
www.nichdprotocol.com

What happens if we persist when a child remains reluctant?

Hershkowitz et al., 2007

- 100 forensic interviews in high suspicion cases
- 50 disclosed; 50 no disclosure
- Interviewers for non disclosers provided fewer supportive comments to children who did not disclose and asked more option posing & suggestive questions

Orbach et al., 2007

- 70 interviews in U.S./United Kingdom
- Half disclosed at beginning of substantive section with open ended questions, half disclosed after more focused prompts used
- Results – reluctant group more uncooperative in rapport building phase before substantive phase started; reluctant group provided less information overall; interviewers asked more focused questions with reluctant group

UNAVAILABILITY OF CHILD WITNESS

Where a witness is unable, unwilling or unavailable to testify, the Crown may request admission of a witness's prior statement for its truth, provided that the statement is deemed necessary and reliable.

A statement must be necessary to prove a fact in issue and the witness is unable to testify.

A statement is reliable if it has circumstantial guarantees of trustworthiness.

Partial Disclosers

Children who provide
SOME forensically relevant
information during an initial
forensic interview.....



Gwen

- Initial allegations – 6 year old overheard by aunt telling her similar aged cousins that she got to see Uncle Mikey's penis.
- 6 year old repeated statement to her mother later that day when asked about her comment about Uncle Mikey. Mother began crying.
- During first interview, 6 year old girl disclosed that Uncle Mikey exposed his penis and @ end of interview while describing her contact with suspect states, "I don't want to play that doctor game with him anymore." Attempts to have her elaborate on comment not successful.

Gwen

First Interview

- Introductions
- Interview instructions
- Practice interview & rapport

Supplementary Interview

- Introductions
- Ask recollection of interview instructions and promise to tell the truth restated
- Shorter practice interview / rapport

Gwen

First Interview

Transition to substantive

- What are you here to talk to me about today?
- Tell me about your family?
- I heard you were playing with your cousins a few days ago. Tell me all about playing with them.
- Is your mom worried or sad about something?

Supplemental Interview

Transition to substantive

- What are you here to talk to me about today?
- We need to talk about the same things you talked to (first interviewer) about.
- Do you play games with suspect.....tell me all about the games.
- Do you play doctor games? (yes/no response followed by open ended prompt)

Sally

- 5 year old girl disclosed a stranger sexual assault to her mother. The alleged sexual assault occurred while Sally and her mother were in a retail store earlier in the day and Sally was briefly separated from mother.
- During first forensic interview, Sally disclosed that while in the toy section of the store and her mother was elsewhere in the store, the suspect pulled open the back of her pants and touched her bum. Despite questions, Sally does not provide details regarding suspect's identity except that he was male and referred to him as the "bad man".

Sally

First Interview

- Introduction
- Interview instructions
- Practice interview / rapport

Supplemental Interview

- Introduction
- Recollection of interview instructions and restated promise to tell the truth
- Short practice interview / rapport

Sally

First Interview

- Transition to substantive
 - What are you here to talk to me about today.
 - Is your mom worried that something may have happened to you?
 - I heard that someone may have bothered you.

Supplemental Interview

- Transition to substantive
 - What are you here to talk to me about today.
 - We need to talk about the same things you talked to (first interviewer) about.
 - When you talked to (first interviewer) you talked about a man in the Variety Village store. Tell me all about that man.
 - When you talked to (first interviewer), you talked about a bad man. Tell me all about the bad man.

Jeff

- 4 year old boy with observed sexual behavior with peer including oral / genital contact. When asked by his mother about the behavior, Jeff said he did not want to talk about it as he did not want his uncle to get in trouble.
- During police interview, child describes sexual behavior with peer and near the end discloses sexual abuse (the private part game) by uncle indicating it occurred multiple times, uncle took pictures and used videos.

Jeff

First Interview

- Introduction
- Interview instructions (promise to tell the truth)
- Practice interview / rapport

Supplemental Interview

- Introductions
- Recollection of interview instructions and re-state promise to tell the truth
- Short rapport / practice interview

Jeff

First Interview

- Transition to substantive
 - What are you here to talk to me about today?
 - Tell me about your friends. What do you do on playdates
 - How did you learn about sexual behavior?
 - Whose idea was the sexual behavior.
 - Has sexual behavior happened with someone else?
 - If it happened with someone else, what would you do?

Supplemental Interview

- Transition to substantive
 - What are you here to talk to me about today?
 - We need to talk about the same things you talked to (first interviewer) about
 - You told (first interviewer) about private part games. Tell me all about the private part games.
 - Clarify separate incidents, videotaping, picture taking, did something different happen.....

Supplementary interview approaches

- Touch survey (S. Hewitt, *Assessing Allegations of Sexual Abuse in Preschool Children*)
- Body safety knowledge (terminology for parts, function, rules about genitals, someone broken rules, what would kid do if someone broke rules) – sexual abuse
- Survey of family members and relationships
- Developmental narrative elaboration interview (*Evidence-based Child Forensic Interviewing The Developmental Narrative Elaboration Interview, Interview Guide*, Karen J. Saywitz & Lorinda B. Camparo, 2014)

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