

DOCUMENTATION AND ASSESSMENT OF CHILDREN'S FORENSIC INTERVIEW STATEMENTS*

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“Training is everything. The peach was once a bitter almond; cauliflower is nothing but cabbage with a college education.—*Pudd'nhead Wilson's Calendar*.”¹

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1. MARK TWAIN, PUDD'NHEAD WILSON 37 (Harper & Brothers ed., 1894).

I. INTRODUCTION

There are many critical elements to conducting reliable and defensible interviews with child victims or witnesses of abuse or violence. However, there is nothing as critical as comprehensive and ongoing training for those who carry out such interviews.² With this training comes knowledge and understanding of how children experience and disclose their abuse, the developmental differences in children's linguistics, and normal sexual development.

This Article, in two parts, will address the importance of documenting the investigative interview with child victims and witnesses, and will discuss several elements that might assist in assessing the internal reliability of a child's interview statements. This Article will also demonstrate that without accurate and complete interview documentation, it is difficult to put into practice the proposed methods to comprehensively review the interview itself.

II. RECORDING THE CHILD ABUSE INTERVIEW

Interviews of alleged child abuse victims and witnesses are often the primary source of evidence on possible criminal activities involving sexual abuse.³ Therefore, it is critical that investigative interviews conducted with children are completely and accurately documented to effectively capture the child's statements regarding any abuse allegations, events witnessed, or denials of witnessing or experiencing traumatic events. This section examines the benefits and drawbacks of electronically recording investigative interviews, reviews legislation and case law regarding electronic recordings of interviews, and makes recommendations on documenting child abuse interviews.

A. Documenting the Interview

Numerous published forensic interview protocols, interview practice guidelines, and best practices manuals advocate for detailed documentation by investigative interviewers of statements obtained from children about experiencing abuse or witnessing violence.⁴ Furthermore, these protocols

2. See Victor I. Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years (revised and expanded)*, 28 *HAMLIN J. PUB. L. & POL'Y* 1, 13-15 (2006).

3. Am. Prof. Soc'y on the Abuse of Children, *Investigative Interviewing in Cases of Alleged Child Abuse*, PRACTICE GUIDELINES, 2002, at 1 [hereinafter APSAC].

4. See, e.g., AM. PROSECUTORS RESEARCH INST., INVESTIGATION AND PROSECUTION OF CHILD ABUSE 42 (3d ed. 2004); HOME OFFICE, DEP'T OF HEALTH, GREAT BRITAIN, MEMORANDUM OF GOOD PRACTICE ON VIDEO RECORDED INTERVIEWS WITH CHILD WITNESSES FOR CRIMINAL PROCEEDINGS 15-25 (1992); N.Y. STATE CHILDREN'S JUSTICE TASK FORCE, FORENSIC INTERVIEWING BEST PRACTICES 12 (2003) [hereinafter NY TASK FORCE]; ERIN SORENSON ET AL., HANDBOOK ON INTAKE AND FORENSIC INTERVIEWING IN THE

frequently recommend that documentation of an interview include the child's exact verbal statements,⁵ the emotions and behaviors exhibited by the child during the course of the interview,⁶ and the questions posed by the interviewer.⁷ Behavioral interactions of the interviewer are also important to capture to avoid future challenges that the interviewer manipulated the child's verbal reports through his or her own body language or nonverbal cues during the interview.⁸

If the interview is documented solely in writing, in order to comprehensively attend to the child's verbal reports as well as any behavioral or emotional displays, some practitioners recommend that one investigative professional conduct the interview while another professional take notes as an observer.⁹ In addition, many practitioners recommend minimizing multiple forms of interview documentation to reduce the potential for conflicting reports based on misunderstandings, inaccuracies, or omissions.¹⁰ However, while the American Professional Society on the Abuse of Children (APSAC) acknowledges that not all investigative or legal professionals agree on one single method for documenting investigative interviews, the professional organization advocates for electronic recordings as "the most comprehensive and accurate method of documentation."¹¹

Some commentators additionally argue that precise and complete memorialization of a child abuse interview is a constitutionally mandated due process issue.¹² When forensic interviews are erroneously perceived as a

CHILDREN'S ADVOCACY CENTER SETTING 21-22 (Trisha Booth ed., 1997); Jack S. Annon, *Recommended Guidelines for Interviewing Children in Cases of Alleged Sexual Abuse*, ISSUES IN CHILD ABUSE ACCUSATIONS, Summer 1994, available at http://www.ipt-forensics.com/journal/volume6/j6_3_2.htm; APSAC, *supra* note 3, at 3.

5. APSAC, *supra* note 3, at 3; see also SORENSON ET AL., *supra* note 4, at 21.

6. NY TASK FORCE, *supra* note 4, at 11, 12; SORENSON ET AL., *supra* note 4, at 21.

7. STATE OF MICH. GOVERNOR'S TASK FORCE ON CHILDREN'S JUSTICE & DEP'T OF HUMAN SERVS., FORENSIC INTERVIEWING PROTOCOL 4 (2003), available at http://www.michigan.gov/documents/dhs/DHS-PUB-0779_211637_7.pdf; SORENSON ET AL., *supra* note 4, at 21.

8. NY TASK FORCE, *supra* note 4, at 13.

9. See, e.g., AM. PROSECUTORS RESEARCH INST., *supra* note 4, at 42; NY TASK FORCE, *supra* note 4, at 11.

10. SORENSON ET AL., *supra* note 4, at 21.

11. APSAC, *supra* note 3, at 3. The American Professional Society on the Abuse of Children (APSAC) is a national organization with a goal of improving investigative and prosecutorial responses to child abuse and violence within families. Am. Prof. Soc'y on the Abuse of Children, <http://www.apsac.org> (last visited Apr. 2, 2010).

12. See Lucy S. McGough, *Good Enough for Government Work: The Constitutional Duty to Preserve Forensic Interviews of Child Victims*, LAW & CONTEMP. PROBS., Winter 2002, at 179, 180, 197-208. In addressing this challenge, however, the Supreme Court of Montana determined that the failure to record a child sexual abuse interview did not constitute destruction of material exculpatory evidence. *State v. Weaver*, 964 P.2d 713, 723 (Mont. 1998), *superseded on other grounds by statute*, 2009 Mont. Chap. 214; see also *State v. McIntosh*, 43 P.3d 837, 847 (Kan. Ct. App. 2002) (finding a failure by the police to record an interview with a victim does not constitute a due process violation unless the defendant demonstrates bad faith on the part of the State).

prosecutorial tool orchestrated for the sole purpose of use during a criminal trial, defense advocates can effectively argue that prosecutors are creating evidence and then deliberately hiding the product or failing to maintain and turn over potentially exculpatory evidence.¹³ Furthermore, absent accurate documentation of an interview of an alleged child victim in its entirety, commentators argue that there are no means to evaluate the reliability of the child's account of his or her abuse or the degree to which the interviewer may have contaminated the child's statements.¹⁴

B. Literature Review Regarding Electronically Recording Interviews

In 1999, *The National Child Advocate* published a point and counter-point discussion on the benefits and drawbacks of videotaping child interviews.¹⁵ In their article, Morgan and Brickman asserted that videotaping interviews with child victims would be beneficial for several reasons. Video recordings of the interviews may be used to reduce the child's court appearances, thereby reducing the potential for unnecessary anxiety, stress, and re-traumatization of the child.¹⁶ The recording may be played for an offender and his or her attorney prior to trial to encourage a plea, or, in some jurisdictions, it may be played in preliminary hearings as admissible hearsay evidence in lieu of the child's testimony.¹⁷ The authors also assert that video recordings of a child's statements eliminate the need for note-taking, because the recordings fully capture the conversation between the interviewers and the child, and effectively preserve the child's emotional and behavioral responses for the jury or other investigative team members who are not present during the interview.¹⁸

Video recordings of interviews are also beneficial for purposes of trial, as the investigative interview is frequently conducted months or even years before the child may have to testify in court.¹⁹ Children who experience growth spurts in the intervening time may appear less vulnerable to the jury,

13. McGough, *supra* note 12, at 198.

14. *Id.* at 204.

15. Compare J. Tom Morgan & Jeff Brickman, *Videotaping Child Victim Interviews: Eight Reasons Why It Works*, NAT'L CHILD ADVOC., Winter 1999, at 1, with Paul Stern, *Routine Videotaping of Child Interviews Can Create as Many Problems as It Seeks to Solve*, NAT'L CHILD ADVOC., Winter 1999, at 1.

16. Morgan & Brickman, *supra* note 15, at 1.

17. *Id.*

18. *Id.*

19. *Id.*; Wendy A. Walsh, Tonya Lippert, Theodore P. Cross, Danielle M. Maurice, Karen S. Davison, *How Long to Prosecute Child Sexual Abuse for a Community Using a Children's Advocacy Center and Two Comparison Communities?* 13 CHILD MALTREATMENT 3, 8 (2008) (finding sixty-five percent of reviewed child sexual abuse cases take more than a year to resolve from the abuse report to law enforcement to final case disposition, and more than one-third of the reviewed cases exceed two years for resolution).

and possibly more complicit or compliant in their victimization.²⁰ Playing the interview that demonstrates the child's own reports of his victimization for the jury may emphasize the fact that the child was defenseless to the alleged perpetrator's molestation.²¹

Furthermore, it is not uncommon for child witnesses to forget their initial statements and the level of detail they provided to criminal or child abuse investigators.²² It is common trial practice to permit witnesses to review their own written statements given to investigators, and thereby refresh the recollection of their initial statements.²³ Young children who did not provide an initial written statement, or witnesses who cannot read, are not afforded this assistance. Permitting young witnesses to watch their own pre-recorded statements refreshes their recollection of the abusive events and facilitates accurate and detailed courtroom testimony.²⁴ There is, however, a question as to whether a young child is developmentally capable of understanding the purpose of viewing the videotape. Although an adult witness may understand the purpose is to refresh his memory as to prior statements he may be asked about, the child may view the videotape as a demonstration of the expected response to various questions.²⁵ The tape may unwittingly coach the child into giving a seemingly "rehearsed" answer. The Utah Supreme Court has admonished prosecutors not to prepare a child abuse victim for court in "such a way that it is likely the child is only parroting what others have said about the relevant facts."²⁶

In contrast to Morgan and Brickman's assertions that video recordings of investigative child abuse interviews are helpful, Stern argues that there are more drawbacks than benefits for electronic documentation of these interviews.²⁷ Stern cautions professionals about the technological problems which may arise when electronically recording interviews, and avers that once a child's statement is recorded, it becomes over-emphasized in the investigative and prosecutorial procedures.²⁸ Stern argues the integrity of the interview is compromised if there are technical problems in the recording of the interview, such as inaudible or electronically distorted questions or

20. Morgan & Brickman, *supra* note 15, at 1.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. See, e.g., John E.B. Myers, *The Child Witness: Techniques for Direct Examination, Cross-Examination and Impeachment*, 18 PAC. L.J. 801, 816-18 (1987); see also Thomas D. Lyon, *Witnesses, Children as Legal*, in *THE CHILD: AN ENCYCLOPEDIA COMPANION* 1036, 1038 (Richard A. Schweder ed., 2009) (noting that preschool children are more susceptible to suggestion from adults than older children; and when children's memories are weak for an event, they may have difficulty distinguishing actual memories from information supplied by others).

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

27. Stern, *supra* note 15, at 1.

28. *Id.*

statements, inadequate lighting, or imprecise camera placement.²⁹ This is even more problematic if the child makes multiple informal, yet equally reliable, statements outside the formal interview process to multiple people, including statements to family members, school personnel, or friends.³⁰ The one-time recorded formal interview with a child places undue emphasis on the single recorded interview in spite of the common acceptance in the child abuse field that children may only partially disclose their abuse experiences in a formal investigative interview, implying that children's statements are inherently unreliable.³¹

Stern additionally expresses concerns that resources should focus on improving interviewers' skills and techniques and not on expensive electronic recording equipment.³² Ancillary arguments against videotaping child abuse interviews include possible suggestive interactions between the interviewer and child that occur off camera and are subsequently not documented or disclosed; possible utilization of electronic equipment as part of the child's victimization that may be unknown to the interviewer and therefore negatively impact the child's ability to report abuse in a recorded interview; and concerns about the need to refresh a child's recollection of abuse prior to his or her testimony in court.³³

Unfortunately, when decisions are made to not electronically record investigative child abuse interviews based solely or primarily on legal implications that may arise from the production of an interview recording, credence is given to assertions that "forensic interview[s are] conducted for the purpose of creating evidence that will be admissible at trial, either as a recording of the interview or as testimony of the interviewer about what transpired during the interview."³⁴ The purpose of coordinated multidisciplinary investigations is to meet the needs of children who are alleged victims of abuse, including provision of mental health and medical services, crisis intervention, support services, and violence intervention.³⁵ While coordinated interventions and multidisciplinary child abuse interviews are services provided for child protection workers, law enforcement investigators and prosecution professionals, this is by no means their sole, or even their primary, purpose. Furthermore, forensic interviews, and the resultant documentation, are but one step in the extensive investigative process. A child abuse investigation should not begin and end with a forensic

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Stern, *supra* note 15, at 1.

34. McGough, *supra* note 12, at 181.

35. NAT'L CHILDREN'S ALLIANCE, BEST PRACTICES FOR ESTABLISHING A CHILDREN'S ADVOCACY CENTER PROGRAM 5 (Nancy Chandler ed., 3d ed. 2000).

interview. Law enforcement and child protective investigators should conduct collateral interviews of possible witnesses, any potential additional victims, outcry witnesses, and others who may be able to corroborate any part of the child's report or provide insight as to the child's emotional and behavioral changes, if any, since the alleged abuse.³⁶

Electronically recorded child abuse interviews are also criticized due to a lack of training and expertise of individuals conducting the interviews, and because of the possibility for misuse or exploitation of the recordings.³⁷ These concerns are real and these shortcomings could potentially result in serious emotional harm to the child and could significantly affect the integrity of the investigation. However, both issues may be avoided with adequate training. Multidisciplinary teams and child advocacy centers should ensure that all team members have the skills and knowledge-base to independently conduct and provide peer feedback on forensic interviews.³⁸

Investigators who are not trained or who fail to demonstrate mastery of interviewing alleged child victims should not have responsibility for doing so. In addition, by developing controls for the electronic recording, such as orders of protection, copyright protections and protocols for the release and dissemination of electronic recordings, the child's privacy may be further safeguarded.³⁹

The advantages of electronic recordings are well documented by investigative professionals: they serve as a means to decrease the number of investigative child abuse interviews and to reduce court appearances for children.⁴⁰ Repetitive investigative interviews that require children to repeat their experiences of abuse increase trauma that children experience due to their abuse.⁴¹ Electronic recordings carry additional advantages in the courtroom, where they can be utilized for witness corroboration or witness impeachment if the child recants in court. Recordings can also be used as a statement in lieu of the child's testimony in grand jury proceedings, civil hearings, or in family court as jurisdictional rules permit.⁴² In addition, a video recorded interview enables the judges or juries to observe the children witness

36. See Victor I. Vieth, *When a Child Stands Alone: The Search for Corroborating Evidence*, UPDATE (Am. Prosecutors Research Inst./Nat'l Dist. Att'ys Ass'n, Alexandria, Va.), 1999, at 1; see also DONNA PENCE & CHARLES WILSON, TEAM INVESTIGATION OF CHILD SEXUAL ABUSE: THE UNEASY ALLIANCE 87-99 (1994).

37. Kathleen Coulborn Faller, *Documentation of the Interview*, in INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE: CONTROVERSIES AND BEST PRACTICE 58, 61-62 (2007); see NAT'L CHILDREN'S ALLIANCE, *supra* note 35, at 48-49.

38. WENDY BOURG ET AL., A CHILD INTERVIEWER'S GUIDEBOOK 12 (1999).

39. NAT'L CHILDREN'S ALLIANCE, *supra* note 35, at 49.

40. See, e.g., AM. PROSECUTORS RESEARCH INST., *supra* note 4, at 443; NAT'L CHILDREN'S ALLIANCE, *supra* note 35, at 46-47.

41. Frank E. Vandervort, *Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach*, 96 J. CRIM. L. & CRIMINOLOGY 1353, 1389 (2006).

42. AM. PROSECUTORS RESEARCH INST., *supra* note 4, at 443; NAT'L CHILDREN'S ALLIANCE, *supra* note 35, at 47.

themselves. Observation of a recorded interview, as opposed to testimony of a hearsay witness, enables decision-makers to better evaluate the quality of the interview as well as the child's statements.⁴³

Additional advantages for electronically recording interviews of alleged child victims and witnesses stem from desires to assist the interviewers themselves. Research demonstrates interviewer recall of a child's statements deteriorates over time.⁴⁴ Interview content recall may be necessary for interviewers to develop a written report of an interview or to provide hearsay testimony in criminal or civil proceedings relating to the alleged occurrence of abuse. While interviewers were able to recall most of the general discussion that occurred in interviews with children, they forgot more than a third of the details the children provided and more than eighty percent of the specific questions they posed to children with whom they spoke.⁴⁵

Additional research suggests that interviewers are likely to have errors in their handwritten notes of child abuse interviews.⁴⁶ In a 2009 study of law enforcement officers conducting interviews with alleged child victims, some interview notes demonstrated errors of commission, wherein the officers included information in their notes that the child did not report.⁴⁷ Other errors include note-taker omission of critical facts as disclosed by the child: in one instance, the child reported digital penetration by the alleged perpetrator in the recorded interview, yet the interviewer notes failed to include this information entirely.⁴⁸ Moreover this research demonstrates that note-takers, perhaps in the name of efficiency, paraphrase what a child says in an interview, effectively removing the opportunity to evaluate the age-appropriateness of the child's reports.⁴⁹

Furthermore, generally accepted practices dictate that, to the extent possible, child abuse interviewers utilize open-ended and free-recall questions rather than closed or forced-choice inquiries.⁵⁰ When asked to identify the

43. See Julie A. Buck et al., *When Does Quality Count?: Perceptions of Hearsay Testimony About Child Sexual Abuse Interviews*, 28 LAW & HUM. BEHAV. 599, 599 (2004); Allison D. Redlich et al., *A Comparison of Two Forms of Hearsay in Child Sexual Abuse Cases*, 7 CHILD MALTREATMENT 312, 324 (2002).

44. Amye R. Warren & Cara E. Woodall, *The Reliability of Hearsay Testimony: How Well Do Interviewers Recall Their Interviews With Children?*, 5 PSYCHOL. PUB. POL'Y & L. 355, 365 (1999); see also Maggie Bruck et al., *The Accuracy of Mothers' Memories of Conversations with Their Preschool Children*, 5 J. EXPERIMENTAL PSYCHOL.: APPLIED 89, 103 (1999).

45. Warren & Woodall, *supra* note 44, at 365.

46. Rita Cauchi & Martine B. Powell, *An Examination of Police Officers' Notes of Interviews with Alleged Child Abuse Victims*, 11 INT'L J. POLICE SCI. & MGMT. 505, 511, 513 (2009).

47. *Id.* at 511.

48. *Id.* at 512.

49. For discussion on the importance of assessing age-appropriate language, see *infra* Section III.A.5., III.A.7.

50. Kathleen Coulborn Faller, *Questioning Techniques*, in INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE: CONTROVERSIES AND BEST PRACTICE, *supra* note 37, at 91, 92. See also

types of questions interviewers utilized with children, most trained interviewers indicated that they posed mostly open-ended questions.⁵¹ In actuality, however, more than eighty percent of the questions were “specific or closed-ended” and more than fifteen percent were leading.⁵² In a similar study conducted on investigative interviewer note-taking, interview notes were frequently written entirely in the voice of the child, eliminating any means to evaluate the type of question posed by the interviewer.⁵³

Electronic recordings of interviews may also be used to train new interviewers, social workers, and investigative and prosecutorial professionals to conduct legally defensible interviews with children, to improve the techniques and skills of current interviewers and to ensure that interview practices comply with generally accepted protocols and methodologies.⁵⁴ An interviewer's supervisor may confidentially review an individual's recorded interviews for professional development, and other multidisciplinary team members may review the recording in a peer-review format to ensure children in their community receive quality interview services, to share knowledge and skills with others, and to demonstrate consistency and transparency of community practices.⁵⁵ Interviewers may also conduct self-evaluations by reviewing their own interview recordings to enhance their interviewing skills. An electronically recorded interview can provide professionals immediate feedback on their interviewing styles and competencies, and may help them identify their strengths and limitations when soliciting information from alleged child victims.⁵⁶

A therapeutic advantage of recorded interviews is utilization with non-offending caregivers to help the caregiver believe and support the alleged child victim.⁵⁷ When non-offending parents and trusted adults believe and support their children, the children are more likely to be successful in their recovery from the abuse. In contrast, children who are not supported by their caregivers are at increased risk for serious psychological disturbances due to their

Jennifer Anderson, Julie Ellefson, Jodi Lashley, Anne Lukas Miller, Sara Olinger, Amy Russell, Julie Stauffer & Judy Weigman, *The Cornerhouse Forensic Interview Protocol: RATAC*, 12 T.M. COOLEY J. PRAC. & CLINICAL L. 193, 222-41 (2010); APSAC, *supra* note 3, at 7-8.

51. Warren & Woodall, *supra* note 44, at 365.

52. *Id.* at 365-66.

53. Cauchi & Powell, *supra* note 46, at 510.

54. See AM. PROSECUTORS RESEARCH INST., *supra* note 4, at 444-45; see also MICH. COMP. LAWS SERV. §§ 600.2163a(9), 712A.17b(8) (LexisNexis 2004) (permitting the utilization of a child's video-recorded statement to train other investigators in the jurisdiction-specific forensic interview protocol).

55. Faller, *supra* note 37, at 61; see also Kam-fong Monit Cheung, *Developing the Interview Protocol for Video-Recorded Child Sexual Abuse Investigations: A Training Experience with Police Officers, Social Workers, and Clinical Psychologists in Hong Kong*, 21 CHILD ABUSE & NEGLECT 273, 278 (1997).

56. Cheung, *supra* note 55, at 278.

57. AM. PROSECUTORS RESEARCH INST., *supra* note 4, at 443; NAT'L CHILDREN'S ALLIANCE, *supra* note 35, at 48.

victimization.⁵⁸ The recorded interview may also be used in the individual therapeutic setting with children to assist them in processing their experiences of abuse, in family therapy to facilitate communication between non-offending parents and children, and within the family to address safety and protection issues.⁵⁹

C. Statutory and Judicial Support for Electronic Recordings of Investigative Interviews

To date, fifteen states have legislation specific to electronic recordings of investigative interviews with child victims of abuse. Arizona legislation requires that, when a child is abused in an out-of-home placement, child sexual abuse interviews conducted by child protective service workers be video or audio taped.⁶⁰ Alaska permits video or audio recordings of child abuse interviews by a trained and competent interviewer and, unless it is not feasible or will be traumatic for the child, mandates videotaping if the alleged perpetrator is a parent or caregiver.⁶¹ Similarly, Colorado allows audio or videotaping of child abuse interviews, and “strongly encourage[s]” child sexual abuse interviews be videotaped.⁶² Idaho requires that all investigative interviews of alleged child abuse victims conducted by law enforcement or child protection investigators be audio or video recorded absent any good cause not to record the interview.⁶³ Michigan law permits the video recording of a statement of an alleged victim of child abuse, but requires that video recorded interviews be conducted in accordance with jurisdictional protocols.⁶⁴

Other states have similar laws. In Minnesota, any government employee or agent of the state is required to document, either by videotape, audiotape or a written record, all interviews of alleged child abuse victims, and prosecutors’ offices in all counties must establish individual protocols for videotaping child abuse interviews.⁶⁵ In addition, Minnesotan child protection investigators or their agents must produce an audio-video recording of each interview conducted with an alleged child victim or child witness of sexual abuse, whenever possible.⁶⁶ Mississippi permits child advocacy centers to videotape forensic interviews of children alleging child abuse “in a child friendly

58. Carol A. Howard, *Factors Influencing a Mother’s Response to Her Child’s Disclosure of Incest*, 24 PROF. PSYCHOL. RES. & PRAC. 176, 176 (1993).

59. NAT’L CHILDREN’S ALLIANCE, *supra* note 35, at 48.

60. ARIZ. ADMIN. CODE § R6-5-5516(C) (2008).

61. ALASKA STAT. § 47.17.033(d)-(e) (2008).

62. COLO. REV. STAT. § 19-3-308.5(1)(a) (West 2005).

63. IDAHO CODE ANN. § 16-1618 (2009).

64. MICH. COMP. LAWS SERV. § 600.2163a(7) (LexisNexis 2004); § 712A.17b.

65. MINN. STAT. ANN. § 626.561 (West 2009).

66. MINN. STAT. ANN. § 626.556(10)(j).

environment . . . to prevent further trauma to [children] in the investigation and prosecution of child physical and sexual abuse cases.”⁶⁷

Furthermore, Montana permits the production of a video recording of a child abuse interview, with special protections for the videotape and privacy of the alleged child victims.⁶⁸ At a child advocacy center in Nebraska, county attorneys are required to establish investigative protocols for coordinating videotaped forensic interviews of children who are alleged victims of serious physical abuse or neglect, sexual abuse, or who have “witnessed a violent crime, been removed from a clandestine drug lab, or been recovered from a kidnapping.”⁶⁹

Children in New Hampshire who are alleged victims of sexual abuse, serious physical abuse, neglect or abandonment, or who may have witnessed criminal acts are to be fully interviewed on videotape if possible; an audio recording of the interview is acceptable if the interview cannot be videotaped in its entirety.⁷⁰ In a Family Court Article 10 child protective proceeding in New York State, the court is afforded the discretion of ordering a videotaped interview in its entirety if expert testimony is sought regarding the sexual abuse of a child.⁷¹ Distinct from an investigative interview, this evaluation is conducted by a “validator” and must be requested by a respondent or a child’s attorney.⁷² The judge must balance the need for this evaluation for court preparation purposes against the potential harm to the alleged child victim.⁷³

Tennessee encourages coordinated investigations of child abuse or neglect to minimize investigative child abuse interviews, and instructs investigative team members to refer to audio or video recordings of previously conducted interviews “to avoid additional questioning of the child.”⁷⁴ In Texas, an investigative interview conducted with an alleged child victim of physical or sexual abuse must be audio or videotaped unless good cause exists for not taping, such as the age of the child or the severity of the alleged abuse.⁷⁵ Investigative interviews of a suspected child victim of sexual or serious physical abuse in Utah will be recorded visually and aurally unless the child refuses to be recorded, in which case the child’s refusal will be documented.⁷⁶ Interviews conducted by child protective services workers in Virginia are to be electronically recorded unless recording is detrimental to the child, recording is

67. MISS. CODE ANN. § 43-15-51(3)(b)(ii) (West 2008).

68. *See* MONT. CODE ANN. §§ 41-3-202, -205 (2007); § 46-15-403.

69. NEB. REV. STAT. ANN. § 28-728(3) (LexisNexis 2009).

70. N.H. REV. STAT. ANN. § 169-C:38(IV)-(V) (2002).

71. N.Y. FAM. CT. ACT § 1038(c) (McKinney 2010).

72. *Id.*

73. *Id.*

74. TENN. CODE ANN. §§ 37-1-405(b)(2), -607(b)(3)(B) (2005).

75. TEX. FAM. CODE ANN. § 261.302(e) (Vernon 2008).

76. UTAH CODE ANN. §§ 62A-4a-414, -202.3(7) (2006 & Supp. 2009).

impractical, the child refuses to be recorded, or recording is “not appropriate” in a multidisciplinary investigation with law enforcement.⁷⁷

In addition, the Thirteenth Judicial Circuit Unified Family Court in Hillsborough County, Florida enacted an administrative order requiring that statements of victims of abuse under the age of sixteen or individuals with developmental disabilities be recorded on DVDs.⁷⁸

Twenty states have legislation that addresses the admissibility of electronically recorded pre-trial interview statements as evidence in criminal child abuse proceedings.⁷⁹ In addition, twenty-eight states have carved out a variety of hearsay exceptions specific to alleged child abuse victims in criminal, family and dependency courts, consequently permitting the admission of children’s out-of-court statements as evidence when provided by the investigative interviewer.⁸⁰

There is also judicial support for the electronic recording of interviews with alleged child victims of abuse. In a 1990 Westchester County Family Court case in New York, a father was accused of sexually abusing his three year old

77. 22 VA. ADMIN. CODE § 40-705-80(B)(1)(2009).

78. Administrative Order S-2009-001, Fla. 13th Jud. Cir. (2009) (indicating the continued authority of Administrative Order S-2005-153, Fla. 13 Jud. Cir. (2005)).

79. ALA. CODE § 15-25-32 (1995 & Supp. 2009); ARIZ. REV. STAT. ANN. §§ 13-4251 to -4252 (2001); COLO. REV. STAT. ANN. § 19-3-308.5; HAW. REV. STAT. ANN. § 587-43 (LexisNexis 2005); HAW. R. EVID. 804(b)(6) (2007); IND. CODE ANN. § 35-37-4-6 (LexisNexis 1998); IOWA CODE ANN. § 915.38(3) (West 2003); KAN. STAT. ANN. § 22-3433 (2007); LA. CHILD CODE ANN. art. 324 (2004 & Supp. I 2009); LA. REV. STAT. ANN. § 15:440.5 (2005); MICH. COMP. LAWS SERV. § 600.2163a (LexisNexis 2004); MINN. STAT. § 595.02(3) (West 2007); MO. REV. STAT. § 492.304 (West 1996); N.Y. CRIM. PROC. LAW §§ 190.30(4), 190.32, 190.25(4)(b) (McKinney 2007) (grand jury only); N.D. CENT. CODE § 31-04-04.1 (1996); R.I. GEN. LAWS § 11-37-13.1 (2002) (grand jury only); S.D. CODIFIED LAWS § 19-16-39 (2004); TENN. CODE ANN. § 24-7-117 (2000); TEX. CRIM. PROC. CODE ANN. art. 38.071 (Vernon 2005); UTAH R. CRIM. PROC. 15.5 (2009); VA. CODE ANN. § 63.2-1523 (2007); WIS. STAT. ANN. § 908.08 (West 2009).

80. ALA. CODE § 12-15-65(i) (LexisNexis 2005); ARK. CODE ANN. § 16-41-101 (1999); CAL. EVID. CODE §§ 1253, 1360 (West Supp. 2010); COLO. REV. STAT. ANN. § 13-25-129 (West 2005 & Supp. 2009); DEL. CODE ANN. tit. 11, § 3513 (West 2006 & Supp. 2009); FLA. STAT. ANN. § 90.803(23) (West 1999); GA. CODE ANN. § 24-3-16 (1995); 725 ILL. COMP. STAT. ANN. 5/115-10, 5/115-1 (West 2006); 735 ILL. COMP. STAT. ANN. 5/8-2601 (West 2003); 750 ILL. COMP. STAT. ANN. 5/606 (West 2009); MD. CODE ANN., CRIM. PROC. § 11-304 (LexisNexis 2008); MASS. GEN. LAWS ANN. ch. 233, §§ 81-83 (West 2000); MICH. COMP. LAWS SERV. § 3.972(C)(2); MINN. STAT. ANN. § 595.02; MINN. STAT. ANN. § 260C.165 (West 2000); MISS. CODE ANN. § 13-1-403 (2009); MISS. R. EVID. 803(25) (2009); MO. REV. STAT. § 491.075; NEV. REV. STAT. § 51.385 (2007); N.J. R. EVID. 803(c)(27) (2009); N.Y. FAM. CT. ACT § 1046(vi) (McKinney 2010); OHIO EVID. R. 807 (2007); OR. REV. STAT. § 40.460 (2007); 42 PA. CONS. STAT. ANN. §§ 5985.1, 5986 (West 2000); S.C. CODE ANN. § 17-23-175 (West Supp. 2009); S.C. CODE ANN. § 19-1-180; S.D. CODIFIED LAWS § 19-16-39; TENN. CODE ANN. § 24-7-120; TENN. R. EVID. 803(25) (2009); TEX. CODE CRIM. PROC. ANN. art. 38.071-.072 (Vernon 2005); UTAH CODE ANN. § 76-5-411 (2008); VA. CODE ANN. § 63.2-1522; VA. R. EVID. 804 (2009); WASH. REV. CODE § 9A.44.120 (LexisNexis 2009).

daughter.⁸¹ In reviewing the facts of the case, the family court found that the father abused his daughter based on credible testimony from the social worker, the validator and the child's foster mother.⁸² In referencing the interviews conducted by the validator, the court noted, "[the interviewer] denied using leading questions during her interviews of the child,"⁸³ although it did not give any indication that this was an issue at question in the case at bar. However, in concluding its opinion, Judge Spitz implored the legislature

to enact a statute setting forth guidelines for . . . interviews, which should include the automatic video taping of all interviews. This procedure would enable the respondent to examine the procedures utilized in the interviews, and pre-empt the use of leading and suggestive questions by the . . . [interviewer]. Another beneficial result would be that the videotaped . . . interview would reduce the need for second evaluations regularly requested by respondents.⁸⁴

The Westchester County Family Court decision relied in part on the 1990 U.S. Supreme Court case of *Idaho v. Wright*, a criminal case wherein a mother was convicted of two counts of lewd conduct with her daughters, ages five-and-a-half and two-and-a-half.⁸⁵ A pediatrician conducted a medical examination on both children and found evidence consistent with sexual abuse and provided testimony to that effect in court.⁸⁶ The mother appealed her conviction, which the Supreme Court of Idaho overturned on grounds that the pediatrician's hearsay testimony regarding the youngest child's statements were admitted in violation of the Confrontation Clause.⁸⁷ The U.S. Supreme Court upheld Idaho's high court decision, noting that the trustworthiness of the out-of-court statements could never be assessed because the pediatrician did not fully and accurately preserve the contents of his interview with the alleged child victim.⁸⁸ The physician failed to retain a drawing generated during the interview, did not note the child's behavioral or emotional displays during the interview, and merely summarized the contents of the interview, thereby failing to provide a specific and detailed description of his interactions with the alleged victim.⁸⁹ While not unequivocally compelling electronic recordings of child sexual abuse interviews, the U.S. Supreme Court acknowledged that procedural guidelines that promote recording interviews "may well enhance the reliability" of children's statements about their alleged victimization.⁹⁰

81. *In re Linda S.*, 560 N.Y.S.2d 181, 182 (Fam. Ct. 1990).

82. *Id.* at 185.

83. *Id.* at 182.

84. *Id.* at 185.

85. *Idaho v. Wright*, 497 U.S. 805, 808 (1990).

86. *Id.* at 809.

87. *Id.* at 812.

88. *Id.* at 813.

89. *Id.* at 811.

90. *Id.* at 819.

In affirming a criminal sexual assault case, the Supreme Court of Illinois “strongly admonish[ed] law enforcement personnel and social workers to record...interviews [of child sex offense complaints] whenever possible.”⁹¹ The court further stated that contemporaneous video recordings in child sexual abuse cases enhanced the reliability of the alleged child victim’s statements.⁹² Analysis from the Fourth District of the Appellate Court of Illinois also indicated that the lack of video recording may be weighed against the government if a recording system was available in the interview room.⁹³ The intermediate court stated that a recorded “interview provides a better means for assuring that there was no adult prompting or manipulation involved, and the failure to [record an interview] may be considered a negative factor when considering reliability.”⁹⁴

Similarly, in the well-publicized day care sexual abuse case against Kelly Michaels, the Supreme Court of New Jersey indicated that a “failure to videotape or otherwise document the initial interview sessions,” in combination with other factors, “constitute more than sufficient evidence to support a finding that the [investigative interviews] created a substantial risk that the statements and anticipated testimony are unreliable.”⁹⁵

The Supreme Court of Montana considered and rejected a *per se* rule that all child sexual abuse interviews be recorded.⁹⁶ The court emphasized that “the failure of the investigating officer in child sexual abuse cases to preserve some tangible record of the interview, in a controlled situation and absent exigent circumstances, will be viewed with distrust in the judicial assessment of the veracity of the child victims’ statements.”⁹⁷ Additionally, the Court of Criminal Appeals of Oklahoma indicated that taping allegedly abused children’s statements was the “optimum way of preserving those interviews.”⁹⁸

D. Additional Comments

The combined benefits of electronically recording investigative interviews with alleged child abuse victims and child witnesses to violent crimes outweigh

91. *People v. Cookson*, 830 N.E.2d 484, 494 (Ill. 2005).

92. *Id.*

93. *See People v. Cookson*, 780 N.E.2d 807 (Ill. App. Ct. 2002).

94. *Id.* at 811 (citing *People v. Simpkins*, 697 N.E.2d 302, 308 (Ill. App. Ct. 1998)).

95. *State v. Michaels*, 642 A.2d 1372, 1383 (N.J. 1994).

96. *State v. Weaver*, 964 P.2d 713 (Mont. 1998).

97. *Id.* at 723.

98. *Gilson v. State*, 8 P.3d 883, 906 (Okla. Crim. App. 2000); *see also Greene v. Camreta*, 588 F.3d 1011, 1017 (9th Cir. 2009) (stating in dicta that a recording of an in-school investigative interview conducted by a law enforcement officer and a child protection worker may have facilitated the evaluation of whether the government officials were coercive or intimidating in their interactions with a child who claimed her Fourth Amendment rights had been violated).

the challenges and shortcomings that arise within the practice. The proper practice of recording these important interviews—when conducted in conjunction with a comprehensive multidisciplinary investigation to assess the health, safety, and welfare of children who may have experienced trauma—negates challenges about suggestive interview practices, repudiates the argument that prosecutorial objectives drive interviews, provides valuable documentation for subsequent treatment and support services for abused children and their families, and facilitates supervision and peer review for interview skill development. A well-conducted recorded interview preserves the child's statement and allows for a more complete investigation of all aspects of the child's statements. This not only benefits the child, but also serves to protect the community from additional abuses.

III. ASSESSING ALLEGED CHILD VICTIMS' STATEMENTS

As empirical research continues to both support and challenge the credibility of children's statements regarding alleged sexual victimization, child abuse investigators, legal professionals, and judicial officers seek reliable methods of determining the trustworthiness of the reports children provide. Numerous training programs and interview protocols have been developed to instruct professionals in the child abuse arena. Investigative and legal professionals who interview children for a variety of purposes should be skilled in eliciting and examining children's statements when allegations of abuse arise. Child protection investigators must also make critical decisions regarding the safety of children based to some extent, although not entirely, on the information that children provide. Therefore, it is critical that civil and criminal attorneys, administrative officers, juries, and judges understand how interviews with alleged child victims are conducted and assessed for their reliability.

In spite of the demand for an all-inclusive evaluation tool, no single checklist or test exists that clearly and unequivocally identifies whether a child has been a victim of abuse, since children individually experience their abuse in a variety of ways. However, there are several factors or elements that professionals should assess that may help evaluate the reliability of a child's statement.⁹⁹ Professionals are cautioned, however, that not all children

99. *See, e.g.*, KATHRYN KUEHNLE, ASSESSING ALLEGATIONS OF CHILD SEXUAL ABUSE 159-64 (1996); *see also* Idaho v. Wright, 497 U.S. 805, 819, 821-22 (1990). The U.S. Supreme Court affirmed the reversal of the defendant's conviction of lewd conduct with a minor because the child victim's out-of-court statements lacked "particularized guarantees of trustworthiness" based on the totality of circumstances surrounding the child's statement. These circumstances included the pediatrician interviewer's use of leading questions and preconceptions of what the child would disclose, as well as assessment of the child's veracity at the time of the statement, which was evaluated based on the child's spontaneity and consistent repetition, her mental state, her use of terminology unexpected of child her age, and her lack of motive to lie. *Id.* While the U.S. Supreme Court decision of *Crawford v. Washington*, 541 U.S. 36, 76 (2004) and its successors

respond to abuse and victimization in the same manner, and that the following criteria are not diagnostic of abuse, but are instead characteristics that should be considered and weighed.

Another caveat is that no single factor discussed below should be utilized to declaratively diagnose abuse of a child. Professionals assessing the statements of allegedly abused children should consider the totality of the factors discussed below and evaluate them in light of other corroborative information obtained in the course of the entire investigation or assessment.

A. Factors for Evaluating Children's Statements

1. Medical Evidence

Researchers surveyed potential jurors, finding two-thirds supported a false belief that medical evidence is present in child abuse cases.¹⁰⁰ However, while the presence of medical evidence may support an allegation of sexual abuse, the lack of medical evidence is not dispositive that abuse did not occur. In fact, there is no medical evidence of abuse in approximately ninety-six percent of child sexual abuse cases.¹⁰¹ Abnormal medical findings for children who have a history of anal or vaginal penetration are present in only 5.5% of cases,¹⁰² and in a study of pregnant teens, “only 2 of 36 adolescents had genital changes that were diagnostic of penetrating trauma.”¹⁰³ Child protection and legal professionals are encouraged to educate themselves on the variety of possible reasons for the absence of medical evidence in child abuse cases. It is possible that the child victim did not suffer any tissue damage.¹⁰⁴ This may occur in cases of fondling, oral sex, or instances when the child had to

have rendered *Wright* irrelevant for confrontation analyses, it still affords guidance when analyzing child victim's statements for their trustworthiness.

100. Jodi A. Quas et al., *Do Jurors "Know" What Isn't So About Child Witnesses?*, 29 LAW & HUM. BEHAV. 425, 438, 443 (2005); see also Susan Morison & Edith Greene, *Juror and Expert Knowledge of Child Sexual Abuse*, 16 CHILD ABUSE & NEGLECT 595, 608-09 (1992).

101. Astrid Heger et al., *Children Referred for Possible Sexual Abuse: Medical Findings in 2384 Children*, 26 CHILD ABUSE & NEGLECT 645, 651 (2002); see also Joyce A. Adams et al., *Examination Findings in Legally Confirmed Child Sexual Abuse: It's Normal to be Normal*, 94 PEDIATRICS 310, 316 (1994) (concluding the majority of legally-confirmed cases of sexual abuse had normal or non-specific findings from medical examinations of abused children's genitalia); Jim Anderst et al., *Reports of Repetitive Penile-Genital Penetration Often Have No Definitive Evidence of Penetration*, 124 PEDIATRICS e403 (2009) (finding no definitive evidence of penetration in eighty-seven percent of patients with a history of ten or more experiences of sexual penetration); Abbey B. Berenson et al., *A Case-Control Study of Anatomic Changes Resulting from Sexual Abuse*, 182 AM. J. OBSTETRICS & GYNECOLOGY 820, 820-21 (2000) (finding few significant anatomical differences between sexually abused and non-abused children).

102. Heger et al., *supra* note 101, at 652.

103. Nancy D. Kellogg et al., *Genital Anatomy in Pregnant Adolescents: "Normal" Does Not Mean "Nothing Happened"*, 113 PEDIATRICS e67, e68 (2004).

104. Heger et al., *supra* note 101, at 654.

perform sexual acts on another. It is also possible the case involved actual penetration, but the penetration did not damage the tissue or that damage did occur, but subsequently healed completely.¹⁰⁵

2. Timing and Circumstances of Disclosure

When assessing a child's statements, investigative and legal professionals should understand the importance of the context in which the child made the initial report. Multiple researchers have concluded that the spontaneity of a child's initial report tends to lend credibility to the allegation, as does the spontaneity of a child's report during an investigative interview.¹⁰⁶ Professionals should assess whether the child's statement was the result of numerous and direct questions focused on the allegedly abusive event, whether the child reported the abuse as a narrative response to an open-ended question, or whether the report was made in the absence of any questioning at all.¹⁰⁷

Further assessment of the context of the child's statement includes: whether the abuse was initially suspected due to medical evidence, such as pregnancy or a sexually transmitted disease¹⁰⁸ (STD); whether the abuse was witnessed by a third party; whether someone suspected abuse due to the sexualized play or maladaptive behaviors of the child; or whether concerns arose based on the child's known contact with someone previously suspected of abusing a child.¹⁰⁹ While pregnancy or the presence of certain STDs are clear indicators of a child's sexual experience, "sexualized play" of a child may actually be developmentally appropriate sexual behaviors, and adults are cautioned not to attribute adult sexual meanings to a child's actions in the absence of other indicators of abuse.¹¹⁰

105. *Id.* at 653.

106. Kathleen Coulborn Faller, *Is The Child Victim of Sexual Abuse Telling the Truth?* 8 CHILD ABUSE & NEGLECT 473, 476 (1984); William H. Wehrspann et al., *Criteria and Methodology for Assessing Credibility of Sexual Abuse Allegation*, 32 CANADIAN J. PSYCHIATRY 615, 618 (1987); see David C. Raskin & Phillip W. Esplin, *Assessment of Children's Statements of Sexual Abuse*, in THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS 153, 155-56 (John Doris ed., 1991).

107. See Raskin & Esplin, *supra* note 106, at 153, 155.

108. See Nancy Kellogg & Comm. on Child Abuse & Neglect, *The Evaluation of Sexual Abuse in Children*, 116 PEDIATRICS 506, 508 (2005) (indicating that approximately five percent of children who have been sexually abused contract an STD from their perpetrator).

109. Suzanne M. Sgroi, *Management of the Sexually Abused Child*, in MANAGEMENT OF THE PHYSICALLY AND EMOTIONALLY ABUSED: EMERGENCY ASSESSMENT, INTERVENTION, AND COUNSELING 263, 268 (Carmen Germaine Warner & G. Richard Braen eds., 1982); see also Nico Trocmé et al., *Differentiating Between Substantiated, Suspected, and Unsubstantiated Maltreatment in Canada*, 14 CHILD MALTREATMENT 4, 12 (2009) (discussing factors used to substantiate reports of child abuse).

110. See Mark Chaffin et al., *Report of the ATSA Task Force on Children with Sexual Behavior Problems*, 13 CHILD MALTREATMENT 199, 200-01 (2008).

Professionals are additionally encouraged to understand how and why children may disclose abuse and to evaluate circumstances in a particular child's life that may impact his or her ability or willingness to report. While some children may report victimization immediately, there is widespread support to indicate that children may not immediately disclose their abuse experiences, and may delay their reports for years.¹¹¹ Several studies provide empirical support that some children may completely deny experiencing sexual victimization even in the face of direct evidence to the contrary.¹¹² Other factors that may impact a child's ability or inability to report the occurrence of sexual abuse include: the closeness of the child's relationships with the alleged perpetrator(s); the degree of support the child receives from his or her parents, particularly the mother; the frequency and severity of the abuse suffered; and the child's age.¹¹³ Professionals must assess how these factors play into the child's ability or inability to report their abuse.

3. Identity of the Alleged Perpetrator

Other elements to consider regarding the circumstances of a child's disclosure of abuse are the identity of the alleged perpetrator and the initial reporter of abuse. The closer the relationship between the child and the alleged perpetrator, the more difficult it may be for the child to report his or her abuse experiences.¹¹⁴ If the alleged perpetrator of sexual abuse is also a perpetrator of intimate partner violence within the home, the child may be

111. See, e.g., Irit Hershkowitz et al., *Exploring the Disclosure of Child Sexual Abuse with Alleged Victims and Their Parents*, 31 CHILD ABUSE & NEGLECT 111, 112 (2007); Kamala London et al., *Review of the Contemporary Literature on How Children Report Sexual Abuse to Others: Findings, Methodological Issues, and Implications for Forensic Interviewers*, 16 MEMORY 29, 43 (2008) (“[M]any children simply do not willingly tell.”); Rickard L. Sjöberg & Frank Lindblad, *Limited Disclosure of Sexual Abuse in Children Whose Experiences Were Documented by Videotape*, 159 AM. J. PSYCHIATRY 312, 313-14 (2002); Teena Sorensen & Barbara Snow, *How Children Tell: The Process of Disclosure in Child Sexual Abuse*, 70 CHILD WELFARE 3, 3-4, 9 (1991); Michael Ungar et al., *What Canadian Youth Tell Us About Disclosing Abuse*, 33 CHILD ABUSE & NEGLECT 699, 700, 706 (2009). But cf. April R. Bradley & James M. Wood, *How Do Children Tell? The Disclosure Process in Child Sexual Abuse*, 20 CHILD ABUSE & NEGLECT 881 (1996).

112. See Bradley & Wood, *supra* note 111, at 882; Hershkowitz et al., *supra* note 111, at 112; Sjöberg & Lindblad, *supra* note 111, at 313-14; Sorensen & Snow, *supra* note 111, at 4; Ungar et al., *supra* note 111, at 704-07.

113. Lindsay C. Malloy et al., *Filial Dependency and Recantation of Child Sexual Abuse Allegations*, 46 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 162, 162-63 (2007); see also Hershkowitz et al., *supra* note 111, at 113-14.

114. See, e.g., Kathleen Coulborn Faller, *Children Who Do Not Want to Disclose*, in INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE: CONTROVERSIES AND BEST PRACTICE, *supra* note 37, at 175, 181-83; Tonya Lippert et al., *Telling Interviewers About Sexual Abuse: Predictors of Child Disclosure at Forensic Interviews*, 14 CHILD MALTREATMENT 100, 102-03 (2009); Erna Olafson & Cindy S. Lederman, *The State of the Debate About Children's Disclosure Patterns in Child Sexual Abuse Cases*, JUV. & FAM. CT. J., Jan. 2006, at 27, 35.

even more reluctant to disclose abuse due to fear of past harm or future threats.¹¹⁵

Investigators should determine whether the child made the initial outcry or if it originated with someone else. In addition, interviewers should consider whether the child made the accusation of abuse at the direction of another accusing adult,¹¹⁶ and should assess whether there were ulterior motives for the child to fabricate an accusation of abuse.¹¹⁷ However, the mere determination that a child reported abuse at the behest of an accusing parent or other adult is not proof positive that the accusations are untrue; just as the presence of a motive to fabricate an allegation is not indicative that the allegation was, in fact, fabricated. False allegations of sexual abuse are uncommon,¹¹⁸ and the mere existence of a motive to fabricate does not necessarily mean that the child acted upon those grounds.

4. Existence of a Motive to Fabricate

State and federal courts have identified the lack of a motive to lie about sexual abuse as one of the factors to support the reliability of children's statements.¹¹⁹ However, this factor generally weighs in favor of the government since there is adequate empirical and anecdotal support that it is uncommon for children to lie about sexual abuse,¹²⁰ unless it is an intentional

115. Olafson & Lederman, *supra* note 114, at 36.

116. Elissa P. Benedek & Diane H. Schetky, *Problems in Validating Allegations of Sexual Abuse. Part 1: Factors Affecting Perception and Recall of Events*, 26 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 912, 914 (1987).

117. *Id.*; Raskin & Esplin, *supra* note 106, at 153.

118. *See infra* discussion in Section III.A.4.

119. *See, e.g.*, Idaho v. Wright, 497 U.S. 805, 821-22 (1990).

120. *See, e.g.*, Mark D. Everson & Barbara W. Boat, *False Allegations of Sexual Abuse by Children and Adolescents*, 28 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 230, 231 (1989) (estimating the rate of false allegations of all child and adolescent reports of sexual abuse as low as 4.7 to 7.6%); Kathleen Coulborn Faller, *Invited Commentary: False Accusations of Child Maltreatment: A Contested Issue*, 29 CHILD ABUSE & NEGLECT 1327, 1329 (2005) (summarizing research and concluding "false allegations of child maltreatment are uncommon"); R. Kim Oates et al., *Erroneous Concerns About Child Sexual Abuse*, 24 CHILD ABUSE & NEGLECT 149, 149, 151-52 (2000) (finding that of 551 child sexual abuse reports, 2.5% were erroneous allegations made by children, including three reports made together with a parent, "three cases in which an innocent event was misinterpreted as sexual abuse and eight cases of intentionally false allegations of sexual abuse"); *see also* Nancy Thoennes & Patricia G. Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 CHILD ABUSE & NEGLECT 151, 158, 161 (1990) (finding that false allegations occurred in only five percent of 9,000 divorce cases in twelve states); Nico Trocmé & Nicholas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 CHILD ABUSE & NEGLECT 1333, 1340-41 (2005) (finding a mere four percent of the 7,672 reports of all types of abuse examined were intentionally fabricated, of which two percent were fabricated by children and did not include allegations of sexual abuse).

omission of their victimization.¹²¹ The low incidences of fabricated allegations of abuse may be attributed to children's lack of sophistication and inability to sustain fallacious, detailed reports of sexual victimization,¹²² their fears about the consequences of telling about sexual abuse,¹²³ and their desire to protect the alleged perpetrator, who is commonly a caretaker or relative of the abused child.¹²⁴

When evaluating the existence of a motive to fabricate a sexual abuse allegation, interviewers should consider the original source of the report, and ascertain whether that person has made any prior allegations of abuse. Professionals generally acknowledge that children who have been victimized once have an increased risk of additional victimization.¹²⁵ Investigators should gather information on previous allegations, if any, and consider what resulted from those allegations. Factors to consider regarding possible motivation to fabricate include: the responses of any adults aware of the child's allegations and any responding professionals following his disclosure; whether the child was removed from his home and where he was placed following removal; whether the child had to change schools and how he felt about that change; the financial consequences the disclosure had on the child's family; and how the child's family and friends treated him following his disclosure.

In addition to the child's possible motive to fabricate abuse, investigative and legal professionals should consider whether someone else had a motive to manufacture accusations of abuse.¹²⁶ The child may have been coached by

121. Sorensen & Snow, *supra* note 111, at 11-12; Thomas D. Lyon, *False Denials: Overcoming Methodological Biases in Abuse Disclosure Research*, in CHILD ABUSE: DISCLOSURE, DELAY, AND DENIAL 41, 57-58 (Margaret-Ellen Pipe et al. eds., 2007).

122. AM. PROSECUTORS RESEARCH INST., *supra* note 4, at 70.

123. Lucy Berliner & Jon R. Conte, *The Effects of Disclosure and Intervention on Sexually Abused Children*, 19 CHILD ABUSE & NEGLECT 371, 376 (1995).

124. Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271, 282-83 (2002). *See generally* Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177 (1983) (discussing the effects of Child Abuse Accommodation Syndrome in on disclosure of identity of the perpetrator).

125. *See* Jaclyn E. Barnes et al., *Sexual and Physical Revictimization Among Victims of Severe Childhood Sexual Abuse*, 33 CHILD ABUSE & NEGLECT 412, 412 (2009); Julie A. Larrieu & Shana M. Bellow, *Relationship Assessment for Young Traumatized Children*, in YOUNG CHILDREN AND TRAUMA: INTERVENTION AND TREATMENT 155, 156 (Joy D. Osofsky ed., 2004).

126. Kathleen Coulborn Faller, *Coaching Children about Sexual Abuse: A Pilot Study of Professionals' Perceptions*, 31 CHILD ABUSE & NEGLECT 947, 951, 954, 956 (2007) (finding nearly eighty percent of 192 respondents at conferences or workshops focusing on interviewing and coached children believed they worked on at least one child abuse case wherein the child was coached by a parent; the low rates of perceived coaching was consistent with other research finding it uncommon for children to be coached to make false allegations of abuse; and the incidences of coaching were generally rare with therapy as the recommended treatment); *see also* Stephanie J. Dallam & Joyanna L. Silberg, *Myths That Place Children at Risk During Custody Disputes*, 9 SEXUAL ASSAULT REPORT 33 (2006) (outlining commonly held false beliefs about placing incest victims back into the hands of their abusers during custody disputes). *See generally*

someone, or the child's statements may have been intentionally or inadvertently contaminated by someone. Interviewers should explore with the child whether someone else talked to the child about any abuse experiences and what that other person may have said to the child, if the child indicates prior conversations.¹²⁷

5. Language Congruent with Developmental Level

Professionals should assess whether the allegation was reported from the child's perspective or that of someone else,¹²⁸ including a person in the child's family or any professionals that responded to the child's accusations of abuse. A child is expected to use language appropriate for his age and developmental level,¹²⁹ and interviewers and legal professionals should adopt the child's vocabulary when discussing allegations of abuse with a child.¹³⁰ The use of anatomical diagrams is particularly helpful in understanding the child's language with regard to body parts, especially if the child is less than ten years of age.¹³¹ When possible, it may be helpful to determine any idiosyncratic terms used in the child's home and their meanings prior to conversations with the child. This allows for an enhanced understanding of the child's

Stephanie J. Dallam, *The Parental Alienation Syndrome: Is It Scientific?*, in EXPOSE: THE FAILURE OF FAMILY COURTS TO PROTECT CHILDREN FROM ABUSE IN CUSTODY DISPUTES (E. St. Charles & L. Crook eds., 1999), available at <http://www.leadershipcouncil.org/1/res/dallam/3.html> (concluding Parental Alienation Syndrome lacks scientific support, is biased against women and abused children and shifts attention away from the alleged abuser to the parent attempting to protect the abused child).

127. See, e.g., *People v. Cookson*, 830 N.E.2d 484, 490-91 (Ill. 2005) (finding that the child's admission regarding outside attempts to influence her testimony supported, rather than detracted, from her credibility).

128. Benedek & Schetky, *supra* note 116; Kathleen Coulborn Faller, *Criteria for Judging the Credibility of Children's Statements About Their Sexual Abuse*, 67 CHILD WELFARE 389, 392 (1988); Wehrspann et al., *supra* note 106, at 615, 619; see also Marsha L. Heiman, *Annotation: Putting the Puzzle Together: Validating Allegations of Child Sexual Abuse*, 33 J. CHILD PSYCHOL. & PSYCHIATRY 311, 319-20 (1992) (discussing that the use of adult terms suggests coaching).

129. See David L. Corwin, *Early Diagnosis of Child Sexual Abuse: Diminishing the Lasting Effects*, in LASTING EFFECTS OF CHILD SEXUAL ABUSE 251, 254 (Gail Elizabeth Wyatt & Gloria Johnson Powell eds., 1988); Raskin & Esplin, *supra* note 106, at 155.

130. ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE 6-7 (2d ed. 1999).

131. Lori S. Holmes & Martha J. Finnegan, *The Use of Anatomical Diagrams in Child Sexual Abuse Forensic Interviews*, UPDATE (Am. Prosecutors Research Inst./Nat'l Dist. Att'ys Ass'n, Alexandria, Va.), 2002, http://www.ndaa.org/publications/newsletters/update_volume_15_number_5_2002.html; Lori S. Holmes & Victor I. Vieth, *Finding Words/Half a Nation: The Forensic Interview Training Program of CornerHouse and APRI's National Center for Prosecution of Child Abuse*, APSAC ADVISOR, Winter 2003, at 4, 6; Amy Russell, *Out of the Woods: A Case for Using Anatomical Diagrams in Forensic Interviews*, UPDATE (Am. Prosecutors Research Inst./Nat'l Dist. Att'ys Ass'n, Alexandria, Va.), 2008, at 2, 2, http://www.ndaa.org/publications/newsletters/update_vol_21_no_1_2008.pdf.

language,¹³² allows the interviewer to evaluate the child's statements for possible coaching or contamination by others, and may help identify language used with the child that is particular to family members or the possible perpetrator of abuse.¹³³ Finally, interviewers should pay attention to the choice and combination of words the child utilizes and how the child describes sexual incidences in the absence of the child's comprehension of their significance.¹³⁴

6. Quantity and Quality of Details

Evaluations of children's statements regarding their experiences require appropriate expectations of what children may be able to report with regard to their abuse, a thorough understanding of language development in children, and knowledge of proper questioning techniques.¹³⁵ On the whole, younger children are less able to provide as much detail as older children; however, the information they may provide is no less substantive.¹³⁶ General guiding principles suggest that the content of the information children may report lies on a continuum depending on the age of the child.¹³⁷ A three year old may be able to only supply a description of who perpetrated what type of abuse, whereas an older child may offer a full disclosure of abuse experiences that incorporates information on who the perpetrator was, what the perpetrator did, where the abuse occurred, when the abuse occurred, and the circumstances surrounding the abuse event.¹³⁸

Investigative interviewers should seek explicit detail of sexual involvement from the child in the context of the child's developmental level and linguistic ability to provide such information.¹³⁹ Professionals assessing a child's

132. Heiman, *supra* note 128, at 320; *see also* Faller, *supra* note 106, at 476 (stating that in evaluating a child's statement, interviewers should learn the names children use to describe genitalia to overcome the lack of sexual knowledge of young children); Russell, *supra* note 131, at 2.

133. *See* Heiman, *supra* note 128, at 320.

134. Wehrspann et al., *supra* note 106, at 619.

135. Anderson et al., *supra* note 50, at 215-22; Kathryn Kuehnle et al., *Incorporating the Principles of Scientifically Based Child Interviews into Family Law Cases*, J. CHILD CUSTODY, Feb. 2004, at 97, 102.

136. Karen J. Saywitz et al., *Credibility of Child Witnesses: The Role of Communicative Competence*, 13 TOPICS IN LANGUAGE DISORDERS 59 (1993).

137. Kuehnle et al., *supra* note 135, at 101.

138. Faller, *supra* note 128, at 396; Raskin & Esplin, *supra* note 106, at 155 ("It must be kept in mind that a relatively simple sexual incident described by a young and inexperienced child tends to have simpler structure and fewer details than does an account . . . provided by an older more experienced child.").

139. Kathleen A. Kendall-Tackett & Malcolm W. Watson, *Factors That Influence Professionals' Perceptions of Behavioral Indicators of Child Sexual Abuse*, 6 J. INTERPERSONAL VIOLENCE 385, 394 (1991) (noting that interviewer assumptions can bias interview outcomes, but that when children verbally describe abuse, there is less threat of bias); *see also* Corwin, *supra* note 129, at 254; Heiman, *supra* note 128, at 312.

statement should look for idiosyncratic details the child may provide regarding any abuse incidents. These may include: sensory motor descriptors of the experience; any identifying characteristics of the alleged offender; references to possible physical evidence; and the locations from which the evidence came and where it was returned before and after the abuse incidences.¹⁴⁰ Examples of physical evidence include clothing, towels or sheets that may have blood or other bodily fluids, as well as condoms, magazines and movies that the perpetrator may have used with the child.¹⁴¹ Secondary details describing the location of the abuse provided by the child should also be evaluated to understand the child's experience.¹⁴²

Interviewers should also attempt to identify the physical whereabouts of others while the abuse was occurring to identify potential witnesses. This also allows interviewers to determine to whom the child may have previously reported his abuse and what he told that person. Interviewers should seek information from the child or others present about other possible victims.¹⁴³

7. Appropriateness of Sexual Knowledge

Professionals who talk to children about sexual abuse should be familiar with normal sexual development for children, and compare the child's report of sexual abuse with what would be considered normal sexual knowledge and behaviors of children the same age.¹⁴⁴ Children as young as two years old may engage in self-stimulating behaviors with no history of sexual abuse.¹⁴⁵ Non-abused children under the age of thirteen, however, rarely exhibit such sexualized behaviors as engaging in oral sex, asking others to participate in sexual acts with them, acting out coitus, inserting objects into their vaginal cavity or anus, or fondling the genitals of animals.¹⁴⁶

While there are many factors that may impact a child's sexual development,¹⁴⁷ interviewers should look for sexual precociousness of a child, or advanced sexual knowledge for the child's age.¹⁴⁸ Interviewers and other

140. Benedek & Schetky, *supra* note 116, at 912-14; Faller, *supra* note 128, at 391; Faller, *supra* note 106, at 476-77; Heiman, *supra* note 128, at 316-17; Wehrspann et al., *supra* note 106, at 619.

141. *See* Vieth, *supra* note 36.

142. Raskin & Esplin, *supra* note 106, at 156.

143. Faller, *supra* note 106, at 477; *see also* Faller, *supra* note 128, at 131.

144. Benedek & Schetky, *supra* note 116, at 913; Faller, *supra* note 128, at 392; Faller, *supra* note 106, at 479; Heiman, *supra* note 128, at 318, 323; Wehrspann et al., *supra* note 106, at 622.

145. William N. Friedrich et al., *Normative Sexual Behavior in Children: A Contemporary Sample*, 101 PEDIATRICS e9 (1998); *see also* TONI CAVANAGH JOHNSON, UNDERSTANDING YOUR CHILD'S SEXUAL BEHAVIOR: WHAT'S NATURAL AND HEALTHY 11-12 (1999).

146. Kellogg et al., *supra* note 103, at 507.

147. *See* Friedrich et al., *supra* note 145.

148. Mark S. Lipian et al., *Assessing the Verity of Children's Allegations of Abuse: A Psychiatric Overview*, 27 INT'L J.L. & PSYCHIATRY 249, 253 (2004); *see also* Lucy Berliner & Diana

professionals should also pay attention to unusual details that are meaningful to the child's disclosure,¹⁴⁹ and should consider whether the child verbalizes or acts out adult forms of sexuality.¹⁵⁰

8. Consistency of Report

When assessing children's statements, investigative and legal professionals should determine whether the central elements of the child's report are generally consistent across time and the people to whom the child reports the abuse. While minor inconsistencies may arise depending on the person to whom the child discloses and the questions asked of the child, the core events and people involved should generally remain constant.¹⁵¹ A child may recreate conversations he had with the alleged perpetrator or with others to whom he reported abuse.¹⁵² This is valuable information to elicit, and interviews should be sought with those witnesses to evaluate whether the information the child provided in the child abuse interview is generally consistent with what the witness reports.¹⁵³

The utilization of props in an interview may also help establish internal consistency for the child's interview disclosure. If a child has verbally disclosed abuse, it is helpful if a child is able to repeat the same basic theme of abuse through more than one medium, such as drawings, references to anatomical diagrams, or manipulation of anatomical dolls.¹⁵⁴ However, a diagnosis of sexual abuse should never be made solely on the basis of the child's manipulation of anatomical dolls or use of other interview tools.¹⁵⁵ Where a

M. Elliott, *Sexual Abuse of Children*, in THE APSAC HANDBOOK ON CHILD MALTREATMENT 55, 60 (John E. B. Myers et al. eds., 2d ed. 2002); Faller, *supra* note 106, at 479.

149. Raskin & Esplin, *supra* note 106, at 156-57.

150. Toni Cavanagh Johnson, *Understanding the Sexual Behavior of Children*, 30 CYC ONLINE (2001), <http://www.cyc-net.org/cyc-online/cycol-0701-toni1.html>.

151. See Wehrspann et al., *supra* note 106, at 618; see also Benedek & Schetky, *supra* note 116, at 913, 915.

152. See generally Corwin, *supra* note 129; Faller, *supra* note 106, at 477; Raskin & Esplin, *supra* note 106, at 156-57.

153. Wehrspann et al., *supra* note 106, at 617.

154. Heather R. Hlavka, Sara D. Olinger, Jodi L. Lashley, *The Use of Anatomical Dolls as a Demonstration Aid in Child Sexual Abuse Interviews: A Study of Forensic Interviewers' Perceptions*, 19 JOURNAL OF CHILD SEXUAL ABUSE 519 (2010); Barb Hiltz & Grant Bauer, *Drawings in Forensic Interviews of Children*, UPDATE (Am. Prosecutors Research Inst./Nat'l Dist. Att'ys Ass'n, Alexandria, Va.), 2003, http://www.ndaa.org/publications/newsletters/update_volume_16_number_3_2003.html; see also Jan Aldridge et al., *Using a Human Figure Drawing to Elicit Information from Alleged Victims of Child Sexual Abuse*, 72 J. CONSULTING & CLINICAL PSYCHOL. 304, 305, 309 (2004); Mark D. Everson & Barbara W. Boat, *Putting the Anatomical Doll Controversy in Perspective: An Examination of the Major Uses and Criticisms of the Dolls in Child Sexual Abuse Evaluations*, 18 CHILD ABUSE & NEGLECT 113, 113-14 (1994).

155. Kathleen Coulborn Faller, *Anatomical Dolls: Their Use in Assessment of Children Who May Have Been Sexually Abused*, J. CHILD SEXUAL ABUSE, 2005, at 1, 9.

child's report appears to be inconsistent, an interviewer should explore this apparent discrepancy with the child by reformulating her questions to ensure they are developmentally appropriate for the child, or clarify information with the child to ensure the interviewer is not making assumptions about the child's experience.¹⁵⁶ An interviewer may also thoughtfully and judiciously challenge the child's inconsistencies.¹⁵⁷ This should be done in a manner that does not indicate disbelief of the child's report, but in a way that is respectful and genuinely conveys to the child that the interviewer is confused about what the child has disclosed.

9. Description of Perpetrator's Behavior

Investigative and legal professionals should have an understanding of the dynamics of an abusive sexual relationship, and should seek information from children about the behaviors of the alleged perpetrator to fully ascertain and understand the child's experience.¹⁵⁸ Interviewers should be aware of the possible utilization of psychological coercion of the child by the perpetrator indicating the offender's misuse of his power and authority and the progression of sexual acts with the child over time.¹⁵⁹

Coercive techniques to engage the child in sexual acts include inducements to obtain participation; statements, rewards or threats to the child for maintaining secrecy about the abuse; and attempts by the perpetrator to undermine the child's credibility or to force the child to recant his statements after he discloses abuse.¹⁶⁰

10. Plausibility of Description of Abuse

Evaluations of a child's statements should include an assessment of whether the child's reported experience could actually physically occur, and whether the child's description of his abuse is consistent with common patterns of abusive situations.¹⁶¹ Furthermore, the way in which the child recounts his abuse experience may be meaningful. Interviewers should look for a rich and varied description as opposed to a rehearsed litany or borrowed scenario.¹⁶² However, it is important to remember that children experience and report their abuse in different ways. An unemotional disclosure may imply

156. See Raskin & Esplin, *supra* note 106, at 154-56.

157. Wehrspann et al., *supra* note 106, at 620-21.

158. See Sgroi, *supra* note 109, at 263-69.

159. See *id.* at 263-64.

160. *Id.* at 265-67, 269; see also Mark D. Everson, *Understanding Bizarre, Improbable, and Fantastic Elements in Children's Accounts of Abuse*, 2 CHILD MALTREATMENT 134, 136-37 (1997); Faller, *supra* note 106, at 474, 478; Heiman, *supra* note 128, at 327; Paine & Hansen, *supra* note 124, at 277; Wehrspann et al., *supra* note 106, at 619-20.

161. Corwin, *supra* note 129, at 255-56; Raskin & Esplin, *supra* note 106, at 154-55.

162. Heiman, *supra* note 128, at 319-20.

that the child did not in fact have an abusive experience, or a dispassionate response may result from years of abusive experiences, normalization of abuse, multiple re-tellings of the abuse events to numerous family members and professionals, shock response, or posttraumatic stress.¹⁶³

Interviewers should explore what they might consider fantastic elements or unconvincing disclosures of abuse provided by children. Seemingly implausible descriptions may be due to the means in which the perpetrator explained the abuse to the child, the techniques the abuser employed to gain the child's acquiescence, or the child's developmental understanding of the abuse experience.¹⁶⁴ They may also be the result of the questions the interviewer asked or the conclusions the interviewer has formulated without clarification from the child.¹⁶⁵

11. Emotional Reaction of the Child During the Interview

It is critical that professionals working with children who may have suffered sexual abuse understand how a child experiences his abuse.¹⁶⁶ As with other factors utilized to assess sexual abuse, interviewers should look for evidence of the Child Sexual Abuse Accommodation Syndrome (CSAAS) in children before, during, and after the disclosure of abuse. Although CSAAS is not a clinically recognized and diagnosable syndrome, its manifestations may help professionals understand why a child was secretive about his victimization, why a child was unable or unwilling to take advantage of opportunities to report the abuse immediately or over time, and it may also help vindicate a child who subsequently retracts his initial report of abuse.¹⁶⁷

During discussions with alleged child victims, the person conducting the interview should note and report all verbal and nonverbal emotions observed during the interview, including hesitancy, avoidance, or anxiety regarding questions about sexual behavior.¹⁶⁸ Keeping in mind the different ways a child

163. See, e.g., Wehrspann et al., *supra* note 106, at 619.

164. See Faller, *supra* note 106, at 474, 478; Heiman, *supra* note 128, at 327; Paine & Hansen, *supra* note 124, at 277; Wehrspann et al., *supra* note 106, at 619-20.

165. Everson, *supra* note 160; see also Constance J. Dalenberg, *Fantastic Elements in Child Disclosure of Abuse*, 9 APSAC ADVISOR 1, 5-10 (1997).

166. See, e.g., David Finkelhor & Angela Browne, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55 AM. J. ORTHOPSYCHIATRY 530, 530, 539 (1985) (developing a framework of four ways children experience sexual abuse and how it can aid in a more systematic understanding of sexual abuse); Thomas D. Lyon, *Scientific Support for Expert Testimony on Child Sexual Abuse Accommodation*, in CRITICAL ISSUES IN CHILD SEXUAL ABUSE: HISTORICAL, LEGAL, AND PSYCHOLOGICAL PERSPECTIVES 107 (Jon R. Conte ed., 2002) (discussing how an understanding of Child Sexual Abuse Accommodation Syndrome can explain inconsistent behaviors in abused children and differences in how they experience abuse); Summit, *supra* note 124, at 179.

167. Summit, *supra* note 124.

168. Corwin, *supra* note 129, at 255.

may experience and demonstrate trauma, an interviewer should evaluate whether the child's behaviors and emotions are consistent with his verbal report during the interview.¹⁶⁹ Furthermore, the interviewer should be aware of language indicating self-deprecation or assumption of blame on the part of the child or excuses offered for the alleged perpetrator.¹⁷⁰ These statements may be indicative of the child's state of mind regarding incidences of abuse, and may demonstrate a lack of motivation to falsely accuse the perpetrator.¹⁷¹

B. Other Possible Explanations for Abuse

As a part of the conversations they have with children, investigative and legal professionals should explore, and if possible, eliminate, other feasible explanations that may account for the abuse report. These may include misinterpretation of innocent contacts, coaching of the child to make the report or even contamination of the child's statements by family, friends or the investigative professionals themselves. Interviewers should further explore the possibility of a different or an additional perpetrator, and if identified, determine whether the child can distinguish between reported abuse experiences by multiple perpetrators. Finally, interviewers should always be open to the possibility that the report of abuse was a deliberate falsehood, and although the interviewer should never seek to confirm the accusations of abuse, he or she should ask questions of the child to determine whether the abuse actually occurred.

C. Additional Comments and Considerations

Evaluations of a child's report should always include assessment of whether the interview itself comported with acceptable child interview practices.¹⁷² The interview should be free from undue suggestive behaviors and leading questions, the interviewer should appropriately utilize props in the interview setting, and the interview should be conducted in a child-friendly location in the absence of interviewer pressure and coercion.¹⁷³

Questions posed to the child should be developmentally appropriate.¹⁷⁴ The child should be permitted to correct himself or the interviewer, and the interviewer should encourage the child to indicate when he does not know or

169. Benedek & Schetky, *supra* note 116 at 915; Faller, *supra* note 106, at 476. *See generally* Faller, *supra* note 128, at 390-92; Heiman, *supra* note 128, at 319-322; Wehrspann et al., *supra* note 106, at 618-19.

170. Raskin & Esplin, *supra* note 106, at 156.

171. *See* Wehrspann et al., *supra* note 106, at 619-20.

172. *See* APSAC, *supra* note 3.

173. *See* Kuehnle et al., *supra* note 135, at 106; L. Dennison Reed, *Findings from Research on Children's Suggestibility and Implications for Conducting Child Interviews*, 1 CHILD MALTREATMENT 105, 105-11, 114 (1996).

174. *See* WALKER, *supra* note 130, at 6.

cannot remember the answer to a question.¹⁷⁵ Professionals should not rely on truth-lie discussions with a child to establish the reliability of the child's statements. Generally speaking, truth-lie discussions are beyond the developmental abilities of children under the age of eight years old, and contrary to conventional thought, a truth-lie discussion conducted at the beginning of an interview neither predicts nor promotes truth-telling through the remainder of the interview.¹⁷⁶ Finally, the number of interviews—both formal and informal—should be limited as much as possible to reduce the introduction of information to the child.¹⁷⁷

While this section provides guidance and information to child abuse professionals on evaluating a child's interview statements, this information is *not* provided to enable investigators or interviewers serving as witnesses in court to testify as to the child's credibility. Rather, the factors presented in this section serve to offer guidance to professionals who interview children and investigate and corroborate child abuse allegations. This information may also be utilized in court, explained by interviewers and investigators to educate judges and jury members as to what factors investigators and prosecutors seek in interview statements. During closing arguments, prosecutors or civil child protection attorneys may also reference the factors described in this section to inform judges and juries as to what factors may be applied to the specific facts of the case. The trier-of-fact can use these factors when evaluating witness testimony and other forms evidence, and when formulating their own decisions about the outcome.

Witnesses are strongly cautioned against providing testimony concerning the veracity of another witness or of a child whom they have interviewed. Criminal convictions have been overturned because one witness impermissibly vouched for another. For example, in a case before the Nevada Supreme Court, a law enforcement officer conducted an interview of a child victim and testified about the particular child sexual abuse interview protocol he employed with the alleged child victim.¹⁷⁸ The officer included an explanation of the practice of incorporating a truth-lie discussion with the child at the

175. See Amy Russell, *Best Practices in Child Forensic Interviews: Interview Instructions and Truth-Lie Discussions*, 28 HAMLIN J. PUB. L. & POL'Y 99, 110-11 (2006).

176. For a more complete discussion on the efficacy of truth-lie discussions in interviews, see *id.* at 113-26. See also Thomas D. Lyon et al., *Young Children's Competency to Take the Oath: Effects of Task, Maltreatment, and Age*, 34 LAW & HUM. BEHAV. 141 (2010).

177. See Reed, *supra* note 173, at 108. But see Lina Leander, *Police Interviews with Child Sexual Abuse Victims: Patterns of Reporting, Avoidance and Denial*, 34 CHILD ABUSE & NEGLECT 192, 203 (2010) (finding children may require two or three interviews to fully disclose their abuse experiences); David La Rooy et al., *Do We Need to Rethink Guidance on Repeated Interviews?*, 16 PSYCHOL. PUB. POL'Y & L. 373, 375-78 (2010) (finding non-duplicative, repeated interviews may be warranted for children of limited abilities or attention span, children reluctant to talk and children with multiple victimizations, particularly when conducted by well-trained interviewers).

178. *Abbot v. State*, 138 P.3d 462 (Nev. 2006).

beginning of his interview,¹⁷⁹ and based on interview techniques he had learned, the officer further testified that he concluded the child was truthful in the interview and was not coached or biased against the defendant.¹⁸⁰ The court subsequently admitted this testimony as expert opinion. Under Nevada law, the defense was therefore entitled to conduct a psychological evaluation of the child.¹⁸¹ After review of the new evaluation, the Nevada Supreme Court subsequently reversed the defendant's conviction for two counts of lewdness with a child under the age of fourteen, and remanded the case back to the lower courts for a new trial.¹⁸²

IV. CONCLUSION

Investigative and legal professionals involved in cases that may include child sexual abuse accusations should be adequately trained to understand a variety of issues related to these investigations. Therefore, these professionals should have training and an in-depth comprehension of: 1) the normal sexual and linguistic development of children; 2) an understanding of the issues; 3) a familiarity with the current research regarding the suggestibility of children; 4) the dynamics of child sexual abuse and intra-familial violence, and how victims experience their abuse; 5) and an awareness of interviewing protocols and best practices for eliciting information from children who may have been abused. Finally, professionals must understand how child abuse investigative professionals appropriately elicit and evaluate a child's statement regarding his or her abuse experiences and how to best present those experiences in court.

Attorneys, judges, law guardians, and other legal and investigative professionals are encouraged to receive on-going training to recognize the signs of child abuse and to learn the various methods of assessing a child's disclosure of abuse. A child's statements emotions, and behaviors should be collected in a multidisciplinary forensic interview and accurately preserved in an electronic form; when combined with corroborating information gathered during the investigative process, these tools will allow investigative, legal and judicial professionals, and jurors to more fully understand and evaluate a child's report of abuse.

179. *Id.* at 466 (Nev. 2006).

180. *Id.*

181. *Id.* at 470-72, 476.

182. *Id.* at 476. *But see* State v. Warren, 195 P.3d 940 (Wash. 2008) (finding description of interview protocol which included request of child to tell the truth and eliciting promise to do so is not improper vouching).

