

# **Enhancing the Reliability of Children's Statements During Videotaped Forensic Interviews**

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## In actual child sexual abuse cases . . .

- Diagnostic medical evidence of abuse is present in only 5-15% of cases
- Physical evidence from the crime scene is usually lacking or absent
- Apart from the victim and the offender, there are rarely any witnesses to the abuse
- There are no psychological profiles or behavioral indicators that reliably determine whether a child was abused or whether a given suspect is a child

***Consequently, the reliability of  
children's statements about their  
abuse***

***(as perceived by judges and juries)  
most often determines the outcome of  
Child Sexual Abuse Cases***

# Children's statements during Videotaped Forensic Interviews can serve as the

## Most Compelling Evidence of Abuse

- Since forensic interviews often occur months or even years before the case goes to trial, children's memory regarding details of the abuse at the time of the forensic interview is often superior to their memory at the time of trial
- Children may also be less anxious and more willing to discuss their abuse during sensitive, one-on-one forensic interviews than they are during a formal trial where there are many

# Contexts for Reliability Determinations

- **Child hearsay hearings**: During a preliminary hearing, a Judge determines whether a child's 'hearsay statement' (e.g., as made during a videotaped forensic interview) is sufficiently *reliable* to be admitted into evidence
- **Trial**: Judges and juries assess the credibility of children's statements made in and out of court—including statements made during videotaped forensic interviews that have been admitted into evidence

# Caveats for the admission of children's videotaped forensic interviews in Criminal Cases

- Recent changes in Constitutional law have posed challenges to the admissibility of videotaped forensic interviews at trial in criminal cases based on the defendant's Constitutional right to confront his accuser
- In *Crawford v. Washington* (2004), the United States Supreme Court ruled that if a hearsay statement is “**testimonial**” then the statement cannot be admitted—no matter *how* reliable it is—unless the witness is unavailable and the defendant had the opportunity to **cross-examine** the child, e.g., at trial, deposition, or preliminary hearing

# Are Statements Made During Videotaped Forensic Interviews Considered “Testimonial” Hearsay?

- A child’s hearsay statement is more likely to be considered ‘**testimonial**’ when: the interview of the child was ‘forensic’ in nature; it was recorded; it was structured in a manner similar to ‘police questioning’; and if it was done for law enforcement purposes
- In *Bobadilla v. Carlson* (2008), the federal court ruled that the child’s statement elicited via the “CornerHouse” forensic interview protocol was ‘**testimonial**’

In Criminal cases the child must testify in order for the child's 'testimonial' hearsay statement to be admitted at trial

- Thus, it is essential for the prosecution to make the child available for cross-examination, e.g., at deposition, preliminary hearing or trial
- The child need not testify about the alleged abuse; she/he may have forgotten it
- The child's willingness to answer questions on cross-examination is what satisfies the defendant's confrontation

# Prosecutors have options for reducing children's fear of testifying in criminal court proceedings

- Preparation
- Special accommodations
- Support persons
- CCTV

# “Testimonial” hearsay is only an issue in criminal trials in which the child fails to testify

- The right to cross-examine testimonial hearsay is based on the Confrontation Clause, which does not apply in civil and dependency court proceedings
- Most substantiated child abuse cases never find their way into criminal court, largely because of the greater burden of proof in criminal proceedings

(Lyons,

2008)

# Factors frequently considered by Courts (and juries) in determining whether children's hearsay statements are sufficiently reliable

- 1. Was the child "competent to take the oath"?*
- 2. Were the child's statements "spontaneous" or were they the product of leading questions?*
- 3. Were the child's statements substantially consistent or quite inconsistent?*

# CHILDREN'S COMPETENCE TO TAKE THE OATH

- The 'competence to take the oath' refers to the witness' ability to demonstrate:
  1. An understanding of the difference between truth and falsehood, and
  2. An appreciation of the obligation to tell the truth (i.e., realizing that lying can result in negative consequences)
- Most often, challenges to children's competence to take the oath center on younger children—especially preschoolers

Children's Competence to Take the Oath may be challenged with respect to the forensic interview and with respect to the child's competence to testify at trial

# ***Incompetent children or Incompetent interviewers?***

- Even though kids as young as 3-years-old often recognize the difference between lying and telling the truth and recognize that lying is 'bad,' they often ***appear*** incompetent when they are questioned in a ***developmentally inappropriate fashion***

# AGE-RELATED TRENDS IN CHILDREN'S COMPETENCE TO TAKE THE OATH

Children under 9 or 10 are not good at:

*explaining differences*

*defining terms*

*generating examples*

# Developmentally Inappropriate “Truth-Lie” questions for children under 9

- ***“What’ is the difference between the truth and a lie?”***
- ***“What does it mean to tell the truth?”***
- ***“Can you give me an example of a lie/the truth?”***

# Other truth/lie questions that should be avoided with young children

- ***“Have you ever told a lie?”***
- Hypothetical questions about the consequences for lying, particularly if the *child* is the hypothetical liar:  
***“What would happen if you told a lie?”***
- Hypothetical questions that require the child to acknowledge that *the interviewer* is lying:  
***“If I said my shirt is white (when it is black), would that be the truth or a lie?”***
- Many children will perform poorly at these questions despite being quite capable of identifying statements as true or false and recognizing that lie-tellers are punished

Tom Lyon and Karen Saywitz have  
constructed  
a developmentally sensitive protocol for  
Qualifying Children to Take the Oath

- The Lyon & Saywitz protocol is especially well-suited for children ages 3 through 8
- Many children as young as 3 and 4 have been found to be competent when using this protocol
- Materials and instructions for the Lyon & Saywitz protocol are available free of charge at: <http://works.bepress.com/thomaslyon/9/>

# The Lyon & Saywitz Protocol

- Involves presenting four truth/lie “**difference**” tasks and four “**morality**” tasks using pictures as a reference point
- Three different sets of colorized pictures/tasks for this protocol are available online. The colorized pictures should be used instead of black and white copies
- Very young children and children with short attention spans are often drawn to the colorful pictures and often dwell to the

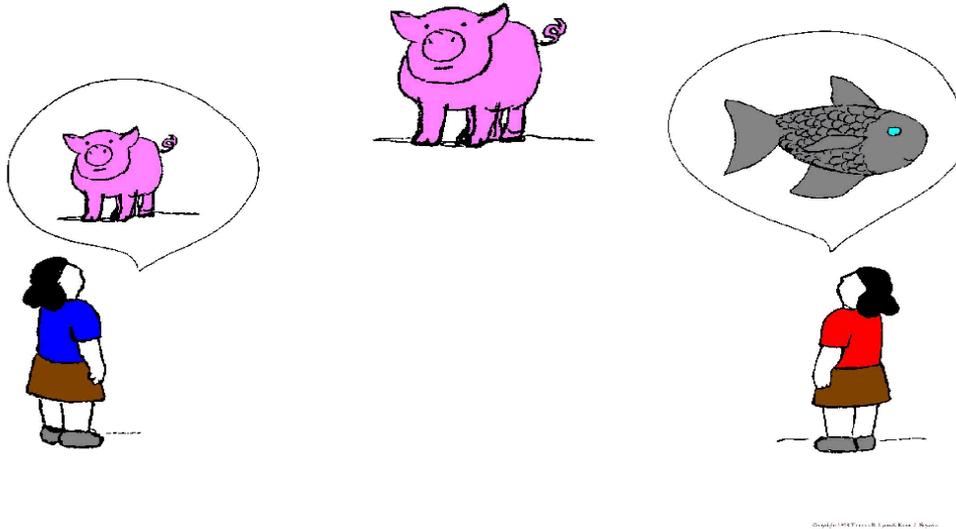
# Introduction of the Truth-Lie Task

“I talk with lots of children. It’s important that they always tell me the truth.

So, before we begin, I want to make sure that you understand how important it is to tell the truth.”

# **EXAMPLES OF LYON & SAYWITZ'S “TRUTH – LIE TASK”**

TRUTH  
VS. LIE TASK



Here's a picture. Look at this animal--what kind of animal is this?  
OK, that's a [child's label].

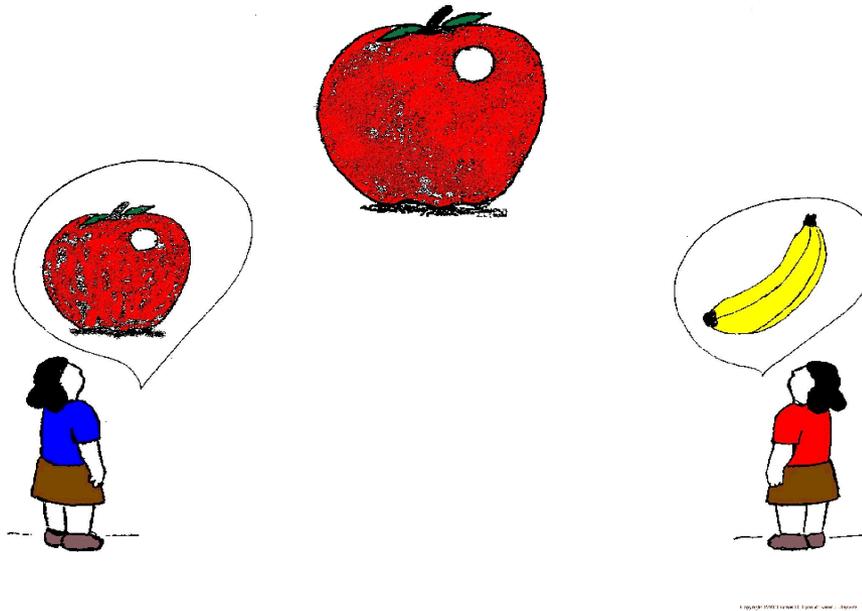
LISTEN to what these girls say about the [child's label]. One of them will tell a LIE and one will tell the TRUTH, and YOU'LL tell ME which girl tells the TRUTH.

*(point to girl on the left)* THIS girl looks at the [child's label] and says "IT'S a [child's label]."

*(point to girl on the right)* THIS girl looks at the [child's label] and says "IT'S a FISH."

Which girl told the TRUTH?

## TRUTH VS. LIE TASK (2)



Here's another picture. Look at this food--what kind of food is this?  
OK, that's a [child's label].

LISTEN to what these girls say about the [child's label]. One of them will tell a LIE, and one will tell the TRUTH.

*(point to girl on the left)* THIS girl looks at the [child's label] and says "IT'S an [child's label]."

*(point to girl on the right)* THIS girl looks at the [child's label] and says "IT'S a BANANA."

Which girl told the TRUTH?

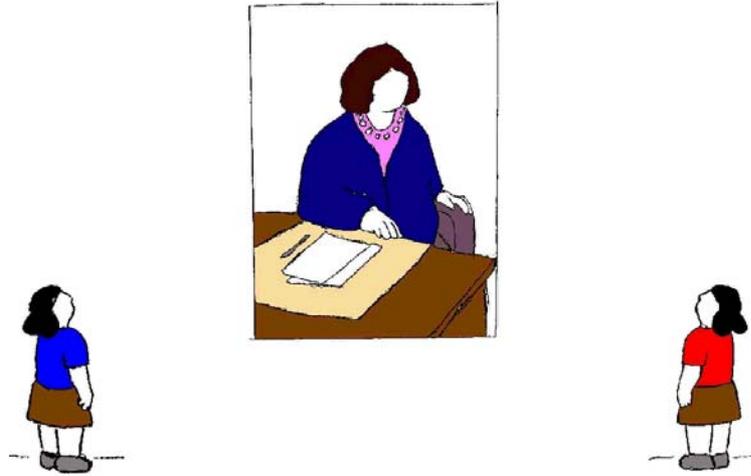
# **EXAMPLES OF LYON & SAYWITZ'S “MORALITY TASK”**

## MORALITY TASK



- Here's a School Principal. She wants to know what happened to these boys.
- Well, ONE of these boys is GONNA GET IN TROUBLE for what he says, and YOU'LL tell ME which boy is GONNA GET IN TROUBLE.
- LOOK (*point to left boy*). This boy tells the TRUTH.
- (*point to right boy*) This boy tells a LIE.
- Which boy is GONNA GET IN TROUBLE?

## MORALITY TASK (2)



Here's a Lady who comes to visit these girls at home.  
She wants to know what happened to these girls.  
Well, ONE of these girls is GONNA GET IN TROUBLE for  
what she says.

LOOK (*point to left girl*) This girl tells a LIE.  
(*point to girl on right*) This girl tells the TRUTH.  
Which girl is GONNA GET IN TROUBLE?

# Example of Lyon & Saywitz Truth/Lie Method Used During a Forensic Interview



It is quite unlikely that a child would 'guess' all the correct answers

- The likelihood of the child *guessing* the correct answer to all 4 "difference" questions *and* all 4 "morality" questions is **1 in 400**. (The same probability as tossing a coin and getting "heads" 8 times in a row)

# Advantages of the Lyon & Saywitz Protocol for Assessing Children's Competence to Take the Oath

- Because it is developmentally appropriate for very young kids, it *maximizes* their likelihood of being found competent by the court
- The visual images used in the protocol capture the attention of young and inattentive kids
- This protocol has been tested on the front-lines in real-life child sexual abuse cases

**ELICITING “SPONTANEOUS”  
STATEMENTS FROM CHILDREN  
AND  
AVOIDING LEADING QUESTIONS**

# What are spontaneous statements?

- Statements that were not elicited by leading questions
- Statements made in response to 'open-ended' questions are generally considered spontaneous

# The best questioning strategy for eliciting “spontaneous” statements from children

- Rely on open-ended questions as much as possible
- Resort to potentially more suggestive questions (e.g., yes/no questions) only when absolutely necessary—then *follow-up* with open-ended questions

# What are “leading” questions?

- There is no universal consensus regarding the definition of a leading question
- Leading occurs on a ‘continuum’ from mildly leading to highly leading
- A highly leading question **tempts, pressures or coerces** the child to agree with information suggested by the interviewer:
  - “*Come on now. Tell me the truth. Your Daddy didn’t ‘really’ touch your pee-pee, did he?*”
- Some have argued that other less coercive questions are also leading—including yes/no and multiple choice questions

# Yes/No and Multiple Choice Questions ("Option-Posing Questions") can also be suggestive/leading

- Assume that the child previously told the interviewer that Roger touched her pee-pee—but she has never alleged that Roger did anything else to her. The interviewer then asks:
  - *Were you **in your bedroom or in Roger's room** when Roger touched your pee-pee?*
  - *Did Roger **lick** your pee-pee, too?*

Examples of  
Open-Ended Questions that are  
commonly used in Forensic  
Interviews (e.g., the NICHD  
protocol)

*Tell me why you came to talk to me*

*Tell me all about (something the child mentioned)*

*Tell me more about (something the child  
mentioned)*

*What happened right after/right before  
(something the child mentioned)*

# Open-ended questions

vs.

## Option-posing and leading questions

- Children's responses to open-ended questions are generally considered to be far more "spontaneous" than their responses to option-posing and leading questions
- Children's responses to open-ended questions are also generally far more accurate and detailed than their responses to option-posing and leading questions

# Substituting Open-ended Questions for Option-posing Question, and Pairing Option-posing Questions with Open-ended Questions

- *Assume that the child previously told the interviewer that Roger touched her pee-pee—but she has never alleged that Roger did anything else to her*
  - You told me that Roger touched your pee-pee. Tell me all about that
  - What happened right before/right after Robert touched your pee-pee?
  - Did Roger do anything else to you? [Option-posing Q]  
(If so) Tell me all about that (Paired with Open-ended Q)

# Investigative interviewers tend to rely far more on Option-Posing questions than on Open-ended questions

- Approximately one-third of the questions asked by CSA investigators are option-posing questions
- Only about 6% of CSA investigators' questions are open-ended (e.g., “*Tell me more about that*”)
- This is true even though children's responses to open-ended questions are generally far more spontaneous, accurate and detailed!

# Practice Session

Option-posing questions  
(yes/no, multiple choice)

VS.

Open-ended Questions

*“Tell me all about . . .”*

*“Tell me more about . . .”*

*“What happened right before/right after . . .”*

# The “Practice Narrative”

## Using Open-ended Questions to Elicit More Spontaneous and Detailed Accounts

- In typical conversations with adults, young children provide minimal detail
- When sexually abused children were first asked open-ended questions about neutral/pleasant topics early in the forensic interview (before abuse-related questioning), they later provided **2½ times** as much detail about their abuse

# The Practice Narrative

- “Tell me all about”:
  - What you like to do for fun
  - What you did today from the time you woke up until I came to see you today
  - Your birthday party (a recent holiday, etc)
- Follow up with: *“Tell me more about . . . ”*  
*“What happened right after . . . ?”*

# The Sources of Children's Inconsistent Statements

- Inconsistent statements by children are often the result of *misunderstandings* and *developmentally inappropriate questioning*

**Questions that invite inconsistent statements—especially from *young* children**

# QUESTIONS RELATING TO FREQUENCY

## “How many times did that happen?”

- Young children who were abused on several occasions can rarely be able to accurately state the number of times they were abused—but they will often **guess** if asked!
- DON'T ask: “How many times?” (***Kids will guess!***)
- DO ask: “Did that happen one time or more than one time?”

## When multiple incidents are suggested

- Children are usually better able to remember the most recent incident (and sometimes the ‘first’ incident).
- If a child says, ***“It happened lots of times,”*** consider saying:
  - *Tell me about the time you remember best*
  - *Tell me about the first time/the last time*

# QUESTIONS ABOUT THE SEQUENCE OF EVENTS

## INVITE INCONSISTENT STATEMENTS

- When (young) children indicate that they were abused on several different occasions, don't expect them to be able to accurately and consistently specify what happened on which occasion
- Avoid asking:  
***“What happened the first time, the second time, the third time, the fourth time . . .”***
- Kids will often ‘guess’ and will offer *different* guesses when questioned on *different* occasions (e.g., during the forensic interview and at trial)

# QUESTIONS ABOUT TIME FRAMES AND DATES

## *“When did it happen?”*

- Children generally do not fully master calendar time until they are about 10-11 years old.
  - Days of the week, months, the “date”
- For many 3- and 4-year-olds “yesterday” means any day other than ‘today’
- Expecting young children to provide dates is unrealistic and asking them to provide such information invites inconsistent responses

# Pairing events to establish time frames

- Children are often better at pairing events than providing specific time frames
  - *“It happened when we went to Disney World.”*
  - *“It happened when Mommy went to pick up grandma from the airport”*

# "Who's on First?"

- ◆ Young children often have difficulty recognizing the topic the interviewer is inquiring about—especially when several different sex acts, incidents, or perpetrators are being discussed
- ◆ Questions containing non-specific references exacerbate these problems:

***“Where were you when he did that?”***

# BE “PAINFULLY REDUNDANT” WHEN QUESTIONING CHILDREN

- DON'T ASSUME that the child knows what or who you are referring to!
- REPEAT the specific names of the people, activities, places, and things that you are inquiring about.

# Enhancing Mutual Understanding During Forensic Interviews

- Use common and simple words.
- Keep questions short. One idea at a time.
- Ask one question at a time and give the child time to process the information.
- Use proper names and clear references
- Monitor the child's responses for understanding and test your assumptions.

# References

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