

Forensic Analysis of Forensic Interviews **Matthew L. Ferrara, Ph.D.**

There are many problems associated with the way forensic interviews are conducted and then used in a criminal trial. The purpose of this paper is discuss these problems with the hope that juries can use this information to arrive at a more fair and accurate verdict.

Erroneous Assumptions about the Forensic Interview

Before discussing some of the problems associated with forensic interviews, it is important to take a look at a few of the problems with underlying assumptions the forensic interview.

1. **Forensic Interviews are Not Forensic:** The word “forensic” implies objectivity and lack of bias. Contemporary forensic interviews as conducted by Child Advocacy Center interviewers and law enforcement are biased and consequently, these interviews should not be called “forensic interviews.”

The first Child Advocacy Center (CAC) was created in 1985, by Robert “Bud” Cramer, who was the district attorney in Madison County, Alabama. The first CAC was called, *The Little House*, and it was located in Huntsville, Alabama.

When District Attorney Cramer became Congressman Cramer, he was instrumental in establishing the National Children’s Alliance, which provides training, support, technical assistance, and leadership to CAC’s throughout the United States. A visit to the NCA website will tell you that there is more than 700 CAC’s receiving support from the NCA.

Congressman Bud Cramer has been quoted as saying, “*As it was initially conceived, a primary goal of the CAC mode was to increase successful prosecution of child sexual abuse. A secondary goal was to conduct more child friendly interviews in settings other than intimidating police stations, medical settings, or social services offices.*”

Every organization is free to choose its goals and there is nothing wrong with CAC’s choosing prosecution as its primary goal. There is, however, something wrong with a CAC center portraying the forensic interviews it conducts as objective, when everything about a CAC has a pro-prosecution bias.

Consider the work of Dr. Gary B. Melton and Dr. Robin J. Kimbrough-Melton (2006) who examined the effect that working in a CAC has upon mental health professionals. These researched observed that the multidisciplinary structure of CAC’s, where mental health professionals join forces with investigative staff, who are focused on prosecution, may cause the mental health professionals to lose their objectivity and be drawn into the advancement of a specific agenda, prosecution of sexual offenders, rather than to retain a neutral stance on the question of alleged abuse.

To truly appreciate the biased nature of forensic interviews, consider who conducts these interviews, where the interviews are conducted, and who is left out of the interview.

- **Interviewers** – Law enforcement and Child Advocacy Center personnel typically conduct forensic interviews. The primary role of the police officer is to catch criminals, not be objective. The primary role of the Child Advocacy Center

interviewer is to produce a video recording and turn it over the prosecution. There are even laws that make it difficult for defense counsel to obtain a copy of such an interview. The entire interview process is under the auspices of the prosecution and consequently, the interview process is biased toward the prosecution.

- **Location** – Interviews are typically conducted in a law enforcement center or at Child Advocacy Center. Both of these are governmental agencies involved in the prosecution of alleged criminals. This is important because of the overt and covert pressure exerted on interviewers to produce results consistent with the goals of the agency. Even the interviewers who try to be objective are in a constant wash of agency mission and philosophy and as a result, bias inevitably seeps into their work.
- **Omission** – The defendant and his representative are left out of the forensic interviewing process. Given the adversarial nature of our legal system, it is easy to rationalize such an exclusion, however, if the goal is to be unbiased, the failure to involve all parties, including the accused, is a sign of bias.

All of the forgoing may seem obvious and perhaps not worth mentioning. If you think this way, you are wrong. Even though you are aware of the foregoing, most laypersons, often referred to as jurors, do not know these things.

Jurors who fail to appreciate the biased nature of the forensic interview may mistakenly attribute to it the same objectivity as the results of DNA testing, fingerprinting, or other forensic tests. Defense counsel should help the jury see the intrinsic bias of the forensic interview so the jury can give the forensic interview the proper weight.

2. **Forensic Interviews Cannot Reverse the Effects of Coaching:** In the courtroom, the trier of fact is allowed to determine the credibility of witnesses, including the credibility of victim witnesses. Unfortunately, the research says that if the jury looks at a videotape of the forensic interview and tries to determine the veracity of the outcry, they might as well flip a coin.

Dr. Ceci conducted a research study with over 1500 professionals involved in the criminal justice system: psychologists, social workers, judges, attorneys, and case workers. Dr. Ceci allowed these professionals to view videotapes of children talking about things that did and did not happen to them. These professionals were asked to determine if the child was telling the truth or lying. These professionals were accurate about 50% of the time, the same accuracy as flipping a coin.

Jurors need to understand that if they undertake the task of determining whether a child is telling the truth they are embarking on a venture that the scientific research says can't be done. This doesn't mean that the jury cannot render a verdict in a child sexual abuse case. What it means is that in order to reach a verdict, jurors should focus on evidence surrounding the alleged victim's claims of sexual abuse, i.e., the jury should use circumstantial evidence to prove the outcry.

3. **Forensic Interviews are Not Proof an Outcry is True or False:** A forensic interview is not proof of anything. The statements that a child makes in a forensic interview are the things that need to be proved. In that respect, forensic interviews are very important; the forensic interview contains the facts that the State must prove.

It is often argued that a forensic interview is proof that an outcry is valid because the alleged victim has consistently said the same thing to different people. As Emerson would say, “*petty consistencies are the hobgoblins of small minds.*” Consider the following scenario:

Create a statement that you know to be false. For example, claim that you have a blue corvette in the parking lot. Now, your task is to tell three people that you have a blue corvette. Since we are in a courtroom, you could tell the attorney at the other table, “I have a blue corvette.” Next, you could walk over to the court reporter and tell the court reporter, “I have a blue corvette.” Next, walk over to the bailiff and tell him, “I have a blue corvette in the parking lot.” But you don’t have a blue corvette and you probably never have had one. Just because you said the same thing to three different people at three different times doesn’t make the statement correct. Bottom line: you can’t use a statement to prove a statement; that is tautological.

Before the Forensic Interview

There are certain factors which if present, can undermine the validity of the results of a forensic interview. These factors fall into three categories: characteristics of the child making the outcry; nature of interviews conducted by nonprofessionals prior to the forensic interview; and, nature of relationship among adult caretakers of the child making the outcry.

Characteristics of the Child: Research has shown that adults can influence a child to believe a false statement, with younger children being more suggestible than older children. Some children on their own, due to the presence of a mental health diagnosis, can spontaneously generate false statements of child sexual abuse.

Below is a list of characteristics of children associated with false outcries of sexual abuse. It is worth doing a careful analysis of these factors to determine which if any of these factors are present because each of these factors on their own can undermine the veracity of a child’s claim of sexual abuse.

1. The child is between three and seven years old at the time of the outcry.
2. The child is between three and seven at the time of the testimony.
3. The child has difficulty distinguishing fact from fantasy.
4. The child has a diagnosis of bipolar disorder.
5. The child has a diagnosis of or traits of Borderline Personality Disorder, if the diagnosis or symptoms predate the alleged abuse.

Interviews by Nonprofessionals: Alleged victims are almost always interviewed by a nonprofessional prior to the forensic interview. Here is a typical scenario:

Mary’s first grade class just heard a presentation about sexual abuse. After the presentation, Mary’s teacher overhears Mary talking with other classmates. Mary reportedly said that her grandfather “does sexual abuse.” Mary’s teacher is concerned. She pulls Mary aside and in order to confirm the sexual abuse she asks Mary a series of questions: How long has your grandfather been sexually abusing you? How many times has he touched you on your vagina? How many times has he taken his hand and put it on his penis?

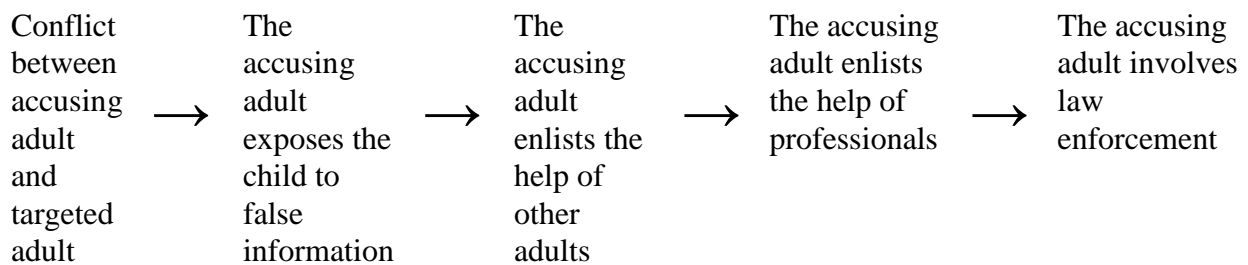
The scenario above is not farfetched. Well-meaning adults concerned about the welfare of a child may vigorously question a child about sexual abuse and unwittingly plant the seeds for a false outcry of sexual abuse by asking leading questions, i.e., a leading question is a question with the answer embedded in the question.

It only takes one affirmative response by a child to a leading question to begin the process of a false outcry developing. The well-meaning adult asking these questions should not be blamed for asking leading questions. Most adults are not trained to conduct forensic interviews, i.e., they are not trained to avoid using leading questions. Even though an adult should be permitted certain allowance for caring enough to question a child, it doesn't change the fact that questions by a nonprofessional can be the sole cause of a false outcry of sexual abuse. Below are some signs that a nonprofessional has had an opportunity to plant the seeds of a false outcry.

1. Individual talked with the child about the abuse to get information about the abuse.
2. Individual talked with the child about the abuse on multiple occasions.
3. Individual talked with others about the abuse within earshot of the child.
4. Individual had other nonprofessionals talk with the child about the abuse
5. A therapist not trained to conduct forensic interviews has talked with the child about the alleged abuse.
6. There is a delay between the outcry and when the child participates in a forensic interview and there is some indication that others have talked with the child about the alleged abuse.

Conflict between Caretakers: Most false outcries are created by adults and carried by children. There are various reasons, or motives, an adult might intentionally induce a child to make a false outcry. While the motives may vary, the process whereby the adult induces the child to make a false outcry of sexual abuse happens over a period of time. Inducing the child to make a false outcry of sexual abuse usually happens at the end of series of efforts by one adult to use a child to hurt another adult.

Below is a common way, but not the only way, that an accusing adult induces a child to make a false outcry against a targeted adult.



As mentioned above, there is more than one process an accusing adult could use to induce a child to make a false outcry. Even though the process may vary, some of the signs that process are listed below:

Before a Formal Accusation of Sexual Abuse is Made

1. The accusing adult has consistently said negative or degrading things about the targeted adult.
2. The accusing adult shows no guilt or remorse for attacking the targeted adult.
3. The accusing adult is able to inspire animosity toward the targeted adult among friends or extended family of the targeted adult.
4. The accusing adult doesn't comply with visitation schedule for child.
5. The accusing adult doesn't return the children on time.
6. The accusing adult cannot control his or her anger towards the targeted adult in front of the child
7. The accusing adult interferes with phone calls between the targeted adult and child.
8. The accusing adult has told the child malicious things about the marital relationship and the reason for the divorce.
9. The accusing adult tells the child that the targeted adult is responsible for breaking up the family.
10. The accusing adult puts the child in the position of choosing one adult over another.
11. The accusing adult uses the child to spy on the targeted adult.
12. The accusing adult sets up temptations to interfere with visitation with the other adult.
13. The child begins to refuse to visit the targeted adult.

After a Formal Accusation of Sexual Abuse has been Made

14. The accusing adult shows no ambivalence or uncertainty about the veracity of the outcry.
15. The accusing adult doesn't seek an objective evaluator to assess the child and may engage in evaluator shopping, i.e., going to different evaluators until the accusing adult finds an evaluator to support the claims of abuse.
16. The accusing adult does things to bias the evaluator, e.g., presents false evidence to the evaluator.

There has never been a case in which all seventeen of the factors listed above were present and very likely, there will never be such a case. The reason is simple: the accusing adult is typically careful to conceal his or her efforts. Consequently, it is likely that if an adult uses five or six of the factors listed above, it might be possible to only detect one or two of those factors. The jury should be made aware of any and all factors listed above because it is the job of the jury to decide how many factors is enough to prove an accusing adult has the motivation to cause a child to make a false outcry.

During the Interview

As evident by the forgoing, a lot can happen to influence the veracity of an outcry prior to the child ever reaching a forensic interview. Hopefully, it is also evident that a forensic interview cannot undo and probably won't detect when a child is talking about something that did not actually happen to him or her.

Even though most false outcries are created long before the forensic interview, on rare occasion a forensic interview can be conducted so incorrectly that it can create or promote a false outcry. Some of the ways a forensic interviewer creates false outcries are listed below.

Factors that create a false outcry:

1. Interviewer introduces misleading information to child while interviewing child.
2. Interviewer asks the child to imagine, pretend or speculate about the alleged abuse.
3. The interviewer introduces information that would bias the child to believe that he or she was sexually abused or that the sexual abuse occurred.
4. The interviewer uses bribes to get the child to talk about the abuse.
5. The interviewer uses threats to get the child to talk about the abuse.
6. The interviewer tells the child that he or she is part of an investigation.
7. The interviewer tells the child that other children have accused the defendant of abuse.
8. Interviewer asks leading questions, i.e., questions that contain an answer, e.g., “Did your stepdad touch you on your breast with his hand?”
9. The interviewer asks a barrage of specific questions.
10. The interviewer asks the same question repeatedly, until the child gives a response consistent with the bias.
11. The interviewer conducts a prolonged interview without a break.
12. The interviewer uses “stereotype inducement,” which amounts to telling the child that the defendant is bad or does bad things.
13. The interviewer uses selective reinforcement, i.e., only uses encouragement and reinforcement of the child’s statements that are consistent with notion that the abuse happened.

Factors that don’t create but can maintain a false outcry:

14. When information comes up that refutes the notion that abuse happened, or the defendant is the perpetrator, the interviewer does not follow-up.
15. The interviewer fails to test an alternative hypothesis, i.e., test the hypothesis that the abuse did not occur or if it did occur, the defendant was not the perpetrator.
16. Child has been subjected to repeated interviewing and the interviewing stops once the interviewer gets the child to make statements consistent with the interviewer’s bias.
17. The interviewer avoids questions that might generate evidence that is inconsistent with the notion that the abuse happened.
18. Interviewer relies more on close ended questions than open ended questions.
19. The interviewer uses an accusatory tone.

Do not make the mistake of thinking that factors that maintain a false outcry aren’t as critical as factors that create a false outcry. As noted previously, much can happen prior to a forensic interview to create a false outcry. Forensic interview techniques that maintain false outcries have the same effect as techniques that create false outcries.

Use of an Expert

Most experts who testify about forensic interviews and false outcries are mental health professionals, not forensic interviewers. The fact that a mental health professional is not a trained forensic interviewer is often used against the mental health professional by opposing counsel, as if a professional from one discipline can’t evaluate the work of a professional from another discipline. Ironically, this is exactly what happens during cross examination.

It is easy enough to defeat this spurious argument by addressing it during direct examination. Mental health professionals who evaluate forensic interviewers are basing their

opinions on what they were trained to do, i.e., since they were trained to conduct therapy using some of the same techniques that forensic interviewers use, they can use their knowledge, training and education to evaluate the work of another professional using the same or similar techniques.

Conclusion

There is so much that can happen prior to a forensic interview that can influence a child to make a false statement. Therefore, it is important to analyze the antecedents to the forensic interview along with the manner in which the forensic interview is conducted. If the analysis shows that there is overlap between the current case and the factors associated with false outcries, the jury needs to be made aware of the findings. Hopefully, the jury can use this information to arrive at a more fair and accurate verdict.