Biases and Opinion Formulation in Child Custody Disputes

The role of Cognitive Biases

WHO AM I? WHY AM I HERE?
[Admiral James Stockdale – 1992]

REPORTER FOR THE AFCC MODEL STANDARDS

Co-author, with Jon Gould, of THE ART and SCIENCE of CHILD CUSTODY EVALUATIONS

Jeff Wittmann has asked that I announce that I am not Jeff Wittmann.
9/14/11:

736 WORK PRODUCT REVIEWS
FOR PSYCHOLOGISTS

1,210 WORK PRODUCT REVIEWS
FOR ATTORNEYS

108 CONSULTATIONS on
LICENSED BOARD and/or
MALPRACTICE ACTIONS

CONSULTATIONS in 32 STATES

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COGNITIVE BIASES
are tendencies to process information in ways that are influenced by various motivational factors, social factors, and a tendency to employ various mental shortcuts (heuristics), some of which lead us to erroneous conclusions.

DATA GATHERING
DATA INTEGRATION
FORMULATION OF OPINIONS AND RECOMMENDATIONS
DATA GATHERING

PRIMACY / RECENCY
JIMINY CRICKET
MARITAL MINDSET
PARENTAL NEEDS
INTERVENTION
ASSOCIATIVE
CORNUCOPIA FALLACY
CONFIRMATORY
DEFORMATION PROFESSIONNELLE

DATA INTEGRATION

TROXELOGICAL
UPAE
MARITAL MINDSET
PARENTAL NEEDS
DEFORMATION PROFESSIONNELLE
In writing for the majority, Justice Anthony Kennedy stated: “We do not question [Chief Justice Benjamin’s] subjective findings of impartiality and propriety. . . (at 2263),” **BUT, . . .**

[Copies of the Decision available on request.]

“Evaluators examining the same evidence * often arrive at substantially different conclusions in forensic assessments of child sexual abuse” (p. 287).
THE COGNITIVE BIAS THAT MOST OFTEN DISTORTS THE EVALUATION PROCESS IS KNOWN AS THE PRIMACY EFFECT

Gary Belsky & Thomas Gilovich want you to consider an IPO. They present you with a fact sheet containing 5 favorable facts and 5 unfavorable facts.
One-sided presentations of two-sided stories can create for evaluators a distorted mental framework.

WHAT DO YOU MEAN BY A MENTAL FRAMEWORK?
But, as you become more attentive to the PRIMACY EFFECT, don’t ignore the RECENCY EFFECT.

Jiminy Cricket Bias leads otherwise rational evaluators to believe that they can detect deception in custody litigants. This bias leads evaluators to ignore the research that documents our inability to discern who is being candid and who is not.

THE 15-MINUTE ASSESSMENT

APPEARING IN THE MARGIN OF THE EVALUATOR’S NOTES, ONE-THIRD OF THE WAY DOWN THE FIRST PAGE FROM THE FIRST SESSION, WE SEE L L P F
“The honesty of the children leaps from the pages.”*

* Of a note for the evaluator prepared while at the home of one of the parents. 😊

There is no indication in the contemporaneously-taken notes that the evaluator asked in whose home the children were, whether anyone was present, whether anyone assisted them, or whether they understood all of the words that they used.
And without ever having seen anyone involved in this case, . . .
I will offer the expert opinion that . . .

“MR. SMITH IS A BATTERER.”
EXPERT’S OPINION IS BASED UPON HAVING VIEWED A DEPOSITION OF MRS. SMITH IN WHICH SHE DESCRIBED HER ALLEGED ABUSE.

AT THE EXPERT’S DEPO, SHE ASSERTS THAT WHAT MRS. SMITH DESCRIBED "WAS CONSISTENT WITH WHAT IS KNOWN ABOUT DOMESTIC VIOLENCE RELATIONSHIPS . . . >
SO I DIDN’T NEED TO DO FURTHER CORROBORATION OF IT TO OFFER THAT OPINION.”

marital mindset bias
Attention is focused on each litigant’s strengths and deficiencies as a spouse, rather than on each litigant’s strength and deficiencies as a parent.
**Intervention bias**

An inclination to provide therapeutic intervention in the midst of a forensic evaluation.

“I’m trying to improve the circumstances between the children and their father. . . .”
**Associative bias**

A positive bias that develops when evaluators discover that they share beliefs, interests, or experiences with one of the litigants but not with the other.
X’s CHILD IS TAKING PIANO LESSONS, NOT ENTIRELY VOLUNTARILY.

YOUR CHILD IS TAKING PIANO LESSONS, NOT ENTIRELY VOLUNTARILY.

Cornucopia Fallacy:
The more information that is provided, the better.
[What about relevance?]
CONFIRMATORY BIAS

REFERS TO A TENDENCY EITHER TO SEEK OR TO BE DISPROPORTIONATELY ATTENTIVE TO INFORMATION THAT SERVES TO CONFIRM OUR INITIALLY GENERATED HYPOTHESES *

Confirmatory bias can become **confirmatory distortion** — an indisputably conscious endeavor to find and report information that is supportive of one’s favored hypothesis and/or fail to report data that are unsupportive ➔
TAPED QUESTIONS TO AND ANSWERS FROM A THREE-YEAR OLD:  [1] WHAT COLOR IS DADDY’S PENIS? <> GREEN

[2] WHAT COMES OUT OF IT?  
A TABLECLOTH

[3] IS IT WET OR DRY?  
DRY
THESE QUESTIONS AND RESPONSES ARE NOT REPORTED WHEN EXPERT FILES A REPORT IN WHICH SHE OPINES THAT FATHER FORCED DAUGHTER TO PERFORM FELLATIO.

INNOVATIVE ASSESSMENT BIAS

A new way of assessing attachment.
THE LOCK ‘EM IN A ROOM TECHNIQUE? *

DATA INTEGRATION

TROXELOGICAL
UPAE
MARITAL MINDSET
PARENTAL NEEDS
In *Troxel*, The Superior Court trial judge had deemed it appropriate to "'look back at some personal experiences. . . .’"

*Troxel v. Granville*,

**UPAE* bias**
[*Unfortunate Past As Excuse]*
A tendency to permit sympathy for parents with unfortunate pasts to influence evaluators in the formulation of their recommendations.
Background > Mr. and Mrs. Jones have 2 children. Mr. and Mrs. Smith have 3 children. Mr. Jones and Mrs. Smith commence an atypically overt adulterous relationship, which continues unabated throughout the course of a custody evaluation being conducted in connection with the Jones’s divorce.

From the Evaluator’s commentary:

“In order to understand Mr. Jones’s behavior, it must be seen in a broader perspective. Throughout his life, Mr. Jones has borne the burden of trying to meet expectations communicated to him by his parents.
He is 37 years old. **It was time for him to individuate and break free of parental control.** His adulterous relationship was undoubtedly his way of letting his parents know that he was now his own person.”

[Mr. & Mrs. Jones have 2 children.]
**Neuman Bias**

It is reflected in recommendations that are little more than expressions of naive optimism for which no basis can be found in the record.

[BUT, . . . Beware of *Spotted Leopard Bias.*]
Litigation: 10/4/01 – 1/18/10

“There is no reason Why these two parents can’t . . .”

**empathy bias**
Disregarding parental behaviors that have negative consequences for children simply because the evaluators have empathy for the parents who have engaged in the behaviors and because the evaluators can imagine themselves behaving in a similar manner.
**Marital Mindset bias** *

PARENT A HAS DRAMATICALLY GREATER JOB FLEXIBILITY THAN DOES PARENT B, MAKING PARENT A FAR MORE AVAILABLE TO THE CHILDREN AT TIMES WHEN WORKING PARENTS ARE OFTEN NOT AVAILABLE. ➔

DR. LEVELTHEPLAYINGFIELD ELECTS NOT TO CONSIDER THIS. HE SUPPORTS PARENT B's POSITION THAT "IT'S NOT FAIR" THAT PARENT B "DOES NOT HAVE THE SAME OCCUPATIONAL FLEXIBILITY."
"We must be mindful of the fact that it is Mrs. Carson’s attention deficit disorder that has kept her from being on time to appointments and that has led to her forgetfulness and disorganization."

No, we must be mindful of each parent’s ability to meet the needs of the children.

**Parental needs bias**

Attention is focused on the needs of the parents and issues relating to fairness to the parents, with concomitant inattentiveness to the needs of the children.
CONSIDER MOM’S NEEDS

MRS. DOE’S REQUEST TO RELOCATE MUST BE EXAMINED WITH THE DEPENDENT FEATURES OF HER PERSONALITY IN MIND. HER NEED TO HAVE JOEY IN HER LIFE ON A DAY-TO-DAY BASIS IS STRONG.

*Imperium curia bias*

A baseless belief in the power of the court; specifically, the belief that anything that the court orders can be accomplished.
DEFORMATION PROFESSIONNELLE
the tendency to look at things
according to the conventions
of one's own profession

SGFP 10.01: "[P]roblems . . . may
arise by using a clinical diagnosis. . . ."

SGFP 10.02: "Assessment in
forensic contexts differs from
assessment in therapeutic contexts. . . ."

BIASES
REVEALED IN
CONTEMPORANEOUSLY-
TAKEN NOTES ➔

*
Mrs. P states that she believes that Mr. P is over-protective in ways that will ultimately be detrimental to the children.

As an example, Mrs. P Asserts that Mr. P waits with the children until the school bus arrives. [The children wait in the lobby of a Park Avenue apartment building. There is a doorman. All 3 children take the same bus. The bus stops at their door.] ➔
The father does this despite the fact that the children have informed him that his behavior causes them to be teased by their classmates. [This has been acknowledged by the father in a deposition.]

The evaluator writes: “What’s her problem?”
The evaluator does not ask Mrs. P to explain her reasons for believing Mr. P’s actions not to be advisable.

"Smith - 3/25 - 3:00“

Questions prompted by this marginal notation, led to an acknowledgment by the evaluator that he takes phone calls during evaluative sessions. The note was a reminder to himself about an appointment.
BIASES REVEALED IN FINAL REPORTS

MALE CHILDREN NEED MALE THERAPISTS (?)

• EVALUATOR OPINES THAT THE 12-YEAR-OLD MALE CHILD TERMINATE THERAPY WITH HIS CURRENT THERAPIST* – A FEMALE – AND COMMENCE TREATMENT WITH A MALE THERAPIST.

• *IN THERAPY 18 MONTHS
“LET’S HOPE THAT THIS EPISODE OF *HOW TO MARRY A MILLIONAIRE* HAS FINALLY COME TO A CLOSE.”

“THE FINANCIAL ARRANGEMENT TO WHICH MR. AND MRS. SMITH HAVE AGREED REQUIRES REEXAMINATION. IN MY VIEW IT IS UNFAIR TO MRS. SMITH.”
AND NOW,

TIMOTHY M. TIPPINS

→
Workshop 75

Assessing Parenting Skills for Family Court

John A. Moran, PhD
David K. Weinstock, JD, PhD
ASSESSING PARENTING SKILLS FOR FAMILY COURT

AFCC ANNUAL CONFERENCE
June 9, 2012

John Moran, Ph.D.
David Weinstock, J.D., Ph.D.

PC3 Tool

- Parenting assessment model
- 3 primary domains
  - Nurturing
    - Shared Affection
    - Responsiveness
    - Protection
  - Teaching
    - Communication
    - Managing
    - Discipline
  - Modeling
    - Communicating with the co-parent
    - Encouraging the child's relationship with the co-parent

9 parenting skills

- 1. Shared affection – offering affection; participating in activities
- 2. Responsiveness – sensitivity to child's subjective experience and behavioral signals
- 3. Protection – providing physical, emotional, cognitive and interpersonal resources and security; developmentally appropriate expectations
- 4. Communication – clarity about expectations, rules, and values; active listening; minimal use of negative talk such as loud, demanding, threatening or hostile speech
- 5. Managing - structuring and monitoring school progress, social involvement, and exposure to media including the internet
- 6. Discipline – setting developmentally appropriate limits, boundaries, rules, expectations and consequences; use of praise, positive reinforcement, planned ignoring, time-outs
- 7. Modeling emotional and impulse self-regulation; being a good citizen; conflict management
- 8. Communicating with the co-parent about the child's health needs, school performance, recreational activities, peer relationships, discipline, daily routines etc.
- 9. Supporting the child's relationship with the co-parent by refraining from criticism of the co-parent; compliance with the parenting time share schedule; acknowledging the co-parent's caring and support
### Parent Competence Programs

<table>
<thead>
<tr>
<th>Parenting Competence Programs</th>
<th>Models of Parenting</th>
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<tr>
<td>Parenting Competence</td>
<td>Parenting Behaviors</td>
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<td>Parenting Styles</td>
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<td>Baumrind (1966)</td>
<td>Control</td>
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<td>Quality of communication</td>
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<td>Maturity demands</td>
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<td>Nurturance</td>
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<td>Maccoby &amp; Martin (1983)</td>
<td>Responsiveness</td>
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<td>Demandingness</td>
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<td>Beyond adult</td>
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<td>Bringen (2005); Bringen, Fidler, Barrett, &amp; Kulick (2005)</td>
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<td>Sensitivity</td>
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<td>Structure</td>
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<td>Non-intrusiveness</td>
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<td>Non-hostility</td>
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<td>Responsiveness</td>
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<td>Reorientement</td>
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<tr>
<td>Parent-Child Interaction Therapy (PCIT); Eyberg &amp; Robinson, 1982; Herschell et al., 2002</td>
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<tr>
<td>Praise, reflection, imitation, descriptive</td>
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<td>Consistent consequences</td>
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<td>Timeout following child noncompliance</td>
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<td>Triple P-Positive Parenting (Sanders, 2003)</td>
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<tr>
<td>Observation/monitoring</td>
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<tr>
<td>Engaging with positive and engaging activities</td>
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<tr>
<td>Teaching new skills and behaviors</td>
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<tr>
<td>Managing misbehavior</td>
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<tr>
<td>Partner support and communication</td>
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</tbody>
</table>
### Parent Competence Programs

**Incredible Years Program** *(Webster-Stratton, 2009)*
- Child-directed play
- Balancing power and managing conflict
- Effective communication and descriptive commentary
- Predictable routines with monitoring and support
- Use of differential attention, consequences, ignoring
- Academic, social, and emotion persistence coaching

**New Beginnings** *(Wolchik et al., 2007)*
- Warm, positive parent-child interactions
- Listening skills
- Anger management skills
- Discipline skills
- Coparenting support

**Parent Training Components Associated with Effects Sizes** *(Keminska et al., 2008)*
- Increased positive parent-child interaction
- Emotional communication skills
- Using time-outs
- Discipline consistency
- Parent’s problem-solving skills
- Promoting children's cognitive, academic, social skills
- Parent’s anger/stress management skills
- Substance abuse treatment
- Job skills training
Statutes and Professional Practice Guidelines

- The Uniform Marriage and Divorce Act of 1979, Sec. 402 (p. 45) suggests evaluators shall assess "the interaction and interrelationship of the child with the parent or parents, siblings, and any other person who may significantly affect the child's best interest."
- The ethical guidelines of psychologists and code of conduct (American Psychological Association, 2010, p. 364) specify that parenting responsibility evaluations "focus upon parenting attributes, the child's psychological needs, and the resulting fit... The most useful and influential evaluations focus upon skills, deficits, values, and tendencies relevant to parenting attributes and a child's psychological needs."
- The Model Standards of Practice for Child Custody Evaluation (Association of Family and Conciliation Courts, 2007, p. 73) states that child custody evaluators are to expect to be trained in, "(13) how to assess parenting capacity and co-parenting and to construct effective parenting and co-parenting plans."

PC3 Parent Report

- Name: ___________________ Date: ___________________
- The parent survey asks about nine (9) parenting skills. The next part of this survey asks you to rate a parent, co-parent, and stepparents (if relevant) in nine (9) parenting skills. Each parenting skill is described in detail, and then several examples written from a child's point of view are listed. These examples show various ways a child would experience these parenting skills. Use the following ratings when you consider each parenting skill:
  - Below average = worse than 50% of parents
  - Average = similar to most parents
  - Above average = better than 50% of parents
- Note: In the space at the bottom, for any parenting skill you rate below average or average or provide examples to demonstrate the rating. Add additional space for examples as you wish.

PC3 Parent Report

1) SHARED AFFECTION: defined as: Offering physical and verbal affection; participating in special activities

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<tr>
<th></th>
<th>Below</th>
<th>Avg</th>
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<tbody>
<tr>
<td>Give me big hugs and kisses</td>
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<tr>
<td>Do things that make me feel special</td>
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<tr>
<td>Help me get along with others</td>
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<tr>
<td>Help me enjoy spending time with family</td>
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<td>Help me make my friends, and meet new people</td>
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<td>Offer to help me with my schoolwork or chores</td>
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<td>Consider my feelings and wants</td>
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<td>Take me places to see things</td>
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<td>Watch TV/movies with me</td>
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<tr>
<td>Overall rate for SHARED AFFECTION:</td>
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<td>Father:</td>
<td>Step Father:</td>
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<td>Observations and examples:</td>
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</table>
PC3 Collateral Report

INSTRUCTIONS:
The parent survey asks about nine (9) parenting skills. The next part of this survey asks you to rate a parent, co-parent, and stepparents (if relevant) in nine (9) parenting skills. Each parenting skill is described in detail, and then several examples written from a child’s point of view are listed. These examples show various ways a child would experience these parenting skills. Use the following ratings when you consider each parenting skill:

- Below average = worse than 80% of parents
- Average = similar to most parents
- Above average = better than 80% of parents

Note: In the space at the bottom, for any parenting skill you rate as Below average or Above average provide examples to demonstrate the rating. Add additional space for examples as you wish.

PC3 Collateral Report

1. NURTURING SKILLS
2. SHARED AFFECTION: defined as: Offering physical and verbal affection; participating in activities with the child. - Example:
   - Give me hugs and kisses in ways I like
   - Says things that make me feel special
   - Helps me enjoy spending time with him/her
   - Brings me and my friends places
   - Visits my school and comes to sports activities
   - Plays games and sports with me
   - Watches TV/movies with me

   Overall rating for SHARED AFFECTION
   - Mother: Below Avg Above
   - Father: Step-Mother Step-Father

   Observations and examples:

   PC3 Collateral Report

   You have been nominated by [Name of Parent] as an impartial collateral witness who can provide a fair and unbiased perspective of this family as part of a child custody evaluation being performed for the Superior Court of Arizona. As you answer the questions below, please keep in mind that it is the responsibility of the Court to safeguard the welfare and future development of the child(ren) in this family and determine what parenting plan is in the best interest of the child(ren). You can help the Court meet its responsibility by being objective and confining your statements to what you have personally observed – eyewitness observations, for example, incidents you have seen or heard. If you are not confident of your answer, do not respond to the question.

   Please consider that information you provide may be shared with the attorneys, the parties and the judge involved in this litigation. Your involvement and statements may become part of the public record. In brief, your participation is not confidential and the information you provide may become available to others.
### PC3 Child Interview

- **Child's Name** __________________________
- **Date** ____________ **Brought by** __________________________

**INTRODUCTION:** I am going to ask you to grade your Mom/Dad on things that parents do. These are the grades:

- **A** = Excellent Job
- **B** = Good Job
- **C** = OK Job
- **D** = Needs Improvement
- **F** – Needs a Lot of Help

### NURTURING

<table>
<thead>
<tr>
<th>My Mom/My Dad</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>F</th>
<th>Example</th>
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<tbody>
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<td>1. NURTURING</td>
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<td>2. Shared Affection/Participation</td>
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<td>3. Gives me hugs and kisses</td>
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<td>6. Drives me and my friends places we want to go</td>
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<td>7. Visits my school and comes to my sports activities</td>
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<td>8. Plays games and sports with me</td>
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<td>9. Watches TV/movies with me</td>
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### CCE Process and the Three Factors

- CCE procedures tailored to the PC3
- Interaction observation
  - Coding interaction for the three factors
- Testing
  - Particular items or mental health issues related to the factors
- Structured interviews
  - Factor focused questions
  - Parent Interview (we have to come up with this one)
  - Child Interview
  - Collateral Interview
Test relevancy

- Considering tests as structured interviews more than validated measures
- Examples of items related to three factors
  - MMPI-2-RF
  - PAM
  - PSI
  - PCRI

Parenting Competence and Common Parenting Problems

- 1. Depression
- 2. Substance Abuse
- 3. Sexual misconduct
- 4. Personality Disorders
- 5. Domestic Violence
Child’s Name ____________________________________
Date ________ Brought by _________________________

INTRODUCTION: I am going to ask you to grade your Mom/Dad on things that parents do. These are the grades:

- A = Excellent Job
- B = Good Job
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- F – Needs a Lot of Help

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<td>1</td>
<td>Gives me hugs and kisses</td>
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<td>2</td>
<td>Says things that make me feel special</td>
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<td>3</td>
<td>I like giving my parents hugs and kisses</td>
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<td>4</td>
<td>Helps me enjoy spending time with him/her</td>
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<td>5</td>
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<td>6</td>
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<td><strong>Responsiveness</strong></td>
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<td>9</td>
<td>Is a good listener when I feel sad</td>
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<td>10</td>
<td>Understands how I feel about his/her girlfriend/boyfriend</td>
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<td>11</td>
<td>Comforts me when my feelings are hurt</td>
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## My Mom / My Dad

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<th>A</th>
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<th>F</th>
<th>Examples:</th>
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<tbody>
<tr>
<td>12</td>
<td>Does not embarrass me in front of my friends</td>
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<tr>
<td>13</td>
<td>Is kind when I feel sick</td>
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<tr>
<td>14</td>
<td>Sets aside time when I need him/her to talk</td>
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<td>15</td>
<td>Makes me wear sunscreen and protective sports gear on bicycles, ATV’s, rollerblades, etc.</td>
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<td>16</td>
<td>Makes me feel safe when I am at home or in a car with him/her</td>
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<tr>
<td>17</td>
<td>Does not say sexual things that make me feel uncomfortable</td>
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<tr>
<td>18</td>
<td>Has nutritious food around the house</td>
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<tr>
<td>19</td>
<td>Does not yell at me</td>
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<tr>
<td>20</td>
<td>Has a savings account for me</td>
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<tr>
<td>21</td>
<td>Understands when something is too difficult for me to do</td>
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<tr>
<td>22</td>
<td>Is good at helping me try new things which frighten me</td>
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## II. TEACHING

### Communication with Child

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<tbody>
<tr>
<td>23</td>
<td>Has heart-to-heart talks with me about what is right and wrong</td>
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<tr>
<td>24</td>
<td>Teaches me how to respond to emergencies like if somebody gets sick or hurt, if I’m locked out of the house, when a stranger tries to talk to me</td>
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<td>25</td>
<td>Explains human sexuality to me</td>
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<tr>
<td>My Mom / My Dad</td>
<td>A</td>
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<td>26  Listens to what I say carefully when we have an argument</td>
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<td>27  Makes it easy to talk to about my problems</td>
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<tr>
<td>28  Makes it easy to talk comfortably with him/her about my other parent</td>
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<tr>
<td><strong>Managing/Supervising</strong></td>
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<td>29  Takes me to special learning activities like museums, national parks, theatre plays, puppet shows and stuff like that</td>
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<td>30  Knows what movies I watch or what computer sites I visit</td>
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<tr>
<td>31  Knows what my teachers are like and what is going on at school</td>
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<tr>
<td>32  Knows if I am getting along good with teachers, coaches and friends</td>
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<tr>
<td>33  Talks with me about what to do or say to bullies and friends who are mean to me</td>
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<td><strong>Discipline</strong></td>
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<td>34  Stays calm and does not get angry when I break a rule</td>
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<td>35  Talks to me calmly when I get in trouble so I learn to make better choices</td>
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<td>36  Does not hit, punch, slap or grab me</td>
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<td>37  Gives consequences and punishments that are fair when I break a rule</td>
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<td>My Mom / My Dad</td>
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<tr>
<td>38 I know he/she means it if they say I have to do something</td>
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<tr>
<td>39 Is nice, not bossy or mean, when telling me to do things</td>
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<td><strong>Modeling</strong></td>
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<td>40 Usually is in a happy mood</td>
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<td>41 Calms down quickly when he/she gets upset</td>
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<td>42 Does not smoke cigarettes or drink too much alcohol</td>
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<td>43 Is patient</td>
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<td>44 Can be counted on to do what he/she says they will do</td>
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<tr>
<td>45 Apologizes to me when he/she makes a mistake</td>
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<td>46 Respects my privacy: for example, does not go through my personal journal or phone history</td>
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<td>47 Does not say mean things about other people, including minority groups such as Blacks, Jews, Hispanics, Arabs, Gays</td>
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**III. CO-PARENTING**

*Communication with Co-Parent*

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<th>F</th>
<th>Examples:</th>
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<tbody>
<tr>
<td>48 Keeps my other parent informed about my activities, school grades, friends, school, etc.</td>
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<td>49 Is friendly at doctor appointments when my other parent is there</td>
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<tr>
<td><strong>My Mom / My Dad</strong></td>
<td>A</td>
<td>B</td>
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<td>Examples:</td>
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<tr>
<td>50 Is friendly to my other parent when they meet at school and when he/she calls on the phone</td>
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<td>51 Tells me I can take my stuff between houses if I want to</td>
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<tr>
<td><strong>Supporting</strong></td>
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<td>52 Tells me to telephone or text my other parent and to return their phone calls</td>
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<td>53 Does not get angry at my other parent when I am close enough to hear</td>
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<td>54 Does not ask questions about my other parent’s private life</td>
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<td>55 Does not make me talk about which home I want to spend most of my time in</td>
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<td>56 Helps me to send cards or gifts to my other parent for holidays, birthdays, when they are sick</td>
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<td>57 Does not tell me to keep secrets from my other parent</td>
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<tr>
<td>58 Talks about my other parent in kind and loving ways</td>
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<tr>
<td>59 Makes nice comments about the gifts and cards I get from my other parent</td>
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<td>60 Is on time to pick me up at exchanges</td>
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<td>61 Enjoys himself/herself while I am with my other parent</td>
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<tr>
<td><strong>My Mom / My Dad</strong></td>
<td>A</td>
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<td>Examples:</td>
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<tr>
<td>62 Compliments me on how I resemble my other parent, for example: “You have beautiful hair like your mother”</td>
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<tr>
<td>63 Encourages me to pray for my other parent</td>
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<tr>
<td>64 Keeps pictures of my other parent at his/her home</td>
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<td>65 Wants me to have good relationships with relatives on both sides of the family</td>
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<tr>
<td>66 Changes the parenting schedule so that I can attend special activities</td>
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PC3 COLLATERAL REPORT

You have been nominated by (Name of Parent) as an impartial collateral witness who can provide a fair and unbiased perspective of this family as part of a child custody evaluation being performed for the Superior Court of Arizona.

As you answer the questions below, please keep in mind that it is the responsibility of the Court to safeguard the welfare and future development of the child(ren) in this family and determine what parenting plan is in the best interest of the child(ren). You can help the Court meet its responsibility by being objective and confining your statements to what you have personally observed – eyewitness observations, for example, incidents you have seen or heard. If you are not confident of your answer, do not respond to the question.

Please consider that information you provide may be shared with the attorneys, the parties and the judge involved in this litigation. Your involvement and statements may become part of the public record. In brief, your participation is not confidential and the information you provide may become available to others.

Because the Court operates according to scheduled hearing dates, please send the questionnaire as soon as possible directly to:

Mail
John A. Moran, Ph.D.  602-374-5912  jd@jmphd.com
1730 East Northern Ave, Suite 112
Phoenix, Arizona 85020-3976

I have read, understand, and agree to provide information for this Court case as a collateral witness.

Name:_____________________________________________________________________
Address:___________________________________________________________________

Telephone Number:_______________________________________________________

Signature:__________________________________________ Date: ___________
REGARDING THE MOTHER IN THE FAMILY

1. How long have you known Mother? ________________________________________

2. What is your relationship with Mother, for example, grandmother, family friend, teacher, etc.? ________________________________________________

3. How often do you have contact with Mother? ____________________________
   Date of last contact? ________________________________________________

4. Do you have concerns about Mother in the areas of:
   - emotional stability ________________________________________________
   - drug and alcohol abuse ____________________________________________

REGARDING THE FATHER IN THE FAMILY

1. How long have you known the Father? ____________________________________

2. What is your relationship with Father, for example, grandmother, family friend, teacher, etc.? ________________________________________________

3. How often do you have contact with Father? ____________________________
   Date of last contact? ________________________________________________

4. Do you have concerns about Father in the areas of:
   - emotional stability ________________________________________________
   - drug and alcohol abuse ____________________________________________

REGARDING THE CHILDREN

5. Does the child(ren) have special needs in:
   - Getting along with either parent: ______________________________________
   - School and learning: ________________________________________________
REGARDING DOMESTIC VIOLENCE

6. If you observed domestic violence between members of the family (hitting, slapping, punching, grabbing, destruction of one another’s property, verbal threats or intimidation) provide the date and location of each incident and describe what happened:

____________________________________________________________
____________________________________________________________
____________________________________________________________
____________________________________________________________

INSTRUCTIONS:

The parent survey asks about nine (9) parenting skills. The next part of this survey asks you to rate a parent, co-parent, and stepparents (if relevant) in nine (9) parenting skills. Each parenting skill is described in detail, and then several examples written from a child’s point of view are listed. These examples show various ways a child would experience these parenting skills. Use the following ratings when you consider each parenting skill:

    Below average = worse than 80% of parents
    Average = similar to most parents
    Above average = better than 80% of parents

Note: In the space at the bottom, for any parenting skill you rate as Below average or Above average provide examples to demonstrate the rating. Add additional space for examples as you wish.
PC3 COLLATERAL REPORT

Abbreviations for ratings:

- Below average = worse than 80% of parents
- Average = similar to most parents
- Above average = better than 80% of parents

Note: For any parenting skills you rate a parent as Below average or Above average, please provide examples demonstrating the rating in the space provided.

NURTURING SKILLS

1. **SHARED AFFECTION** defined as: Offering physical and verbal affection; participating in activities with the child. For example:
   - Give me hugs and kisses in ways that I like
   - Says things that make me feel special
   - I like giving my parents hugs and kisses
   - Helps me enjoy spending time with him/her
   - Drives me and my friends places
   - Visits my school and comes to sports activities
   - Plays games and sports with me
   - Watches TV/movies with me

   Overall rating for **SHARED AFFECTION**

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<tr>
<td>Mother</td>
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<td>Father</td>
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<td>Step-Mother</td>
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<td>Step-Father</td>
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   Observations and examples: ____________________________
   ____________________________________________________________________________
   ____________________________________________________________________________

2. **RESPONSIVENESS** defined as: Sensitivity to the child’s feeling and requests; empathetic responding; helping the child identify and express emotions. For example:
   - Is a good listener when I feel sad
   - Understands how I feel about his/her girlfriend/boyfriend
   - Comforts me when my feelings are hurt
   - Does not embarrass me in front of my friends
   - Is kind when I feel sick
   - Sets aside time when I need to talk

   Overall rating for **RESPONSIVENESS**

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<td>Step-Father</td>
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3. **PROTECTION** defined as: Providing physical, emotional, cognitive and interpersonal security. For example:

- Makes me wear sunscreen and protective sports gear on bicycles, ATV’s, rollerblades, etc.
- Makes me feel safe when I am at home or in the car with him/her
- Does not say sexual things that make me feel uncomfortable
- Has nutritious food around the house
- Does not yell at me
- Has a savings account for me
- Understands when something is too difficult for me to do
- Is good at helping me try new things which frighten me

Overall rating for **PROTECTION**

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<td>Step-Mother</td>
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Observations and examples: _______________________________________

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TEACHING SKILLS

4. **COMMUNICATION WITH THE CHILD** defined as: Clarity about expectations, rules and values; active listening; minimal use of negative talk such as loud, demanding, threatening or hostile speech. For example:

- Has heart to heart talks with me about what is right and wrong
- Teaches me about how to handle emergencies like if somebody gets sick or hurt; if I am locked out of the house; when a stranger tries to talk to me.
- Explains human sexuality to me
- Listens to what I say carefully when we have an argument
- Makes it easy to talk to about my problems
- Makes it easy for me to comfortably talk to about my other parent

Overall rating for **COMMUNICATION WITH THE CHILD**

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<td>Step-Mother</td>
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5. **MANAGING** defined as: Structuring routines, monitoring in a non-intrusive manner academic progress, social involvement, and exposure to school environments including the media and internet.
For example:
- Takes me to special learning activities like museums, national parks, ball games, plays, puppet shows, etc.
- Knows what movies I watch or what computer sites I visit
- Knows what my teachers are like and what is going on at school
- Knows if I am getting along good with teachers, coaches and friends
- Talks to me about what to do or say to bullies and friends who are mean to me

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<th>Overall rating for MANAGING</th>
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<td>Mother</td>
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Observations and examples: ____________________________________________________________

6. **DISCIPLINE** defined as: Setting developmentally appropriate goals; establishing clear consistent limits, boundaries, rules, expectations and consequences; use of praise, positive reinforcement, planned ignoring, time-outs. For example:
- Stays calm and does not get angry when I break a rule
- Talks to me calmly when I get in trouble so I learn to make better choices
- Does not hit, punch, slap or grab me
- Gives consequences and punishment that are fair when I break a rule
- I know he/she means it if they say I have to do something
- Is nice, not bossy or mean, when telling me to do something

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Observations and examples: ____________________________________________________________

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7. **MODELING** defined as: Stress management, impulse control, rule-compliance, conflict management. For example:

- Usually is in a happy mood
- Calms down quickly when he/she gets upset
- Does not smoke cigarettes or drink too much alcohol
- Is patient
- Can be counted on to do what he/she says they will do
- Apologizes to me when he/she makes a mistake
- Respects my privacy: for example, does not go through my personal journal or phone history
- Does not say mean things about other people, including minority groups such as Blacks, Jews, Hispanics, Arabs, Gays

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Observations and examples: ____________________________________________________________

**CO-PARENTING SKILLS**

8. **COMMUNICATING WITH THE CO-PARENT** by informing the other parent about the child’s medical needs, school performance, recreational activities, friends, disciplinary incidents, daily routines, etc.

For example:

- Keeps my other parent informed about my activities, school grades, friends, school, etc.
- Is friendly at doctor appointments when my other parent is there
- Is friendly to my other parent when they meet at school and when he/she calls on the phone
- Tells me I can take my stuff between houses if I want to

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Observations and examples: ____________________________________________________________

__________________________________________________________
9. **SUPPORTING THE CHILD’S RELATIONSHIP WITH THE CO-PARENT** by refraining from criticism of the co-parent; flexing the parenting time share schedule; acknowledging the co-parent’s resources and benign intentions; supporting relationship with the co-parent’s extended family and social network. For example:

- Tells me to telephone or text my other parent
- Does not get angry at my other parent when I am close enough to hear
- Does not ask questions about my other parent’s private life
- Does not make me talk about which home I want to spend most of my time in
- Helps me to send cards and gifts to my other parent for holidays, birthdays, when they are sick
- Does not tell me to keep secrets from my other parent
- Talks about my other parent in kind and loving ways
- Makes nice comments about the gifts and cards I get from my other parent
- Is on time to pick me up at exchanges
- Enjoys himself/herself while I am with my other parent
- Compliments me on how I resemble my other parent, for example: “You have beautiful hair like your Mother”
- Encourages me to pray for my other parent
- Keeps pictures of my other parent at his/her home
- Wants me to have good relationships with relatives on both sides of the family
- Changes the parenting schedule so that I can attend special activities

**Overall rating for SUPPORTING THE CHILD’S RELATIONSHIP**

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Observations and examples:

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________________________________________________________________________

Avowal:

The information provided in response to this questionnaire is true, honest, and complete to the best of my knowledge and ability.

Signature: ___________________________ Date: ______________
The parent survey asks about nine (9) parenting skills. The next part of this survey asks you to rate a parent, co-parent, and stepparents (if relevant) in nine (9) parenting skills. Each parenting skill is described in detail, and then several examples written from a child’s point of view are listed. These examples show various ways a child would experience these parenting skills. Use the following ratings when you consider each parenting skill:

- Below average = worse than 80% of parents
- Average = similar to most parents
- Above average = better than 80% of parents

Note: In the space at the bottom, for any parenting skill you rate as Below average or Above average provide examples to demonstrate the rating. Add additional space for examples as you wish.

### 1) **SHARED AFFECTION**, defined as: Offering physical and verbal affection; participating in activities with the child
- Give me hugs and kisses
- Says things that make me feel special
- I like giving my parents hugs and kisses
- Helps me enjoy spending time with him/her
- Drives me and my friends places we want to go
- Visits my school and comes to sports activities
- Plays games and sports with me
- Watches TV/movies with me

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Observations and examples: __________________________________________

### 2) **RESPONSIVENESS**, defined as: Sensitivity to the child’s feelings and requests; empathetic responding; helping the child identify and express emotions
- Is a good listener when I feel sad
- Understands how I feel about his/her girlfriend/boyfriend
- Comforts me when my feelings are hurt
- Does not embarrass me in front of my friends
- Is kind when I feel sick
- Sets aside time when I need him/her to talk
Overall rating for **RESPONSIVENESS**

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Observations and examples: 


3) **PROTECTION**, defined as: Providing physical, emotional, cognitive and interpersonal security; has developmentally-appropriate expectations
   - Makes me wear sunscreen and protective sports gear on bicycles, ATV’s, rollerblades, etc.
   - Makes me feel safe when I am at home or in the car with him/her
   - Does not say sexual things that make me feel uncomfortable
   - Has nutritious food around the house
   - Does not yell at me
   - Has a savings account for me
   - Understands when something is too difficult for me to do
   - Is good at helping me try new things which frighten me

Overall rating for **PROTECTION**

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Observations and examples: 


4. **COMMUNICATION WITH THE CHILD**, defined as clarity about expectations, rules, and values; minimal use of negative talk such as loud, demanding, threatening or hostile speech
   - Has heart to heart talks with me about what is right and wrong
   - Teaches me about how to respond to emergencies like if somebody gets sick or hurt, being locked out of the house, when a stranger tries to talk to me
   - Explains human sexuality to me
   - Listens to what I say carefully when we have an argument
   - Makes it easy to talk to about my problems
   - Makes it easy for me to comfortably talk to about my other parent

Overall rating for **COMMUNICATION WITH THE CHILD**

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Observations and examples:

5. **MANAGING**, defined as: Structuring and monitoring school progress, social involvement, and exposure to social environments including the media and internet
   - Takes me to special learning activities like museums, national parks, ball games, plays, puppet shows, and stuff like that
   - Knows what movies I watch or what computer sites I visit
   - Knows what my teachers are like and what is going on at school
   - Knows if I am getting along good with teachers, coaches and friends
   - Talks to me about what to do or say to bullies and friends who are mean to me

   Overall rating for **MANAGING**

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Observations and examples:

6. **DISCIPLINE**, defined as: Setting developmentally-appropriate limits, boundaries, rules, and expectations; consequences are clear and enforced consistently; use of praise, positive reinforcement, planned ignoring, and timeouts
   - Stays calm and does not get angry when I break a rule
   - Talks to me calmly when I get in trouble so I learn to make better choices
   - Does not hit, punch, slap or grab me
   - Gives consequences and punishment that are fair when I break a rule
   - I know he/she means it if they say I have to do something
   - Is nice, not bossy or mean, when telling me to do something

   Overall rating for **DISCIPLINE**

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9. **SUPPORTING THE CHILD’S RELATIONSHIP WITH THE CO-PARENT**, defined as: Refraining from criticism of the co-parent; flexing the parenting time share schedule; acknowledging the co-parent’s resources and benign intentions; supporting relationship with the co-parent’s extended family and social network
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Observations and examples: 

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FURTHER OBSERVATIONS:

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Workshop 10
How Children Tell What They Know: Improving Your Interviews with Children

Mindy Mitnick, Ed.M., M.A.
Louise T. Truax, Esq.
IMPROVING YOUR INTERVIEWS WITH CHILDREN

• Mindy F. Mitnick, Ed.M., M.A.
• 5100 Eden Avenue Suite 122
• Edina, MN 55436
• (952) 927-5111
• mfm02@yahoo.com

GOALS OF HEARING FROM CHILDREN

• To obtain their information
• To understand their viewpoint
• To allow them to participate in the process

WHAT IS AN INTERVIEW?

• Organized means of obtaining information
• Directs child’s attention to particular topic
• Does not follow usual rules of conversation
• Can be highly stressful for the child
PURPOSES OF INTERVIEW

• To learn about the child and family from the child's perspective

• To allow a child to tell in her own words what she knows, feels, believes

DEVELOPMENTALLY SENSITIVE INTERVIEWS

• Physically comfortable environment for children

• Do not interfere with important events in child’s life

• Last an appropriate length of time

• Meet the child’s level of competence

DIMENSIONS OF COMPETENCE

• Ability to recall

• Ability to report

• May differ from chronological age
ESTABLISHING COMPETENCE
• Does the child understand your questions?
• Do you understand the child’s answers?
• Do you need to adjust your questions?
• Are there signs of coaching or contamination?

WHAT AFFECTS COMPETENCE?
• Culture
• Environment
• Developmental delays
• Family communication style
• Trauma

USE OF A PROTOCOL
• Standardizes the process
• Provides structure
• Can be flexible
• Is efficient
• Can be defended in court
“Begin at the beginning...and go on till you come to the end: then stop.”

Lewis Carroll, *Alice’s Adventures in Wonderland*, 1865

---

**A FLEXIBLE PROTOCOL**

- Introduction & Instructions
- Building Rapport
- Inquiry
- Closure

---

**INTRODUCTION & INSTRUCTIONS**

- Adopt neutral/supportive attitude
- Identify your job
- Identify the child’s job
INTRODUCTION (7+)

"My name is________________. I talk to children about their families. I’m going to be asking you a lot of questions today. Some will be easy and some will be hard. Some you’ll know the answers to and some you won’t. If I ask a question and you don’t know the answer, I don’t want you to guess. So if I said, ‘What

INTRODUCTION (7+)

did I have for breakfast today’, what would you say?’"

"Sometimes I forget and say things that kids don’t understand. If I do that, I want you to tell me. So if I said, ‘Do you feel garrulous today,’ what would you say?’"

INTRODUCTION (7+)

“Sometimes I make mistakes. If I do, I want you to tell me. So if I called you __________, what would you say? “

"Sometimes I ask the same question more than once. If I do that, it doesn’t mean you gave me the wrong answer. It means I forgot that I already asked that question.”
If I ask you a question and you don't want to answer, you don't have to. You can say something like, "Pass" and I'll ask a different question.

"Let's start with an easy question. How old are you?"

CONFIDENTIALITY

• For children 10 and over, interviewers should provide information about locally mandated reporting, esp. abuse.

RAPPORT BUILDING

• Avoid sensitive subjects
• Ask open-ended questions
  ✓ “What’s your favorite part of school school?”
  ▪ “Tell me more about that.”
  ✓ “Tell me something you like to do for fun.”
  ▪ “Tell me more about that”
INQUIRY

• Begin with open-ended question

  → “Do you know why you’re here today? _______ Tell me about that. (Tell me more about that.)”
  → OR Provide brief explanation
     “Your mom and dad asked me to help them figure out how to share you and your brother.”

SAMPLE INQUIRY

• “Tell me what you know about why mom and dad don’t live together (anymore)/ why mom and dad are getting a divorce.”
  • “You said mom and dad were fighting too much. Tell me about that.”
  • “Tell me what you do for fun with mom/dad.”
    • “What else do you do for fun with dad?”

INQUIRY

• Purposes:
  • Facts
  • Feelings
  • Themes
FOLLOW-UP

“I want to know more about _______. Start at the beginning and tell me everything you can remember even if you don’t think it’s important.”

FOLLOW-UP WITH SPECIFIC TOPICS

• Topics you may wish to cover:
  ✓ Sleeping arrangements
  ✓ Rules in each home
  ✓ Responsibilities in each home
  ✓ Child’s view of parents’ roles, involvement with them
  ✓ Discipline
  ✓ Expression of anger
  ✓ Conflict between parents
  ✓ Witnessing domestic abuse
  ✓ Use of alcohol by parents
  ✓ Relationship(s) with new partners
  ✓ Exposure to pornography/Internet
PROJECTIVE QUESTIONS

• 3 wishes
• Animal
• Age
• Change about family members

CLOSURE

• Ask the child if there is anything she wants to tell you before you stop
• Ask the child if she has any questions
• Thank the child for talking with you today
  ✗ Avoid: “Is there anything else I should know?”

ISSUES IN COGNITIVE DEVELOPMENT

• Egocentric
• Concrete and literal
• Unable to “explain”
• Not hypothetical
ISSUES IN REPORTING
• Narratives may be disorganized
• Fear may affect disclosure
• Details may be missing
• Memory effects

Using a continuum of suggestiveness in questions
• Open-ended questions
  • Focused questions
  • Suggestive questions

OPEN-ENDED PROMPTS
• “Tell me more about ...”
• “And then what happened?”
• “You said he ... Tell me more about that.”
• “I’m not sure I understood the part about... Tell me more about that.”
• “Just before ________ what happened?”
FIND THE OPEN-ENDED QUESTION

1. “Did someone tell you to tell me that?”

2. “Your dad said to talk about that. Tell me more about what he said.”

3. “What did he tell you to say?”

FOCUSED QUESTIONS

• “Who, what, when where, why, how” questions

• Multiple choice questions

• Yes/No questions

• EXERCISE
ASKING QUESTIONS

• Avoid hard words
• Avoid numbers
• Avoid duration and frequency
• Avoid time frame
• Never invite guessing
• Avoid Yes/No without open-ended follow-up

ASKING QUESTIONS

• Ask one question at a time
• Avoid “Why”
• Avoid forced choice questions
TESTING HYPOTHESES

• Always keep an open mind
• Never interview only to confirm information from other sources
• Expect the unexpected

Tell me why you’re here today.

To tell you that I want that 50/50 thing.

Tell me what you like about that 50/50 thing.

It’s fair to my dad and mom.
Tell me something you would like about that 50/50 thing.

*My mom’s really busy and I could be with my dad.*

Your mom’s really busy. Tell me more about that.

*She told me I don’t have to worry about her. She’s really busy taking care of the house when I’m gone.*

And your dad?

*He really misses me...and I miss him, too.*
3 QUESTIONS
• Dad was mad because my sister peed the bed.
  1. __________________
  2. __________________
  3. __________________

QUESTIONS TO AVOID
• “I need you to. . .”
• “Can you help me. . .”
• “If you don’t talk to me. . .”
• “I really want to help you. . .”

COERCIVE QUESTIONS
NEVER use coercive questions
romium “You’re telling the truth today, aren’t you?”
romium “You wouldn’t make up a story like this, would you?”
#1 Avoid legal jargon

“Do you understand that you’re under oath in this deposition in the matter before us today?”

#2 Avoid multisyllabic words

Preceding, unintentional, accidental, demonstrate, deliberately, multiple, etc.

#3 Check out child’s meaning

“She cut me.”
#4 Avoid relationship words
Stepfather, foster mother, real mom, mom’s boyfriend, your grandpa

#5 Avoid quantifiers
A few, some, several, many, most

#6 AVOID DURATION AND FREQUENCY TERMS
• “Did he touch your coochie very often?”
• “How long did...”
• “How often did he babysit you?”

(Rudy and Goodman, 1991)
#7 Avoid estimates of measurements

Height, weight, distance, volume, speed, length, numbers of objects

#8 AVOID ASKING HOW MANY TIMES

- Children can count objects not incidents

(Saywitz and Camparo, 1998)

#9 USE NAMES INSTEAD OF PRONOUNS

- “When your dad Brian came in your room …”

(Saywitz and Camparo, 1998)
#10 Use the child’s exact words

NEVER substitute your words for the child’s

“When ‘Mom was mean’, what did she do?”

NOT

“When Mom was mad, what did she do?”

Mitnick ’11

#11 Avoid negative constructions

● All n’t words
   ○ Not
   ○ Never

Mitnick ’11

#12 Avoid vague referents

● It this there then that

× “When you were over there and that happened, how did it feel?”

Mitnick ’11
THE WORDS CHILDREN USE

- Child uses names of people, places and things without explanation
  (Lamb, Sternberg, and Esplin, 1998)

NEVER ASK THE CHILD TO GUESS OR PRETEND

× NOT “How many times do you think it happened?”
× NEVER ask the child to “imagine”, “get a picture in your head” or “try real hard to think about it”

REASSURE CHILD

- Reassure rather than bargain:
  - “Is this hard to talk about?”
  - “You’ve really been working hard. I’d like to ask a few more questions.”
  - “It’s OK to talk here.”

MITNICK '02
How Children Tell What They Know: Improving Your Interviews with Children

Louise T. Truax, Esq.

The Ultimate Interview Technique – Don’t Try This at Home

“Now two prostitutes came to the king and stood before him. One of them said, ‘Pardon me, my lord. This woman and I live in the same house, and I had a baby while she was there with me. The third day after my child was born, this woman also had a baby. We were alone; there was no one in the house but the two of us. During the night this woman’s son died because she lay on him. So she got up in the middle of the night and took my son from my side while I your servant was asleep. She put him by her breast and put her dead son by my breast. The next morning, I got up to nurse my son—and he was dead! But when I looked at him closely in the morning light, I saw that it wasn’t the son I had borne.’

The other woman said, ‘No! The living one is my son; the dead one is yours.”

But the first one insisted, ‘No! The dead one is yours; the living one is mine.’ And so they argued before the king.

The king said, ‘This one says, ’My son is alive and your son is dead,’ while that one says, ‘No! Your son is dead and mine is alive.’

Then the king said, ‘Bring me a sword.’ So they brought a sword for the king. He then gave an order: ‘Cut the living child in two and give half to one and half to the other.’

The woman whose son was alive was deeply moved out of love for her son and said to the king, ‘Please, my lord, give her the living baby! Don’t kill him!’

But the other said, ‘Neither I nor you shall have him. Cut him in two!’

Then the king gave his ruling: ‘Give the living baby to the first woman. Do not kill him; she is his mother.’

When all Israel heard the verdict the king had given, they held the king in awe, because they saw that he had wisdom from God to administer justice.”¹

¹ 1 Kings 3:16-3:28.
Best Interest of the Child

Children increasingly having a voice in custody and parenting time cases.

Most states have statutes stating the court must consider the best interests of the children when rendering a decision on custody and parenting time. These statutes range from merely stating that the court shall consider the best interests of the child\(^2\), to enumerating the factors to be considered when deciding the best interests of the child\(^3\).

Child’s Preference to be Considered – Statutory Criteria

Many states specifically include, either within the factors defining the best interests of the child or separately, the child’s preference as a consideration in custodial issues. States differ considerably as to how the child’s preference is evaluated. On one side are those states which merely state that the court should


\(^3\) Listing of 4 factors - CA Fam §3011 (California); 5 factors – NE St. §43-2923(6)(Nebraska) and N.M. S.A., 1978, §40-4-9(A)(New Mexico); 6 factors – O.R.S. §107.137(1)(Oregon); 7 factors I.C. §37-717(1)(Idaho); 8 factors – 13 Del.C. §722(a) (Delaware), IC §31-14-13-2 Sec. 2 (Indiana), and V.A.M.S. §452.375(2) (Missouri); 9 factors AS §25.24.150 (Alaska), KRS §403.270(2)(Kentucky), and 15 V.S.A. §665 (Vermont); 10 factors 750 ILCS 5/602(a)(Illinois), ICA §598.41(3)(Iowa), R.C. §3109.04(F)(1)(Ohio), T.C.A. §36-6-106(a) (Tennessee), U.C.A. 1953 §30-3-10.2(2)(Utah), VA Code Ann. §20-124.3 (Virginia), and W.S. 1977 §20-2-201 (Wyoming); 11 factors A.R.S. §25-403 (Arizona), C.R.S.A. §14-10-124(1.5)(a) & (b) and KSA §60-1610(a)(3)(B) (Kansas); 12 factors LSA C.C. Art. 134 (Louisiana), M.C.L.A. §722.23 (Michigan), M.S.A. §257-325(a) (Minnesota), N.R.S. §125.480(4) (Nevada), N.H. Rev. Stat. §461-A:6(I) (New Hampshire), and NDCC §14-09-06.2(1)(North Dakota); list of 13 factors MCA §40-4-212(1) (Montana); list of 14 factors N.J.S.A. §9:2-4(c) (New Jersey); 16 factors C.G.S. §46b-56(c) (Connecticut), HRS §371-46(b) (Hawaii), 23 PA. C.S.A. §5328(a) (Pennsylvania), and W.S.A. §767.41(5) (Wisconsin); 17 factors GA Code Ann. §19-9-3(a)(3)(Georgia); 19 factors 19 A.M.R.S.A. §1653(3)(Maine); and 21 factors F.S.A. §61.13(3)(Florida).
consider the wishes of the child.\textsuperscript{4} The vast majority of states qualify the wishes of the child by considering the child’s preference if they are: of sufficient or reasonable age and maturity to express such a preference\textsuperscript{5}; of sufficient age, experience, capacity, or intelligence to form a preference\textsuperscript{6}; able to form an intelligent or informed preference\textsuperscript{7}; and of sufficient maturity to express a reasoned and independent preference.\textsuperscript{8}

Arkansas and Nebraska take into consideration a child’s preference if it is based upon sound reasoning, irrespective of the child’s age.\textsuperscript{9} A child’s age may be a determinative factor in deciding whether to consider their stated preference. In Tennessee, the court will consider a child’s reasonable preference if they are 12 or older, and may hear the preference of a younger child upon request.\textsuperscript{10} A child 12 years or older is presumed to be of sufficient age to form an intelligent preference in Oklahoma.\textsuperscript{11} The court in Indiana will give more consideration to the wishes of a


\textsuperscript{5} Ala. Code 1975 §30-3-169.3 (Alabama); 23 Pa. C.S.A. §5328(a)(7)(Pennsylvania), LSA C.C. Art. 134(9)(Louisiana); 19 A.M.R.S.A. §1653(3)(C)(Maine), M.C.L.A. §722.23(i)(Michigan), and M.S.A. §257.025(a)(1) (Minnesota).


\textsuperscript{7} C.R.S.A. §14-10-124(1.5)(a)(II) (Colorado), C.G.S. §46b-56(c)(3) (Connecticut), HRS §571-46(a)(3)(Hawaii), N.R.S. §125.480(4)(a)(Nevada), N.J.S.A. §9:2-4(c) (New Jersey), SDCL §25-4-45 (South Dakota), and U.C.A. 1953 §30-3-10.2(2)(f)(Utah).


\textsuperscript{9} A.C.A. §9-13-101(a)(1)(A)(ii)(Arkansas), and NE St. §43-2923(6)(b)(Nebraska).

\textsuperscript{10} T.C.A. §36-6-106(a)(7)(A) & (B) (Tennessee).

\textsuperscript{11} 43 Okl. St. Ann. §113(b)(2) & (3) (Oklahoma).
child provided they are at least 14 years of age.\textsuperscript{12} At the far end of the spectrum are Georgia and Maryland. In Georgia, a child 14 or older shall have the right to select which parent with whom they desire to live, unless it is determined not to be in the child’s best interest.\textsuperscript{13} Additionally, the court shall consider the desires of a child between ages 11 and 14, but is not bound by them.\textsuperscript{14} In Maryland, a child who is 16 or older and subject to a custody order, may file a petition to change custody.\textsuperscript{15}

Surprisingly, there are only two states which specifically delineate that the court must look at factors which may have influenced the child’s decision, such as undesirable or improper influences on the child.\textsuperscript{16}

Ohio requires the child’s preference to be considered if the court has interviewed the child.\textsuperscript{17} The wishes of a child, which may be communicated by the guardian ad litem or another professional on behalf of the child, is required to be considered in Wisconsin.\textsuperscript{18}

\textbf{How a Child’s Preference is Communicated}

As can be seen, virtually every state will take into consideration the wishes and desires of the child when making a custody determination. The question is how the child’s preference comes before the court or any mediator/ADR professional attempting to resolve the custody dispute.

\begin{proof}
\textsuperscript{12} IC §31-14-13-2, Sec. 2 (Indiana).
\textsuperscript{14} Ga. Code Ann. §19-9-3(a)(6) (Georgia).
\textsuperscript{15} MD Code, Family Law, §9-103(a)(Maryland).
\textsuperscript{16} N.H. Rev. Stat. §461-A:6(II)(New Hampshire), and NDCC, §14-09-06.2(1)(i) (North Dakota)
\textsuperscript{17} R.C. §3109.04(F)(1)(a)(Ohio).
\textsuperscript{18} W.S.A. §767.41(5)(2)(Wisconsin).
\end{proof}
Courts appoint any number of professionals who will meet with the child to determine her preference. Such professionals can include a Guardian ad Litem, Attorney for the Minor Child, Best Interests Attorney, Court Investigators, Parenting Coordinators, and in some instances, the Judge herself.

A Guardian ad Litem, in some instances is given carte blanche to interview whomever they feel necessary in the performance of their duties.19 In other states, the ability of the Guardian ad Litem to interview the child is subject to conditions set by the court.20 In other instances, the Guardian ad Litem may only interview the child if the child is of an appropriate age for the interview.21 A child who is four or older may be interviewed by the Guardian ad Litem, who must do so in a developmentally appropriate manner.22 Certain states provide that the Guardian ad Litem may meet with the child and parent and have home observations, but do not state that they may meet with the child alone.23 Other states require that they interview persons who have contact or knowledge about the child in order to determine her wishes and, if appropriate, to interview the child.24 Some Guardian ad Litems are permitted to interview the child prior to hearings unless the child's circumstances render doing so unreasonable.25

20 F.S.A. §61.403(1) (Florida).
23 Probate and Family Court Standing Order 1-05 (4.3)(Massachusetts).
24 V.A.M.S.A. §452-423 (Missouri).
25 N.M.S. 1978, §32A-1-7(E)(New Mexico).
Relatively few states address an Attorney for the Minor Child speaking with her, client. In California, an attorney should interview or observe the child as appropriate.\(^\text{26}\) In addition, California sets forth education and training requirements for an attorney who will be representing children.\(^\text{27}\) In Louisiana, the child’s attorney is to interview the child and conduct discovery as necessary to determine relevant facts regarding custody and visitation.\(^\text{28}\) A Child’s Advocate Attorney in Maryland is to meet with the child and advance the child’s wishes if the child has considered judgment.\(^\text{29}\)

Oftentimes, in contested custody matters the court will appoint independent investigators, whether a mental health professional, court appointed mediator, or custody evaluator, to provide the court with input and potentially an opinion as to what is in the minor child’s best interests. In completing their investigation, it will frequently be required that the child be interviewed.\(^\text{30}\) Other times, such interviews shall be at the discretion of the mediator.\(^\text{31}\) In Florida, a licensed mental health professional, or other expert who is to interview the child, must record the interview and maintain it in the expert’s file.\(^\text{32}\)

Other potential professionals who may be involved in interviewing children are parenting coordinators and parenting mediators. Parenting coordinators in Arizona are

\(^{26}\) Cal. Rules of Court, Rule 5.242(j) & (k) (California).
\(^{27}\) Cal. Rules of Court, Rule 5.242(b) (California).
\(^{28}\) LSA – R.S. 9:345(5)(D) (Louisiana).
\(^{29}\) MD Rules, Child Custody or Access Guidelines 2.3 (Maryland).
\(^{31}\) RCWA 26.09.015(4) (Washington) and W.S.A. 767.405(10(b) (Wisconsin).
\(^{32}\) Fla. Fam. L. R.P. Rule 12.363(a)(1) & (4) (Florida).
permitted to interview members of the household, including children.\textsuperscript{33}  Nebraska rules provide that the parent mediator may interview the child if the mediator deems it necessary or appropriate.\textsuperscript{34}  North Carolina provides that the mediator may interview the child to assess the needs and interests of the child.\textsuperscript{35}

An alternative to having a child testify either in court or in chambers is to have the child's statements come into court by means of hearsay. "There are problems with making the decision of the child determinative. For one thing, such an approach places a tremendous amount of pressure on the child. A better way than an in camera hearing to get the child's preference before the court may be through admission of the child's hearsay statements, through the testimony of a guardian ad litem, or through professional personnel.\textsuperscript{36}  Clearly, any such professional testifying as to the child’s wishes must be in a position to state whether such preference is truly that of the child or influenced by a parent.

The final method by which the child's desires and preferences are determined, is in court either by their own direct testimony or by a judge interviewing them.

For the most part, rules and statutes pertaining to a child testifying in court concern criminal actions, primarily crimes against the child. Most of those rules, statutes, and evidentiary provisions concern the ability of the child to make reliable statements to be relied upon in the proceedings. However, there are some rules for children testifying in non-criminal proceedings.

\textsuperscript{33} 17 B.A.R.S. Rules Fam. Law Proc., 74(F)(Arizona).
\textsuperscript{34} Neb. Rev. St. §43-2939(4)(Nebraska).
\textsuperscript{35} N.C.G.S.A. §50-13.1(e)(North Carolina).
Both Nevada and Oklahoma have statutory provisions which allow a child to testify via an alternative method if necessary to serve the best interests of the child, taking into account: the nature of the proceeding; the age and maturity of the child; the relationship of the child to the proceedings; the emotional trauma the child may suffer in testifying; and anything else which is relevant.\(^ {37} \) Oklahoma additionally permits the child's preference to be given by testimony in chambers without the parents or other parties present. Additionally, if the court excludes the parents’ attorneys, the reason for the exclusion should be stated.\(^ {38} \)

In Minnesota, no child under 14 will be allowed to testify without written notice to the other party and court approval.\(^ {39} \)

Pennsylvania, in a poorly worded rule, provides for a child to be “interrogated” in court or in chambers. Such “interrogation” should be in front of the attorneys, who will have the right to “interrogate” the child under supervision of the court, and the court may or may not permit the parties to be present.\(^ {40} \)

Clearly, if a child is to be brought into court to be interviewed or state her preference, that is best accomplished through an in chambers interview by the court.

Obviously, the purpose of such an [in camera] hearing is not to lessen the ordeal for the parents, but, rather, to lessen the ordeal for the child. Nor is it intended to make a secret of the basis for the court's findings. The preference of the child is only one of many factors to be considered when determining the child's best interest concerning custody. It should never be the only basis for determining custody. Nor should a child be directly asked where the child would rather live because specifically asking preference provides an opportunity for parental manipulation or intimidation of the child as well as an

\(^ {37} \) N.R.S. §50-580(2)(Nevada), and 12 Okl. St. Ann. §2611.7(C)(Oklahoma)
\(^ {38} \) 43 Okla. St. Anno. §113(B)(3)(Oklahoma).
\(^ {39} \) Minn. Gen. R. Prac., Rule 303.03(d) (Minnesota).
\(^ {40} \) Pa. R.C.P. No. 1915.11 (Pennsylvania)
opportunity for the child to manipulate the parents. It also gives the child the impression that their preference is 'the' deciding factor for custody. Rather, the trial court should conduct such an interview so as to discern the child's preference, while at the same time, being sensitive to how the child is coping with the divorce, the pressures put on the child by the divorce and stating a preference, as well as to ascertain the motive of the child in stating a preference. When the trial court determines the child's best interest would be served by considering the child's preference, whether to grant such an interview is generally within the trial court's discretion. Ynclan v. Woodward, 237 P.3d, 145, 151-152, 2010 OK 29 (2010, Oklahoma).

In determining whether to interview a child, consideration may be given to the child's age. In Texas, the court shall interview a child in chambers who is 12 and over and may interview a child under 12.41

Some states provide for the appointment of a guardian ad litem in the event the court is going to interview a child in chambers.42

At times, those allowed to be in chambers for such an interview are limited. The judge may in his discretion allow the attorneys in chambers in the interview, but not the parties. 43

In addition, while it is not guaranteed that a record will be made of the in chambers interview, parties may be able to request a recording to be made which will become a part of the record.44 If the court does an in chambers interview and counsel are present, a record can be made of the interview.45 "In custody trials where there is a firm factual foundation that such harm may result if a child is made to testify in court, judges may use in camera interview to obtain necessary information from children.... Therefore,

41 V.T.C.A., Family Code §153.009(a)(Texas).
42 R.C. §3109.04(B)(Ohio).
43 R.C. §3109.04(B)(Ohio), and RCWA §26.09.210(Washington)
44 13 Del. C. §724(a)(Delaware), K.S.A. §60-1614 (Kansas), KRS §403.290(1) (Kentucky).
45 - IC §31-17-2-9 (Indiana)
although trial judges are permitted, in certain circumstances, to interview children in camera out of the glare and pressure of the courtroom, because the interview is still part of a court proceeding, we conclude that it must be recorded, and that the record must be made available to the parties and to the appellate court.” N.D. MeN. v. R.J.H., Sr., 979 A.2d 1195, 1200, 1201 (D.C. App., 2009). Yet at other times, courts have found that if there is reliance on a child's statements, there must be a record of the testimony. See, Strain v. Strain, 95 Idaho 904, 906, 523 P.2d 36 (1974). Other courts have found that when there is an in chambers interview, the attorneys must be present to determine the child’s competency to testify and a transcript must be provided. Gould v. Gould, 687 So. 2d 685, 688-689 (La. App. 2 Cir., 1997). In New York, a child may not be interviewed in chambers unless there is a stenographic record of the interview. Any in chambers interview with a child in Virginia shall have a record prepared unless the parties otherwise agree.

In Michigan, the court may interview a child to determine if they are of sufficient age to express a preference, and if so, what the preference is. "The court shall focus the interview on these determinations, and any information received shall be applied only to the reasonable preference factor.”

**Conclusion**

As can be seen, in the vast majority of states, children are integrally involved in disputes regarding their custody. It is likely that they will be interviewed by any number of professionals to determine their preference for custodial placement. Proper

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46 NY CPLR Rule 4019 (New York)
48 MI Rules MCR 3.210 (Michigan)
interviewing techniques are necessary to ensure that such professionals obtain accurate information from children and elicit their true preferences and views.
Making the Most of Information-gathering Interviews with Children

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Because child abuse victims are often the only available sources of information about their experiences, extensive efforts have been made to understand how to maximize their informativeness. There is now broad international consensus regarding optimal interview practices, and broad awareness that children’s informativeness increases when interviewers conduct developmentally appropriate interviews with children. In this paper, we (1) summarize current understanding of how children remember, retrieve, and communicate information and (2) discuss ways in which children’s memory and reporting can be fostered using techniques designed to help children recount past experiences such as the Cognitive Interview, the Narrative Elaboration Technique, and the National Institute of Child Health and Human Development-Protocol. Communicative success clearly depends on how well children understand their role and how effectively interviewers take advantage of children’s competencies and abilities to help them maximize their informativeness. Unfortunately, agreement regarding ways in which interviews should be conducted has not been paralleled by changes in the way interviews are actually conducted in the field and more attention thus needs to be paid to training and implementation. Copyright © 2008 John Wiley & Sons, Ltd.

Key words: interviews with children; child abuse victims; interviewing techniques

Reliable information about experienced events can be obtained from children as young as 4 years of age provided interviewers converse with and question them carefully and appropriately, adapting their techniques to accommodate children’s needs and capacities. This can be especially important when interviewing alleged child abuse victims because they are often the only sources of information about the crimes in question. This places the children in

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the role of experts when conversing about their experiences. Despite developmental deficiencies in memory, cognition, communication skills, and social style, researchers have shown that children’s informativeness in such interviews is profoundly shaped by the interviewing practices of their adult interlocutors. When investigative interviewers conduct developmentally appropriate interviews with children, they help children become competent informants about their experiences. In this paper, we provide a brief summary of our understanding of children’s capacities and limitations. We discuss children’s memory, the distinction between different types of memory (i.e. recall and recognition) and the effect of questioning style on the accuracy of responses in the first section. In the second section, social aspects of communication, such as rapport-building, are considered. Three techniques that help children perform to the best of their abilities are then discussed. Finally, we consider the features of components of professional training programs that are likely to maximize the ability of investigative interviewers.

MEMORY

In the late 1970s and early 1980s, researchers began to study children’s memory for events in which they had been participants or witnesses (episodic or event memory) rather than their memory of stimuli, words, or symbols. In general, students of episodic or autobiographical memory found that, as children grow older, the length, informativeness, and complexity of their recall increase (see Fivush, 1997, 1998; Lamb, Sternberg, & Esplin, 2000; Poole & Lamb, 1998; Saywitz & Campano, 1998; Schneider & Pressley, 1997, for reviews) but that even very young children can provide temporally organized and coherent narratives. These accounts are generally quite accurate, although young children tend to provide briefer free narratives than do older children and adults (e.g. Flin, Boon, Knox, & Bull, 1992; Goodman & Reed, 1986; Lamb et al., 2003).

Limited memory capacity and linguistic ability may help account for the brevity of young children’s accounts, but the length of children’s responses may also be affected by the tendency for young children to form and rely on general event representations, or scripts, of typical events instead of remembering particular incidents when similar events were repeatedly experienced (Roberts & Blades, 2000). Because of this tendency, young children may either fail to report or confuse details about specific incidents. This tendency to make script-related and source-monitoring confusions generally declines with age (e.g. Poole & Lindsay, 2001, 2002; Thierry, Goh, Pipe, & Murray, 2005; Thierry, Lamb, & Orbach, 2003). Children are also less likely to make such errors when asked for open-ended, free-recall accounts instead of being asked specific questions (Roberts & Powell, 2001).

Several researchers have attempted to improve children’s source monitoring and enhance their ability to recall specific experienced events accurately without intrusion of information from other similar experiences. This can be done by explicitly asking about the sources of the children’s memories (e.g. if it is unclear which parts of a child’s testimony refer to the first or second described incidents). Although it can be difficult for very young (3-year-old) children to answer explicit source questions (e.g. Leichtman, Morse, Dixon, & Spiegel, 2000; Quas, Schaal, Alexander, & Goodman, 2000; Thierry & Spence, 2002), results from analogue studies indicate that children aged 4 and over benefit when they are asked explicitly whether they are describing something they saw (or
experienced) as opposed to something that someone told them about (see Roberts, 2002; Roberts & Powell, 2001, for reviews). With older children, explicit source questions should be restricted to the sources already identified by children (e.g. if a child mentions two incidents, question only about those two sources). In addition, the interviewer should use the child’s labels for the sources (e.g. use ‘the time in the bedroom’ and ‘the time in the bathroom’ if that is how the child described the incidents, rather than interpreting those incidents as ‘the first time’ and ‘the second time’).

The distinction between recall and recognition is crucial when considering the amount and likely accuracy of information retrieved from memory. When adults and children are asked to describe events from free recall (‘Tell me everything you remember…’) their accounts may be brief and sketchy, but are likely to be accurate (see Pipe, Thierry, & Lamb, 2006; Powell, Fisher, & Wright, 2005 for reviews). When asked for more details using open-ended free recall (e.g. ‘Tell me more about that’ or ‘And then what happened?’) or more focused recall (e.g. ‘When did that happen?’) prompts, children often recall additional details, although younger children often retrieve relatively few each time they are asked (see Lamb, Orbach, Warren, Esplin, & Hershkowitz, 2006 for a review). By contrast, option-posing questions such as ‘Did he have a beard’? or ‘Did this happen in the day or in the night’? often elicit answers, but because such questions rely on recognition rather than recall processes, the probability of error rises (see Melnyk, Crossman, & Scullin, 2006 for a review). For this reason, the information retrieved using recall is preferable when reliability or accuracy is important.

Recall memories are not always accurate, of course, especially when children feel pressure to provide information of which they are unsure (e.g. ‘Surely you can remember more than that!’). Nonetheless, accounts elicited using open-ended questions are much more likely to be accurate than those elicited from children using recognition prompts. Most focused questions activate recognition memory, focus children on domains of interest to the questioners, and exert pressure to respond or agree with the interviewers (whether or not the children are sure of their responses). Recognition prompts are also more likely to elicit erroneous responses because of response biases (i.e. tendencies to say ‘yes’ or ‘no’ without reflection) and false recognition of details that were only mentioned in previous interviews or are inferred from the general idea (‘gist’) of the experienced events (e.g. Brainerd & Reyna, 1996). The risk for interviewer contamination or error thus increases in association with the specificity of the question asked; it is lowest for open-ended invitations and greater for suggestive prompts.

Open-ended invitations elicit free-recall responses from children using very general invitations (e.g. ‘Tell me what happened’; ‘Then what happened?’). Cued invitations are more specific invitations that prompt free recall by referring to details already mentioned by the child (e.g. ‘Tell me about the touching’ when touching was previously mentioned by the child). Directives prompt children to provide more information about previously mentioned details using wh-questions (e.g. ‘Where did he touch you’? when the child had mentioned that he/she was touched). Open-ended invitations, cued invitations, and directives all activate recall processes. Option-posing questions, such as yes–no and forced-choice questions, prompt children for information not previously mentioned by them in ways that do not imply expected responses (e.g. ‘Did he touch you’?). Suggestive questions presuppose information not mentioned by the child (e.g. ‘Did he touch you over or under your clothes’? when the child had not mentioned any touching), imply expected responses (e.g. ‘He forced you to do
that, didn't he?), or invite the child to speculate about what could have happened. Option-posing and suggestive questions activate recognition processes, and may sometimes lead interviewers to 'recognize' events or details about what they are not sure.

Because forensic interviewers seldom know what actually happened in the incidents described by interviewees, they have largely had to rely on generalization from laboratory analogue research when assuming that information elicited using recall prompts was more likely to be accurate than information retrieved in other ways. However, there have been a few attempts to explore the effects of prompt type on accuracy in actual forensic contexts. For example, Lamb, Orbach, Hershkowitz, Horowitz and Abbot (2007) recently assessed the relative accuracy of forensically relevant details reported by alleged victims of child sexual abuse in response to contrasting types of prompts. Forty-three victims and 52 youths who admitted abusing them were interviewed about the abusive incidents. Forensically relevant information reported by the victims and the type of prompt by which it were elicited was identified, and coders then determined whether the details were confirmed, contradicted, or ignored by the perpetrators. Although most details were ignored, details were more likely to be confirmed when they were elicited using invitations (open-ended free-recall prompts) rather than focused prompts, thereby confirming that information elicited using free-recall prompts is more likely to be accurate than information elicited using focused prompts even in 'real world' forensic contexts. In another study, Orbach and Lamb (1999) examined one child's account of an abusive encounter that she surreptitiously recorded; details provided in response to open-ended free-recall prompts were more accurate than those provided in response to more focused recognition prompts. Using an alternative approach to the estimation of accuracy, Orbach and Lamb (2001) and Lamb and Fauchier (2001) identified self-contradictions in two case studies, respectively, examining within-interview contradictions in a single forensic interview of a 5-year-old alleged victim, and within-and across-interview contradictions in 24 forensic interviews of seven (5.5–8.8-years-old) alleged victims. In both studies, details elicited using suggestive and option-posing prompts were most likely to be contradicted by the same informants, whereas those elicited using open-ended invitations were never contradicted themselves and never contradicted earlier reported details. These findings add support to recommendations by professional and expert groups emphasizing that forensic interviewers should rely as much as possible on open-ended questions when obtaining information from alleged victims of child sexual abuse and take special care to avoid risky questions when interviewing young children (American Professional Society on the Abuse of Children, 1990, 1997; Home Office & Department of Health, 1992, 2002; Jones, 1992, 2003; Lamb 1994; Lamb, Orbach, Hershkowitz, Horowitz et al., 2007; Poole & Lamb, 1998).

As time passes, both children and adults forget. Errors of omission (leaving out information) are much more common than errors of commission (reporting erroneous information) among both adults and children. Errors of omission are a special problem where children are concerned, moreover, because their accounts, especially their recall narratives, are often so brief, and although long delays are also associated with forgetting (errors of omission), this is not always the case. Just how well children remember and recount particular experiences depends on a number of interacting variables (e.g. La Rooy, Pipe, & Murray, 2007). For instance, considerable controversy persists in the literature concerning the effects of increased arousal or stress on the accuracy of children’s memory. It is unclear
whether memories for traumatic experiences involve unique mechanisms or can be accounted for by the same mechanisms that affect memories of other events (i.e. salience) (e.g. Cordon, Pipe, Sayfan, Melinder, & Goodman, 2004). Traumatic experiences are often distinctive, however, so memories thereof might be better retained over time than memories of less distinctive or meaningful events (see Howe, 1997, 2000, for reviews).

In sum, children can remember and recall experiences, sometimes over long time periods, and this is especially likely when the experiences were highly distinctive. Recalling one of several similar experiences may be particularly difficult, however, and details are likely to be confused across incidents. Accuracy can be enhanced when children successfully focus on individual events, although confusions among incidents do not necessarily cast doubt on the accuracy of children’s accounts.

COMMUNICATION

Most adults know that children are often inhibited by strangers and thus recognize the need to establish rapport when initiating interaction with unfamiliar children, especially when the topics are stressful or embarrassing. Although rapport-building is critically important, however, we actually know very little about how much and what kind of rapport-building is necessary or effective, and almost nothing about how rapport-building needs may differ depending on the age and other characteristics of the children being interviewed. Surprisingly, few researchers have examined different kinds of rapport-building techniques or compared interviews with and without attempts to build rapport. Field research has found that rapport-building using open-ended questions (invitations) about neutral or positive events (such as a recent birthday or holiday) helps interviewers elicit more abuse-relevant information than rapport-building using closed-ended specific questions (Sternberg et al., 1997).

Interviewers are routinely encouraged to establish rapport with alleged victims before seeking to elicit information about suspected incidents of abuse. Despite this consensus, many interviewers fail to establish rapport before broaching the substantive issue under investigation (Sternberg, Lamb, Esplin, & Baradaran, 1999; Warren, Woodall, Hunt, & Perry, 1996). Clearly, interviewers should build rapport with children by asking open-ended questions about neutral, everyday events before questioning them about sensitive topics. In addition, interviewers should give children examples of the kinds of information they will later be seeking about the event of interest.

Successful interviewers should also understand children’s communicative strengths and recognize the important difference between children’s levels of capacity and performance. In fact, interviewers can affect the level of performance dramatically by changing their own behaviour, using recall rather than recognition prompts, and developmentally appropriate, simple and clearly worded questions, like ‘Tell me what happened’ instead of complex multifaceted questions. However, interviewers clearly have difficulty internalizing recommended interview techniques and may need more explicit guidelines than those typically provided in training sessions or manuals. It is not yet clear which specific training elements (or combination of elements) have the most desirable effects. Researchers have identified the following core features of successful training programs; however, the introduction of structured interview protocols, multiple opportunities to practice over an extended period, expert
feedback and ongoing supervision, and internal motivation among trainees to enhance individual performance (Lamb, Sternberg, Orbach, Esplin et al., 2002; Lamb, Sternberg, Orbach, Hershkowitz et al., 2002). Detailed interview guidelines have thus been developed by researchers at the National Institute of Child Health and Human Development (NICHD). Other techniques designed to enhance interviewees’ recall while reducing the risks and errors, which often accompany non-spontaneous memory retrieval are the Cognitive Interview (CI) and The Narrative Elaboration Technique (NET). These techniques and guidelines are described later in this paper.

PROBING MEMORY

A variety of techniques for probing memory and enhancing recall have been developed by researchers. Many of these have been examined in laboratory contexts and involve providing children with either items (Gee & Pipe, 1995; Smith, Ratner, & Hobart, 1987) or representations of items (Goodman & Aman, 1990; Price & Goodman, 1990; Priestley & Pipe, 1997; Salmon, Bidrose, & Pipe, 1995) associated with the to-be-remembered event, revisiting the context in which the event occurred (Pipe & Wilson, 1994; Priestley, Roberts, & Pipe, 1999; Wilkinson, 1988), or drawing during interviews (Butler, Gross, & Hayne, 1995; Gross & Hayne, 1998). Although these techniques enhance the amount of information retrieved, at least under some conditions (see Salmon, 2001, for a review), interviewers seldom know which props might be relevant, and need to avoid introducing props at times which would make them suggestive. In addition, analogue studies show that, when children interact with the prop items, showing as well as telling, accuracy decreases markedly, and that the effects on accuracy are even greater when young children are shown toys and models (Gordon et al., 1993; Salmon, 2001; Salmon, Bidrose, & Pipe, 1995; Salmon & Pipe, 1997, Steward & Steward, 1996; Thierry, Lamb, Orbach, & Pipe, 2005), presumably because young children are more vulnerable to suggestion and are less capable of representing their experiences using objects (DeLoache, 1995).

Children may also be asked to draw during the interview. Existing studies suggest that drawing during interviews can enhance children’s recall in some contexts (see Salmon, 2001, for a review). Drawing especially facilitates the retrieval of verbal information about objects rather than actions and may enhance retrieval by older children but not by 3- to 4-year-olds (Butler et al., 1995). Human figure drawings, provided by the interviewer, are frequently employed by and widely recommended to therapists and forensic interviewers, but they have not been studied systematically until recently (Poole & Lamb, 1998). Willcock, Morgan, and Hayne (2006) found that body maps did not facilitate 5- to 6-year-old children’s reports of touch and they argued that they should not be used in clinical or forensic interviews with children of this age. Brown, Pipe, Lewis, Lamb, and Orbach (2007) examined the accuracy of information elicited from 5- to 7-year-old children about a staged event that included physical contact/touching. They found that unreliable information was more likely to be elicited when children were asked to talk about innocuous touches, especially when human figure drawings were used as aids. Following very long delays (Salmon & Pipe, 2000), or when used in combination with suggestions about false events (Bruck, Melnyk, & Ceci, 2000), drawings also tend to increase the number of errors children make. Clearly, further research is needed on how, when, and whether drawing or drawings should be introduced in forensic contexts.
The idea that reinstatement of the contexts in which events occurred will result in better recall of details about the event stems from Tulving’s principle of encoding specificity, according to which the congruence between the contexts of encoding and recall fosters accurate retrieval (Tulving & Thomson, 1973). Both analogue studies (e.g. Malpass, 1996; Pipe & Wilson, 1994; Price & Goodman, 1990; Priestley, Roberts, & Pipe, 1999; Saywitz, Geiselman, & Bornstein, 1992; Wilkinson, 1988) and forensic field studies (Bowen & Howie, 2002; Hershkowitz et al., 1998; Orbach, Hershkowitz, Lamb, Sternberg, & Horowitz, 2000) have confirmed that physical context reinstatement (exposure to the actual setting in which the to-be-remembered event occurred) and mental context reinstatement (the guided mental reconstruction of the setting in which the to-be-remembered event occurred) can facilitate children’s recall of that event. Indeed, exposure to context information 24 h prior to an interview can have the same beneficial effects as exposure to the context during the interview (Priestley et al., 1999). Mental context reinstatement has also been studied as a key component of the CI that was developed in the early 1980s in an attempt to improve the quality of police interviews with adult witnesses (Geiselman et al., 1984). The primary aims were to increase both the quantity and the quality of information elicited from cooperative witnesses, victims, and suspects (Geiselman et al., 1984; Geiselman, Fisher, MacKinnon, & Holland, 1985, 1986). Since then, the CI has been modified for field settings as well as for children.

The CI procedure initially drew upon four basic cognitive techniques for increasing the amount of information recalled that were derived from two theoretical principles: multiple trace theory (Bower, 1967) and the encoding specificity hypothesis (Tulving & Thomson, 1973). The first component (the mental reinstatement of context) involves mental reconstruction of the physical and personal contexts that existed at the time that the events were experienced. Accordingly, interviewers instruct interviewees to mentally reconstruct the external (physical surroundings) and internal (subjective states-of-mind) contexts of the to-be-remembered event. Interviewees are asked to form images or impressions of the scenes and to remember feelings and thoughts. Second, interviewees are asked to report everything and are encouraged to report fully without screening out details they consider irrelevant, unimportant or for which they have only partial recall. In addition to facilitating the recall of additional information, this technique may yield information that corroborates or explains details provided by other witnesses. Third, interviewees are instructed to make retrieval attempts from different starting points. Interviewees usually feel they have to start their accounts at the beginning and are usually asked to do so. However, the CI encourages more extensive retrieval by instructing interviewees to recall events in a variety of sequences—from the end, from the middle, or from the most memorable event. This technique has the same effect as simply asking the interviewee to make a second retrieval attempt (Memon, Wark, Bull, & Köhnken, 1997). In other words, by going through the event a second time, the interviewee may provide some new information not reported earlier. For the same reasons, the fourth CI retrieval aid (the change perspective technique) asks interviewees to recall the incident from a variety of perspectives. Interviewees are encouraged to place themselves in the shoes of another witness and to report what they saw or would have seen. According to the proponents of the CI, such changes of perspective force changes in retrieval processes that allow additional information to be recalled from the new perspective. Because the change in perspective imposes an increased cognitive burden on the interviewee, some researchers have expressed concerns that the technique might inadvertently...
encourage interviewees to fabricate details or become confused (Memon & Köhnken, 1992).

Use of the original version of the CI produced substantial gains in the amount of accurate information elicited from interviewees (see Köhnken, Milne, Memon, & Bull, 1999, for a meta-analysis). Because many interviewers nevertheless failed to understand and implement many aspects of effective interviewing (Fisher, Geiselman, & Amador, 1989), however, Fisher and Geiselman then revised the CI for use in field settings (Fisher & Geiselman, 1992; Fisher, Geiselman, Raymond, Jurkevich, & Warhaftig, 1987) and a revision designed to guide those interviewing children was subsequently developed (Geiselman & Padilla, 1988; Saywitz et al., 1992). Several independent researchers have evaluated and demonstrated the positive effects of using the CI when interviewing children about events staged in the laboratory (e.g. Akehurst, Milne, & Köhnken, 2003; Larsson, 2005; Larsson, Granhag, & Spjut, 2003; Milne & Bull, 2002; Robinson & McGuire, 2006). Children interviewed using the CI report more accurate information than children interviewed in control conditions (see Köhnken et al., 1999 for a meta-analysis). The children also tend to report more inaccurate details, but the accuracy rate appears to be unaffected. The CI also appears to reduce the contaminating effects on memory of misleading information (Geiselman, Fisher, Cohen, Holland, & Surtes, 1986; Holliday & Albon, 2004; Malpass, 1996; Milne & Bull, 2003).

These studies also showed that it was necessary to adjust the CI in order to accommodate children’s capabilities and limitations. Specifically, because children may have difficulty understanding why they might be asked to change perspective or not start their accounts at the beginning, these techniques should be used with caution with children (Geiselman & Padilla, 1988; Larsson, 2005; Larsson et al., 2003; Saywitz et al., 1992). To further facilitate children’s recall, it may be helpful for children to verbalize out aloud (e.g. describing the room, its smells, its sounds and other features as the picture comes to mind) when mentally reinstating context (Saywitz et al., 1992).

Other techniques have also been designed to overcome children’s cognitive limitations and help them recount past experiences more fully. One example is the NET that involves pre-interview modelling, practice and feedback about the kinds of information needed by listeners (Saywitz & Snyder, 1996; Saywitz, Snyder, & Lamphear, 1996). Children are trained to use cue cards as reminders of what to talk about (the participants, the setting, actions, and conversations and emotions associated with the event). In analogue contexts, the NET appears to help children provide more complete and equivalently accurate event reports (e.g. Brown & Pipe, 2003a, 2003b; Dorado & Saywitz, 2001). Further, Camparo, Wagner, and Saywitz (2001) reported that children trained and interviewed using the NET were not disproportionately likely to talk about a fictitious event although some children attempted to describe this non-event during prompted recall or specific questioning when their initial denials of the event were ignored. These findings point to the risks of persistent prompting when children have repeatedly indicated that they do not recall the event.

Interestingly, several researchers have shown that the gains associated with the NET can be obtained simply by providing verbal prompts for the same categories of information cued using the NET cue cards, without training in how to talk about the past (Bowen & Howie, 2002; Brown & Pipe, 2003a, 2003b; Elischberger & Roebers, 2001). In other words, simply asking children to report what they saw and heard (Poole & Lindsay, 1995) or to talk about different
categories of information (Quas et al., 2000) can produce increases in the amounts of information reported. Variance in performance has been a feature of all studies using the NET, furthermore, suggesting that some children benefit from the technique more than others do (see Brown & Pipe, 2003a, 2003b, for discussions), and in all of the studies examining the NET children were interviewed about neutral or fun experiences and were unlikely to be reluctant participants in the interview. The NET has not been explored in forensic settings where the timing of the cues relative to the disclosure of relevant information might influence the cues’ suggestiveness and thus their suitability and where there not may be time to incorporate pre-interview training sessions like those included in the NET.

In sum, many researchers have conducted laboratory-based and analogue studies designed to document the vulnerability of children’s accounts to misleading questions and suggestions, and increasing numbers of researchers have explored techniques for enhancing children’s reports without decreasing accuracy. In the laboratory setting, for example, the CI and the NET appears to help children report more information, whereas the NICHD Investigative Interview Protocol described below (Lamb et al., 2003, Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007; Orbach, Hershkowitz, Lamb, Sternberg, Esplin et al., 2000; Sternberg, Lamb, Davis, & Westcott, 2001) enhances the amount of information that children report in response to more open-ended prompts in the investigation of abuse allegation.

The NICHD Investigative Interview Protocol covers all phases of the investigative interview and is designed to translate research-based recommendations into operational guidelines in order to enhance the retrieval of informative, complete, and accurate accounts of alleged incidents of abuse by young victim-witnesses (Lamb, Orbach, Hershkowitz, Êspín, et al., 2007; Lamb, Orbach, Hershkowitz, Horowitz, et al., 2007). This is accomplished by creating a supportive interview environment (before substantive rapport building), adapting interview practices to children’s developmental levels and capabilities (e.g. by minimizing linguistic complexity and avoiding interruptions), preparing children for their tasks as information providers (by clarifying the rules of communication and training children to report event-specific episodic memories), and maximizing the interviewers’ reliance on utterance types (e.g. invitations) that tap children’s free recall.

When following the protocol, interviewers maximize the use of open-ended questions and probes, introduce focused questions only after exhausting open-ended questioning modes, use option-posing questions (including Yes/No questions) only to obtain essential information later in the interview and eliminate suggestive practices. Interviewers are encouraged to use information provided by the children themselves as cues to promote further free-recall retrieval. In essence, the protocol is designed to maximize the amount of information elicited using recall prompts because information elicited in this way is more likely to be accurate. In addition, the structured interview protocol minimizes opportunities for contamination of the children’s accounts.

The use of the NICHD-protocol increases the amount of information obtained from alleged victims using recall rather than recognition prompts (e.g. Cyr, Lamb, Pelletier, Pierre, Alain, 2006; Lamb et al., 2006; Orbach, Hershkowitz, Lamb, Sternberg, Esplin et al., 2000; Sternberg et al., 2001; Sternberg, Lamb, Esplin, Orbach, & Hershkowitz, 2002). Moreover, dramatic improvements have been found in the organization of interviews, the quality of questions asked by interviewers, and the quality of information provided by children.
when investigators follow the protocol when interviewing 4- to 13-year-old alleged victims of sexual abuse (Cyr et al. 2006; Lamb et al., 2006; Orbach, Hershkowitz, Lamb, Sternberg, Esplin et al., 2000; Orbach and Lamb 2001). In the Orbach et al.’s study, for example, almost all of the children interviewed using the structured protocol provided a narrative account of the alleged abuse in response to the first invitation, and the interviewers offered more than five times as many open-ended invitations as they did in comparable interviews conducted before the structured protocol was introduced. The number of option-posing questions dropped by almost 50% as well, and much more of the information was obtained with the use of free recall rather than investigator directed recognition probes in the protocol-guided interviews. Children in the protocol condition provided proportionally more of the total number of details in their first narrative response than did children in the non-protocol condition, and they provided significantly more information before being asked the first option-posing question. More of the details they provided were elicited by open-ended prompts, whereas fewer were elicited by directive, option-posing, and suggestive utterances. Although this was not studied systematically, the interviewers using the NICHD interview protocol also became better critics of their own and of their colleagues’ interviews (Orbach, Hershkowitz, Lamb, Sternberg, Esplin et al., 2000).

Unfortunately, agreement regarding the ways in which interviews should be conducted has seldom been paralleled by changes in the way interviews are actually conducted in the field. Much of the evaluation research converges on the discouraging conclusion that investigative interviewers tend to use predominantly short-answer questions with few pauses and an excessive number of closed and leading questions (Cederborg, Orbach, Sternberg, & Lamb, 2000; Fisher, Geiselman, & Raymond, 1987; Korkman, Santtila, & Sandnabba, 2006; Lamb et al., 1996; Mildren, 1997; Moston, Stephenson, & Williamson, 1993; Sternberg et al., 2001; Thoresen, Lonnum, Melinder, Stridbeck, & Magnussen, 2006). Furthermore, the pattern is widespread. This pattern occurs internationally (e.g. USA, UK, Australia, Sweden, Norway, Finland, and Israel), across different interviewee groups (e.g. children, adults) and for different kinds of interviewer (e.g. police, social workers). Several researchers in a variety of countries have also shown how difficult it is to effect lasting changes in interviewing skills through training (e.g. Sweden by Cederborg & Lamb, 2006; and Israel by Lamb et al., 1996 and Hershkowitz & Lamb, 2005; the UK by Sternberg et al., 2001; the US by Warren et al., 1999). Even the most intensive training programs have little, if any, effect on the actual behaviour of interviewers in the field. Brief intensive training sessions 1–5 days in length seem to enhance the trainees’ knowledge of what they should do, but have little effect on what they actually do when interviewing alleged victims (Stevenson, Leung, & Cheung, 1992; Warren et al., 1999). That is, even when interviewers are taught information and they believe that their behaviour has changed, their interviewing practices nevertheless remain the same (see Powell et al., 2005 for a review). Only when interviewers go through regular intensive training that combines use of the structured interview protocol, get regular supervision, review recent interviews, and continue to receive feedback on their interviews does the quality of the interviewing improve and remain high (Lamb, Sternberg, Orbach, Esplin et al., 2002; Lamb, Sternberg, Orbach, Hershkowitz et al., 2002; Powell, Fisher, & Hughes-Scholes, 2008). In addition, in order to guarantee the maintenance of interviewing skills, quality assessment and assurance need to be regular parts of agency practice, as it now is in Israel. In the future, researchers...
need to identify and evaluate techniques for producing and maintaining long-term improvements in interview quality.

CONCLUSION

Communicative success clearly depends on how well children understand their role and how effectively interviewers take advantage of children’s competences and abilities in order to maximize their informativeness. Even young children can be valuable informants when interviewers recognize their strengths and limitations. Specifically, children often can remember important details of incidents that they have observed or experienced when interviewers recognize the limits of children’s communicative powers and acknowledge the difference between children’s abilities and their level of performance. Interviewers cannot change children’s abilities, but they can affect the levels of performance by changing their own behaviour. Interviewers should take advantage of developmentally appropriate strategies for motivating children to be informative, providing children with the cognitive supports they need to retrieve as much information as possible, while avoiding contamination by the interviewers’ beliefs and expectations.

REFERENCES


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