

Questioning the expertise of “experts” who recommend active hypothesis testing in child forensic interviews

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Abstract

The McMartin Preschool case in the 1980s was one of several alleged day care sex abuse cases that highlighted the need to establish best practices in forensic child interviews. As a result of that case, tens of millions of dollars were allocated to study and develop child interviewing techniques that were most likely to preserve the integrity of the accounts of children identified as possible victims and survivors of child abuse. That research led to the identification and standardization of the child forensic interviewing techniques widely used today. Despite the creation of best practices for child forensic interviews, courts sometimes accept as expert witnesses professionals who promote practices that should not be used when interviewing children who may have been victimized. A recent case in Canada underscores the critical need for awareness of best practices in child forensic interviews. This discussion article examines the dangers of viewing the lack of active hypothesis testing as a sign of poor interviewing.

KEY WORDS

child abuse, child forensic interviewing, expert witnesses, hypothesis testing

BACKGROUND

Over the past 40 years, a large body of research has been amassed to help ensure that children's accounts of abuse experiences are not influenced by investigative techniques, including child forensic interviews. This body of research grew out of the McMartin Preschool case (and several similar others, including the Kelly Michaels case in New Jersey) in the 1980s, which was the longest and most expensive criminal case in the history of the US legal system (Schreiber et al., 2006). The case brought forth hundreds of allegations of child sex abuse through interviewing techniques that were described as coercive, directive, and adult directed (Bruck & Ceci, 1995; Wood & Garven, 2000).

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The indictment of these improper techniques through expert witness testimony contributed to hung juries in two separate trials, despite the fact that jury members in both trials believed at least some of the children had been sexually abused by one of the defendants (Schreiber et al., 2006).

At the same time, a number of researchers, including Gail Goodman, Debra Poole, and Maggie Bruck, published seminal articles that helped establish best practice standards for child forensic interviewing (Bruck & Ceci, 1995; Goodman, 2006; Goodman & Melinder, 2007; Lamb & Fauchier, 2001; Lamb & Sternberg, 1990; Poole & Lamb, 1998). **Table 1** summarizes some of the key elements of these best practice standards. In addition to this research, efforts to educate judges and prosecutors help to reduce the likelihood that unqualified professionals would be accepted as expert witnesses to testify about child forensic interviews; if they were accepted and offered inaccurate testimony about best practices, prosecutors could effectively cross-examine them and call qualified rebuttal expert witnesses (e.g., Department of Justice Canada, 2004).

Despite these efforts to ensure that judicial proceedings in child abuse cases are not tainted by improper interviewing techniques nor by unqualified experts who are unfamiliar with or ignore best practices, some recent cases highlight the challenges that prosecutors, judges, and defense attorneys continue to face 40 years after criminal charges were first brought in the McMartin Preschool case. For example, in a recent child abuse case in Alberta, Canada, *R. v. Blair* (2024), an expert witness testified that explicit hypothesis testing should have occurred in a forensic interview of a child describing sexual abuse. Although forensic interviewers are clearly encouraged to consider multiple hypotheses for why an allegation arose, the literature is equally clear that *actively and directly questioning* the child about these multiple hypotheses would not be recommended (e.g., Lyon, 2014; Zhang et al., 2023). Thus, the expert witness in *R v. Blair* misled the court by recommending practices in conflict with the foundational best practices of child forensic interviewing. The defendant in *R. v. Blair* (2024) was subsequently acquitted and, as detailed below, the judge expressly cited the absence of hypothesis testing in the forensic interview as a factor in the court's decision.

In light of those proceedings, in which inaccurate testimony had a disproportionate impact, the following discussion is intended to (1) summarize for legal and judicial professionals the best practices to look for in child forensic interviewing, (2) help them identify threats to the reliability of the interview, and (3) understand the dangers, in particular, of active hypothesis testing (i.e., through explicit questioning) and how to differentiate it from consideration of multiple hypotheses, before (4) highlighting strategies that well-trained child forensic interviewers should use to ensure that children's accounts are free from interviewer or other investigator bias. Insisting that expert witnesses offer testimony consistent with evidence-based forensic interviewing practices will help ensure justice for victims, the accused, and society overall.

TABLE 1 Summary of best practices for child forensic interviews.

Key elements	Description
Building rapport	Establishing a comfortable environment and building trust with the child is crucial. This helps the child feel safe and more willing to share information
Open-ended questions	Interviewers should rely on open-ended questions to encourage detailed responses. This approach helps avoid leading the child and reduces the risk of suggestive questioning
Developmentally appropriate language	The language used should be appropriate for the child's age and developmental level. This ensures that the child understands the questions and can respond accurately
Recording the interview	Interviews should be recorded to ensure accuracy and to provide a clear record of the child's statements. This can be useful for legal proceedings and for reviewing the interview process
Child-friendly environment	Conducting the interview in a child-friendly setting helps the child feel more at ease
Cultural sensitivity	Being aware of and sensitive to the child's cultural background is important. This helps in understanding the child's responses and in building rapport

GENERAL OVERVIEW OF CHILD FORENSIC INTERVIEWING AND BEST PRACTICE

Child forensic interviewing is a developmentally sensitive and legally sound practice designed to elicit details from a child about a personally relevant experience (Lamb et al., 2008, 2018), often related to sexual abuse, physical abuse, and neglect. It is often the case that information obtained in the audio/video recorded forensic interview of a child will serve as the primary source of evidence in a criminal investigation and subsequent prosecution (Smith et al., 2018). Fortunately, there has been a significant amount of research that has established best practice interviewing techniques to meet the needs of children based on their unique developmental circumstances (e.g., see Cyr, 2022; Lamb et al., 2018; Watkins et al., 2022).

Best practices and standards in investigative interviewing of children have evolved considerably since the McMartin Preschool case, and there are now acceptable and standardized approaches to conducting interviews with child victims and witnesses. The National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol provides a structured, evidence-based approach to interviewing children and is well supported by international research (both field and experimental) on the Protocol and on the underlying principles (e.g., Lamb et al., 2007, 2008, 2018). The NICHD Protocol includes an initial introductory phase (the delivery of ground rules and an opportunity to practice tapping into a neutral episodic memory), a transition to the topic of concern, and subsequent exploration of the allegation (i.e., the substantive phase), followed by a closure phase. After its original conceptualization, the NICHD Protocol was revised to include a more substantive focus on intensive rapport building prior to the introduction of the ground rules and provision of emotional support throughout the interview (e.g., showing appreciation, signaling that the interviewer is a source of support), given the extensive evidence that such activities increase the likelihood that children will disclose and do so in a credible way (e.g., Hershkowitz et al., 2014; Hershkowitz & Lamb, 2020). Other child forensic interviewing protocols are also evidence-based (e.g., Tom Lyon's 10-Step protocol, based on the NICHD Protocol; Lyon, 2014), and experts universally agree about the desirable key components of child interviews.

The predominant utilization of open-ended questions, avoidance of suggestive questions, provision of interview ground rules, and use of practice narratives to orient children to the unusual context of a forensic interview, as well as the need for an informed understanding of child development, all form the basis for these evidence-based approaches (Cyr, 2022; Lamb et al., 2018). An overarching guiding principle is that the child is the expert regarding the alleged events, and the interviewer's primary role is to help the child describe the event(s) under investigation (e.g., Poole & Dickinson, 2024; Poole & Lamb, 1998). More recent research on how to overcome reluctance (e.g., Blasbalg et al., 2019), elicit statements from children with special circumstances (e.g., Wyman et al., 2019), provide a supportive environment to children (e.g., Lamb et al., 2018; Saywitz et al., 2019), and enhance interviewer training (e.g., Brubacher et al., 2022) has been the focus of much of the recent literature on interviewing children and has been incorporated into the revised protocol, which has been in use since 2014. However, the core principles of interviewing have remained consistent for many years.

COMMON THREATS TO THE RELIABILITY OF CHILD FORENSIC INTERVIEWS

There are clear and universal recommendations for conducting effective child forensic interviews. There are also well-known ways in which forensic interviewers can negatively influence the child's disclosure of their experiences of abuse. Most problems arise when an interviewer influences the child's report, either through deliberate attempts to direct the child's statement or inadvertently, by communicating to the child that particular answers are expected, required, or "correct." There is a substantial literature on the devastating result of interviewers who engaged in suggestive questioning

of children, leading vulnerable children to make false allegations that result in wrongful accusations and imprisonment (e.g., Bruck & Ceci, 1995; Schreiber et al., 2006; Wood & Garven, 2000). This large body of work details risky interviewer behaviors which are often driven by an interviewer's mistaken beliefs prior to the interview. Thus, an effective interview with a child must be characterized by interviewer neutrality because a neutral interviewer is less likely to influence the content of the child's report. Neutrality is manifested in at least three ways:

- (i) *Adherence to an established interview protocol that minimizes the opportunity for bias to infiltrate the interview.* Gathering information from children during a forensic interview necessitates engaging in a style of questioning different from that which adults typically use. Habitual conversational patterns often reflect less than desirable questions (e.g., questions that yield very little information, such as closed-ended or directive questions) when applied in a forensic context. Therefore, it is imperative that forensic interviewers follow evidence-based practices designed to increase the quantity and quality of information obtained from children. When interviewers have a step-by-step evidence-based path to follow, the need for in-the-moment decision-making is reduced (Stewart et al., 2011). Conducting child forensic interviews is an intensive task that requires the interviewer's full focus and attention on the child. It can be emotionally taxing, mentally exhausting, and overwhelming to monitor the many different elements that must be navigated during an interview (e.g., criminal elements of the offense, language and developmental considerations, potentially corroborative details, recognizing signs of reluctance or reticence; Hanway et al., 2021; Powell et al., 2010). When an interviewer is trained and experienced in using an established protocol, the interviewer's attention can be directed to the aspects of the interview that are unique to the particular circumstances at hand. This more efficient use of cognitive resources helps reduce the use of potentially problematic mental shortcuts (e.g., confirmation bias or tunnel vision) because the interviewer's mental resources are not as taxed.
- (ii) *Posing open-ended questions that allow the child to dominate the interview.* A primary focus on open-ended questions is recommended when interviewing child victims and witnesses. Although asking direct questions targeting recall of particular details may be required at times, such questions should be relatively limited and phrased as openly and neutrally as possible. Direct questions should be followed by a return to open-ended prompts for expansion and to reinstate the child as the expert on their experience. Open-ended questions limit opportunities for interviewers to introduce new information into the interview or to suggest or imply information about the event that the child has not introduced themselves. Open-ended questions force the interviewer to maintain neutrality through the nature of their construction.
- (iii) *Remaining open to multiple interpretations of the statement provided by the child.* To avoid confirmation bias or tunnel vision (e.g., Kassin et al., 2013), which focuses the interviewer on information that is consistent with their existing beliefs, it is critical that an interviewer maintains an open mind about what might have happened that led to the investigative interview. This openness to multiple interpretations means that the interviewer should actively consider all possible reasons why the situation at hand may have unfolded. For example, in the infamous Kelly Michaels day care sex abuse case, a 4-year-old boy had his temperature taken rectally during a doctor visit. The child reported that Kelly, his preschool teacher, did that to him at nap time. This statement was reported to the police and resulted in highly suggestive interviews of the other children who attended the day care in an attempt to determine if they may have experienced sexual assault. These interviews resulted in Michaels' conviction on 115 counts of sexual abuse of 20 children. Michaels spent more than 5 years in prison before her conviction was overturned on appeal due to the highly suggestive nature of the interviews. The original 4-year-old child reported that he meant that Kelly took his temperature, and thus, had an interviewer asked the child to expand on his original statement, the entire tragedy may have been avoided (see Schreiber et al., 2006).

While there is little debate about the first two points, the third aspect of interviewer neutrality has been the subject of intense debates and discussions in the literature. For instance, there has been

debate about whether or not forensic interviewers should be completely blind regarding the allegation in the case at hand to avoid the potential for high-risk suggestive questions (Rivard et al., 2016). Allegation-blind interviewing, though relatively uncommon, allows the interviewers to follow the recommended practice of only using information that the child has disclosed when formulating their questions (Rivard & Schreiber Compo, 2017). Regardless of the particular practice, evidence-based approaches to interviewing must all involve an openness to multiple hypotheses.

CONFUSION RELATED TO GENERATING HYPOTHESES AND TESTING HYPOTHESES

The concept of interviewer openness may be difficult to understand for those who are unfamiliar with child forensic interviewing best practice protocols. The recent Canadian legal case, referenced earlier, demonstrated how the recommendation of “hypothesis testing” can be misinterpreted. In *R. v. Blair* (2024), Justice Silver summarized the expert testimony regarding hypothesis testing in the case:

Moreover, [interviewer] was not open to exploring other viable explanations for [complainant] responses, which suggested confirmation bias. [Expert] confirmed that exploring alternate hypotheses was an established best practice in interviewing children. This closed approach to questioning [complainant] meant [interviewer] did not get any information from [complainant] on the context of the touchings such as what happened before and after the events and what [complainant's] observations were when the touchings happened.

[para 83]

In this excerpt, two issues are conflated. The first issue, which may have validity (as described earlier) is the forensic interviewer's lack of openness to exploring alternative explanations. The second issue, however, is that the judge (via an “expert's” testimony) inferred that the failure to explore alternative hypotheses explicitly suggested confirmation bias. The description of exploring alternate hypotheses as an established best practice in interviewing children misrepresents the literature. Openness and exploration are two distinct concepts. Openness implies a willingness to consider multiple interpretations of information that is encountered. Exploration implies an active effort to test those hypotheses.

Imagine that the interviewer was compelled to engage in active hypothesis testing in all child forensic interviews. Now imagine that an 8-year-old child has provided a clear statement of sexual assault involving vaginal touch and digital penetration by her coach after soccer practice. After the child provides a cogent statement that a familiar person touched her inappropriately, the interviewer would then engage in active hypothesis testing. What might this hypothesis testing look like? What impact might hypothesis testing have on an 8-year-old who has cogently described an event that has occurred? If the interviewer sought to test the hypothesis that the child erred in her identification of the perpetrator, they would have to ask direct questions about alternative people who may have touched her inappropriately. Or, perhaps the interviewer could challenge the child's confidence that she had identified the correct perpetrator. If the interviewer sought to test the hypothesis that the touch may have been non-sexual, they would have to question the child's account of the events in a way that may either communicate to the child that she was not believed or lead her to doubt her previously cogent recollection of the experience. What would such challenges achieve? One possible, perhaps likely, outcome is that the child might change her answers, not because she was not accurate the first time, but rather simply because she is accustomed to adults in the role of authority repeating questions until she provides the response they want to hear (e.g., Andrews & Lamb, 2014; Zajac & Hayne, 2003). In the above example, the child had made clear and articulate statements about both who committed the sexual assault and the nature of the sexual assault. There was little room for interpretation. Any efforts to actively test other hypotheses substantially increase the likelihood of direct and leading questions—the very questions interviewers seek to avoid because they are less likely to lead to the truth.

Engaging in active hypothesis testing may also have additional adverse effects, including interfering with the development of interpersonal rapport and the child's willingness to cooperate with the criminal investigation and subsequent prosecution. The sensitive nature of the forensic interview context calls for disclosure of private personal details, which is best facilitated using socio-emotional support; as a result, developing interpersonal rapport is a well-established practice in forensic interviewing (Hershkowitz et al., 2014; Karni-Visel et al., 2023). The sensitive environment, coupled with the unfamiliarity of the forensic interviewer, demands adequate rapport building efforts to create a sense of trust and facilitate cooperation with the interview process (Hershkowitz & Lamb, 2020; Lamb et al., 2018; Lewy et al., 2015). Actively testing hypotheses involves questioning the child's version of events and risks communicating to the child that their initial cogent account of what happened might not be believed or understood. These interviewer behaviors undermine the most foundational efforts to build rapport with children—compromising the efficacy of the forensic interview and raising questions about the child's willingness to cooperate with the investigation and subsequent legal proceedings (Lamb et al., 2018; Lavoie et al., 2021).

In *R. v. Blair*, the absence of active or explicit hypothesis testing was interpreted as being inadequate interviewing. This interpretation of appropriate interviewer behavior could set a dangerous precedent. Active or explicit hypothesis testing is not recommended as a routine practice in child forensic interviews (e.g., see Lamb et al., 2007). While active openness to multiple hypotheses is critical, the engagement in 'active' hypothesis testing during a forensic interview is a dated, reactionary response to the day care sex abuse cases of the late 20th century. Though active hypothesis testing is a critical tool for use in circumstances in which a statement is unclear (e.g., if there is contradictory information provided by the child), or there are reasons to be concerned about the interpretation of a statement (e.g., compelling evidence of pre-interview contamination), the assumption that its absence implies confirmation bias is problematic and misleading. It is not necessary to explicitly test alternative hypotheses in every interview with a child. In fact, alternative hypothesis testing can happen at any point throughout the entire investigative process and may not even require a follow-up interview with the child. For example, clarifying information could be collected from other witnesses or non-abusive caregivers in the child's life. The lack of hypothesis testing is distinct from openness to alternative hypotheses. When an interviewer remains open, they are able to identify the circumstances in which active exploration of alternative hypotheses is necessary.

The confusion related to generating hypotheses and testing hypotheses may also be a result of misplaced guidance from the forensic evaluation literature. In some cases, forensic evaluators, who are often mental health professionals, are retained to assess allegations of child sexual abuse after an investigation has concluded. The work of a forensic evaluator differs from that of a forensic interviewer in many respects, including the timing of the intervention and specific practice goals. While forensic evaluators are often involved in later stages, even after an investigation has concluded (see Herman, 2005), forensic interviewers are typically engaged at the onset of an investigation. As mentioned, forensic interviewers engage in questioning children for the purpose of obtaining an uninterrupted narrative account of the child's experience, which differs from the goal of a forensic evaluator, to assess the veracity of the allegation. Models for assessing child sexual abuse allegations, used by forensic evaluators, are often more structured and include "checklists" of various dimensions to be assessed (O'Donohue et al., 2014), including specific hypotheses to be considered by investigators (Kuehnle, 1996; Kuehnle & Connell, 2010).

CONCLUSIONS AND RECOMMENDATIONS

Despite efforts to ensure that judicial proceedings in child abuse cases are free from improper interviewing techniques and unqualified experts, recent cases reveal ongoing challenges for prosecutors and judges. The influence of unqualified expert witnesses, who provide testimony contrary to best practices in child forensic interviewing, underscores these difficulties. This

paper highlights the risks associated with interpreting the absence of active hypothesis testing as inadequate interviewing, which sets a dangerous precedent. Ensuring that expert witnesses adhere to best practices based on established knowledge is crucial for delivering justice to victims, the accused, and society as a whole.

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Prof. Warren Binford is an international children's rights scholar and advocate whose research and writing largely focuses on 21st century forms of childhood harms. Warren is the inaugural W.H. Lea Endowed Chair for Justice in Pediatric Law, Policy and Ethics at the University of Colorado where she is a Professor of Pediatrics, Professor of Law (by courtesy), and a Core Faculty Member in the Center for Bioethics and the Humanities. She joined the Kempe Center as its Advocacy Director in 2020. She has received approximately 50 awards and distinctions and has been both a Fulbright Scholar and the inaugural Fulbright Canada-Palix Foundation Distinguished Visiting Chair in Brain Science and Child and Family Health and Wellness.

Dr. Gina Dimitropoulos is a Professor of the Faculty of Social Work and cross appointed with the Departments of Psychiatry and Pediatrics at the University of Calgary. She holds a Research Excellence Chair in System Level Interventions for Equitable and Accessible Youth Mental Health Services. She co-leads the Canadian Child and Youth Advocacy Knowledge and Research Centre with Dr. Naomi Parker. She has over 160 publications in peer reviewed journals and received CIHR funding to lead projects related to child maltreatment, youth mental health, peer support, and transitions in care.

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