

DEFENDING THE FORENSIC INTERVIEW AGAINST CLAIMS OF SUGGESTIBILITY

The prosecutor's first step in addressing defense claims of suggestibility in a forensic interview is to be educated on the particular forensic interview structure utilized in the interview. To address defense claims that the forensic interviewer suggested answers to the child or led the child to respond in a certain way, the prosecutor must be keenly familiar with the interview structure used. A prosecutor should consider attending training on the forensic interview structure utilized in his or her jurisdiction. In addition, the prosecutor should attend the interview itself, if possible. As part of the multidisciplinary team (MDT), the prosecutor will have an opportunity to watch the interview as it happens and strategize the case immediately with other MDT members.



In addition, the child abuse prosecutor also must be knowledgeable about memory and suggestibility research. A prosecutor may not be familiar with every research article that exists on suggestibility but should be aware of the keystone research articles in the field. For a new child abuse prosecutor, an excellent first step is to become acquainted with the Child Abuse Library Online (CALiO™) developed by the National Children's Advocacy Center (NCAC). There is an experienced Digital Information Librarian available at the NCAC to assist child abuse prosecutors with bibliographies of the latest suggestibility research.



When preparing for trial, the prosecutor should schedule preparatory meetings with the forensic interviewer. At this meeting, the prosecutor can learn more about the forensic interview structure that was utilized. It is important for the prosecutor to learn from the forensic interviewer. The prosecutor needs to fully analyze the video recording and ask the interviewer if he or she noticed any particular issues or challenges during the interview. If errors of suggestibility were made by the interviewer, the prosecutor must acknowledge these errors. The prosecutor though may meet the defense claims of suggestibility by emphasizing that the forensic interview as a whole was non-leading and non-suggestive. The prosecutor needs to anticipate and address the specifics of the defense claim of suggestibility in their case in chief to thwart the defense claim of suggestibility.

Tips on Defending the Forensic Interview against Suggestibility Claims throughout the Trial from Opening Statement to Closing Argument

- Emphasize every time the child corrected the forensic interviewer.
- Emphasize the child's understanding of the interview instructions to tell the truth, to not guess, to tell the interviewer if he or she does not understand.
- Emphasize the video recording shows no improper body language by the forensic interviewer.



- Emphasize tools utilized during the forensic interview (e.g., Play-Doh®) are for the comfort of the child and not for playtime.
- Emphasize reason for deviation in interview structure (e.g., multiple forensic interviews of the child were conducted because of the complicated fact pattern or several alleged perpetrators).
- Emphasize errors by forensic interviewer were rehabilitated (e.g., if forensic interviewer were to inadvertently mention the name of the alleged perpetrator before the child did, the forensic interviewer continually reinforced the interview instructions that the child can correct the interviewer at any time).
- Emphasize the interview tool of a human figure drawing is not suggestive, the drawing is only used for clarification purposes, and only the child marked on the drawing.
- Emphasize the policy of the children’s advocacy center, if applicable, to give items (e.g., juice boxes and teddy bears) to children who are interviewed is extended to all children, not select children, who are interviewed.
- Emphasize non-leading and non-suggestive questions were asked by forensic interviewer. Emphasize interviewer’s continued use of phrases, such as “Tell me more about that. “
- Emphasize the forensic interviewer’s follow-up and clarification questions in the latter part of a forensic interview are to seek clarification of the previous disclosure by the child.
- Emphasize there is no perfect forensic interview, but, as a whole, the forensic interview was neutral, non-leading and non-suggestive.
- Emphasize no motive or bias on the part of the forensic interviewer (e.g., the interviewer does not know the parties involved in the investigation).

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Contact the Association of Prosecuting Attorney' s Child Abuse Prosecution Project at www.APAInc.org or at www.childabuseprosecution.org for additional information concerning child abuse prosecution training and materials.

Visit the [Child Abuse Library Online \(CALiO™\)](#) to access the latest research on suggestibility. Or contact the National Children's Advocacy Center, Digital Information Librarian, Muriel Wells, at mwells@nationalcac.org for assistance.