

# EFFECTIVE CROSS-EXAMINATION OF A DEFENSE EXPERT IN A CHILD SEXUAL ABUSE CASE

An effective cross-examination of a defense expert highlights the prosecution's theory of a child sexual abuse case, is grounded in research and science; and juxtaposes those principles with a lack of scientific support and common sense for positions held by a defense witness.

Most importantly, it is critical to highlight the problems in the defense theory of a case in a way a jury will understand. Starting with the state's case, a prosecutor must lay the groundwork for the scientific principles that underlie the forensic interviewing profession in a manner that a lay person will grasp, having likely never before heard the term "forensic interviewing." This is accomplished by taking painstaking efforts to explain forensic interviewing and the scientifically based protocols in painstaking detail with the relevant witnesses. If sufficient groundwork is laid, and the jury understands the basics of forensic interviewing, including common issues such as suggestibility and coaching, then jury members can follow the cross-examination of a defense expert with deeper thought and consideration.

## Practical Tips for Cross-Examination:

- Always attempt to speak with a defense expert prior to trial with an investigator or detective listening to the conversation.
  - If an expert refuses to speak with a prosecution team in advance of the trial, that fact can be brought out during cross-examination, ultimately highlighting his or her lack of objectivity, and arguing that a neutral expert who is telling the truth would not shy away from speaking with either side.
  - Having an investigator or detective present for a pre-trial conversation is extremely important, as he or she can testify about any inconsistencies that occur from this conversation to trial testimony.
- A common defense tactic is to highlight any problematic questions that were asked during a child's forensic interview. An effective rebuttal is to ask a defense expert to acknowledge all of the aspects of an interview that were done correctly. Generally, the few imperfections are greatly outnumbered by the positive attributes of an interview. It is important for a jury to see that an interview was competently conducted pursuant to established protocols.
- Have a defense expert acknowledge that leading questions, in and of themselves, do not lead to an unreliable forensic interview. Rather, an interview must be viewed as a whole.
  - At what point was a problematic question asked during the interview?
  - Was this the first time the information was introduced into a conversation, or was it initially disclosed by the child earlier in the interview?
  - Was the leading question offense-related or critical to the outcry, or was it about superfluous information?
  - Did the child resist any suggestion by correcting the interviewer or indicating he or she did not know the answer to a question? And if so, pointing out this resistance rejects the notion that the child was subject to suggestibility.
  - The age of the child is critical. Most of the research on suggestibility concerns preschool children. Don't allow a defense expert to paint the portrait that the same issues regarding the reliability of a 4-year-old child's interview are the same as those regarding a 14-year-old child's interview.



- Always have an expert acknowledge that the quality of an interview must be evaluated as a whole and not simply appraised on potential problem areas, to determine the overall reliability.

## Understand the Research Regarding Suggestibility

An effective prosecutor must have a working knowledge of the research surrounding the concept of suggestibility. No other concept is more exploited by the defense than suggestibility in attacking the statements of a child at trial, because it is both misunderstood by lawyers and lay persons, and ripe for misinterpretation. Understanding what the research actually states, including the methods and limits of those studies, will provide for a fruitful area of cross-examination when a defense expert makes unsupported statements.

A prosecutor should be familiar with the following historical research studies that are commonly used by a defense expert and a defense attorney:

- The Mouse Trap Study – Ceci, S. J., Huffman, M. L., Smith, E., & Loftus, E. F. (1994). Repeatedly thinking about a non-event: Source misattributions among preschoolers. *Consciousness & Cognition*, 3, 388-407.
- Mouse Trap Follow-Up Study – Huffman, M. L., Crossman, A. M., & Ceci, S. J. (1997) Are false memories permanent? An investigation of the long-term effects of source misattributions. *Consciousness and Cognition*, 6, 482-490.
- Sam Stone Study – Leichtman, M. D., & Ceci, S. J. (1995). The effects of stereotypes and suggestions on preschoolers' reports. *Developmental Psychology*, 31(4), 568-578.

A prosecutor should also be familiar with the research and articles that put these and other studies in context. For example, it is widely acknowledged that it is possible for a younger child to be suggestible. However, if a forensic interview is conducted pursuant to the recognized protocols, then the likelihood of suggestibility is small. There are numerous resources through the National Children's Advocacy Center's *Child Abuse Library Online* (CALiO™) to aid prosecutors and allied professionals in expanding their knowledge about suggestibility and many other common defenses. The following materials are great starting points to understanding the research regarding suggestibility:

- Lyon, T. D. (2001). Let's not exaggerate the suggestibility of children. *Court Review*, 38(3), 12-14.
- National Children's Advocacy Center. (2019). Question types in forensic interviews of children: A bibliography. Huntsville, AL: Author.
- Newlin, C., Cordisco Steel, L., Chamberlin, A., Anderson, J., Kenniston, J., Russell, A., Stewart, H., & Vaughn-Eden, V. (2015). Child forensic interviewing: Best practices. *Juvenile Justice Bulletin*, NCJ 248749. Washington, DC: Office of Juvenile Justice and Delinquency.
- Poole, D. A., & Lindsay, D. S. (2002). Reducing child witnesses' false reports of misinformation from parents. *Journal of Experimental Child Psychology*, 81, 117-140.

**Contact the Association of Prosecuting Attorney's Child Abuse Prosecution Project at [www.APAInc.org](http://www.APAInc.org) or at [www.childabuseprosecution.org](http://www.childabuseprosecution.org) for additional information concerning child abuse prosecution training and materials.**