Developmentally Sensitive Interviewing for Legal Purposes

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Originally edited by Helen Westcott, Graham Davies, and Ray Bull and published in 2002, *Children's Testimony: A Handbook of Psychological and Forensic Practice* represented a significant collaborative achievement of researchers and practitioners. The book not only provided a comprehensive guide to the available research on children's testimony, but also called attention to unanswered questions and issues remaining to be resolved by researchers and practitioners striving to ensure that investigators elicited detailed and accurate testimony from child witnesses so that children and innocent suspects could be protected and guilty perpetrators prosecuted.

A comprehensive understanding of children's testimony requires expertise from a diverse group of professionals with knowledge of topics ranging from memory to language to law to mental health, with insights drawn from both practitioners and researchers. Not surprisingly perhaps, such interdisciplinary collaboration is, unfortunately, rare. Because the past decade has been marked by substantial progress and
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achievements, the time is ripe for a new and fully up-to-date edition of *Children’s Testimony*.

Before providing an overview of the book and describing our goals, we begin by placing the field of children’s testimony in context. A complete review of the social and historical context is beyond the scope of this chapter (for such discussions see Bruck, Ceci, & Principe, 2006; Poole & Lamb, 1998), but it is necessary to explain the development of the field— even since the first edition of this book was published almost a decade ago—in order to make sense of current issues and debates. Frankly, there is too much yet to be discovered to repeat the lessons and mistakes of the past.

When children are asked to testify, it is usually about maltreatment (Bruck *et al.*, 2006; Lamb, 2003; Lamb, Hershkowitz, Orbach, & Esplin, 2008); a body of knowledge about ‘children’s testimony’ largely exists because a shocking number of children around the world do not live in safe and secure circumstances. In the United States, for example, about 3.5 million investigations or assessments are carried out annually in response to reports of suspected child maltreatment. Following these investigations, nearly 800,000 children were classified as victims of maltreatment in 2007 (US Department of Health and Human Services, Administration on Children, Youth, and Families, 2009). Similarly alarming situations exist in the United Kingdom, Canada, Australia, and elsewhere (Australian Institute of Health and Welfare, 2007; Creighton, 2004; Trocmé *et al.*, 2001). Increased awareness of child maltreatment beginning in the 1970s complemented by the reduction of barriers to children’s participation in the legal system in the 1980s together ensured that increasing numbers of children have come to be viewed as potential witnesses (Lamb, 2003).

Each year, increasing numbers of children thus come into contact with the legal, social service, and child welfare systems around the world. As a result, children represent ‘a large and growing legal constituency, one that possesses a special set of constraints involving basic developmental competencies, including cognitive, social, and emotional, that may constrain their effective participation’ (Bruck *et al.*, 2006, p. 777). In response to these trends, the amount of research concerning children’s testimony has grown rapidly; it remains one of the fastest-growing areas in all of developmental psychology (Bruck *et al.*, 2006).

Accurate identification of child maltreatment and its victims is crucial if we wish to end victimization, protect children, and provide children, families, and, potentially, perpetrators with appropriate services and treatment. This is particularly important given that maltreatment can profoundly affect children’s cognitive, socio-emotional, and even
physical, development (for a review see Cicchetti, 2010). Early identification is often difficult because (as we explain in this book) child maltreatment is a crime that is extremely difficult to investigate. Because corroborative evidence is often absent, especially when sexual abuse is involved, suspected victims may often be the sole sources of information about their experiences.

For this reason, investigative interviewers have vital roles in the investigation of child maltreatment. The investigative interview typically sets into motion criminal proceedings and/or a variety of other interventions for children and families. Information originating from investigative interviews may powerfully affect legal and administrative decisions that may profoundly affect the lives of children, families, and suspects, so it is imperative that children’s reports are clear, consistent, detailed, and accurate.

Enough has been written about the McMartin and similar trials to make an extensive review unnecessary here, but it is worth noting how cases such as this highlighted the importance of careful interviewing and the profound need for empirical research on children’s testimony. These highly publicized cases involving allegations of child sexual abuse in daycare centres occurred around the world (e.g., in the United States, Norway, New Zealand, and the United Kingdom) particularly underscored the counterproductive ways in which alleged victims were sometimes questioned, at times rendering their testimony flawed and inaccurate (Bruck et al., 2006; Ceci & Bruck, 1995). In the McMartin case, for example, children made bizarre allegations (e.g., that they were taken into tunnels underneath the school, saw witches fly, went on hot-air balloon rides, and witnessed human and animal sacrifice), but the charges were eventually dropped after years of expensive investigation and litigation. Defendants in other cases similarly served long periods in jail before their convictions were overturned (Ceci & Bruck, 1995; Nathan & Snedeker, 1995).

As so often happens in child maltreatment cases, these daycare cases relied almost entirely on children’s allegations, and it was the jury’s task to determine whether the children could be believed. These decisions had to be made in the face of competing claims by prosecutors that children never lie about sexual abuse, and by defence lawyers that children could easily be led to provide false reports following repeated suggestive interviews by zealous therapists. Such competing claims were made about child witnesses’ capabilities and limitations despite scant research on children’s testimony and a strong need for empirical research on these issues.

Researchers responded to this need enthusiastically. In the last 30 years, literally hundreds, if not thousands, of studies have been
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conducted by an international and disciplinarily diverse group of researchers. These studies have revealed much about children’s abilities, capacities, and limitations, and the factors that influence children’s eyewitness testimony. Drawing upon the findings of laboratory research, researchers have developed (and continue to develop) creative ways to conduct more ecologically valid research – interviewing children about stressful medical procedures, and involving maltreated children as research participants, for example. By identifying children’s strengths, weaknesses, and characteristics, investigative interviewing procedures and protocols have improved the quality of information elicited from children. We have learned quite a lot, therefore, even since the 2002 publication of the first edition of _Children’s Testimony_.

What do we know and what have we accomplished? We now know that children – even very young children – can provide reliable and accurate testimony about experienced or witnessed events. We also know that children (like adults) are suggestible, and that we must be aware of ways in which suggestibility can be minimized. We further know that the level of accuracy and the amount of detail provided by young witnesses is largely dependent on the ways in which children are interviewed and that the role of the interviewer is thus paramount.

Close collaboration between researchers, interviewers, legal experts, and the police has been especially marked in this field, as exemplified by the achievements of the team who developed the National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol, a set of structured guidelines for interviewing children about experienced or witnessed events which has been validated extensively around the world (Bull, 2010; Lamb et al., 2008). In fact, it has now been more than a decade since publication of the first field study validating the NICHD Investigative Interview Protocol (Orbach, Hershkowitz, Lamb, Esplin, & Horowitz, 2000). Many researchers have also tested a variety of techniques and procedures ostensibly designed to enhance children’s testimony (e.g., dolls/props, CCTV, drawing). Growing confidence in scientific research is evident in the development of a professional organization that focuses specifically on investigative interviewing and facilitates meaningful interaction among a diverse group of researchers and practitioners from around the world – the International Investigative Interviewing Research Group (IIIRG). Research on child testimony also features prominently at the conferences organized by such organizations as the American Psychology–Law Society, the European Association of Psychology and Law, the Society for Applied Research in Memory and Cognition, and the Society for Research in Child Development. Professionals in many different fields have come to realize that there is much to gain – practically,
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theoretically, and methodologically – from studying children’s eyewitness testimony in both laboratory and field contexts. Above all else, we have learned that, in this field, researchers and practitioners need and complement one another in unique and important ways and that the promotion and pursuit of children’s welfare requires cooperation with and learning from each other.

Of course, there is much yet to learn. The willingness to learn and draw on new evidence characterizes good investigative interviewers and researchers alike. Research on children’s testimony that is informative and helps to solve problems in the field needs to be implemented by practitioners, whose insights and experiences in the field should help in the formulation of new studies and in the interpretation of their findings. The NICHD Investigative Interview Protocol, described in detail throughout this volume, continually strives to accommodate the results of new research and changing needs. Recognition of its overall effectiveness has prompted other researchers and practitioners to consider ways in which it might be altered to address the differing needs of specific groups of individuals who need to be interviewed forensically, including those who are very young or especially reluctant to talk, those who are suspects rather than victims or witnesses, and those who have mental or intellectual difficulties.

Clearly, we have come a long way since the McMartin trials and the associated intense debates about what child witnesses can and cannot do, and we have come a long way since the first edition of *Children’s Testimony* was published in 2002. Surely, the next decade promises to be as exciting and productive as the last.

WHAT WE SET OUT TO DO IN THIS UPDATED HANDBOOK

Our aim in preparing this handbook is to create a resource that will be valuable to all professionals working in the field of children’s eyewitness testimony – academics and practitioners alike – because it provides a fully up-to-date review of the significant developments made in the last decade. This book contains valuable and practical information of direct relevance, not only to investigative interviewers, but also to lawyers, judges, expert witnesses, social workers, intermediaries, academics, and students. We believe that new advancements must be shared in accessible ways, and have thus asked both academic and practitioner contributors to write in a user-friendly style that make their conclusions available to a wide audience. The book comprises a collection of short focused chapters, organized to deal with the issues in the
sequence with which they must often be addressed as investigations unfold and progress.

Whereas most comparable resources emphasize the research and issues of concern to scholars and practitioners in individual countries, we have invited authors from as diverse an array of national and disciplinary backgrounds as the consumers of the burgeoning literature on children’s testimony. The editors themselves have experience working in the British, American, New Zealand, Canadian, and Israeli systems and we have included contributors from both these and other national backgrounds because it is so advantageous and important to learn from the experiences and diversity of other systems and practices. Knowledge of what is done elsewhere allows us to reflect on the procedures that characterize our own jurisdictions, helping us to generate new ideas for both research and implementation. Although it was not possible or desirable to address every concern in every jurisdiction, we have attempted to build a diverse knowledge base from which international researchers and practitioners can draw.

This book is also distinguished by our determination to include contributors from many different professional backgrounds. We are pleased to have secured contributions by psychologists, police officers, lawyers and legal scholars, clinicians, expert witnesses, and experienced investigative interviewers and trainers. This allows us to provide a truly comprehensive overview of children’s testimony while ensuring that information is topical and directly relevant to practitioners.

**WHAT TO EXPECT**

The contributors consider all aspects and stages of the investigative process. First, we provide some critical foundational chapters and address issues pertaining to child development and memory. Second, we discuss the various phases of the investigation – from planning the interview to reviewing its value after the fact. Finally, other important issues (including the challenges of interviewing children with intellectual disabilities, the use of supplementary interview techniques and interviewer training) are discussed.

Authors were asked to provide short and focused chapters emphasizing information of direct relevance to practitioners in the field. Of course, relevant theory is discussed when applicable but the focus is on practical recommendations and solutions. In that sense, we asked authors to stress non-technical information and to present research findings in ways that could be readily applied by investigative interviewers and ‘consumers’ (e.g., decision makers) of the information.
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provided in those interviews. We asked authors to avoid using jargon and highly technical language or providing unnecessary methodological details. Whenever possible, authors reference key resources (reviews and secondary sources) and provide examples directly from the field. To facilitate learning, each chapter begins with bullet points foreshadowing key concepts discussed in the chapter and their relevance for practice.

CHAPTER OVERVIEW

The first chapters (Chapters 2 and 3) provide essential background for those who study and work within the field of children’s testimony, because interviewers and legal professionals need to understand the body of knowledge about children’s developmental characteristics (Chapter 2) and memory capacities (Chapter 3) that has allowed development of the best-practice guidelines that shape their everyday work. Readers may find that this information helps them better understand why they need to behave (or not behave) in certain ways, and may also help them describe and defend their practices when they are challenged in court, or wish to challenge the behaviour of others. The developmental considerations chapter provides a brief overview of developmental concepts that are directly relevant to interviewing, including, for example, language, children’s concept of time, and children’s understanding of the word ‘touch’. In the memory foundations chapter, we discuss key aspects of human memory and its developmental characteristics that must be taken into account when evaluating accounts of allegedly experienced events. These two chapters set the stage for the remainder of the book by reminding us that our expectations of children must be reasonable and that our demands must respect their developmental capacities and limitations. The field of children’s testimony owes a tremendous debt to basic developmental and memory researchers, and this knowledge is summarized in these initial chapters.

Chapter 4, written by an American law professor/developmental psychologist, focuses on issues of testimonial competency, with distinctions made between basic competency and the ability to distinguish between truth and falsehood. In the chapter, Thomas Lyon shows how these competencies can be assessed in ways that are sensitive to children’s developmental capacities and limitations. Furthermore, he reveals that truth–lie competency does not predict children’s honesty, but that eliciting a developmentally appropriate promise to tell the truth does – an important consideration given the need to encourage truthful reports from victims/witnesses.
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Chapters 5–10 take us through phases of the investigative process. Planning is a prerequisite for good interviewing and is thus the focus of Chapter 5 by Kevin Smith (UK police force) and Rebecca Milne (British forensic psychologist) in which detailed advice is provided about the planning process. Key tasks include collating relevant information, setting interview objectives, and making other key practical decisions, such as when the child should best be interviewed.

In Chapter 6, Irit Hershkowitz (an Israeli professor of social work) shows that rapport building is an essential part of the interview process, especially because children may be reluctant to disclose intimate and perhaps embarrassing details about their experiences (e.g., of sexual abuse) unless they feel comfortable with the interviewer. Hershkowitz also describes and provides easy-to-use examples of empirically based best-practice methods for developing rapport. As she shows, the NICHD Investigative Interview Protocol includes a sequence of prompts designed to build rapport with children in the pre-substantive part of the interview. For example, rapport building should involve open-ended invitations for children to talk about personally meaningful experiences. She also emphasizes that interviewers must evaluate how children are responding to rapport-building attempts, asking themselves whether the child is sufficiently engaged and cooperative for an effective interview to proceed.

In Chapter 7, Kim Roberts, Sonja Brubacher, Martine Powell, and Heather Price (a team of Canadian and Australian developmental forensic psychologists) describe the important role that a practice narrative can have in preparing children to talk. The practice interview involves asking children to describe an episodic event (e.g., their last birthday) so they can become familiar with an unusual task – providing a detailed narrative in response to open-ended invitations. As Roberts and her colleagues show, practice narratives have both cognitive and motivational benefits. Although research on the practice narrative is not as abundant as in some other areas addressed in this book, the authors show that practice leads children to later provide longer and more accurate reports of substantive issues. In a sense, children actually learn how to exploit their memories by practicing with interviewers. Practice helps interviewers, too. Practice interviews, which should adhere to the same best-practice guidelines as regular interviews, allow interviewers to practice asking open-ended questions, thereby reducing the total number of questions and the number of less desirable questions asked in the subsequent substantive phase of the interview.

Margaret-Ellen Pipe and Yael Orbach (respectively, New Zealand and Israeli cognitive psychologists now based in the United States) describe the desired hierarchical structure and sequential organization of the
substantive portion of the interview in Chapter 8. They provide examples about the ways in which interviewers can maximize the amount of information obtained using open-ended prompts, while delaying the use of focused-recall directive prompts, minimizing focused-recognition prompts and eliminating suggestive prompts. These exemplary descriptions are accompanied with an invaluable description of the reasons why these strategies should be adopted.

However, after the interview has been conducted (ideally in accordance with best-practice guidelines), the job is not done. In Chapter 9, Trond Myklebust and Gavin Oxburgh (respectively, Norwegian and British academics with police backgrounds and responsibilities) describe how investigators must review the case after the interview is conducted and show in the process how and why some cases progress (or fail to progress) and how decisions concerning case progression are made. Of particular relevance to interviewers and other legal professionals, they describe steps (such as examining the crime scene or interviewing the child again) that can be taken if a case is not ready to progress. Thus, among other helpful recommendations, this chapter provides practical suggestions about what to do when it is not appropriate to close an investigation but additional information is needed.

While gathering and reviewing information about the alleged event, the clinical circumstances must also be considered. In Chapter 10, Kathryn Kuehnle and Mary Connell (US clinical and forensic psychologists) thoroughly discuss the risks associated with children’s involvement in the legal system – particularly during the period between the abuse report and any possible judicial determination. This period can be very stressful for children, especially when, for example, they face or fear the loss of family members. Kuehnle and Connell discuss the delicate balance between the children’s clinical needs and the requirements of the legal case. They advocate that abuse-specific therapy should not be provided for children involved in Family or Dependency court proceedings until their abuse status has been determined legally and remind forensic interviewers that they are uniquely placed to assess the stresses that children are experiencing and, where necessary, ensure that they get referred to appropriate services. As the authors point out, all children do not react similarly to abuse, and thus their vulnerabilities and strengths must be determined on an individual basis.

The remaining nine chapters discuss a number of important issues, techniques, and dilemmas.

We cannot say enough about the importance of interviewer training. It is imperative that those who deal with children’s testimony – both on the front lines and behind the scenes – are trained in empirically
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based best practices. In Chapter 11, Heather Stewart (a US social worker), Carmit Katz (an Israeli social worker), and David La Rooy (a New Zealand-born Scotland-based forensic psychologist) focus on interviewer training. This chapter underscores the need for empirically based training methods and discusses the successful NICHD training model developed by teams involving researchers, practitioners, and expert witnesses. This model emphasizes the crucial importance of ongoing training for maintaining best practices, and Stewart et al. discuss studies showing considerable deterioration after the termination of ongoing feedback sessions. Interviewers, their managers or trainers, and policy makers will all find the chapter invaluable.

In Chapter 12, Deirdre Brown (a clinical and forensic psychologist from New Zealand) discusses the use of supplementary techniques that interviewers sometimes choose to help elicit testimony from children, with emphasis on what empirical research has (or has not) revealed about their effectiveness in enhancing children's reports. In her overview, Brown explains the issues (such as the developmental level of the child) that interviewers must consider before using supplementary techniques and draws attention to the potential risks associated with use and misuse of the techniques.

In Chapter 13, Lucy Henry, Caroline Bettenay, and Daniel Carney (British psychologists) discuss the special considerations that attend interviews with children and adults who have special needs or intellectual disabilities. As the authors point out, such children are at greater risk of maltreatment but have difficulty participating effectively in the legal system. Recent research shows that children with mild and moderate intellectual disabilities are capable of providing forensically relevant details about their experiences, however, and the authors of this chapter provide practical recommendations regarding interviewees with specific disabilities (e.g., Down syndrome, autistic spectrum disorder). Too often 'children with intellectual disabilities' are lumped together even though they do not comprise a homogeneous group with respect to either causes or presentation (e.g., severity, symptoms).

The next two chapters focus on the evaluation and utilization of children's testimony in court proceedings. In Chapter 14, British law professor John Spencer puts cross-examination in context by discussing different legal traditions and diverse attempts to elicit reliable testimony from witnesses in the course of criminal proceedings, noting the centrality of cross-examination in the Anglo-American legal tradition. Spencer also highlights the problems associated with cross-examination, particularly when children are involved, and suggests how such problems might be mitigated. Spencer presents the legal theory and cases in a straightforward fashion, closing with a solid legal and
practical argument in favour of fully implementing the 1989 Pigot Commission proposal that child witnesses should provide direct evidence and be cross-examined as soon as possible after the alleged crime, even when the trial itself is delayed.

In Chapter 15, an American law professor, John Myers, focuses on the special difficulties associated with hearsay evidence. Like John Spencer and Thomas Lyon, he discusses legal concepts clearly and concisely, beginning with definitions of hearsay and hearsay exceptions. The chapter documents the critical role hearsay testimony has in legal cases and calls for all professionals who interact on a regular basis with children (e.g., teachers, medical doctors, child care providers) to be trained in the importance of hearsay evidence as well as in the collection of hearsay evidence. Disclosures made by children need to be documented carefully and not followed up with suggestive questioning. Training should also explain the factors considered when determining whether children's statements qualify for one of the hearsay exemptions.

In Chapter 16, we learn about potential consequences of children's involvement in the legal system. Jodi Quas and Mariya Sumaroka (American developmental psychologists) begin by characterizing the children likely to be involved in the legal system. The authors emphasize aspects of legal involvement that may be particularly difficult and problematic for children, including, for example, multiple delays and continuances, testifying in open court and lacking support from non-offending family members. As they point out, it is not feasible to eliminate such stresses entirely, but some risks and consequences can be recognized and minimized.

In Chapter 17, Bryan Tully reflects on his years of experience providing expert testimony in British courtrooms. In this chapter, he discusses what the courts can expect from expert testimony. Of particular value to interviewers, he explains how they can avoid common pitfalls and attacks on children's testimony. Based on his extensive experience as an expert witness, Tully gives interviewers a snapshot of the expert witness's role and helps them to take the expert's perspective, thereby teaching interviewers how to evaluate children's evidence critically and how to anticipate challenges and criticism, perhaps by modifying their practices.

In Chapter 18, Graham Davies and Lindsay Malloy (a team of British and American forensic developmental psychologists) focus on the relationship between researchers and practitioners. Their chapter addresses the strengths and weaknesses of basic and applied research and touches on some of the important lessons and controversies in the field of children's testimony. As anyone who has worked in this field knows, there are many difficulties and complexities encountered when
conducting research in the ‘real world’ and translating such research into practical guidelines. Davies and Malloy draw attention to areas in which researchers and practitioners collaborated productively (e.g., while studying how investigative interviews should be conducted, or how children’s evidence is presented in court) and suggest ways in which communication and dissemination might be improved.

In Chapter 19, the penultimate chapter, Richard Gelles and Rebecca Brigham (American social work academics) shed light on the ‘screening process’ employed as child protective service workers try to determine whether children have been maltreated, helpfully represented by reference to a series of ‘gates’. Surprisingly little attention is paid to these decision-making processes, even though child protection decisions are importantly influenced by the quality of investigative interviews. Gelles and Brigham recommend that the workers concerned be given training about the implications of their decisions and the frequency with which they serve as ‘gate keepers’ while systems are reformed to ensure that child protection workers get the information they need in a timely fashion so that they can make the best possible decisions.

In the final chapter, the editors bring the book to a close by highlighting key overall conclusions that can be drawn from the informative contributions provided by the diverse and knowledgeable authors involved in producing this volume. They also remind readers of current challenges and the work that lies ahead by emphasizing the continued need for practical and ecologically valid research in this broad and ever-changing field. Finally, the editors underscore the critical need for both academics and practitioners to keep abreast of new developments in the field.

The field of ‘children’s testimony’ is broad and complex, requiring expertise from diverse groups of researchers and practitioners whose knowledge concerning a wide range of topics must be compiled in an accessible manner to facilitate comprehensive understanding and interdisciplinary communication. We must consider the ‘child as a whole’ – with attention paid to developmental, cognitive, and social capacities and limitations. We must bear in mind the normal workings of human memory. And, of course, we must work within the constraints of various legal and social service systems. It is a rewarding and challenging field peopled by an interdisciplinary group of researchers and practitioners all working toward a common goal – the elicitation of detailed and accurate testimony from child witnesses so that children and innocent suspects can be protected and guilty perpetrators prosecuted. By preparing this fully up-to-date review of the research on children’s testimony, we hope to further that goal.
REFERENCES


