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Child Abuse & Neglect



Letter to the Editor

Authors' response to Vieth (2008)

Legal and Psychological Support for the NICHD Interviewing Protocol

In 2007, Lamb, Orbach, Hershkowitz, Esplin, and Horowitz published in *Child Abuse & Neglect* a review of empirical research on the National Institute of Child Health and Development (NICHD) Investigative Interview Protocol in which they provided extensive research supporting the conclusion that the NICHD Protocol “comprises a useful and usable set of guidelines that allow trained interviewers to conduct investigative interviews that hew more closely than they otherwise would to universally endorsed professional guidelines” (p. 1212).

Lamb and colleagues did not suggest that the NICHD Protocol was the only valid and reliable method for interviewing children. They noted that “the Finding Words technique, otherwise known as CornerHouse’s RATAc, has been officially adopted by many jurisdictions and states and their training courses have been very popular” (p. 1211). However, they also mentioned two limitations of the RATAc approach. Specifically, Lamb et al. argued that “[b]ecause the Finding Words approach includes aids such as drawings and anatomical dolls that can adversely affect accurate retrieval. . . researchers need to evaluate the use of these potentially risky tools by interviewers following the Finding Words guidelines” (p. 1212) and noted that “no research on what RATAc-trained interviewers actually do when interviewing children has been published (p. 1211).”

In a critical letter published in this journal, Vieth (2008), a leading proponent of the Finding Words protocol, did not cite any research on RATAc-trained interviewer behavior but instead questioned the value of published research on child interviewing as well as the acceptance of the Protocol in judicial contexts. In this response, we correct some erroneous statements made by Vieth while highlighting agreement with him on several important issues.

Is there consensus on how interviews should be conducted?

Vieth (2008) agreed with Lamb and colleagues that there is a “substantial degree of consensus regarding the ways in which investigative interviews should be conducted” (p. 1005, quoting Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007, pp. 1202–1203). It is indeed well accepted that interviewers should “introduce as little information as possible while encouraging children to provide as much information as possible in the form of narratives elicited using open-ended prompts (‘Tell me what happened.’)” (Lamb et al., 2007, p. 1203). Research has shown that among children disclosing abuse, “responses to individual free-recall prompts are three to five times more informative than responses to more focused prompts” (p. 1203).

Vieth did not question this research. Indeed, the National Center for the Prosecution of Child Abuse (2004) has emphasized that “[t]he most reliable information elicited from children comes in response to open-ended questions such as, ‘Tell me about that’ or ‘Tell me more about that’” (p. 48) and that “[c]hildren provide more erroneous information in response to yes or no questions than to open-ended questions” (p. 33).

How can interviewers be trained to use more open-ended questions?

Vieth did not question the well-replicated finding that interviewers trained to use the NICHD Protocol use more open-ended prompts and reduce their use of more risky question-types, risky because they elicit less accurate information. He also agreed that improving the quality of forensic interviewing requires “continued support, guidance, and feedback on interviewer behavior”, pointing to ways in which the Finding Words program encourages peer review of interviews (Vieth, 2008, p. 1003).

Vieth further acknowledged the importance of research in informing interviewing practice. Although he did not cite any research on RATAc-trained interviewers’ behavior, he asserted that “there are peer-reviewed articles discussing research

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on the *Finding Words* model,” predicting that “in the next year or so, we anticipate there will be a number of scholarly works providing further support that graduates of *Finding Words* are adhering to widely accepted practices in the field,” and promising that “[i]f this is not the case, adjustments to the course or the infrastructure surrounding it will be made” (p. 1005). We emphasize that research on interviewer *behavior* is essential because interviewer training has repeatedly been shown to improve interviewers’ knowledge of appropriate interviewing practices, without effecting commensurate changes in the interviewers’ questioning styles (e.g., Aldridge & Cameron, 1999; Lamb et al., 2002; Sternberg, Lamb, Davies, & Westcott, 2001; Warren et al., 1999).

Are NICHD-Protocol interviews legally acceptable in US courts?

Rather than acknowledge the demonstrated superiority of interviews conducted after NICHD-Protocol training, Vieth suggested that, because NICHD-trained interviewers reduce but do not eliminate the use of option-posing and suggestive questions, their interviews might be found inadmissible in US courts. This assertion is untenable.

In the United States, the quality of forensic interviews is most likely to be assessed by the courts when they judge the admissibility of child interviews under exceptions to the rule against hearsay. Many hearsay exceptions that apply to children’s statements require courts to consider the “reliability” of the hearsay statements on a case-by-case basis. Courts consider the extent to which the children’s statements are “spontaneous” and not the result of “extensive or coercive questioning” (Myers, 2008; e.g., *Bokting v. Bayer*, 2007). Indeed, these factors are cited by the court opinions regarding RATAc-trained interviewers cited by Vieth (In re A.H., 2003; *State v. Hollander*, 1999).

Because use of the Protocol allows interviewers to elicit more spontaneous statements from children while using fewer questions that might be considered coercive, Protocol-guided interviews are more likely to be found reliable and thus admissible, as well as less likely to be attacked in court. One can easily identify cases in which NICHD-trained interviewers conducted admissible interviews (see, e.g., *State v. Quinonez-Gaiton*, 2002) and because use of the Protocol has been universally mandated in Israel since 1998, all prosecutions there in the last decade have benefited from the Protocol. Furthermore, research in both Israel and the United States has shown that interviews conducted using the Protocol yield more investigative leads that can be followed up by investigators (Darvish, Hershkowitz, Lamb, & Orbach, 2005), that use of the Protocol is associated with increases in the number of cases in which charges were filed as well as with increases in the numbers of guilty pleas (Pipe et al., 2008), and that the credibility of child witnesses can be assessed more accurately when the interviews are conducted using the Protocol (Hershkowitz, Fisher, Lamb, & Horowitz, 2007).

Vieth nevertheless suggested that Protocol-trained interviewers might not qualify as expert witnesses, questioning whether the “NICHD Protocol has met the rigorous legal standards for its admissibility in a court of law (p. 2004).” If Vieth was referring to the “standards” used in the United States to ensure the validity and reliability of expert testimony—*Daubert v. Merrell Dow Pharmaceuticals* (1993) and *Frye v. United States* (1923)—his claim is baseless. Those standards look for scientific support, and, as Vieth acknowledged, the Protocol is not only the product of extensive research but the behavior of Protocol interviewers has been studied more extensively than that of any other interviewers. Indeed, at this stage of development, the Protocol is the interviewing approach *most* likely to pass muster under the Supreme Court’s *Daubert* or *Frye* standards.

Vieth’s assertion that Protocol-trained interviews use too many risky questions is equally unsupported by the research. Lamb et al. (2007) focused on published field research documenting the improvements associated with use of the Protocol, and for methodological reasons, the cited studies focused on the first few interviews conducted by interviewers after being trained to use the Protocol. These interviews were understandably far from perfect. Fortunately, the interviewers’ skills did not stagnate at that level, contrary to the impression conveyed by Vieth.

As noted above, Vieth agreed that both the maintenance of superior interviewing skills and further improvement depend on “continued support, guidance, and feedback on interviewer behavior” (Vieth, 2008, p. 1003). Research described by Lamb et al. (2007) shows that skills indeed improve in such circumstances, with recent reports (e.g., Katz & Hershkowitz, 2008) showing the complete elimination of the most problematic questions. Certainly, even well-trained interviewers, whether or not they use the Protocol, need to continue focusing on the quality of their interviews.

What is the proper role of forensic interviewing aids?

As Vieth noted, anatomical drawings are an intrinsic part of the RATAc approach. Vieth did not address research showing that use of these tools is “risky” to the extent that increases in true disclosures may be accompanied by increases in the number of false reports. Brown, Pipe, Lewis, Lamb, and Orbach (2007) have shown that children should be encouraged to provide verbal descriptions of abuse rather than merely pointing to body parts on a drawing. Several researchers have also raised concerns about the risks associated with the anatomical drawings and dolls, particularly when used in interviews with preschool children (Bruck, Ceci, Francoeur, & Renick, 1995; Steward et al., 1996). Although these tools *can* be used non-suggestively, the evidence suggests that actual *practice* is often problematic (e.g., Everson & Boat, 2002; Thierry, Lamb, Orbach, & Pipe, 2005), and Lamb et al.’s observation that researchers have not examined how RATAc-trained interviewers use interviewing aids remains valid. Such risks are especial sources of concern when interviews are not videotaped for subsequent independent evaluation.

Vieth (2008, p. 1004) claimed that the NICHD Protocol advocates the use of non-anatomically detailed body diagrams. This is flatly incorrect. No interviewing tools are included in the Protocol, although the researchers who developed the Protocol

have conducted (and continue to conduct) both field and laboratory research evaluating the effects of using various techniques during or after forensic interviews (e.g., Aldridge et al., 2004; Brown et al., 2007; Katz & Hershkowitz, 2008). As Lamb et al. (2007) argued, it is advisable for forensic interviewers to “provide children with opportunities to recall information in response to open-ended prompts before assuming that special (i.e., more risky) interview techniques are needed (p. 1207).”

Without citing any support, Vieth asserted that use of “gender neutral” drawings is “arguably suggestive in that it requires a child to guess at whether an anatomical part is male or female” (Vieth, 2008, p. 2004). We are aware of no research comparing the suggestiveness of different types of drawings, and Vieth’s assertion that “gender neutral” drawings would be legally objectionable is similarly without merit. None of the three appellate court opinions cited by Vieth (Cleaveland v. State, 1986; Pittman v. State, 1986; State v. Sterna, 1991) concluded that non-anatomically detailed human drawings were inadmissible. Indeed, the court in Cleaveland explicitly rejected the defendant’s argument that “because the pink area between the doll’s legs did not accurately represent the human vagina, [the child] should not have been allowed to use the doll during her testimony” (Cleaveland v. State, 1986, p. 1141).

Are interview instructions problematic?

The Protocol recommends that interviewers instruct children that it is appropriate to say “I don’t understand” or “I don’t know,” to avoid guessing, and to tell the interviewer when s/he is wrong. Appropriate use of these instructions increases children’s accuracy and reduces their susceptibility to suggestion (Poole & Lamb, 1998; Saywitz & Lyon, 2002). Vieth referred to a “debate whether interview instructions should only be used up front or incorporated throughout the interview” (p. 1004), citing a law review article that asserted, without research support, that instructions may be counterproductive if provided at the beginning of the interview (Russell, 2006).

The Protocol also includes language examining the child’s understanding of “true” and “not true.” This language was included at the request of law enforcement, and the substitution of alternative approaches to assessing this understanding—such as asking children to label the statements made by children in stories (Lyon & Saywitz, 1999; Myers, 2005)—would not do violence to the Protocol. Moreover, it is misleading to claim that an interviewer who asks a child whether an interviewer’s statement is true or not true is being “dishonest to the child,” as Vieth claims (p. 1004).

Should research inform interviewer practice?

Vieth quotes Saywitz and Lyon (2002) to the effect that front-line practitioners should not cede decision-making to “laboratory researchers.” Readers might mistakenly conclude that the research reviewed by Lamb et al. (2007) involved laboratory studies of little value to practitioners. On the contrary, the development and evaluation of the Protocol has been informed by the detailed dynamics of many thousands of forensic interviews conducted by hundreds of forensic interviewers (Lamb, Hershkowitz, Orbach, & Esplin, 2008). Field research is slow, difficult, expensive, and necessary (as Vieth appears to recognize), but it ill behooves progress or understanding to overlook the only field research of this sort when it documents the value of a technique that may differ from the critic’s own approach.

The “laboratory researchers” who were the subject of Saywitz and Lyon’s (2002) criticism were those who focus exclusively on false allegations of abuse, ignoring the need to understand the problems of non-disclosure, reluctance, and recantation. In contrast, Lamb et al. (2007) were careful to acknowledge that much more work remains to be done to understand the means by which abused children who are not in press about their experience can best be questioned (see, e.g., Pipe, Lamb, Orbach, & Cederborg, 2007). What is required is a combination of laboratory research (in which accuracy can be verified) and field research (in which the external validity of interviewing techniques can be ascertained) (Lamb & Thierry, 2005). Lamb and his colleagues have already published field research examining the dynamics of interviews with non-disclosing children (Hershkowitz et al., 2006).

Vieth’s (2008, p. 1005) admonishment that “professionals need to avoid any attempt to label one model as superior to another” stands in stark contrast to his criticism of the NICHD Protocol. We agree that *unwarranted* claims of superiority for one model of interviewing are unhelpful. In particular, unsubstantiated legal and psychological claims do little to improve interviewing practice. On the other hand, it is perfectly appropriate to call for empirical testing of interviewing models. Publication of research on the behavior of RATAc-trained interviewers will serve the professional community well, regardless of the outcome.

References

- Aldridge, J., & Cameron, S. (1999). Interviewing child witnesses: Questioning techniques and the role of training. *Applied Developmental Science*, 3, 136–147.
- Aldridge, J., Lamb, M. E., Sternberg, K. J., Orbach, Y., Esplin, P. W., & Bowler, L. (2004). Using a human figure drawing to elicit information from alleged victims of child abuse. *Journal of Consulting and Clinical Psychology*, 72, 304–316.
- Bokting v. Bayer, 505 F.3d 973 (9th Cir. 2007).
- Brown, D. A., Pipe, M.-E., Lewis, C., Lamb, M. E., & Orbach, Y. (2007). Supportive or suggestive: Do human figure drawings help 5–7-year-old children to report touch? *Journal of Consulting and Clinical Psychology*, 75, 33–42.
- Bruck, M., Ceci, S. J., Francoeur, E., & Renick, A. (1995). Anatomically detailed dolls do not facilitate preschoolers’ reports of a pediatric examination involving genital touching. *Journal of Experimental Psychology: Applied*, 1, 95–109.
- Cleaveland v. State, 490 N.E. 2d 1140 (Ind. Ct. App. 1986).

- Darvish, T., Hershkowitz, I., Lamb, M. E., & Orbach, Y. (2005, January). The production of investigative leads in child sexual abuse interviews using the NICHHD protocol. *Paper presented to the Society for Applied Research on Memory and Cognition*, Victoria, New Zealand.
- Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).
- Everson, M. D., & Boat, B. W. (2002). The utility of anatomical dolls and drawing in child forensic interviews. In M. L. Eisen, J. A. Quas, & G. S. Goodman (Eds.), *Memory and suggestibility in the forensic interview* (pp. 383–408). Mahwah, NJ: Erlbaum.
- Frye v. United States, 293 F. 1013 (D.C. App. 1923).
- Hershkowitz, I., Fisher, S., Lamb, M. E., & Horowitz, D. (2007). Improving credibility assessment in child sexual abuse allegations: The role of the NICHHD investigative interview protocol. *Child Abuse & Neglect*, 31, 99–110.
- Hershkowitz, I., Orbach, Y., Lamb, M. E., Pipe, M. E., Sternberg, K. J., & Horowitz, D. (2006). Dynamics of forensic interviews with suspected abuse victims who do not disclose abuse. *Child Abuse & Neglect*, 30, 753–769.
- In re A.H., 578 S.E. 2d 247 (Ga. Ct. App. 2003).
- Katz, C., & Hershkowitz, I. (2008, March). The effects of drawing during investigative interviews with alleged victims of sexual abuse. *Paper presented to the American Psychology-Law Society Conference*, Jacksonville, FL.
- Lamb, M. E., Orbach, Y., Hershkowitz, I., Esplin, P., & Horowitz, D. (2007). Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children. *Child Abuse & Neglect*, 31, 1201–1231.
- Lamb, M. E., Sternberg, K. J., Orbach, Y., Hershkowitz, I., Horowitz, D., & Esplin, P. W. (2002). The effects of intensive training and ongoing supervision on the quality of investigative interviews with alleged sex abuse victims. *Applied Developmental Science*, 6, 114–125.
- Lamb, M. E., & Thierry, K. L. (2005). Understanding children's testimony regarding their alleged abuse: Contributions of field and laboratory analog research. In D. M. Teti (Ed.), *Handbook of research methods in developmental psychology* (pp. 489–508). Malden, MA: Blackwell.
- Lyon, T. D., & Saywitz, K. J. (1999). Maltreated children's competence to take the oath. *Applied Developmental Science*, 3, 16–27.
- Myers, J. E. B. (2005). *Myers on evidence in child, domestic, and elder abuse cases*. New York: Aspen Publishers.
- Myers, J. E. B. (2008). *Myers on evidence in child, domestic and elder abuse cases (2008 cumulative supplement)*. Austin, TX: Wolters Kluwer.
- National Center for the Prosecution of Child Abuse. (2004). *Investigation and prosecution of child abuse* (3rd ed.). Thousand Oaks, CA: Sage.
- Pipe, M. E., Lamb, M. E., Orbach, Y., & Cederborg, A. C. (Eds.). (2007). *Child sexual abuse: Disclosure, delay and denial*. Mahwah, NJ: Erlbaum.
- Pipe, M. E., Orbach, Y., Lamb, M. E., Abbott, C. B., & Stewart, H. L. (2008). *Do best practice interviews with child abuse victims influence case outcomes?* Final Report to the National Institute of Justice (Grant Number: 2006-IJ-CX-0019). Washington DC: Department of Justice.
- Pittman v. State, 344 S.E. 2d 511 (Ga. Ct. App. 1986).
- Poole, D. A., & Lamb, M. E. (1998). *Investigative interviews of children: A guide for helping professionals*. Washington, DC: American Psychological Association.
- Russell, A. (2006). Best practices in child forensic interviews: Interview instructions and truth-lie discussions. *Hamline Journal of Public Law & Policy*, 28, 99–130.
- Saywitz, K. J., & Lyon, T. D. (2002). Coming to grips with children's suggestibility. In M. L. Eisen, J. A. Quas, & G. S. Goodman (Eds.), *Memory and suggestibility in the forensic interview* (pp. 85–113). Mahwah, NJ: Erlbaum.
- State v. Hollander, 590 N.W. 2d 341 (Minn. 1999).
- State v. Quinonez-Gaiton, 54 P.3d 139 (Utah App. 2002).
- Sternberg, K. J., Lamb, M. E., Davies, G. A., & Westcott, H. L. (2001). The Memorandum of Good Practice: Theory versus application. *Child Abuse & Neglect*, 25, 669–681.
- Steward, M. S., Steward, D. S., Farquhar, L., Myers, J. E. B., Reinhart, M., Welker, J., Joye, N., Driskill, J., & Morgan, J. (1996). Interviewing young children about body touch and handling. *Monographs of the Society for Research in Child Development*, 61 (4–5, Serial No. 248).
- State v. Sterna, 1991 WL 135006 (Tenn. Crim. App. 1991).
- Thierry, K. L., Lamb, M. E., Orbach, Y., & Pipe, M. E. (2005). Developmental differences in the function and use of anatomical dolls during interviews with alleged sexual abuse victims. *Journal of Consulting and Clinical Psychology*, 73, 1134–1135.
- Vieth, V. (2008). Letter to the editor. *Child Abuse & Neglect*, 32, 1003–1006.
- Warren, A. R., Woodall, C. E., Thomas, M., Nunno, M., Keeney, J. M., Larson, S. M., & Stadfeld, J. A. (1999). Assessing the effectiveness of a training program for interviewing child witnesses. *Applied Developmental Science*, 3, 128–135.

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