I. INTRODUCTION

The involvement of children in the American legal system is a relatively recent phenomenon. The court system once perceived children as incapable or unreliable witnesses; however, courts today seek children’s testimony when they are victims of child maltreatment or witnesses to violent crime. There is legislation and/or case law for the federal and every state court system delineating guidelines for establishing and evaluating children’s competency for testifying in court for criminal cases.\(^2\) Unfortunately, children traumatized through victimization or violence may not be emotionally prepared to serve as a witness in court, possibly out of fear of the alleged perpetrator, fear that their families or professionals will not believe them or fear of the judicial system itself.\(^3\) Even when children are available to testify in court, legal professionals often wish to admit their out-of-court statements not in lieu of their in-court testimony, but to bolster it and introduce evidentiary information.\(^4\) As a result, professionals have attempted to increase the reliability and credibility of children’s out-of-court statements in a number of ways. While the judge and jury remain the finders of fact in criminal and civil court cases, professionals have endeavored to improve the veracity of children’s statements by

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1 Amy Russell, MSEd, NCC, Dip CFC, is a nationally certified counselor, with a masters of science degree in counseling and a diplomate in clinical forensic counseling; Ms. Russell has worked with victims of trauma in several capacities, including counselor for child victims of abuse; victim/witness coordinator with the U.S. Attorney’s office; and executive director of two children’s advocacy centers. ajr_msed@hotmail.com.


4 Thomas D. Lyon, Assessing Children’s Competence to Take the Oath: Research and Recommendations, 9(1) APSAC ADVISOR, 1, 2 (1996).
introducing interview instructions to the children and conducting truth-lie discussions with the children during the investigative or forensic interview process.\(^5\) Forensic interviewers often intertwine these two tasks at the beginning of an interview, administering a truth-lie discussion within a given set of interview instructions.\(^6\) However, as a point of issue for this article, we will separate the two, individually examining their purposes and efficacy of use as demonstrated by research.

**II. INTERVIEW INSTRUCTIONS**

Professionals involved in child abuse investigations and cases where children may have witnessed violence have offered several rationales supporting the incorporation of interview instructions into an investigative interview.\(^7\) One reason frequently proffered for conducting interview instructions with a child at the outset of an interview incorporates attempts to reduce issues of suggestibility.\(^8\) Interviewers using this method seek to increase “I don’t know”

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\(^5\) Interview instructions, sometimes known as ground rules, may include the following types of commands given by the interviewer to the child at the outset of an interview: 1) I may ask you a question that you don’t know the answer to. If you don’t know the answer, it’s okay to tell me that you don’t know; 2) If I make a mistake, or get something wrong, it’s okay to tell me that; 3) If I ask you a question that you don’t understand, you can tell me that you don’t understand it, and I’ll ask the question in another way; 4) If I ask you a question more than one time, it does not mean that your first answer was wrong – I just forgot what you told me. See Investigative Interviewing in Cases of Alleged Child Abuse, PRACTICE GUIDELINES (Am. Prof’l Soc’y on the Abuse of Children, Chicago, Ill.), 2002, at 10 [hereinafter APSAC]; Truth-lie discussions, also known as competency evaluations, often include instruction to a child that it is important to “tell the truth” during an interview and to “tell things that really happened.” Other types of truth-lie discussions employed by interviewers involve asking the child to define the concepts of truth and lie or asking the child to differentiate between true statements and lies. Id. at 9. Also see Kathryn Kuehnle, ASSESSING ALLEGATIONS OF CHILD SEXUAL ABUSE, 149 (1996).

\(^6\) Interviewers often accomplish this combined interview instruction/truth-lie discussion simply by asking the child a series of questions or providing a list of instructions at the outset of an interview. See supra note 5.


\(^8\) Id.
responses from a child who does not have the information requested; to enhance a child’s ability to correct the interviewer’s mistakes; to encourage a child to tell only what is actually remembered; and to increase the likelihood that a child will tell the interviewer when she does not understand.9

Another rationale for presenting interview instructions with a child at the beginning of a forensic interview is to increase the quality and quantity of information provided.10 Children, particularly younger children who are developmentally prone to egocentric thinking, often believe that adult interviewers already know everything they know, including the details of the alleged violence or abuse.11 By using an interview instruction to explain that the interviewer was not there and does not know what, if anything, happened, proponents of this technique contend that the child is afforded the opportunity to tell about his experiences in his own words. This technique also allows the child to screen out false information that the interviewer may have inadvertently introduced.12

Interviewers may also use interview instructions to address assumptions children may have about the interviewers’ objectives.13 By quizzing children for correct answers, adults often drive conversations with children. Children are frequently “tested” in a variety of situations, including formal academic programs, religious education classes and extracurricular clubs and activities. They often perceive that there is a right and wrong way to answer a question queried by adults, and may formulate their answers based upon what they believe the expected answer to

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9 Id; see also Saywitz, Court, supra note 3; Karen J. Saywitz, Rebecca Nathanson & Lynn Snyder, Credibility of Child Witnesses: The Role of Communicative Competence, 13(4) TOPICS IN LANGUAGE DISORDERS, 59, 62, (1993) [hereinafter Saywitz, Credibility].
10 Saywitz, Credibility, supra note 9 at 409.
11 Id at 409.
12 Saywitz & Moan-Hardie, supra note 7, at 409.
13 Id at 412.
be, as opposed to what they think or know.\textsuperscript{14} Thus, interview instructions are offered to differentiate the interview process from routine interactions with adults, and to indicate to children that they are the best source of information about themselves.\textsuperscript{15}

A number of studies have examined how social expectations a child maintains may impact her performance in a forensic interview. For example, a child may attempt to provide an answer when she does not fully understand the question;\textsuperscript{16} she may feel pressured to provide an answer even when hesitant or uncertain of how to respond;\textsuperscript{17} and if a child is asked the same question more than one time, she may assume her first answer was incorrect, and change her answer to conform to what she believes the interviewer is looking for.\textsuperscript{18} An interviewer may attempt to inoculate a child from adhering to these social expectations by employing interview instructions at the beginning of an interview; however, some research suggests that while a child may respond well to one type of interview instruction, the child’s response may not be predictive on how she will function with regard to other social expectations.\textsuperscript{19} Further, a child’s age or level of cognitive development may not accurately indicate how well a child will function on these tasks.\textsuperscript{20}

This section will review the use of interview instructions by forensic interviews and how they relate to issues where a child does not know the answer to an interview question, the child does not comprehend the language of the interviewer or the purpose of the interview, social

\textsuperscript{14} E.g., \textit{id} at 68.
\textsuperscript{15} CornerHouse Interagency Child Abuse Evaluation and Training Center, \textit{5-Day Child Sexual Abuse Forensic Interview Training Manual} (2005) [hereinafter CornerHouse]. For example, an interviewer may say to a child that she does not know what a child knows; therefore, the child should provide as much information as possible, even if he doesn’t think it is important. See Kuehnle, \textit{supra} note 5 at 149.
\textsuperscript{16} Warren & Marsil, \textit{supra} note 7 at 128.
\textsuperscript{17} Memon & Vartoukian, \textit{supra} note 3 at 404.
\textsuperscript{18} \textit{id} at 404.
\textsuperscript{19} Warren & Marsil, \textit{supra} note 7 at 138.
\textsuperscript{20} \textit{id}.
factors that may negatively impact the forensic interview and recommendations on the appropriate timing and application of interview instructions.

A. “I Don’t Know” Responses

A common interview instruction forensic interviewers provide children in a forensic interview setting gives children permission to tell the interviewer when they do not know the answer. Providing this instruction purportedly helps children report only the experiences they remember or know about, and demonstrates children’s ability to avoid acquiescing or blindly answering the interviewer without a full understanding of the question.

In a study conducted by Moston, 72 six-, eight- and ten-year-olds were questioned about a staged event. Half were told they could say “I don’t know” to a question and half were given no instruction. The findings indicate that while the children who received the “I don’t know” instructions were more slightly likely to give such a response, the children in the control group also offered such a response without being told they could do so. Further, the children who received the “I don’t know” instruction had the same number of correct responses as those who did not receive the instruction, and subjects from both groups were more likely to say “I don’t know” to false rather than true questions.

In his discussion, Moston opined that children who receive an “I don’t know” instruction might interpret the instruction to mean that they can respond “I don’t know” when they do not immediately have an answer or when it is “easier” to respond in that manner instead of directly answering an interviewer’s question. Further, Moston reasoned that “I don’t know”

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21 For example, the interviewer might say, “If I ask you a question that you don’t know the answer to, tell me that you don’t know.” See supra note 5.
22 Moston, supra note 7 at 71
23 Id.
24 Id. at 75.
25 Id. at 76.
26 Id.
instructions are only beneficial when the environment is one which may be hostile or
intimidating, and when such an environment suggests to a child that “I don’t know” is not an
acceptable response. Moston further recommends that when a child does provide an “I don’t
know” response in an interview, interviewers should accept this response without pushing the
child for a more complete answer. Repeatedly questioning a child who is not able to provide
an answer regarding a specific issue is likely to be deleterious to a child’s performance. The
repetition of a question may serve as a challenge to the child’s initial response, causing the child
to offer fewer correct answers as the interview progresses.

Saywitz and Moan-Hardie conducted a study of 100 second grade children, half of whom
received instructions and training to resist misleading questions, including the option to answer,
“I don’t know” or “I don’t remember.” The children practiced these resistance skills prior to an
interview. The remaining children were provided with motivating instructions to “do your
best.” Subsequently, all children were posed with misleading and correctly leading
questions.

The results indicate that children who received the training were less likely to submit to
suggestive question techniques; however, findings also demonstrate that children who received
the resistance training reduced their correct responses to correctly leading questions. This
result may suggest that the invitation at the interview’s onset to respond “I don’t know” offers

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27 Id.
28 Id. at 77.
29 Id.
30 Id.
31 Saywitz & Moan-Hardie, supra note 7 at 414.
32 Id.
33 Leading questions are generally defined as questions with the answer provided within the question itself. A
“misleading” questions would incorporate inaccurate information in the question; a “correctly leading” question
introduces factual information that was not already offered by the subject of the interview.
34 Saywitz & Moan-Hardie, supra note 7 at 420. A child’s rejection or denial of a correctly leading question may
cast doubt on the child’s ability to accurately report information in an interview setting, or may lead investigators
and court personnel to disregard an allegation of abuse or violence.
children permission to respond in this manner even when they do, in fact, know the answer. The results also indicate that a number of children who did not receive the resistance training were still able to indicate when they did not know or could not remember an answer.\textsuperscript{35}

While both the Moston study and the Saywitz and Moan-Hardie study included children who were invited to indicate if they did not know the answer to any question, the control groups in both studies were not afforded this coaching but were still able to say “I don’t know” to their interviewer.\textsuperscript{36} In fact, as Moston indicated, some of the trained children may have elected to answer “I don’t know” even when they were able to answer a question, thus reducing the information the interviewer was able to extract from the children on the topic in question.\textsuperscript{37}

B. Comprehension Issues

Saywitz, Snyder and Nathanson conducted a study with 180 children, half of whom were age six and half of whom were age eight, with all children receiving a pre-interview instruction to verbalize lack of comprehension.\textsuperscript{38} All children were told that they might not understand some questions, and that the interviewer was not present during the test event and therefore does not know what happened at the event.\textsuperscript{39} The children were further divided into three groups, and a different technique was taught to three groups of children.\textsuperscript{40} Some children received training on their comprehension and practiced detecting incomprehensible questions with modeling, feedback and reinforcement.\textsuperscript{41} Others were instructed to tell the interviewer when they did not

\begin{itemize}
\item \textsuperscript{35} \textit{Id.}
\item \textsuperscript{36} Moston, \textit{supra} note 7 at 75; Saywitz & Moan-Hardie, \textit{supra} note 7 at 420.
\item \textsuperscript{37} Moston, \textit{supra} note 7 at 76.
\item \textsuperscript{38} Saywitz, \textit{Facilitating}, \textit{supra} note 7 at 59.
\item \textsuperscript{39} \textit{Id.} at 62.
\item \textsuperscript{40} \textit{Id.} at 59.
\item \textsuperscript{41} \textit{Id.} at 60.
\end{itemize}
understand a question. The control group received motivating instructions to “try your hardest” or “do your best.”

The findings of the Saywitz, Snyder and Nathanson study indicate that a child’s performance in an interview may be enhanced in two ways. Children’s interview performances may be improved when the children receive pre-interview instructions, and when the interviewer provides training to children aimed at improving their proficiency at indicating when they do not understand a question. However, some children displayed difficulty in identifying their own comprehension of complicated questions, and subsequently had trouble reporting this to the interviewers. In order to more successfully enhance a child’s ability to answer questions in a forensic interview setting, the authors of this study recommend that questions should be matched to the child’s developmental level to preclude children from attempting to answer questions they do not understand.

In the practice of conducting forensic interviews, interviewers may more effectively and completely bring out a child’s experiences when asking questions that lie within the child’s developmental capabilities. Asking developmentally appropriate questions may prove to be a more effective technique than reviewing rules and expectations at the beginning of an interview with a child. This is particularly true if the interviewer has taken the necessary time during the rapport-building stage of the interview to make the child feel comfortable, and to evaluate the

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42 Id.
43 Id.
44 Id at 66.
45 Id at 66.
46 Id at 67.
47 Saywitz, Facilitating, supra note 7 at 67. A full discussion on linguistics and child development is beyond the scope of this article. For a more in-depth discussion on this topic, see Anne Graffam Walker, HANDBOOK ON QUESTIONING CHILDREN (1999).
child’s communicative abilities by asking the child open-ended questions in order to identify a response pattern and to practice narrative answers.48

C. Additional Instructions

Memon and Vartoukian conducted a study with five to eight-year-old children who witnessed a staged argument at school between two actors.49 All the children received instruction to tell what they remembered about the event, that it was okay if they did not remember something and that they should not make up answers.50 Half the children received an additional warning that some questions might be repeated.51

Interestingly, this warning resulted in less accurate reports for seven-year-olds when they were asked open-ended questions.52 While Memon and Vartoukian do not postulate why the warning negatively impacted the accuracy of responses by seven-year-olds, they do theorize that interviewers should pair warnings with a clear explanation as to why a question might be repeated.53 Five-year-old children were generally unaffected by the warning when asked both open- and closed-ended questions.54 Memon and Vartoukian submit three possible reasons for the five-year-olds’ lack of responsiveness to the warning: the very broad nature of the warning that may have had more impact if reiterated immediately prior to questioning; the consideration that the warning makes little sense to young children, who are accustomed to repeated questions from adults; and that children simply did not fully understand the warning.55 Results of this

48 CornerHouse, supra note 15 at 8(4).
49 Memon & Vartoukian, supra note 7 at 406.
50 Id. at 407.
51 Id.
52 Id. at 409.
53 Id. at 412. The negative impact on the accuracy of responses by seven-year-olds may be explained through social expectations held by the older children. When provided a warning that questions may be repeated, the seven-year-old children may have taken that as an indication that there were correct and incorrect answers, and responded by attempting to provide the interviewer with an answer they thought was expected.
54 Id at 411.
55 Id at 411.
study by Memon and Vartoukian indicate that correct information may be increased, without diminishing the accuracy, through the repetition of open questions.\textsuperscript{56} 

Geddie, Beer, Bartosik and Wuensch conducted a study with fifty-six children ranging in ages from three to six-years-old.\textsuperscript{57} All children participated in a ‘Circus Day’ event, and ten days later were provided with some instruction by one researcher, and interviewed about their ‘Circus Day’ experiences by another.\textsuperscript{58} Twenty-nine children received four pre-interview instructions, and 27 children received open-ended filler questions.\textsuperscript{59} This study found that pre-interview instructions did not increase correct responses from children during an interview, nor did they appear to impact a child’s suggestibility to misleading questions.\textsuperscript{60} 

Geddie, et al. purported that the pre-interview instructions, due to their extensive nature, may not be appropriate for young children with less-developed cognitive skills and limited attention spans.\textsuperscript{61} Further, they opined that some children may have had difficulty differentiating a misleading question from a truthful question; that some children may have not understood the interview method; that some children were unable to generalize the instructions from the practice

\textsuperscript{56} Id at 411.  
\textsuperscript{57} Geddie et al., supra note 7 at 61.  
\textsuperscript{58} Id. at 61-62.  The Circus Day event consisted of two psychology students dressed as clowns. For a more complete description, see Lane F. Geddie, S. Fradin, & Jessica Beer, Child Characteristics which Impact Accuracy of Recall and Suggestibility in Preschoolers: Is Age the Best Predictor? 24 CHILD ABUSE AND NEGLECT, 223, 223-235.  
\textsuperscript{59} Id. at 62.  The four interview instructions were: 1) The children were told a story and were encouraged to not leave anything out. The children practiced this skill with the researcher until all details were accurately reported. 2) The children were told that the interviewer wasn’t at the Circus Day, and might get some things wrong. They were further instructed that it was okay to correct the interviewer. The children were then asked to describe an activity in which they actually participated as well as a made-up activity. They were then instructed on the difference between actual and made-up events. 3) The children were instructed to say “I don’t know” instead of guessing at an answer. 4) The children were told that if a question was repeated in an interview, it didn’t mean the first answer was wrong. Following all four instructions, the children were asked to repeat them all, and were not interviewed until they could recite all four instructions. The open-ended filler questions were not identified in this study. Id. at 62-63.  
\textsuperscript{60} Id at 66.  
\textsuperscript{61} Id at 66.
session to the interview; and that some children may have required more practice with the skill in order to internalize the process.62

D. Interview Instruction Recommendations

While instructions, reassurance and cues have been demonstrated to reduce suggestibility, there is minimal empirical evidence to support that providing interview instructions at the beginning of a forensic interview is the most effective way to enable children to obviate social expectations that may negatively impact an interview.63 Further, while children may demonstrate the ability to resist suggestion or indicate when they do not know an answer during pre-interview instructions, these skills are not necessarily generalizable to their performance during the interview itself.64

A perhaps more appropriate use of interview instructions is to employ them as the situation presents. As previously discussed, several studies have demonstrated that children are able to respond, “I don’t know” or “I don’t remember” without being instructed to do so.65 Interviewers may more effectively reinforce this skill immediately after a child offers his initial “I don’t know” or “I don’t remember” response. An appropriate reply to the child may be, “Thank you for telling me you don’t know [don’t remember]. If I ask you something else that you don’t know, please tell me like you just did. I only want to know what you do know [remember].” Likewise, the first time a child corrects an interviewer, an appropriate response from the interviewer would be, “Thank you for correcting me. If I make another mistake, I want you to tell me like you just did.” This type of immediate and positive reinforcement of a child’s

62 Id at 66-67.
63 CornerHouse supra note 15, at 7(2)
64 Warren & Marsil, supra note 7 at 134.
65 Geddie, et al., supra note 7; Moston, supra note 7; Saywitz & Moan-Hardie, supra note 7. Also see Victoria Talwar, Kang Lee, Nicholas Bala, & R.C.L. Lindsay, Children’s Conceptual Knowledge of Lying and its Relation to Their Actual Behaviors: Implications for Court Competence Examinations, 26(4) LAW AND HUMAN BEHAVIOR, 395 (2002) [hereinafter Talwar 2002].
own response may be more salient, allows the child to practice this type of response, and may increase the likelihood that the child will utilize this technique again; moreover, it simultaneously demonstrates the child’s ability to not simply acquiesce within the interview itself.

Interviewers must further consider time limitations for children since age and abilities impact children’s attention spans and capability to remain focused in an interview.66 A general guideline for a child’s attention span is three to five minutes per year.67 Hence, a four-year-old child who does not have any disabilities or mental health disorders might be able to actively participate in an interview somewhere between twelve and twenty minutes.68 If an interviewer initiates an interview with a child using instructions that consume even five minutes of the interview, the ability to gather detailed information of a child’s possible experiences is appreciably limited.

Professionals involved in investigating and prosecuting cases where children may be victims or witnesses to violence are also reminded of the importance of posing questions that are developmentally appropriate for children.69 Asking children questions that are beyond their cognitive abilities may lead them to guess at answers, make up responses or provide unclear information that reduces their credibility as reporters.70 While an interviewer may provide children with an interview instruction during an interview to inform the interviewer when

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66 E.g., see American Psychological Association and National Association for the Education of Young Children, Understanding Child Development as a Violence Prevention Tool. ACT: ADULTS AND CHILDREN TOGETHER AGAINST VIOLENCE (June 2001); Al Aynsley-Green, Attention Deficit Hyperactivity Disorder, 6 DEVELOPMENTAL AND BEHAVIORAL PEDIATRICS, 339 (1985); B.D. Schmitt, YOUR CHILD’S HEALTH (1999).

67 Id.

68 Children with Attention-Deficit and Disruptive Behavior Disorders may have difficulties participating in a forensic interview for an extended period of time. See Am. Psychiatric Ass’n, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 78-79 (4th ed. 1994). A child’s inability to attend may also be symptomatic other cognitive, developmental, emotional, environmental or medical issues. See id. at 82-83.

69 Saywitz, Facilitating, supra note 7 at 67.

70 Saywitz, Credibility, supra note 9 at 64.
children do not appear to comprehend a specific question posed, it would be more appropriate for the interviewer to concentrate on formulating questions appropriate to the developmental level of the children.

An additional factor that interviewers should consider when attempting to increase a child’s ability to report accurate information is reducing any perception of the interviewer as an authority figure.\textsuperscript{71} This serves to reduce social pressures and expectations on the child, in turn allowing the child to be the expert on himself in the interview process.\textsuperscript{72} Finally, engaging in a practice at the outset of an interview that lays out to children a set of expectations in how they should answer during the interview process may imply that there is a “right” way and a “wrong” way to answer questions, and may negatively impact the child’s ability to report information.

Based on the research relating to interview instructions discussed in this section, interview instructions provided at the beginning of an interview do not necessarily accomplish their stated goals of reducing suggestibility, improving the quality and quantity of information provided by children in interviews, or differentiating forensic interview interaction from traditional adult-child interactions. Children would be best served if interviewers incorporate interview instructions as the opportunity arises, instead of issuing them all together before rapport is established.

**III. TRUTH/LIE DISCUSSIONS**

In addition to interview instructions, interviewers frequently evaluate the child’s competency at the beginning of the interview through a truth-lie discussion or other assessment

\textsuperscript{71} L. Dennison Reed, *Findings from Research on Children’s Suggestibility and Implication for Conducting Child Interviews*, 1(2) CHILD MALTREATMENT, 105, 108 (1996); Saywitz, *Credibility*, supra note 9, at 72.
\textsuperscript{72} Id.
of the child’s understanding of the concepts of truth and lies. Numerous reasons have been provided for this assessment, including attempts to establish the competency of the child for court testimony and to establish “indicia of reliability” in the context of hearsay exceptions. Interviewers often proceed with the assumption that if children understand the concepts of truth- and lie-telling, they are more likely to tell the truth; therefore, a truth/lie scenario is presented to predict the truthfulness and to establish the reliability of a child’s statements. Finally, a truth/lie scenario may be initiated at the outset of an interview to establish the child’s comprehension of truth-telling and lying, with the belief that the practice will promote truth-telling in an interview setting or in court if a child demonstrates understands the concepts of lie- and truth-telling.

A. Developmental Considerations

Lyon and Saywitz conducted two studies to evaluate the ability of young maltreatment victims to take the oath. Both studies included maltreated children, between the ages of four and seven in one study, and between the ages of four and five in the other. Children who had been maltreated were used as subjects in these studies because such children were considered to

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74 Ohio v. Roberts, 448 US 56 (1980) at 65. The Supreme Court requires a certain level of trustworthiness in out-of-court statements to balance the demands of the Confrontation Clause of the Sixth Amendment. This indicia of reliability is required in order to admit a child’s hearsay testimony in court.
75 London & Nunez, supra note 73 at 132-33; Talwar 2002, supra note 65 at 396.
76 Id.
78 Id at 18, 24. In the first study, children were asked to define truth and lie, and were asked whether it was good or bad to lie, in attempts to assess their understanding of the morality of lying. Id at 17. In the second study, the children completed a reality task and a morality task. In the reality task, the children were asked to identify which characters in a series of illustrations told the truth and which told a lie. In the morality task, the children were shown a series of illustrations and were told that one character in each illustration told the truth to an authority figure, and one character told a lie. The children were then asked to identify which characters in the illustrations would be in trouble. Id at 23. These illustrations are available online at http://hal-law.usc.edu/users/tlyon/comp/title.htm.
be more accurately representative of the population of children in child abuse investigations. Lyon and Saywitz also selected maltreated children to assess how cognitive and linguistic delays in this population may impact their performance on court competency tests.

Outcomes of these studies appear to indicate that children perform better at identifying true and false statements than at either explaining the difference between truths and lies or providing a conceptual definition of truth and lie. By the age of five, most children were capable of identifying true and false statements, but were more proficient at identifying truths than lies. Lyon and Saywitz surmised that children may be reluctant to identify a lie because they equated lying with wrongdoing or because they were disinclined to say the examiner was lying.

While children seven years of age and older were able to provide a sufficient description of the difference between truth and lies, very few children younger than seven were able to do so. Similarly, few children younger than seven were able to provide minimally sufficient definitions of either truth or lie, and a mere 46% of the seven-year-olds were able to do so. Children under five years old were not able to perform even the most basic task of identifying true and false statements; however, by the age of five, most children in this study were able to demonstrate a basic understanding of morality and lying. Lyon and Saywitz contend that asking forced-choice questions, such as selecting one of two options presented by the

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79 Id at 17.
80 Id.
81 Id at 22.
82 Id at 20.
83 Id at 23.
84 Id at 20.
85 Id.
86 Id.
interviewer, is a more appropriate method of testing maltreated children’s understanding of the morality of lying.87

As demonstrated in the Lyon & Saywitz studies, young children, especially those under five years of age, do not understand the concepts of truth and lie.88 However, interviewers continue their attempts to assess this knowledge in children through practical tests. For example, interviewers frequently ask a child, “If I said my shirt was green, would that be the truth or a lie?” This practice does not necessarily measure whether the child understands the concepts of truth and lie, but more accurately determines if the child knows colors. This type of truth-lie examination also requires the child to disagree with the interviewer at the outset of an interview, prior to establishing rapport. Asking a child to disagree with the interviewer at this point in the interview may set the child up to perceive the interviewer as an authority figure, or as someone who already has the answers to his questions and is “testing” the child, thereby potentially making the child more vulnerable to suggestive statements.89

B. Tasks to Predict Behavior

In a 2002 study by London and Nunez, 118 children ranging in age from three to six years were studied under one of four conditions: short/truth discussion; developmentally appropriate long/truth discussion; short conversation without a truth discussion; and long conversation without a truth discussion.90 One researcher held these preliminary discussions

87 Id at 26. Examples offered include having the child choose either “good” or “bad,” and identifying the character that will “get in trouble” in the tasks presented. Editorial note: generally-accepted practice is to avoid forced-choice questions in a forensic interview setting, as they fall into the categories of closed or leading/suggestive questions, which do not allow the child to choose an answer for himself. See CornerHouse, supra note 15 at 6(3); APSAC, supra note 5 at 8.
88 Lyon & Saywitz, supra note 77 at 26.
89 Reed, supra note 35, at 108; Saywitz, Credibility, supra note 9, at 72.
90 London & Nunez, supra note 73 at 136. The “short” discussions lasted approximately one minute; the “long” discussions lasted approximately five minutes. Short/truth discussions asked children if they knew the difference between truth and lies, and asked, “If I said that my hair was purple, would that be the truth or a lie?” Long/truth discussions asked children to identify truths and lies involving four hypothetical story characters and four questions.
with children, and a second researcher conducted the interview.\textsuperscript{91} London and Nunez’ study revealed that the standard truth-lie discussion (short/truth) may underestimate a child’s understanding of the concepts in several ways: young children may recognize truths and lies, but are unable to define the concepts or explain their differences; short/truth discussions ask children to disagree with interviewers, which may be difficult for a child given the interviewers elevated status as an adult and authority figure; and young children have problems reasoning why lies are wrong.\textsuperscript{92}

The results of the London and Nunez study fail to support the assumption forensic interviewers generally hold that performance on truth-lie discussions predict truth-telling behavior, even when the truth-lie discussion was extended and accommodated the cognitive functioning of young children.\textsuperscript{93} However, the results indicate that children receiving a truth-lie discussion gave more honest reports in their interviews, suggesting that truth-lie discussions might promote truth-telling behavior.\textsuperscript{94} The London and Nunez acknowledge limitations of this study in not considering other issues that may impact a child’s report in an interview, including a child’s motivation to lie and a suggestive line of questioning by the interviewer.\textsuperscript{95} While the outcome of the London and Nunez study appear to pose a viable option to the standard truth-lie discussions currently conducted, more research in this area is required to more fully explore the practice’s reliability on promoting truth-telling behaviors and to fully evaluate this practice to determine its generalizability in practice with allegedly abused children or child witnesses.

addressed morality in hypothetical story characters. Short/no truth discussions asked children if they knew the difference between a puppy and a dog. Long/no truth discussions involved rapport-building techniques but did not include a discussion on truth and lies. \textit{Id.} at 137.

\textsuperscript{91} \textit{Id.} at 138.

\textsuperscript{92} \textit{Id.} at 135.

\textsuperscript{93} \textit{Id.} at 141. London & Nunez utilized the reality and morality tasks as described in the Lyon & Saywitz studies, \textit{supra} note 77, in attempts to accommodate to the needs of young children for truth-lie discussions.

\textsuperscript{94} \textit{Id.} at 141.

\textsuperscript{95} \textit{Id.} at 142.
Further, the use of two separate researchers, one to conduct the truth-lie discussion and one to conduct the interview, is neither practical nor generalizable to an investigative interview setting, where a single interviewer is preferable throughout the process.96

C. Does Ability Equate to Practice?

Talwar, Lee, Bala and Lindsay conducted three experiments with a total of 403 three- to seven-year-olds in 2002 to test two assumptions regarding court competence.97 The two assumptions were that children who understand the concepts of truth and lie are more likely to tell the truth, and that children who comprehend truth and lie and promise to tell the truth will exhibit truth-telling behaviors in court.98 The findings of the first experiment fail to support the assumption that children who understand truth- and lie-telling will tell the truth in an interview or court setting.99 The children in this 2002 Talwar, et al. study correctly identified lies and recommended that other children should tell the truth about a transgression, but lied themselves when asked if they violated the conditions of the experiment.100 Further, the first experiment refutes the assumption that truth-lie discussions will promote truth-telling, because the order of the events (transgression and telling about the transgression) and the truth-lie discussion did not affect children’s responses.101

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96 APSAC, supra note 5 at 3.
97 Talwar 2002, supra note 65 at 398.
98 Id. at 396.
99 Id. at 403. This experiment randomly assigned 123 children to an Action First Condition group or a Concept First Condition group, and assessed them for their conceptual knowledge of truth and lie in two ways. The evaluation of conceptual knowledge involved two tasks. First, the children were told a story and were asked to determine if the story child lied and if it was good or bad. Then the children were asked hypothetical questions about what they would do if they broke a glass. The “action” required the children to play a game with the interviewer to guess name of toys by the sounds the toys made. The interviewer then left the room and instructed the child not to peek at toy. When the interviewer returned, she asked the child if he peeked at the toy. Id. at 398-400.
100 Id at 403.
101 Id.
The findings of the second experiment refute the assumption that children who grasp the concept and moral understanding of truth- and lie-telling will tell the truth.102 These children correctly identified lies and recommended that the other child should tell the truth about a transgression, but lied themselves when asked if they peeked at a toy. In addition, the findings of this second Talwar, et al. experiment refute the assumption that truth-lie discussions will promote truth-telling; however, it was concluded that eliciting a promise to tell the truth from the children reduced lie-telling behaviors during the interview in this experiment.103

The findings of the third experiment indicate that eliciting a promise to tell the truth is more likely to promote truth-telling in an interview than questioning children about their conceptual knowledge of truth- and lie-telling.104 Results also indicated that three-year-olds had the most difficulty with concept questions regarding truth and lie, and were least likely to lie during the interview.105 However, due to the lack of a control condition in any of Talwar, et al.’s experiments, this study precludes any determination regarding the effects of a truth-lie discussion on truth-telling.106

D. Promise to Tell the Truth

In 2004, Talwar, Lee, Bala and Lindsay conducted two experiments with 201 three- to eleven-year-olds in which their parents broke a toy and told their children not to tell the

102 Id at 406. This study engaged 103 children first in the guessing game of the first experiment. The children were then assessed for their conceptual knowledge of truth and lie in the same manner as experiment one. See supra note 99. Interviewers then elicited a promise to tell the truth from the children, then asked them whether they peaked at the toy. Id. at 403-04.

103 Id at 406.

104 Id at 408. 177 children were assigned to either the Discussion Condition or the Promise Condition. The Discussion Condition (n=95) included all aspects of experiment two except the promise to tell the truth. The children under the Promise Condition (n=81) were not afforded any discussion regarding truth or lie; they were merely asked to promise to tell the truth before the interview about peaking. Id. at 406.

105 Id at 408.

106 Id.
The first experiment included four stages: 1) children answered questions about the toy breaking event in the first fact-finding interview; 2) a second researcher conducted a competence examination to assess the children’s understanding of truth and lie; 3) the second researcher elicited a promise from the children to tell the truth; and 4) the second researcher conducted a second fact-finding interview. The second fact-finding interview was performed under one of three conditions: parent present (during first interview); parent absent (during first interview); or child absent (child absent during toy breaking and parent absent during first interview).

The results of this 2004 Talwar, et. al. experiment indicate the following: children did not lie to conceal their parent’s transgression; the presence or absence of the parent during the interviews did not significantly affect whether the child reported the parent’s transgression; children’s understanding of truth-lie increased with age; and children’s truthfulness increased significantly after participating in the competence examination and promise to tell the truth. It was unclear whether the increase in truth-telling was due to the second interview conducted with the children during the course of this study, or if it was the effect of competence examination.

Sixty-four separate children, ages three to eleven, participated in experiment two, which included all four stages of experiment one. In this experiment, the parent again broke the toy and elicited an agreement from the child not to tell the interviewer; however, the children were present when the parent broke the toy. Before experiment two began, the toy was placed on top of a tall cabinet out of the child’s reach, and the researcher, prior to any questioning,

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107 Talwar 2004, supra note 73.
108 Id at 416-19. The competence examination was equivalent to the assessment of conceptual knowledge of truth and lie conducted by Talwar, et al. in 2002. See supra note 99.
109 Id at 416-17.
110 Id at 423-24.
111 Id at 424.
112 Id. at 424. See also supra note 108.
113 Id at 425.
reassured the child that it could not have been the child who broke the toy. The second fact-finding interview was again conducted with three conditions: parent present (during first interview); parent absent (during first interview); or child absent (modified into two groups: children were given competence examination and were asked to promise to tell the truth, or simply interviewed without the competence examination or promise). Experiment two resulted in the following: the majority of children told the truth about their parent’s transgression; truthfulness increased with the competence examination and promise to tell the truth; when the children were not implicated in the transgression they were more likely to conceal their parent’s transgression; and truth-telling behavior increased significantly in second interview if the child participated in the competence examination.

While a competence examination and a promise from a child to tell the truth may have a truth-promoting effect during interviews, Talwar, et al. were unable to establish a strong relationship between the understanding of the concepts of truth and lie and truth-telling behavior in this 2004 study. In other words, even though a child may understand the moral concepts of telling the truth and lying, this understanding does not predict whether she will demonstrate truth-telling behaviors during questioning. Alternatively, soliciting a promise to tell the truth from the child may promote truth telling for a child during an interview. Further research is needed in this area.

Preliminary studies may support the practice of eliciting a promise to tell the truth as an age-appropriate and time-effective method to enhance truth-telling behaviors in forensic

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114 *Id* at 424-25.
115 *Id* at 424.
116 *Id* at 428.
117 *Id* at 432.
118 *Id* at 432-33.
interviews with children. However, it would be premature to definitively recommend this practice at this time. While the 2004 Talwar et. al. study did include elements that resemble intrafamilial sexual abuse cases, additional research on the utilization of a promise to tell the truth should be conducted with children who allege sexual abuse allegations in order to test its general applicability in practice.

E. Recommendations on Truth-Lie Discussions

It seems clear that while interviewers want to predict and promote children’s ability to share abuse incidents they may have experienced, research suggests that there are challenges in adequately implementing a task that fully meets this need in a manner that is age-appropriate and time-efficient. In addition to promises to tell the truth, truth-lie discussions and morality tasks, interviewers have attempted to trick children in an interview setting to determine their ability to resist suggestion and to tell the truth. Example of this type of inquiry would include asking children nonsensical questions such as, “If I told you that my cat could fly, would that be a truth or a lie?” or “How long does a goofump last?”

These ridiculous lines of questioning could create multiple problems in a forensic interview. As reasoned earlier, answering this question in the negative would require the child to challenge the interviewer, who may be perceived in a position of authority. Additional

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119 Talwar 2002, supra note 65; Talwar 2004, supra note 73.
120 Talwar 2004, supra note 73.
121 Talwar 2004, id, resembles intrafamilial sexual abuse cases in that the offender was a parent. An additional similarity is the element of secrecy, where the parent asked the child not to disclose the transgression to the interviewer, a common dynamic in sexual abuse cases. See Roland Summit, The Child Sexual Abuse Accommodation Syndrome, 7 CHILD ABUSE AND NEGLECT, 177, 177-193 (1983); and David Finkelhor & Angela Browne, The Traumatic Impact of Child Sexual Abuse: A Conceptualization, 55(4) AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 530, 530-541 (1985). It is estimated that more than one third of sexual abuse instances are committed by family members of the alleged victim. E.g., Lucy Berliner & Diana M. Elliott, Sexual Abuse of Children, in THE APSAC HANDBOOK ON CHILD MALTREATMENT, 55, 56 (John E.B. Myers, Lucy Berliner, John Briere, C. Terry Hendrix, Carole Jenny, & Theresa A. Reid, eds., 2d ed. 2002).
122 Reed, supra note 71 at 115.
123 See supra note 71.
problems would arise if the child actually concurs with the interviewer. If interviews wish to employ this “trick” technique, they must first consider the technique may have on the remainder of the interview. This type of discourse could effectively render anything the child says following this agreement inconsequential, as the child would have no credibility. Further, as the research previously discussed demonstrates, truth-lie discussions neither promote nor predict a child’s performance during the actual interview.

Finally, “the goal of forensic interviews is to find out what, if anything really happened.” If interviewers invite fantasy or encourage the child to pretend at the outset of the interview, they risk encouraging fantastical statements later in the interview. If, during an interview, a child appears to be making or makes statements that are untrue, it is the responsibility of the interviewer to explore these comments with the child. He could be gently redirected with a statement such as, “In this room, we only talk about things that really happened. Did that really happen?” If the child’s statement appears to be incredible or bizarre, the interviewer may want to consider that the line of questioning posed to the child is beyond the child’s developmental capability.

Interviewers should consider that the child simply may not have the words to describe his experience in a manner consistent with the interviewer’s inappropriate expectations. In these cases, interviewers should rephrase the

124 For example, consider “indicia of reliability” discussion, supra note 74.
125 London & Nunez, supra note 73 at 141; Talwar, 2002, supra note 65 at 403.
126 Reed, supra note 35 at 111.
127 See Constance J. Dalenberg, Fantastic Elements in Child Disclosure of Abuse, 9(2) AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN ADVISOR, 1 & 5-10 (1997); and Mark D. Everson, Understanding Bizarre, Improbable, and Fantastic Elements in Children’s Accounts of Abuse, 2(2) CHILD MALTREATMENT, 134, 134-149 (May 1997).
129 Saywitz, Facilitating, supra note 7 at 67.
130 Everson, supra note 127 at 142. For further discussion on fantastical statements in an interview, also see Dalenberg, supra note 127.
questions using words and sentence structure appropriate to the child’s developmental level, or utilize interview aids to assist the child’s communication.\textsuperscript{131}

In addition to the considerations outlined in this section, forensic interviewers should consider several additional reasons to not incorporate truth-lie discussions into a forensic interview protocol. Testing a child’s ability and understanding of truth and lie requires an element of quizzing the child. It gives the child the message that there are “right” and “wrong” answers expected from the child, which conflicts with child-first approach of accepting the child’s answers for what they are,\textsuperscript{132} and increases issues of suggestibility for children, as an interviewer’s interaction with a child can influence a child’s answers.\textsuperscript{133}

\section*{III. INFLUENCE OF CASE LAW}

While research remains inconsistent at best in its evaluation of interview instructions and truth-lie discussions, the courts may have provided the ultimate direction regarding whether to institute a truth-lie scenario during a forensic interview. The Supreme Court decision in \textit{Crawford v. Washington}\textsuperscript{134} may rightfully shift the perceived purpose of forensic interviews away from a practice employed solely for the use of prosecution, and back to the original purpose of a forensic interview as a multidisciplinary evaluation of the health, safety and

\begin{itemize}
\item CornerHouse, \textit{supra} note 15 at 2(2).
\item Ceci & Bruck, \textit{supra} note 128, at 422.
\end{itemize}
wellness of a child. The decision, handed down on March 8, 2004, states that “examinations … [that have] an essentially investigative and prosecutorial function” produce testimonial information. Pursuant to the Confrontation Clause of the Sixth Amendment, these testimonial statements must be accompanied in court by a witness to cross examine, or a reasonable explanation as to why the witness is not available.

In light of this momentous court case, and to reaffirm that forensic interviews serve multiple purposes in evaluating whether a child is safe, interviews should not be conducted for the sole purpose of developing a case against an alleged perpetrator, or establishing testimony of an alleged victim. Subjection to a truth-lie ritual may influence a child’s perception of the status of the interview, which in turn may influence the court’s determination of the interview’s testimonial nature, and subsequently, impact whether a videotaped statement of a child may be admitted into court without the child’s testimony. This amounts to a disservice of a child who has already demonstrated an ability to engage in an interview to report her experiences yet who might not be available to testify due to the intimidating elements of the criminal justice system, or due to fear of the alleged perpetrator.

To address this issue, Phillips advocates for the use of the CornerHouse “Child First Doctrine,” which puts the needs of the child ahead of the criminal investigation or the criminal court case. Further, a forensic interview that occurs in a child-friendly setting, that emphasizes

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135 Many forensic interviews today are conducted by multidisciplinary teams comprised of representatives from mental health, medical, victim advocacy, law enforcement, child protective services, prosecution and children’s advocacy centers. For more information, see Lisa Snell, Child Advocacy Centers: One Stop on the Road to Performance-Based Child Protection, Reason Foundation (June 2003), available online at http://www.rpni.org/ps306.pdf.

136 Crawford, supra note 134, at 53.

137 Id at 54; Amdt. 6.


139 CornerHouse, supra note 15, at 2(2).
the safety of a child, and establishes the need for therapeutic or medical intervention for a child not only is in the child’s best interests, but may reduce the “testimonial” nature of such interviews.\textsuperscript{140} The removal of the testimonial label from a child’s out-of-court statements increases the likelihood that a child’s videotaped statement will be admitted into court is, thereby relieving the child of the potentially traumatic experience of testifying in the presence of his alleged abuser.\textsuperscript{141}

IV. EVALUATING CHILDREN’S STATEMENTS

Forensic interviewers are frequently asked how they evaluate a child’s statements of sexual abuse.\textsuperscript{142} While there is no one universally agreed upon set of guidelines or one generally accepted checklist that allows practitioners to definitively state that a child had been sexually abused, interviewers can employ practices that will help them evaluate a child’s report of his experiences.\textsuperscript{143}

The arguments made in \textit{Idaho v. Wright}\textsuperscript{144} regarding child sexual abuse hearsay exceptions may have been nullified by the U.S. Supreme Court’s more recent ruling on \textit{Crawford v. Washington},\textsuperscript{145} they do illuminate several factors the Court utilizes to assess the reliability of a child’s statements. These include the spontaneity and the internal consistency of the child’s

\textsuperscript{140} Phillips, \textit{supra} note 138.


\textsuperscript{142} Personal experience of this author.

\textsuperscript{143} Kuehnle, \textit{supra} note 5 at 163; CornerHouse, \textit{supra} note 15 at 14(6).

\textsuperscript{144} Idaho v. Wright, 497 US 805 (1990). The Supreme Court affirmed the reversal of defendant’s conviction of lewd conduct with a minor because child victim’s out-of-court statements lacked “particularized guarantees of trustworthiness” based on the totality of circumstances surrounding the child’s statement. These circumstances included the pediatrician interviewer’s use of leading questions and preconceptions of what the child would disclose, as well as assessment of the child’s veracity at the time of the statement, which was evaluated based on the child’s spontaneity and consistent repetition, her mental state, her use of terminology unexpected of child her age, and her lack of motive to lie.

\textsuperscript{145} Crawford v. Washington, \textit{supra} note 134.
statements during the forensic interview; the mental state of the child; the child’s use of age-appropriate terminology; and the lack of motive for the child to fabricate his statements. 146

Utilizing established criteria to make a finding of abuse is valuable, whether the interviewer is an independent forensic interviewer, a child protection investigator or a law enforcement officer. The CornerHouse Criteria for Analysis, or CA Scale, 147 may be useful in providing assistance in evaluating the statements, the behaviors and emotions exhibited by a child during the forensic interview. Further, interviewers can utilize the CA Scale to explicate the internal reliability of the interview and the child’s credibility. 148

The CA Scale encompasses five components that interviewers can employ to support the basis for a finding of abuse, or draw on in court to evaluate the reliability of a child’s statement. 149 The five components include the content of the child’s statements; the internal consistency of the child’s report during the interview; contextual factors the child provides relating to her allegation of abuse; the child’s developmental, social, and emotional abilities; and the affect or emotional display of the child throughout the course of the interview. 150 An interviewer must consider that reliability factors are not the same as corroboration factors. 151 Reliability is found by looking at the circumstances surrounding the statement itself, while corroboration is found by looking outside the statement. 152 While the ability to corroborate a child’s statements is critically important in a criminal court case, 153 one must also be able to

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146 Idaho, supra note 144 at 3150.
147 CornerHouse, supra note 15 at 14(6).
148 Id.
149 Id.
150 Id.
151 Id.
152 Id.
evaluate a child’s statements provided solely within the context of a forensic interview. The CA Scale enables an interviewer to effectively evaluate a child’s interview statements without resorting to ineffective techniques such as interview instructions or truth-lie discussions at the beginning of an interview.

V. CONCLUSION

Based upon the body of research reviewed and discussed in this article, interview instructions and truth-lie discussion with children are not warranted at the outset of a forensic interview. Utilizing these techniques at the beginning of an interview do not necessarily generalize to the child’s statements and behaviors in the balance of the interview. Further, a child’s ability to perform on these tasks during their introduction does not predict or promote their use during the rest of the interview. Interviewers who make the assumption that a child’s competency or statement reliability is established through these techniques is doing the child and the judicial system a disservice.

Further, the issue of legal competency is an issue for trial, not an issue at the time of the child’s disclosure or statement, and some states assume competency in the absence of evidence to the contrary. While it is critical that the interviewer pay attention to the words the child uses, the behavior the child displays and the emotions the child may exhibit during the interview process, these factors are but a few to consider when evaluating the internal consistency of the

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154 CornerHouse, supra note 15 at 14(6). Many corroborative factors are built upon statements children provide in investigative interviews, and are often the only witness to an alleged victimization. See Vieth, supra note 151. The internal reliability factors outlined at supra note 144 may be used as “circumstantial guarantees of trustworthiness” of a child’s statements and may lead to a hearsay exception for the child’s out-of-court statements. See Idaho, supra note 144 at 812.

155 CornerHouse, supra note 15 at 14(6).

156 For example, see MINN. STAT. §595.02(1)(m) (2005): “A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.”
child’s statements. The veracity of the child’s statements will be evaluated by the trier of fact, and in conjunction with other elements of the investigation.

Finally, in the wake of the Crawford decision, interview instructions and truth-lie discussions may lead a court to declare the interview testimonial in nature, and subsequently, counter-productive in getting a child’s hearsay statements admitted into court. If a child is not available for testimony in a criminal court case, it is unlikely that her videotaped statement will be admitted in lieu of her testimony, since it would not meet the requirements of the Confrontation Clause.

Audrey Hepburn once said, “The neglect and humiliation of a child by adults is a killer of trust, of hope and of possibility.” Substantial research supports the assertion that “the absence of suggestive techniques allows even very young preschoolers to provide highly accurate reports.” Children are capable of providing statements that accurately reflect their experiences. Therefore, in their work with children who may have experienced abuse or violence, professionals have the responsibility of eliciting information in a manner that is based on sound, defensible practice and of ensuring that the information is utilized throughout the system to ensure the safety, health and welfare of each child. The trust, hope and possibility of the children depend on this system.

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157 See Section IV, supra at 25.
158 See supra note 156; Idaho, supra note 144 at 812.
159 A detailed analysis of cases interpreting Crawford v. Washington has been developed specifically for child abuse cases, and maintained by senior attorney Allie Phillips at the American Prosecutors Research Institute. [0] See Allie Phillips, Cases Interpreting Crawford v. Washington, National District Attorneys Association/American Prosecutors Research Institute. For more information, see http://www.ndaa-apri.org/apri/programs/ncpca/ncpca_home.html.
159 See Crawford, supra note 134. A child may not be available to testify due to emotional or mental health reasons, pressures from family members to recant his allegations, or fear of facing the defendant.
162 Ceci & Bruck, supra note 128, at 430.
163 Id.