

When the Smoke Clears

Cross-Examining the Defense Expert's Attack on a Forensic Interview

By Victor I. Vieth¹

Introduction

The forensic interview of a child abuse victim is a compelling piece of evidence that is often the cornerstone of a prosecutor's case. As such, it is a prime target for the defense. Even in cases with a strong and solid interview, the defense may attempt to discredit or undermine the work of the forensic interviewer and thus the credibility of the victim. For this reason, defense attorneys often call a defense "expert" to critique the child's statement and the manner in which this evidence was collected. These experts frequently have little or no experience or training in forensic interviewing, nor do they understand even the most fundamental principles. Although they may be aware of a handful of studies addressing one or more issues related to a forensic interview, such as interview instructions or the use of anatomical diagrams, they rarely know how to apply this research to an actual fact pattern. Accordingly, if a prosecutor is well prepared, they can easily discredit these witnesses. In some cases, the prosecutor can even use the defense "expert" to support the quality of the forensic interview.

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Preparing for Cross-Examination

The Importance of Pre-Trial Motions

In preparing for cross examination, the prosecutor should request and collect any and all relevant information about the defense expert. This request may require a pre-trial motion. The request would include a current curriculum vitae, the report or notes prepared by the expert, and any materials, articles, or documents relied on by the expert to arrive at their conclusions. Defense counsel may state that the expert has not prepared a formal report. Regardless, it is still possible to prepare for an effective cross examination.

In addition to collecting information through discovery, a prosecutor should also conduct an internet search. A Google or other search of the defense expert can lead to reports of prior testimony, ethics complaints, publications, social media accounts, or other sources of information that could be helpful in drafting a cross examination. Prosecutors may also want to reach out to others who have experience with this particular expert and collect testimony transcripts.

After all relevant information is collected, a prosecutor should consider filing a pre-trial motion to limit or exclude the defense expert's testimony. By closely reviewing the defense expert's report, try to determine what they will be testifying to. Compare this purported testimony with the expert's curriculum vitae. If the expert is going to testify that the forensic interviewer's methodologies are not widely accepted in the field or that a particular forensic interviewing protocol is invalid or flawed, the expert should have some experience or training that allows them to render such an opinion. Many "experts" have never attended a forensic interview training conference, have never conducted a forensic interview, and have never published an article on a topic related to forensic interviewing. Even many psychologists called as defense experts have only a tangential knowledge of the field. While it may be difficult to exclude their testimony altogether, you may be able to limit its range.

For example, if an expert is going to critique one of the major forensic interviewing training models used in the United States,² the expert should have attended courses teaching that model or at least

² For an overview of major forensic interviewing training programs in the United States, the following articles may be helpful: Patti Toth, *APSAC's Approach to Child Forensic Interviews: Learning to Listen*, 32(2) APSAC ADVISOR 9, 15 (2020); Julie Stauffer, *A Look Inside the CornerHouse Forensic Interview Protocol™*, 32(2) APSAC ADVISOR 19, 25 (2020); Julie Kenniston, *The Evolution of the Childhood Trust Child Forensic Interview Training*, 32(2) APSAC ADVISOR 48 (2020); Heather Stewart and David La Rooy, *NICHD: Where We've Been and Where we Are Now*, 32(2) APSAC ADVISOR 30, 33 (2020); Mark D. Everson, Scott Snider, Scott M. Rodriguez, and Christopher T. Ragsdale, *Why RADAR? Why Now? An Overview of RADAR Child Interview Models*, 32(2) APSAC ADVISOR 36 (2020); Rita Farrell and

have reviewed course material. In some instances, courts have excluded or limited the testimony of defense experts who have never attended a course in which the protocol was taught and otherwise had very little knowledge of the protocol or the research that supports the model.³

A defense expert's inexperience with a particular training model does not mean they cannot testify about other matters. A psychologist, for example, may be qualified to speak about the emotional impact of child abuse on a victim and the possible diagnosis that can result (e.g., PTSD) but should not render opinions about forensic interview protocols or procedures they have no training in or experience with. In this situation, it is the responsibility of the prosecutor to educate the judge. Be prepared to present facts and information to support your argument that the expert is not be qualified in the field of forensic interviewing.

The Importance of the Direct Examination of the State's Forensic Interviewer

Once a prosecutor has received and reviewed the report and curriculum vitae of the defense expert, sit down and discuss these documents with the forensic interviewer. The forensic interviewer is often a strong expert witness for the state; they have training and experience as well as direct knowledge of the case. A prosecutor should utilize this resource as early as possible.

It may be that errors were made in the forensic interview. If so, concede these errors as part of direct examination. Doing so humanizes the interviewer and draws the sting out of the defense attorney's cross examination. Equally important, this approach either may persuade the defense counsel not to call the defense expert or, at the very least, steals their thunder. Many of the defense expert's attacks, though, will be illegitimate and can be addressed on direct examination of the state's forensic interviewer. For example, the defense report may claim the forensic interviewer failed to explore alternative hypotheses. If the interviewer did explore alternative hypotheses but they weren't recognized by the defense expert, point out where in the interview those moments occurred.

Victor Vieth, *ChildFirst Forensic Interview Training Program*, 32 APSAC ADVISOR 56, 57 (2020); Kathleen Coulborn Faller, *Forty Years of Forensic Interviewing of Children Suspected of Sexual Abuse, 1974-2014: Historical Benchmarks*, 4 SOCIAL SCIENCES 34, 51-52 (2015).

³ See e.g. *State v. Wells*, 221 P.3d 561 (2009). As general support for limiting the testimony of defense experts called to critique a forensic interview, see Victor I. Vieth, *The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Expert Testimony Concerning a Forensic Interview in a Case of Child Abuse (Revised and Expanded)*, 47(3) MITCHELL HAMLINE L. REV. 847 (2021).

A prosecutor, working with the forensic interviewer, should do more on direct examination than simply respond to the defense report. Assess what about the forensic interview makes it high quality. For example, if it contained a lot of open-ended questions, highlight them. Also highlight the credentials of the forensic interviewer—credentials that very few, if any, defense experts will have. In this vein, pay attention to the following six areas on direct examination:

1. *Forensic interview standards in the field.* The forensic interviewer should make clear that there are national standards for working in the field of forensic interviewing. At a minimum, the interviewer should cite the following national standards:
 - **National Children's Alliance (NCA) Accreditation standards that pertain to forensic interviewing.** In order to be accredited, a Children's Advocacy Center must meet the standards required by the NCA.⁴ The interviewer should review and be able to articulate to the trier of fact the standards pertaining to forensic interviewing. In particular, the interviewer should emphasize the requirement that "any professional in the role of a forensic interviewer must have initial and ongoing formal forensic interview training that is approved by the National Children's Alliance."⁵ This requirement includes a "minimum of 32 hours of instruction and practice" in an "evidence-supported interview protocol" utilizing a curriculum "included on NCA's approved list of nationally or state-recognized forensic interview" courses.⁶ The interviewer must receive "ongoing education in the field of child maltreatment and/or forensic interviewing" for a minimum of eight hours every two years⁷ and also "must participate in a structured forensic interviewer peer review process" at least twice annually.⁸

Citing these standards sets up an important difference between the forensic interviewer and the defense expert. The CAC interviewer has received nationally recognized and approved basic and ongoing training in forensic interviewing and has had their work critiqued annually through a formal structure. The typical

⁴ National Standards of Accreditation for Children's Advocacy Centers, 2023 Edition.

⁵ *Id.* at 26.

⁶ *Id.* at 27.

⁷ *Id.* at 27.

⁸ *Id.* at 29.

defense expert has rarely attended any of the approved courses, and since they don't work in the field of forensic interviewing, they have not actually conducted a forensic interview nor had their work formally reviewed.

- **Child forensic interviewing best practices.** In 2015, all the major NCA-approved national forensic interview training programs collaborated to publish a document setting forth agreed-upon, research-supported forensic interview training practices.⁹ The document was published by the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Referencing this document will help the trier of fact understand there is uniformity in the field of forensic interviewing and that all the major models teach similar concepts.

It may be helpful to discuss the language in this publication, which states a forensic interview is one "conducted by a competently trained" professional "utilizing research and practice-informed techniques as a part of a larger investigative process."¹⁰ This language is critical because it highlights that the work of forensic interviewing is rooted not only in research but also in practice—again distinguishing the forensic interviewer from the defense expert who has likely never practiced in the field.

- **APSAC Practice Guidelines on forensic interviewing.** The American Professional Society on the Abuse of Children (APSAC) has forensic interviewing guidelines¹¹ that the interviewer can cite to support the questions and practices they used in the forensic interview.

2. *Forensic interview training.* Unlike the defense expert, the government's witness has gone through basic and advanced training (approved by the NCA) specifically on conducting a forensic interview. Highlight this training in great detail. How many days did the training take? What topics were covered? Were you required to read pertinent literature in the field? Did you have to take a test? Did you pass the test? Did you have to demonstrate your expertise

⁹ Chris Newlin, Linda Cordisco Steele, Andra Chamberlin, Jennifer Anderson, Julie Kenniston, Amy Russell, Heather Steward, & Viola Vaughan-Eden, *Child Forensic Interviewing: Best Practices* (OJJDP 2015).

¹⁰ *Id.* at 3.

¹¹ APSAC Practice Guidelines: forensic Interviewing in Cases of Suspected Child Abuse (2012).

and be critiqued? Who critiqued you?

3. *Ongoing training.* Zero Abuse Project, as well as other national organizations, offers advanced courses on forensic interviewing. Continue to access these courses and keep track of them. Again, the NCA requires at least eight hours of ongoing education each year. However, many forensic interviewers far exceed these standards; in that case, point out to the jury the additional hours of training and any increased depth of material. Chances are the defense expert has never attended a course specifically focused on forensic interviewing, much less an advanced course.
4. *Practical experience.* Unlike the defense expert, the government's forensic interviewer actually conducts forensic interviews. Keep track of the number of interviews and be able to cite that number to the court. Many interviewers have conducted hundreds or even thousands of forensic interviews. The volume is relevant because, as noted earlier, the OJJDP best practice guidelines state a forensic interview is conducted utilizing both research and "practice-informed" techniques.
5. *Peer review.* It is critical that forensic interviewers continue to participate in peer review and that they keep track of their participation. This way, the interviewer can testify that not only do they continue to practice in the field, but they also subject their work to ongoing review by professionals in the field.
6. *Membership in professional organizations and adherence to professional guidelines.* Membership in a professional society, such as the American Professional Society on the Abuse of Children (APSAC), boosts the credentials of the interviewer. As noted earlier, APSAC has guidelines for forensic interviewers and for the usage of anatomical dolls. Review these guidelines before testifying so that you are prepared to testify that the forensic interview was consistent with these national guidelines.
7. *The science behind the interviewing protocol.* All of the leading interviewing protocols are "research-based" in that they are rooted in research.¹² Assuming the interviewer attended a course approved by the NCA, then the interviewer can inform the jury that the NCA has

¹² See generally, Chris Newlin, Linda Cordisco Steele, Andra Chamberlin, Jennifer Anderson, Julie Kenniston, Amy Russell, Heather Steward, & Viola Vaughan-Eden, *Child Forensic Interviewing: Best Practices* (OJJDP 2015).

recognized the interviewer was instructed in an "evidence-supported protocol."¹³

A forensic interviewer who testifies along the lines outlined above not only firmly establishes their credentials but also helps the prosecutor set the stage for cross-examining the defense expert.

Ten Tips for Successfully Cross-Examining the Defense Expert

If a prosecutor thoroughly examines the defense expert's report, files the appropriate motions, and reviews any literature pertinent to a particular fact pattern, possible avenues for a successful cross examination are numerous. In most cases, there will be at least 11 areas in which a prosecutor can expose the defense expert's analysis as deeply flawed, with little basis in science, experience, or common sense.

1. *Cross heavily on the credentials of the expert—or lack thereof.* Many defense "experts" have never conducted a forensic interview and have never attended even one of the major forensic interviewing courses. To the extent these "experts" have any experience working directly with children, it is typically in another context—for example, as a psychologist or perhaps purely as a researcher. Moreover, any experiences these experts may have had with children are often a long time ago. Zero Abuse Project has put together a number of sample cross-examinations of these experts on their noticeable lack of credentials. We are also available to work with prosecutors and child protection attorneys in drafting possible cross examinations. As an illustration, here is one sample cross examination on credentials:

- You received a bachelor's degree in psychology? Did any of that coursework specifically pertain to forensic interviewing?
- You received an MS in experimental psychology? Did any of that coursework specifically focus on forensic interviewing? You received a PhD in "legal psychology"? This field of legal psychology applies psychological insights of human behavior to the field of law?

¹³ NCA standards p. 27.

- You are not a clinician, then? You have never provided counseling to a child or an adult?
- You have never worked in a Children's Advocacy Center? You have never worked as part of a multidisciplinary team response to a case of child abuse?
- Are you familiar with the National Children's Alliance? You agree they are a federally funded body that accredits Children's Advocacy Centers? Are you aware that the CAC in this case is accredited?
- Are you aware the NCA has accreditation standards that directly pertain to the work of the forensic interviewer?
- Have you ever read these standards before? Are you aware that anyone who does not meet these standards would not be eligible to work in an accredited CAC here in this state or anywhere else in the country?
- One of these standards is to complete a curriculum "included on NCA's approved list of nationally or state recognized forensic interview trainings..." Have you ever completed a forensic interviewing course approved by the NCA?
- Another standard to work in an accredited CAC is to not only conduct forensic interviews but also to "participate in a structured peer review process for forensic interviewers"?
- You have never conducted a forensic interview, have you? Since you have never conducted a forensic interview, you also have never participated in peer review, have you?

In cross-examining the defense expert on their credentials, pay close attention to any listed publications or workshops taught or attended. Many experts have a lengthy curriculum vitae with dozens, even hundreds of publications or workshops they have presented. However, many of the publications and workshops have nothing to do with child abuse, much less forensic interviewing. If so, pick the publications and workshops the least related to forensic interviewing and cross-examine on these topics.

The following cross-examination questions illustrate this approach:

- Doctor, you have published five peer-reviewed articles on treating a patient with spider phobia? Would you agree that this case does not involve the fear of spiders?
- You have presented three workshops on a trauma-informed response to children who have been in a car accident? You agree this case does not involve an automobile collision?

2. *Examine the ethical guidelines pertaining to the profession of the expert called by defense counsel.* Most ethical codes prohibit members of their profession from offering opinions outside their area of expertise. If, for example, the defense expert is a psychologist and yet is testifying as to the field of forensic interviewing—something they likely know little about—the following cross examination might be appropriate: "Are you familiar with the ethical guidelines of the American Psychological Association? You recognize that these rules require you to be competent in the areas in which you are practicing or are otherwise offering your expertise? And that these rules also require you to undertake ongoing efforts to develop and maintain your competence? And yet you have never attended a basic, much less advanced, course on forensic interviewing?"

3. *Cross-examine the defense expert on specifics—don't let the "expert" get away with a broad critique of the interview or interviewer.* Defense experts often speak in generalities (e.g., there were "too many interviews," "not enough open-ended questions," the "child made contradictory statements"). In most instances, the expert's report provides, at best, only one or two examples from the record to support these statements. When the expert puts forth generic critiques, the prosecutor has at least two options:

- **On cross examination, ask the expert witness to provide examples to support their claim.** This is, of course, a risk. If the defense expert can back up the statements with myriad examples from the forensic interview, the witness becomes this much stronger. If, though, the defense expert had a lot of examples to support such broad claims, why didn't they raise them in the report or on direct examination? Accordingly, it may be worth the risk to put the witness on the spot. In all likelihood, they will only be able to come up with one or two examples. Moreover, the prosecutor, in consultation with the forensic interviewer, should be able to assess whether there are many examples in the record to which the defense expert could point. If not, cross-examination on this subject may be

worth any risk.

- **Ask the expert witness what the forensic interviewer did correctly.** This is a “win-win” question. If the expert concedes there were some things done correctly, this boosts the credibility of the interviewer. If the expert says the interviewer did nothing correctly, it shows the witness is biased. After all, very few things in life can be cast in such absolute terms. If the expert does, in response to cross, articulate things the interviewer did correctly, you may want to point out that none of these positive things were mentioned in the report nor on direct examination—and would not have come up if you had not inquired about them on cross examination. This point might be particularly helpful if the “expert” paints a picture of themselves as neutral.

4. *Box the expert witness into a corner by getting them to define the components of a competent forensic interview—and then cross on the specific examples from your fact pattern showing these components were present.* If, as suggested above, you get the witness to articulate the treatises or articles they are relying on, quote these articles as to the components of a good forensic interview. Once the expert agrees with these definitions, cross them on specific examples in the case file showing the standards were followed. These points may include:

- **Child-friendly environment.** Get the expert to agree that, generally speaking, it is advisable to conduct the forensic interview in a child-friendly environment. If the defense expert agrees with this premise, and if your child victim was interviewed in a Child Advocacy Center (CAC), the follow-up question may be: “And you agree that, in this case, the child was interviewed in a child-friendly environment?”
- **Small number of interviews.** Although there are circumstances warranting more than one interview or a continuation of a single interview,¹⁴ ask the defense expert if they will agree that, generally speaking, the fewer number of interviews the better. If the victim was only interviewed once, your follow-up question is: “In this case, the child was only interviewed once?”

¹⁴ Mark D. Everson and Scott M. Rodriguez, Why Forensic Balance Should be Recognized as a Foundation Best Practice Standard—A Commentary on the State of Child Forensic Interviewing, 32 APSAC ADVISOR 92 (2020).

- **Alternative hypotheses.** Ask the defense expert if they will agree that, generally speaking, an interviewer should explore alternative hypotheses in the interview. If the expert agrees, and if the forensic interviewer did this, cross the expert on the alternatives explored. For example, assume a child disclosed to her daycare provider, "Daddy put his pee on my pee." If the interviewer explored multiple hypotheses (sexual abuse, playing with blocks, a reference to alphabet soup, helping the child spell her name by drawing a capital "P", or the father peeing in the toilet following the child), highlight each of the hypotheses explored as part of the cross-examination.
 - **Open-ended questions.** Get the expert to define an "open-ended question." Offer as an example the prompt "tell me about that?" Once the witness agrees, be prepared to cross-examine them on all the open-ended questions posed by the interviewer. For this cross to be successful, it is essential that you transcribe the interview and highlight a great many open-ended questions. The more the better but, as a general rule, ask the defense expert to acknowledge at least 20 obvious open-ended questions. If the questions are obviously open-ended and the defense expert starts to push back, their protests can also be helpful. Simply plow ahead and then, in closing argument, point out that the defense expert doesn't define anything as open-ended—and ask the jury to apply their common sense in examining the interview.
5. *Cross-examine the expert on any prior inconsistent statements.* If the expert has testified before or has published anything, review as many of these writings and transcripts as possible. Call Zero Abuse Project for help. Many of these witnesses make inconsistent statements from trial to trial and from writing to writing.
 6. *Point out research that contradicts the defense expert's report or claims.* For example, if the defense expert cites the handful of studies condemning the usage of anatomical dolls, be prepared to cite the large body of studies supporting their usage. The cross may look something like this: "In the report you prepared for defense counsel, you discuss the literature on the usage of anatomical dolls. You are familiar with this literature? Do you agree there are well over 100 published studies on anatomical dolls? Are you familiar with Dr. Kathleen Colburn Faller from the University of Michigan? Are you familiar with a peer-reviewed article Dr. Faller published in the *Journal of Child Sexual Abuse* in 2005 providing a

comprehensive literature review of the research on Anatomical Dolls?¹⁵ According to Dr. Faller, 'The majority of studies indicate they [anatomical dolls] can be a useful tool, but there are also a few studies which do not support their use.'¹⁶ Is that an accurate summary of the state of the research on anatomical dolls?"

7. *Cross-examine on the victim's alleged "inconsistent statements."* If the defense expert contends the child victim(s) made "inconsistent statements" in an interview or across multiple statements, the prosecutor can respond in several ways. First, the prosecutor can address this claim through the forensic interviewer who, on direct examination or rebuttal, can offer several possibilities for an inconsistent statement other than the child lied or was led. Second, these additional possibilities can also form the basis for cross-examining the expert along the following lines:

- **Multiple possibilities for inconsistent statements.** The prosecutor's cross examination may include the following questions: "There are multiple possibilities for a child making inconsistent statements? For example, a child's memory fades over time? The question or questioner focuses on a different aspect of the event? The child is tired and doesn't want to give all the details of a prior event? Perhaps the child is perfectly consistent, and we adults misunderstand what she is saying? The child misunderstood a question? The child didn't fully hear a question?" You may also want to cross-examine in a way that highlights the absurdity of demanding a child be consistent on peripheral details, as opposed to the core nature of a sexually abusive relationship. This cross is an example: "Doctor, if you were working with an adult who had been married for a number of years, would you expect them to recall the number of times they had been intimate with their partner? Would you expect them to have a clear memory of the details of every sexual encounter with their partner? You would, however, expect them to know whether or not they had sex with their partner? You would expect them to have clear memories of certain sexual experiences with their partner—such as the honeymoon or the last time they were intimate with their partner?"

¹⁵ Kathleen Coulborn Faller, Anatomical Dolls: Their Use in Assessment of Children Who May Have Been Sexually Abused, 14 J. CHILD SEXUAL ABUSE 1, 8 (2005); see also, Victor I. Vieth, Anatomical Diagrams and Dolls: Guidelines for their Usage in Forensic Interviews and Courts of Law, 48 MITCHELL-HAMLINE L. REV. 83 (2022).

¹⁶ *Id.*

- **Evidence of consistent statements.** Develop a string of *consistent* statements the child made. A cross examination might look like this: "Molly told the forensic interviewer that her father sexually abused her? Molly also told this to a therapist? Molly also told this to a medical doctor? Molly also told this to the jury? Molly has said the abuse involved oral sexual activities? She has been consistent in this allegation? Molly has always claimed, in each of her statements, that there were no other witnesses? Molly's demonstration of abuse with anatomical dolls is consistent with her verbal description of abuse?"

8. *Cross-examine on the "downside" of sexual abuse therapy.* Sometimes a defense expert expresses concern that a child has been in therapy following a disclosure of sexual abuse and argues that therapy should be delayed until after a trial or the criminal case is otherwise concluded. If this approach is taken, a prosecutor may be able to cross-examine them on the cruel nature of such a suggestion. If the defense expert is a psychologist who purports to be an expert on child sexual abuse, the cross can be particularly effective. Consider this approach: "Is child sexual abuse harmful to a child?¹⁷ Why is child sexual abuse harmful to a child? Child sexual abuse often contributes to serious psychological problems including Post Traumatic Stress Syndrome or PTSD? [Bring to court your copy of the most recent Diagnostic and Statistical Manual of Mental Disorders (DSM) and have the PTSD section marked so that you can easily cross-examine the expert from the DSM if they stray.] PTSD is the sort of trauma often experienced by soldiers who have faced combat? Many prisoners of war, particularly those who have endured torture may suffer from PTSD? In such a case, would you delay diagnosis and treatment for a soldier? However, in the case of children who may have been sexually violated or otherwise maltreated, you would delay therapy? How long would you delay therapy? In other words, if the trial was delayed for up to a year, would you wait that long? Would you wait until the appellate process was exhausted? Doctor, what are

¹⁷ Although most defense experts would concede that sexual abuse is harmful to a child, some may minimize the harm. In a North Carolina case, Professor Maggie Bruck testified as follows: Question: "Would it be fair to say that one of the least favorite subjects, ah, to talk about, whether it's with their own parents or, ah, stranger would be anything that occurred to them of a sexual nature?" Answer: "Oh, I don't agree with you, Mr. Hart. I think that children, in fact, love to talk about those kind of things especially among themselves..." Question: "Tell me, Doctor, from your experience how great a time would a child have going and telling her friends and neighbors and other people about having someone stick his finger up their butt, how much glee would be involved in that?" Answer: "You know, I don't know, Mr. Hart, but if they get a good laugh from their friends and if it could be something that would make them a really important kid and that their friends could all jump in and say is that what happened to you, I've got an even better one, it would be a really great topic of conversation." ROSS CHEIT, *THE WITCH HUNT NARRATIVE: POLITICS, PSYCHOLOGY, AND THE SEXUAL ABUSE OF CHILDREN* 181 (2014).

some of the potential problems a child may encounter if therapy for sexual abuse is delayed for months or even years?"

9. *Highlight the existence of corroborating evidence.* You also can use corroborating evidence to cross-examine the defense expert. Any peripheral detail that is corroborated can be used in cross examination. For example, if the child said she was sexually abused in the "room with the giant eagle" and the subsequent search warrant finds a bedspread of a giant eagle, this information can be used to cross-examine the defense expert. The cross can be as simple as:

"Doctor, in this case Molly told the forensic interviewer she was sexually touched in the room with a 'giant eagle'? Are you aware that the investigator found a bedspread in the defendant's room that did, indeed, have an image of giant eagle?" If the expert says they weren't aware of this, cross-examine them on what information, or lack of information, they were given. If the expert admits awareness of this fact, ask if corroborating evidence is a relevant factor in assessing a child's statement.

The defendant's own statements can be powerful corroboration. A confession that corroborates a child's statement is powerful evidence to show the disclosure is true. Statements that fall short of a confession but corroborate time frame of abuse or access to the child are also useful. Further, cross-examination on these topics shows the expert's lack of knowledge of the case or lack of candor.

10. *Employ the money question.* Although defense experts are used to being questioned about their pay, it can still be effective to ask them how much they are getting paid to testify and by whom. However, if you are also calling an outside expert to testify in rebuttal or as part of your case in chief, the effectiveness of this cross is muted. In such a scenario, both the state and the defense retained and paid for outside expertise.

On the other hand, if the government is relying only on the expertise of the forensic interviewer—someone who truly is impartial and is not paid to achieve a certain result—cross-examining the defense expert on their compensation can be effective. If the amount of compensation is significant, breaking down parts of the payments also can be helpful. Exploring the hourly rate for document review and testimony, the rate for travel and conditions of travel, and compensation for expenses can be relevant in showing potential bias. You may also wish to explore whether the witness has ever reviewed a forensic interview and found no significant error. If the witness always finds significant problems, then

it demonstrates some level of bias. If they say they have reviewed interviews in which they see no meaningful flaw, you may wish to inquire how often that happens. It may also be helpful to ask if their billable hours continue when they find no error, and then follow up with "so you know from experience that the more errors you find, the more your billable hours increase?"

Conclusion

Although defense experts often couch their testimony in terms of educating judges and jurors as to the proper or improper method of interviewing children, it is critical to understand the true reason they are paid for their testimony: to undermine the credibility of a child's disclosure of sexual abuse. The boy or girl they are attacking lacks the education and maturity to respond to such an attack. Accordingly, it is essential that prosecutors attend forensic interviewing courses, stay abreast of the literature, and otherwise be fully prepared to respond to unwarranted attacks on the credibility of a child or the child's outcry of abuse. Prosecutors can successfully counter these attacks by conducting a thorough direct examination of the government's forensic interviewer and a rigorous cross examination of the defense expert

