Interviewing Children in Custody Cases: Implications of Research and Policy for Practice

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Research on child interviewing has burgeoned over the past 25 years as expectations about children's agency, competence, and participation in society have changed. This article identifies recent trends in research, policy, and theory with implications for the practice of interviewing children in cases of contested divorce and for the weight to be given the information children provide. A number of fields of relevant research are identified, including studies of families who have participated in the family law system, studies of child witnesses in the field, experimental studies of the effects of interview techniques on children's memory and suggestibility, and ethnographic methods that elicit children's views of their own experiences. Finally, a set of 10 principles for practice are delineated based on the best available science. Copyright © 2010 John Wiley & Sons, Ltd.

Research on child interviewing has burgeoned over the past 25 years as expectations about children's agency, competence, and participation in society have changed. Across diverse fields of study, researchers have been investigating how best to elicit information from children about their experiences, preferences, perceptions, sensations, attributions, thoughts, and feelings (see Saywitz & Camparo, in press, for review). Concurrent with this proliferation in research, there is a growing recognition that children are knowledgeable about their own needs and experiences. Consequently, traditional notions of children and childhood have been re-examined. Early theoretical constructions of children as 'adults in the making' who lack the competencies they will someday develop have given way to constructions of children as social actors who possess unique perceptions of the everyday realities of being a 'child' and who can actively contribute to constructing our notions of 'childhood' (Uprichard, 2008, p. 303). As informants about their own lives, children have become active participants in building the knowledge base on which public policies about their welfare are predicated.

These trends in research, theory, and policy have important implications for the practice of interviewing children in cases of divorce and dissolution, and for the weight given to the information children provide. Two questions are central regardless of whether children are represented by counsel; whether interviews are conducted by a judge in chambers, filtered through a lawyer, a psychologist, or a guardian ad litem; or

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whether a child offers formal testimony in a courtroom: how should information be elicited from children, and how should children's responses be weighed? In this article, we focus on how to objectively elicit reliable information from children pertinent to judicial and parental decision-making in contested custody cases.

Warshak (2003) contends that "most procedures for soliciting children's preferences do not reliably elicit information on their best interests and do not give children a meaningful voice in decision making." Instead, "most procedures provide children with forums in which to take sides in their parents' disputes" (p. 373). However, there is now a sizable body of research and an emerging consensus in the field on general principles of interviewing children when legal decisions are pending, coalescing around a group of evidence-based interview techniques to either employ or avoid in concert with a more objective and neutral overall approach (Ceci, Crossman, Scullin, Gilstrap & Hufman, 2002; Cronch, Viljoen, & Hansen, 2006; Crossman, Powell, Pincipe, & Ceci, 2002; Lamb, Sternberg, Orbach, Esplin, Stewart, & Mitchell, 2003; London, 2001; Poole & Lamb, 1998; Saywitz & Camparo, 2009; Saywitz, Lyon, & Goodman, in press; Sternberg, Lamb, Davies, & Westcott, 2001; Wakefield, 2006; Wood & Garven, 2000). Additionally, there are a number of studies that suggest children want to participate in the decision-making process and can provide both accurate and meaningful information, although they do not want to be responsible for the outcome of the case (Cashmore & Parkinson, 2008; Goodman & Melinder, 2007; Smith, Taylor & Tapp, 2003).

With that said, there remains debate and mixed findings to untangle on the finer points of interviewing; indeed, many books and journal issues are devoted to the discussion (Faller, 2007; Pipe, Lamb, Orbach, & Cederborg, 2007; Westcott, Davies, & Bull, 2002). And, with regard to a few important issues, there are gaps in the existing literature where guidance is limited. However, basic principles of interviewing can be gleaned from a number of domains of relevant research that are described in this article. We begin by reconsidering children's participation in the decision-making process as providers of information obtained through interviews. Then we identify the various sources of evidence on which we rely to derive principles for practice. These include studies of interviews with families who have participated in the family law system, studies of child witnesses in the field, experimental laboratory studies of the effects of interview techniques on children's memory and suggestibility, and ethnographic interview methods that elicit children's views of their own experiences. We also rely on an extensive body of research on child development and on guidelines developed by professional organizations. Finally, we offer 10 principles for practice.

RECONSIDERING CHILDREN'S PARTICIPATION

In part, the interview is driven by the degree to which decision-makers plan to consider input from children on their preferences, perceptions, memories, thoughts, and feelings. The nearly universal acceptance of the *UN Convention on the Rights of the Child* (CRC) (1989) sets a legal benchmark for children's participation in decision-making about matters that affect their own lives. There are many recent examples around the globe where children serve as informants for researchers and policy-makers. For instance, MacNaughton, Hughs, and Smith (2007) described how the Department of Education in Australia consulted with 3- to 4-year-olds to revise gender-equity policies

in schools; Leonard (2007) studied Irish youths' personal accounts of life in a highly contested interface area of northern Belfast in order to designate safe environments; and Lidén and Rusten (2007) examined families seeking asylum in Norway. Similar to custody cases, of particular concern in the latter study was how best to reconcile the states' obligation to the child's best interests with the child's right to express his or her views and have these views given due weight in decision-making processes. Article 12 of the UN CRC states that children should have their views heard in matters affecting them, and these views should be given weight in accordance with age, maturity, and situation (CRC, p. 273).

Changing Constructions of Childhood

In addition to shifting global trends in research and policy, constructions of childhood, long dominated by western developmental perspectives, are changing (James, 2001, 2007). Some scholars believe we are in the midst of a long-overdue shift in the paradigm of childhood away from the view that development unfolds in a unidirectional progression along a single trajectory with age-related increases from intuitive to logical thinking (e.g., Piagetian theory) or from inefficient to greater levels of efficiency (e.g., information processing theory). Instead they emphasize that children gain knowledge and experience gradually through activities in cultural settings dependent on the richness of the interactions they experience (Vygotsky, 1978; Woodhead, 2000). It is argued that theories have undervalued the importance of context so critical in cases of disputed custody (James, 2001, 2007). From this viewpoint, children are considered to be the most reliable witnesses of their own experience (Butler, Scanlan, Robinson, Douglas, & Murch, 2002). Many believe children have a right to participate and are entitled to have a say rather than be protected from decision-making (Trinder, 1997). Stemming from this perspective, researchers have begun to investigate children's views about participating in the legal process in cases of divorce and the impact of participation on children's functioning.

Families' Views on Their Participation in Legal Proceedings

Recent studies suggest many children want to be active partners who contribute to the decision-making process without being placed in the position of being responsible for the outcome of the case. Smith et al. (2003) interviewed 73 families with 103 children aged 7–18 years in New Zealand. When children were asked what advice they would give to separating parents, the most common response was ''let children have their say,'' ''listen to children,'' and ''tell children what is going on.''

Cashmore and Parkinson (2008) interviewed 90 parents of 47 children aged 6–16 years involved in family law cases in Australia. The vast majority of children (91%) expressed a desire to be part of the overall process, part of creating options, but most did not want to be responsible for final decisions. Children's comments reflected several consistent reasons for wanting a say in the process, including the need to be acknowledged, the belief that their input would ensure better outcomes (i.e., more workable arrangements), and the perspective that they had a right to participate in the arrangements that would affect them (e.g., perceptions of fairness). Similarly, most

parents (88%) thought children should have a say, depending on age and maturity, but that children should not be asked to make a bald choice between their parents. Instead, the parents recommended that children should be asked what is important to them and what their preferences are among various options. A small number of parents did not want their children involved, usually due to fear of undue influence or outright mani-pulation by the other parent, or concern that the choice would place an undue emotional burden on the children. Rigorous research to determine whether these concerns are founded is sadly lacking. Most children (70%) indicated that being asked to choose directly between parents puts them in a ''difficult position'' because it would upset or hurt their parents (36%), it would cause children to be sad or worried (30%), or that children were scared of making the ''wrong decision'' (27%). Eighty percent of children under 12 wanted more say than they had been given, with children from contested cases and cases that involved allegations of abuse, violence, and high parental conflict expressing the greatest desire for participation. These children were less con-cerned with being put in a difficult position and less trusting that adults would make workable arrangements and good decisions without their input. They did not consider consensus and compromise to be options in their families.

Although there is little research on the impact of participation, proponents speculate that it may help children accept ultimate decisions, facilitate co-operation and adjust-ment, improve children's safety when neglect or abuse allegations are raised, and facilitate their growth into responsible adults. Unexpectedly, one relevant study did find benefits to children's participation in custody disputes. Wolman and Taylor (1991) examined the effects of participation on 43 families of 135 children whose ages ranged between 7 and 10 years. In 27 families the children had been active participants in contested disputes, whereas the remaining families settled out of court. Surprisingly, researchers found that after 18 months, children in contested cases were functioning better in some domains than those in non-contested cases (e.g., less separation anxiety, less anger/hostility, more positive family concepts). Authors speculated that certain aspects of participation may actually help children develop adaptive coping strategies; that is, participation may create opportunities for open parent–child communication about family conflict, clarify issues rather than leaving them to children's fears and imaginations, make children more aware of the difficulties their families face, and help children feel valued as the subject of a contest.

To further complicate this issue, as proposed by Thibaut and Walker (1978) for adults, effects may be influenced by type of judicial procedure (i.e., adversary vs. mediation; see Melton & Lind, 1982, for a discussion of potential benefits to older children). In one experimental study with undergraduate participants who had been led to believe they had been accused of a wrongdoing of which they knew they were innocent, researchers found that participants perceived the adversarial procedure as fairer than the non-adversarial procedure (Lind, Kurtz, Musante, Walker, & Thibaut, 1980). Surprisingly, participants also perceived the verdict (guilty or innocent), which was manipulated by the researchers, as more fair, satisfying, accurate, and unbiased when it followed an adversarial trial, regardless of the verdict.

There is also very little scientific research on the effects of expressed preference on children's post-divorce adjustment. Clearly, further research with children is needed to understand both positive and negative effects of participation versus non-participation, participation in different types of judicial procedures, and expressed preferences on children's well-being. Moreover, this research needs to focus on sorting out the effects

of participation independent of the effects of the divorce itself (e.g., increased financial stressors or reduced conflict at home).

Although the studies described above represent a starting point for future research, the findings highlight that participation is not a single, black or white event and cannot be narrowed down to simply asking children to choose where they want to live. There is a continuum of involvement that evolves over time as children develop and circumstances change. Interviewers will need to engage children in conversations on a wide array of topics to elicit all the relevant information and refrain from placing children in the role of 'tie-breaker' or being overburdened with responsibility for the outcome (Dunn, Davies, O'Conner, & Sturgess, 2001; Kuehnle, Greenberg, & Gottlieb, 2004). McCabe (1996) outlined three levels of child participation in decisions about medical treatment: (a) providing children with information and keeping them informed of the options under consideration and the stage of the process; (b) shared decision-making and involvement in goal-setting; and (c) autonomous decisions that include choosing not to be involved and deferring to their parents. A similar re-conceptualization is necessary with regard to children's participation in custody planning and the weight accorded to their expressed preferences.

From Competence to Participation

Children's competencies are at issue here both in terms of their ability to make decisions about arrangements for residence or contact, and in terms of their competence to provide accurate information in an interview that is not tainted by biased interviewing or merely a reflection of (or a reaction to) their parents' views. In practice, age is often a proxy for competence and maturity. Older children (over 14 years) are regularly asked about their preferences and children under 8 years of age are rarely asked (Crosby-Currie, 1996), with the greatest weight being given to the preferences of older adolescents over 16–17 years of age. Some states designate a specific age, such as 12 years old in Tennessee (American Bar Association, 2007) or 14 years old in New Mexico (American Bar Association, 2009) at which the court must consider a child's reasonable preference.

However, a host of abilities and skills are involved in participation, many of which come to maturity at different points in development. Some relevant skills develop rapidly between the ages of 3 and 7 years (e.g., vocabulary and grammar to communicate children's views), others between 7 and 9 years of age (e.g., metacogntive abilities for monitoring, evaluating, and controlling information-processing, resistance to suggestion, and perspective-taking skills), and still others between 11 and 15 years of age (e.g., hypothetical-deductive logic, abstract reasoning to weigh the risks and benefits of options). Researchers have found continuing development in maturity of judgment between early and late adolescence in terms of responsibility, temperance, and perspective taking (e.g., Steinberg & Cauffman, 1996), although most studies find adults and adolescents perform similarly on a variety of decision-making tasks (e.g., systematically searching for information, attending to relevant information, and generating solutions).

Despite these developmental trends, the law does not require that children demonstrate adult-like reasoning in order to participate in decision-making. Studies of children's competence to consent to medical procedures validate that adult-like

reasoning is not always necessary to come to reasonable conclusions. In one study, 9-, 14-, 18-, and 21-year-olds were asked to make decisions about hypothetical medical treatments (Weithorn & Campbell, 1982). The 9-year-olds did not understand all of the information provided or the reasons given. They relied on only one or two concrete factors to make decisions. However, they tended to arrive at similar logical decisions as the adults.

Moreover, traditional approaches assume that improvements in competence with age will translate into better decision-making across situations, but recent research suggests this is not necessarily the case. Decision-making is not a monolithic skill; its development is not a linear progression along a single trajectory, despite the fact that there are clear improvements in memory, problem-solving, and reasoning with age. Instead, some judgments actually decline with age (e.g., increases in gamblers' fallacy). Although capable of efficient, effective, cost–benefit analyses, adults do not always use these skills in everyday decision-making. Adults fall prey to judgment biases, ignore important information, rely on inappropriate shortcuts, and make non-optimal ''irrational'' decisions in a wide variety of situations. Studies that focus on discerning age differences have emphasized competence, under ideal conditions, rather than performance, in real-world circumstances.

Jacobs and Klaczynski (2002) described how adults and children over- and under-apply particular rules of logic, such as making predictions based on the most salient pieces of information but failing to consider base rates of occurrence. This occurs, for example, because individuals are motivated to protect their most favored beliefs (e.g., religious beliefs, stereotypes, peer pressure) despite evidence to the contrary (Klaczynski, 2000). First-graders exhibit the same judgment biases as adults when making social judgments, even though they are able to take base-rate information into account from an early age in other content areas. There is a long list of heuristics acquired over development that are used with increasing frequency and have more complex developmental trajectories due to social, motivational, and emotional influences on everyday decision-making.

In summary, traditional age limits as markers for competence fall short when we recognize that levels of participation will vary case-by-case and that participation involves a host of abilities that come to maturity at different points in development, many of which do not have simple linear trajectories and are highly dependent on the context. Further research is necessary to replace age limits with empirically-based, developmentally-appropriate, and context-sensitive guidelines for levels of participation. Levels might vary from (a) children merely being kept informed about options and the stage of the process, to (b) eliciting information from children about what is most important to them at the time in order to help families prioritize and fully understand all the advantages and disadvantages of various options from a child's perspective, to (c) involving children in setting family goals and shared decision-making. In the interim, the existing evidence allows us to begin with a set of basic principles for interviewing young children in custody cases on a wide array of topics that can produce reliable information useful for parental and judicial decision-making.

STUDIES OF CHILD INTERVIEWING

Recent studies suggest that young children are capable of providing accurate and meaningful information about their experiences, perceptions, thoughts, and feelings,

but are also susceptible to the effects of suggestion, bias, and pressure. This body of research comprises various types of study. First, guidance on interviewing derives from hundreds of rigorous experimental analogue studies in the laboratory originally designed to provide insights for investigative interviewing in cases of child maltreatment. Typically, researchers examine accuracy of children's memories for innocuous events (e.g., classroom activities or visits to an amusement park), fictitious events (e.g., field trip to the desert; Camparo, Wagner, & Saywitz, 2001), or naturally occurring stressful experiences (e.g., medical procedures) by comparing interview responses to records of the original event (e.g., videotapes).

Researchers compare the effectiveness of different interviewing techniques and test children's suggestibility and tendency to make false reports in response to misleading questions. For example, Poole and Lindsay (2001) demonstrated how young children in the 3–8 year range provided false information about a science activity when their parents supplied them with fictitious information about what happened in the science activity before they were interviewed. The older children retracted the false information after receiving instructions that directed them to focus on the source of the misinformation; however, the younger children did not benefit from the instruction. Studies show that pre-school children are more suggestible when questioned by an adult than when questioned by a child (Ceci, Ross, & Toglia, 1987), and susceptibility to the status of adults as questioners diminishes with age (Kwock & Winer, 1986).

Analogue studies highlight techniques to avoid, including suggestiveness (e.g., introducing information into the interview that the child has not previously mentioned), influence (e.g., placing social pressure on the child through the use of social conformity, obedience to authority, or induction of stereotypes), reinforcement (e.g., encouragement when comments fit interviewer expectations and challenging or ignoring statements that violate interviewer expectations), and removal from direct experience (e.g., inviting the child to speculate or ''pretend'' as part of the interview) (Wood & Garven, 2000).

Similarly, analogue studies underscore techniques to promote the completeness and reliability of children's reports, such as the use of open-ended questions in place of directive, option-posing, leading, or suggestive utterances (e.g., Cronch et al., 2006; Lamb & Fauchier, 2001; Lamb et al., 2003; London, 2001; Sternberg et al., 2001). Studies have amply demonstrated the benefits of questions that elicit multi-word responses, such as ''what,'' ''who,'' ''where,'' ''when,'' or ''how,'' in comparison to forced choice questions that limit responses to a single word, such as ''yes/no'' or multiple choice questions (e.g., Waterman, Blades, & Spencer, 2001). Open-ended questions elicit longer, more detailed, more accurate, and less self-contradictory responses from older children and adolescents than do the other types of interviewer utterances and are less likely to mislead younger children.

Researchers strive to maximize the ecological validity of their studies without compromising scientific rigor. For example, Eisen, Goodman, Qin, Davis, and Crayton (2007) tested over 300 3- to 16-year-olds who were undergoing forensic investigations of allegations of abuse or neglect. They interviewed children about an anogenital examination and a venepuncture procedure, both required for health reasons. As is often the case in laboratory studies of typical children, researchers found developmental differences: children 6 years of age and older provided significantly more accurate details of the medical events than younger children.

In some cases, researchers have been able to compare a child victim's/witness's memory to a videotape of abuse recorded by the perpetrator (see Paz-Alonso, Ogle, &

Goodman, 2009, for review). In one study, there were photographs, a confession of sexual assault, and multiple victims aged 3–10 years (Leander, Christianson, & Granhag, 2007). Even very young children provided accurate information, although it was incomplete, with only two of eight children mentioning the details of the sexual acts. Fear, embarrassment, shame, and guilt were suggested as explanations for children's omissions.

In addition, there are numerous studies devoted to evaluating the effectiveness of various science-based interview protocols in the laboratory (e.g., Cognitive Interview: Fisher, Brennan, & McCauley, 2002) and in the field (e.g., NICHD interview: Lamb, Hershkowitz, Orbach, & Esplin, 2008). Although these protocols are designed explicitly for interviewing witnesses or victims of crime, many of the findings have applications and important implications for interviews in cases of contested divorce or dissolution.

Another source of relevant information is a body of research using ethnographic interviews, a method originally used by anthropologists to study unfamiliar cultural practices. Ethnographic methods engage with children's own views of their lives to understand what developmental trajectories and cultural factors shape children's perceptions of everyday life (Buchbinder, Longhofer, Barrett, Lawson, & Floersch, 2006; James, 2001). Children are encouraged to talk about a particular topic; researchers ask for explanations and elaborations and take on the role of ignorance, encouraging children to take the role of expert or teacher. Interviewers strive to take on the least adult-like role possible to minimize power differentials between children and adults that are thought to interfere with trust and discourage self-disclosure (e.g., Bauman & Greenberg, 1992). The interviewer strives to understand the child's experience from his or her point of view, deliberately setting aside, as much as possible, preconceived hypotheses.

These types of interviews are common in consumer, child care, and educational research, and studies of children's experiences online using the internet and social-networking sites. They are used in the health sector to understand what children know about everyday health and well-being, illnesses and treatment management, and to understand children's perceptions of pain and the effects of pain medications (see Saywitz & Camparo, in press for review).

In short, there is a diverse and expanding body of research with implications for the practice of interviewing children in cases of divorce and dissolution. Below we suggest 10 principles for practice derived from this literature.

PRACTICE IMPLICATIONS: PRINCIPLES FOR INTERVIEWING CHILDREN

1. Provide an age-appropriate, private environment with minimal distractions

Age-appropriate settings are thought to reduce stress and improve motivation, co-operation, attention, retrieval of detail, resistance to suggestion, and communication. As children mature, they develop a greater ability to function optimally even in unfamiliar and complex situations and to resist distraction and focus attention. Interviewers will want to remove intriguing objects that compete for a young child's

attention. Words disappear once they are spoken, but the ever-present objects in the room pull the young child's attention away from the interview. Similarly, interviewers who answer telephone calls or respond to other distractions during interviews may find it difficult to redirect a young child back to the task at hand.

Private interviews are recommended to eliminate the appearance and reality of cross-contamination from others who may have a vested interest in the outcome (e.g., siblings, grandparents). Studies show children's responses are influenced by the presence of others; they are reluctant to accuse adults and peers of wrongdoing in the presence of others (Harari & McDavid, 1969) and look to adults to provide cues to answer questions.

Under the best of circumstances, children under 5–6 years of age can be reluctant to leave a loved one to accompany a stranger to an unfamiliar location for an unknown purpose. Let children know where significant others will be waiting. Provide an outline of the mechanics of the interview to eliminate uncertainty and fear (e.g., ''We will be sitting in this room the whole time. It will be just the two of us together talking''). What is obvious to adults must be spelled out for young children, often more than once.

In situations where children indicate they are unwilling to be interviewed alone, the interviewer may allow an adult support person to be present for the start of the interview. Interviewers will want to consider taking precautions in these situations, such as instructing the support person to sit behind the child and to redirect the child back to the interviewer if the child has questions. Many protocols recommend asking the adult to leave once the child is comfortable but before substantive questioning begins. Additionally, it should not be assumed that a parent's presence will decrease stress. Whether a child will experience a particular person's presence as supportive depends on the nature of the relationship between the child and the person offering support, and the kind of support provided (e.g., Goodman, Quas, Batterman-Faunce, Riddlesberger, & Kuhn, 1994, 1997).

2. Prepare children with age-appropriate explanations of the purpose of the interview, the child's role, and the functions of the professionals

Children's knowledge of the legal system is limited (Saywitz, Jaenicke, & Camparo, 1990). Children lack a context for understanding the purpose of the questions, consequences of their answers, and the role of the various professionals involved (Saywitz, 1989). They fill in gaps with misunderstanding, anxiety, self-blame, and heightened or unrealistic fears that hinder open communication. For example, children's early conceptions of judges are based on visual perceptions (e.g., ''The judge sits on a high desk and talks and listens. I don't know why''). Even older children believe judges are omniscient and liken a judge to a priest or a witch on the basis of the black robe.

Interviewers can educate and reassure children by ensuring they understand that the judge is in charge of decision-making; that is, it is the judge's job to make sure that everything is fair and everyone stays safe, and it is the judge's job to make the best plan for the whole family after considering other information in addition to input from children and parents.

There is reason to believe that children are likely to benefit from efforts to demystify the legal context. Quas, Wallin, Horwitz, Davis, and Lyon (2009) examined legal knowledge of 94 children aged 4–15 years and found that children who were more

knowledgeable about the legal system were less distressed about attending their dependency court hearings. Nathanson and Saywitz (2003) examined the mock testimony of 81 8- to 10-year-olds in a courtroom at a university law school. They found that greater legal knowledge was linked to more detailed and accurate responses to questions about past events on the stand.

In addition to introductions, interviewers will want to explain their own job responsibilities and objectives. Psychologists and lawyers might explain that they help families solve problems and gather information to pass on to judges to ensure judges can make the best plan for the whole family. Then, opening questions, such as, "Is there something you want to tell me? ...think I should know? ...something you want the judge to know?" take on a different meaning. Once interviewers clarify that their purpose is to learn what the child believes is important in his or her life and family, it makes sense to begin by asking more details about the important people, activities, and events in the child's life:"I'd like to get to know you better. Tell me about something important to you, about the most important people in your life, ...your favorite things to do."

3. Create an objective, non-judgmental atmosphere where children's perceptions are explored and respected. Demonstrate a willingness to hear all sides, without pressuring children

Ethnographers argue that interviewers need to mediate adult–child discrepancies by treating children as cultural experts (Christensen & James, 2000; Mandell, 1991; Weisner, 2002) and take steps to counteract children's expectations of adult social roles (e.g., viewing an adult as someone who will guide, direct, and tutor). From this perspective, interviewers make it clear that children are the experts on their own lives and families. The goal is to understand the child's vantage point as valid and unique from other family members. Therefore, make it clear that you are interested in what the child thinks, feels, and remembers (not some absolute truth).

Studies suggest that, overall, children in divorcing families tend to function better when parental conflict is minimized, and a positive relationship is maintained with at least one, and preferably both, parents (Johnston, 1994). Hence, interviewers are wise to avoid creating a forum that forces children to reject one parent and side with the other, possibly burdening children with guilt or anxiety and taxing their already divided loyalties. Studies are clear that interviewers should refrain from pressuring children. The goal is to provide an opportunity for self-disclosure without creating a false statement that may be retracted later. Many children are ambivalent about disclosing private, painful, or embarrassing information or have been warned or threatened not to talk (Sas & Cunningham, 1995). Pressuring children may taint children's reports, undermine their credibility, or create avoidable inconsistencies.

To maintain objectivity, let the child tell you what is important, then summarize in the child's own words and verify that you understand his or her intent correctly without agreement, debate, or taking sides. For example, you can demonstrate objectivity by asking about moments of positive caretaking by both parents ("Tell me more about that time. It sounds like it is a very good memory. You had fun with your mom/dad that day."). Children are likely to be more comfortable revealing negatives once they know you are interested in understanding all sides and are non-judgmental. Interviewers will

need to explore alternative explanations and accept children's ambivalence (e.g., people often feel more than one way about something.).

4. Make an effort to establish rapport through non-suggestive means

Most guidelines mention that interviewers need to spend time establishing rapport and trust. Yet there are few scientific data available on the best methods for developing rapport with children. We know little about how children decide whom to trust and whom not to trust. We also lack empirical data about the conditions under which techniques designed to overcome resistance and anxiety or to build trust might have positive, negative, or no effects on accuracy and self-disclosure.

Although there is no set list of ice-breakers, some research suggests there is value in using early verbal interactions to demonstrate that the child will be expected to provide as much detail as possible in his or her own words with minimal prompting. Begin the interview as you would like it to proceed – create the expectation that the child will be doing most of the talking; you will do the listening. Give children at least 10–20 seconds to answer a query. Do not rush in with more questions; children need time to process the syntax and cognitive demands of the question and to formulate answers.

Studies are clear that interviewers should refrain from pressuring reluctant children. The goal is to provide an opportunity for self-disclosure without tainting children's statements. If a child is silent, avoid pressing your point. Instead, interviewers might try to understand the reason behind the reluctance. For example, ''What is making it hard to talk right now? Anything I can do to make it easier?'' Or ''People usually have good reasons for doing what they do. You must have a good reason for not talking, too. Can you help me understand?''

5. Promote a supportive, welcoming, non-threatening atmosphere

Social support usually consists of eye contact, smiling, warm intonation patterns, relaxed body posture, initial rapport development, and complimenting children on effort without regard for accuracy (''You are really listening carefully, trying to do your best.''). Studies indicate that when it is not tied to specific content, but is provided independent of content, social support can help children overcome resistance and improve performance, without contaminating their accounts of non-abusive events, even after a 1-year delay (see Bottoms, Quas, & Davis, 2007, for review). However, it is critical that supportiveness not become selective reinforcement of responses that fit the interviewer's *a priori* beliefs (Bruck, Ceci, & Hembrooke, 1998).

Interviewer bias has been linked with distortions of children's accounts, underscoring the need for objectivity and neutrality (Ceci & Bruck, 2006). In experimental studies, when interviewers are provided with biasing information about false events before the interview and are allowed to script their own questions, they tend to ask repeated ''yes/no'' questions about the suggested events (Gilstrap, 2004), thereby increasing error (White, Leichtman, & Ceci, 1997; but see Goodman, Sharma, Thomas, & Considine, 1995). And when combined with selective reinforcement of desired responses, these questions can dramatically increase young children's errors (Garven, Wood, & Malpass, 2000; Garven, Wood, Malpass, & Shaw, 1998). Strive to

remain neutral regarding the veracity of the children's statements. Explore alternative hypotheses and keep biases in check.

6. Match the demands of the interview to the child's stage of development. Use language children comprehend and concepts children understand

Problems arise when questions are asked in language too complex for young children to comprehend, about concepts too abstract for them to understand. Children often answer questions they do not understand, which may then lead adults to misinterpret their meaning. Consequently, a child who comprehends simple sentences five to seven words in length should not be asked 20-word, compound questions with embedded clauses and double negatives. Additionally, because young children have difficulty monitoring whether or not they fully comprehend adult language, and because they rarely ask for clarification, communication problems may become amplified. In one study, out of over 900 confusing, complex questions asked to 30 children, there were only nine instances in which children indicated non-comprehension (Carter, Bottoms, & Levine, 1996). Suggestions for simplifying your language are given in Appendix 1.

Similarly, interviewers will need to avoid using concepts children have yet to master. A girl who does not know how to tell time – a skill initiated in the first grade – should not be asked what time she wants a visit to occur. A boy who cannot multiply and does not understand the calendar year should not be asked to calculate how many times per month/week he wants to visit a relative. Suggestions for avoiding difficult concepts and adapting questions to children's level of cognitive development are given in Appendix 2.

7. Establish conversational ground rules and shared expectations with practice narratives and instructions

Researchers have found that setting conversational ground rules in advance of substantive questions increases the reliability of children's responses. This can be accomplished by providing children with practice and instructions.

Practice narratives prior to substantive inquiry create a template for later questioning that yields longer and richer responses in field studies and greater accuracy of recall in laboratory studies (e.g., Saywitz, Geiselman, & Bornstein, 1992; Sternberg et al., 1997). Various procedures have been studied. In the NICHD protocol, children are asked about a recent event (such as a birthday celebration) and prompted with "Tell me more about the [detail provided by child]" and "What happened next" questions (Lamb et al., 2008). Similarly, in the Narrative Elaboration protocol, children are asked, "Tell me about what happens at home from the time you get up until the time you go to school. Tell me more. What happened next?" (Saywitz, Snyder & Nathanson, 1999). In the Cognitive Interview, children are asked, "Tell me what happens when you brush your teeth" (McCauley & Fisher, 1995). In all of these studies, interviewers taught children to expect to elaborate in their own words in response to open-ended prompts ("What happened next? Tell me more") before substantive questioning begins.

Instructions are easy to administer and they improve performance for many children, although they are not a panacea. Highly leading interview techniques can still distort

children's reports. Appendix 3 provides sample language for instructions derived from the studies discussed below.

Promoting accuracy, completeness, and honesty. Often protocols include an instruction that conveys to children that accuracy, completeness, and honesty are important in the legal context (Lamb et al., 2008; McCauley & Fisher, 1995; Saywitz, Geiselman, & Bornstein, 1992). Children are instructed to talk about what really happened, not to make things up, and to report even the little things they might not think are important. Also, research with both maltreated and non-maltreated children has found that eliciting a promise to tell the truth increases children's honesty as well (Lyon & Dorado, 2008; Lyon, Malloy, Quas, & Talwar, 2008; Talwar, Lee, Bala, & Lindsay, 2002, 2004).

Giving permission to say ''I don't know.'' Studies have found that children are reluctant to admit lack of knowledge, especially in response to ''yes/no'' questions, and that they are less suggestible when given instructions to say ''I don't know'' rather than guess (Cordón, Saetermoe, & Goodman, 2005; Endres, Poggenpohl, & Erben, 1999; Gee, Gregory, & Pipe, 1999; Poole & Lindsay, 2001; Saywitz & Moan-Hardie, 1994; Warren, Hulse-Trotter, & Tubbs, 1991). Several studies demonstrate the added benefit of helping children practice saying ''I don't know'' by asking a few unanswerable questions before substantive interviewing. A simple ''It's OK to say I don't know'' before the interview is not likely to be effective (Geddie, Fradin, & Beer, 2000; Memon & Vartoukian, 1996; Moston, 1987).

Giving permission to say ''I don't understand.'' Children benefit from being instructed to inform the interviewer if they fail to comprehend (Carter et al., 1996; Perry et al., 1995; Saywitz et al., 1999). Again, researchers find that practice on a few incomprehensible questions improves school-age children's performance still further (Saywitz et al., 1999), and even has some positive effect with pre-school children (Peters & Nunez, 1998).

Warning children about misleading questions. Two studies have found positive effects from warning children that questions might mislead them and then giving permission for them to correct the interviewer (Saywitz & Moan-Hardie, 1994; Warren et al., 1991).

Telling children you don't know what happened and cannot help them answer questions. Children often assume that interviewers are knowledgeable, even though they are not part of the family and not privy to the events under discussion. Children are more suggestible when they believe the interviewer knows what occurred (Ceci et al., 1987; Kwock & Winer, 1986; Lampinen & Smith, 1995). Informing children that interviewers do not know what has occurred reduces suggestibility to misleading questions (Mulder & Vrij, 1996).

8. Engage children in conversations on a wide range of topics germane to the decision-making process. Elicit information regarding both advantages and disadvantages of various options, rather than condensing the task to a question of where children prefer to live

Try to create a situation where children's preferences are revealed naturally as you enquire about the child's perceptions of the important aspects of his/her life (e.g., favorite activities, availability of social support, perceptions of safety, supervision, medical and educational needs, etc.). For example, to explore the level of chaos or

organization in each household, ask young children to tell as much as they can remember about what happens from the time they get up until the time they get to school in each home, or what happens from the time they get home from school until the time they go to bed. These requests ask young children for their accounts of concrete, observable behaviors rather than judgment calls about parental competency. Follow-up questions can be simple prompts for elaboration (e.g., "What happened next?") and open-ended questions starting with "h-" or "wh-" such as, "How do you wake up on time?"; "How do you get to school?"; "Who makes breakfast?"; "What do you eat for breakfast?" Frequent topics addressed are given in Appendix 4.

If children take sides, ask what makes them think the way they do and listen with a matter-of-fact tone and open acceptance ("What makes you think so?"). Try to understand reasons for inconsistencies and different responses to facts from siblings or other sources ("What does your brother think about that?"; "What makes Bob think that way?"). Keep interviews balanced by exploring both positive and negative caretaking. If the child volunteers a preference, explore the context. What does the child believe life would be like living with each parent? Be cautious about disabusing children of false impressions. If it is necessary to ask for a preference directly, wait until the end when less intrusive approaches are exhausted and tie specific inquiries to children's previous comments.

Resist over-valuing the results of any one conversation; seek out evidence of patterns over time. Sometimes more than one interview is necessary. Remember that a single interview is only one snapshot in time and may not reflect the child's past, future, or ongoing thoughts and feelings. A younger child's response may reflect what happened a few minutes ago in the waiting room rather than an enduring belief. An older child's response may be a distortion designed to protect the most vulnerable parent rather than a genuine preference. Interview behavior may need to be verified, clarified, and compared with samples at other moments in time and considered along with multiple sources of information.

9. Use general open-ended, non-leading questions that call for multi-word responses whenever possible; invite children to elaborate in their own words

Questions lie along a continuum of impact. At one end of the continuum (the more leading end), the interviewer supplies details, and at the other end (the more non-leading end), the child supplies details. Questions that move toward interviewer-supplied details increase the danger of suggestibility, since the details may be the product of the interviewer's presuppositions based on personal biases or information provided by parents.

When children mention an event (e.g., an act of discipline or caretaking), ask them to describe it ("Tell me about what happened?"). Help children elaborate on their initial statements with "Tell me more," "What happened next? I'm confused," or repeat the end of their comment with rising intonation. Refer to details mentioned by the child previously and follow up with requests for elaboration like "You said something happened, tell me more about the time" (e.g., Lamb et al., 2008). Elicit further details with questions that require multi-word responses, such as questions beginning with "what," "who," "where," "when," "why," and "how" as opposed to forced-choice questions ("yes/no", multiple choice). It may be necessary to reword "yes/no"

questions into ''wh-'' format. For example, ''Did your Mom hit you?'' may become ''What did she do with her hands?''

Help children elaborate on the specific actions (''What did he do with his hands?''), the context (i.e., ''What happened right before? Right after?''), the emotional states of participants (''What made you think he was mad? What did he do or say to make you think so?''), who else knows about the information revealed, what they think about it, and how they learned about it (''How did Grandma learn what happened?''). Try to establish patterns of behavior over time (''Has this happened other times? Tell me about another time.'').

While ''yes/no'' questions are not necessarily leading, they can be problematic because young children are more reluctant to answer ''I don't know'' to ''yes/no'' questions (Poole & Lindsay, 2001). Children try to answer ''yes/no'' questions, even when the question is unanswerable; however, this is not the case for ''wh-'' questions (Waterman et al., 2001). Follow-up questions that require children to explain their reasoning, such as ''What makes you think so?'' or ''What made that happen?'' help to ensure a ''yes'' or ''no'' means what you think it means.

10. Finally, avoid suggestive techniques that mislead, introduce bias, reinforce interviewer expectations, apply peer pressure, stereotype people, or invite children to pretend or speculate

Although there are individual differences in suggestibility at every age, young children are particularly likely to fall sway to suggestive pressures. Young children are inclined to assume that adults possess a superior knowledge base, which increases their vulnerability to defer to adult opinion. Interviewers should avoid utterances that are coercive (e.g., ''You cannot play until after you tell me what happened with John''), tags that ask for verification (''He hurt you, didn't he?''), negative terms (''Didn't he hurt you?''), suppositional questions (''When he hurt you, was he happy or mad?''), and multiple choice questions (''Was Mary, Jane, or someone else in the house?'') whenever possible. Avoid subtly rewarding comments in line with interviewer expectations and ignoring or disapproving of other comments. Avoid pressuring children through the use of social conformity, obedience to authority, or induction of accusatory stereotypes (e.g., ''He was bad. He shouldn't have done that.'').

CONCLUSIONS

In concert with near-unanimous support of the *UN Conventions on the Rights of the Child* and shifts in conceptualizations of the ''child'' and ''childhood,'' research, policy, and theory make clear the need to better articulate the levels of participation that may be made available to children in custody proceedings. Doing so will require additional research in a number of areas, most notably, the effects of participation level on children's well-being and adjustment, independent of the effects of the divorce itself, as well as what weight to give children's input at different developmental levels. In the interim, we have argued that the last 25 years of expanded research on interviewing children, combined with the more recent studies of families involved in the legal process, provide a firm foundation for establishing evidence-based guidelines on how to

elicit accurate and meaningful information for custody planning. Our approach is one of developmental sensitivity, objectivity, preparation, patience, respect, and flexibility. Given that guidelines for weighing children's input are not clear or consistent across jurisdictions, principles based on the best available (albeit limited) science may serve as common ground while interviewers stay abreast of new science as findings accumulate.

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APPENDIX 1: SUGGESTIONS FOR SIMPLIFYING LANGUAGE

1. Use short sentences and simple grammatical constructions. Avoid long compound utterances and embedded and relative clauses, double negatives, subjunctives, conditionals.
2. Use simple tenses (e.g., '-ed', was, did, has, What happened?). Avoid multi-word verbs (e.g., might have been).
3. Repeat proper names; avoid pronouns (e.g., him, her, she, they).
4. Use active voice (''Did Joe talk to Sally?''); Avoid passive voice (''Was Sue spoken to by Joe?'').
5. Avoid jargon and unclear references (e.g., those things). Avoid prepositions, referents and relational terms (above, below, around, more, less). Repeat the antecedent instead.
6. Be cautious with legal terms, especially those that have more than one meaning. To young children, ''Court is a place to play basketball,'' ''A hearing is something you do with your ears,'' and ''A minor is someone who digs coal.''

APPENDIX 2: SUGGESTIONS FOR AVOIDING DIFFICULT CONCEPTS

1. Avoid questions that ask for units of measurement children haven't mastered (inches, feet, dates, pounds, years, hours, minutes) e.g., ''How tall was he?''; ''What time was it?''

2. Avoid or clarify the meaning of basic concepts not mastered until first or second grade: top, next to, through, most, some, part, widest, every, over, last, whole, different, few, forward, farthest beginning, several, between, away.
3. Use concrete visual terms (chair, table). Avoid abstract, hierarchical terms (furniture). Draw a picture with your words. Ask what events looked like; what people did, said, or heard.
4. Use stable terms (in the front of the room, back of the room); avoid words whose meaning shifts with time or place (here, there, yesterday).
5. Avoid questions that call for abstract reasoning or hypothetical deductive logic (''If he went to work that night, how could he have been at your house?'').
6. Phrase questions about emotions in terms of observable actions. As children mature, they develop greater ability to identify feeling states and use a more nuanced vocabulary for describing their feelings. Use concrete observable terms, such as ''What makes your mom cry?'' rather than complex feeling states, such as ''Is your mother depressed?''

APPENDIX 3: SAMPLE INSTRUCTIONS FROM RESEARCH STUDIES

1. *Promoting accuracy, completeness, honesty*: ''Tell me everything you remember, from beginning to end, even the little things you think are not very important. Do not make anything up.'' ''Do you promise that you will tell me the truth? Are you going to tell me any lies?''
2. *Instructing children to say, ''I Don't Know''*: ''If you don't know an answer, tell me you don't know. Don't guess. Don't make up anything that's not true. But if you know the answer, tell the answer.''
3. *Instructing children to say ''I don't understand''*: ''I am going to ask you some questions. Some of the questions will be easy to understand and some questions might be hard to understand. If you hear a question you do not understand, tell me that you do not understand the question. Say 'I don't understand,' 'I don't know what you mean,' or 'I don't get it.' I will tell the question again in new words.''
4. *Warning children about misleading questions:* ''Sometimes I may put my guess into a question or I may make a mistake. Tell me if I am wrong. I am not in your family. I could not know what happened. I want to know what you think. It is important for you to tell me if I make a mistake or say something wrong. I want to understand correctly.''
5. *Telling children that the interviewer cannot help answer questions*: ''I don't know what's happened to you or what happened in your family. I won't be able to help you answers the questions.''

APPENDIX 4: FREQUENT INTERVIEW TOPICS

1. Identification of important activities and relationships to maintain in a custody plan.
2. Descriptions of daily routines prior to and after separation in each household (e.g., bathing, mealtimes, play dates, transportation, and chores).

3. Family interaction patterns:
    a. Availability of help (e.g., ''What do you do when you need help? What would you do if you were lost? . . .fell off your bike? ...felt ill? . . .couldn't understand your homework?'')
    b. Strategies for coping with stress (e.g., ''What makes [name of important person identified by child] happy/angry/upset?''; ''What does [name of person] do when they are happy/angry/upset?''; ''What do people do to calm down in your family?)
    c. Conflict resolution (''How do people in your family solve problems when they do not agree?'').

4. Children's health, mental health, educational, social, and emotional needs (e.g., patterns of communication with teachers, coaches, or doctors: ''What happens when there is problem at school? Who talks to your teacher?'').

5. Patterns of discipline (''What happens when children in your family do not follow the rules? . . .do something they are not supposed to do?'').

6. Safety rules (''What are the rules in your family for keeping children safe?''; ''What could go wrong or make the child not safe?'').

7. Levels of supervision in each household (''Do you ever stay home alone?''; ''When your mom/dad are not there, who takes care of you?'').

8. Children's thoughts and feelings about divorce:
    a. Children's perceptions of their own roles in the evolution and resolution of the divorce
    b. Children's expectations (hopes and fears) about life after divorce in each household
    c. Children's perceptions of the impact of divorce on their relationships with wider support systems (e.g., relatives, friends).