


Summer 8-10-2019

Beyond a Reasonable Doubt: A Discourse Analysis of Forensic and Psychological Truth in Child Narratives

Elizabeth Samson

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BEYOND A REASONABLE DOUBT:
A DISCOURSE ANALYSIS OF FORENSIC AND PSYCHOLOGICAL
TRUTH IN CHILD NARRATIVES

A Dissertation

Submitted to the McAnulty College and Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for
the degree of Doctor of Philosophy

By

Elizabeth Samson

August 2019

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Elizabeth Samson

2019

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TRUTH IN CHILD NARRATIVES

By

Elizabeth Samson

Approved January 18, 2019

Lori E. Koelsch, Ph.D.
Associate Professor of Psychology
(Committee Chair)

Jessie Goicoechea, Ph.D.
Assistant Professor of Psychology
(Committee Member)

Russell Walsh, Ph.D.
Associate Professor of Psychology
(Committee Member)

James Swindal, Ph.D.
Dean, McNulty College and Graduate
School of Liberal Arts
Professor of Philosophy

Leswin Laubscher, Ph.D.
Chair, Psychology Department
Associate Professor of Psychology

ABSTRACT

BEYOND A REASONABLE DOUBT:
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By

Elizabeth Samson

August 2019

Dissertation supervised by Lori E. Koelsch, Ph.D.

This dissertation draws on a hermeneutically-informed modification of Potter and Wetherell's (1987) discourse analysis methodology to explore how child memory and experience are conceptualized in two widely-used forensic psychology training manuals. Current research about child testimony tends to focus on how well children can factually recount their experiences, or on optimizing interviewer performance so as to obtain accurate accounts and minimize the risk of distorting children's memories. Results of this discourse analysis include: 1) frequent advisement of evaluator caution, objectivity, and thoroughness, since evaluators are understood as responsible for preserving the accuracy of children's memories during the evaluation process; and 2) use of the suggestibility model of memory, which assumes memory is a predominantly cognitive process in which people—especially children—are vulnerable to external influences that will distort their

accounts and thereby render them invalid. These findings were then put into dialogue with a phenomenological conceptualization of child memory and experience. Though both approaches present child memory/experience as fluid and easily influenced by other people, phenomenology does not view these qualities as inherently problematic. Rather, this orientation assumes that all experience is interrelated as a given, and that factual truth is similarly important to experiential truth. Socio-historical context is also discussed, namely how American and European legal practices have shifted over time to reflect broader societal views of children as either vulnerable or autonomous. Finally, practical implications of the handbook discourse are elaborated, including ways a phenomenological perspective could improve how children are supported in forensic settings. Integrating non-verbal communication, exploring experiential truth as well as fact truth, and drawing on research that does not assume a suggestibility model of memory are three principal suggestions for evaluators.

Keywords: discourse analysis, child memory, child experience, child testimony, eyewitness testimony, suggestibility, phenomenology, forensic evaluation, forensic interview

ACKNOWLEDGEMENT

I am truly fortunate to owe thanks to so many people for their help in completing this dissertation. First and foremost, my sincere gratitude to my committee chair Dr. Lori Koelsch, who has unfailingly offered encouragement, keen insight, and good humor throughout this endeavor and in the many other contexts in which she has supervised me. Special thanks also to Linda Pasqualino and Marilyn Henline—I am forever grateful for their constant support. In addition, this project could not have come to fruition without the efforts of my other committee members, Drs. Jessie Goicoechea and Russell Walsh, who offered invaluable expertise and direction, especially when it came to firming my grasp on what it would mean to conduct a hermeneutic discourse analysis. Likewise to Drs. Eva-Maria Simms and Roger Brooke for their patient and enthusiastic guidance through various nuances and applications of phenomenology. Beyond the Duquesne University Department of Psychology, I would be remiss without acknowledging Dr. Joyanna Silberg, who first introduced me to this topic through her generosity of spirit and valiant efforts to help children’s experience be heard and respected within the family court system.

I am also indebted to the friends and colleagues who have shared ideas, commiseration, levity, and above all compassion with me. In particular, my cohort-mate Rebecca Gimeno, and Drs. Sugandh Dixit, Nisha Gupta, Seth Young, and Frank Pittenger, kept me buoyed by expressing interest in what I had to say and affirming the value of my perspective.

Similarly, my family has been unwaveringly supportive of this endeavor, and has tirelessly provided transportation and childcare as well as their love and ongoing belief in me. The birth of my daughter during the later stages of this project renewed my dedication to the importance of valuing child experience. Most thanks go to my husband, Ben, whose partnership has been invaluable. Thank you for weathering the challenges and celebrating the accomplishments with me. Consider the favor returned.

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Introduction

On August 12, 1983, Judy Johnson sought medical attention for her 3-year-old son, reporting her suspicions that he had been sodomized by one of his caregivers at McMartin Preschool in Manhattan Beach, California. Her son had complained of rectal discomfort several times since his enrollment at McMartin that June, and though Johnson had noted significant anal redness, it wasn't until August that the possibility of abuse was raised. This concern seems to have stemmed from a conversation she had with her child upon again discovering blood on his anus, during which the boy mentioned an interaction with "Mr. Ray" (Cheit, 2014; cf. Nathan & Snedecker, 1995). The proceeding doctors' examinations confirmed the boy had experienced recent anal penetration. Johnson's report and the corroborating medical evidence spurred what would become the McMartin Preschool trial, "often described as the longest and most expensive criminal trial in American history" (Cheit, 2014, p. 17). Though exact figures vary, the trial proved an ordeal spanning seven years and involving interviews with more than 400 suspected victims of child abuse, over 100 different abuse charges against two defendants, and an estimated \$13 million in court costs (Cheit, 2014; deYoung, 1997). Neither of the defendants was ultimately convicted on any of the charges (though eight against Raymond Buckey were dismissed after two hung juries). While reactions to the justice of the verdict are mixed, there is resounding concurrence across the scholarship that the McMartin case was a disaster, one that is seldom cited without reference to the astonishing media coverage and the language of "moral panic" and "witch hunts" (e.g. Ceci & Bruck, 1995; deYoung, 1997; Eberle & Eberle, 1993; Nathan & Snedecker,

1995). How did the investigation of one young boy's distress develop into such a notoriously unwieldy debacle?

Many factors arguably contributed to the virulent evolution of the McMartin phenomenon. DeYoung (1997) points to an increase in societal attention to and ambivalence about day care centers in the 1980s, given their correlation with women (i.e. mothers) entering the workforce. Cheit (2014) suggests Manhattan Beach's district attorney may have hurried the investigation and encouraged sensationalist media coverage to better serve his political interests. Indeed, the media's role in proliferating trial events in exhaustive detail is well documented as having influenced public perception as well as the legal proceedings themselves (e.g. Eberle & Eberle, 1993; Beckett, 1996). The circumstances surrounding Judy Johnson's initial report foreshadow one of the most contentious aspects of the trials, however, one whose implications remain plangent even today: the veracity of child accounts. Though Johnson took stock of her son's physiological symptoms and complaints, it was not until he—the *child*—mentioned his teacher in association with them that Johnson introduced the question of abuse.

From its outset, the McMartin case hinged largely on the disclosures and testimonies of preschoolers; their significance remained constant throughout its sprawling twists and turns. But these accounts were being presented in the midst of pioneering research by cognitive psychologist Elizabeth Loftus and others that challenged conventional assumptions about the general reliability of memory, particularly in the instance of eyewitness testimony (Loftus, 1975; 1979; Wells & Loftus, 1984). Introducing this research starkly polarized those following the case into two camps: those who believed the children's accounts of abuse, and those who did not. Proponents of the

latter invested in the concept of suggestibility, the theory that memories can be altered by environmental factors easily, unintentionally, and unbeknownst to the individual offering the account (Loftus, 1975; Ceci & Bruck, 1995). Suggestibility figured prominently in the McMartin trial as a crucial (and largely successful) feature of the defense's argument, which claimed that leading interview strategies rendered child accounts tainted and inaccurate. The McMartin case catapulted these questions from psychology labs and courtrooms into the general public, casting a long, persistent shadow on the discourse of child testimony (e.g. Garven, Wood, Malpass, & Shaw III, 1998; Schreiber, Bellah, Martinez, McLaurin, Strok, Garven, & Wood, 2006; Stolzenberg & Lyon, 2014).

The present study strove to better understand this shadow, its practical implications, and the ways it simultaneously reflects and perpetuates broader cultural suppositions about children's experience and memory. To do so, I performed a hermeneutically-informed discourse analysis of the guidelines for forensic evaluation of children that widely-used forensic psychology training handbooks set forth. Specifically, this inquiry focused on addressing the following questions: What version of child memory/experience is constructed in forensic psychology manuals, and what are the practical implications of these implicit and explicit assumptions? How does this conceptualization compare with phenomenological understandings of child memory/experience, and what are potential practical implications of accounting for the lived experience of remembering in this context? In engaging with this project, I have offered a critique of how child experience is and is not supported in the United States legal system, and proposed further considerations for future adjustments and best practices.

Literature Review

Suggestibility Research in the Wake of McMartin

At the heart of McMartin lie questions about whether children’s narratives can be considered valid in a court of law, that is, beyond a reasonable doubt. To what extent can a child be trusted to accurately remember his or her experience? To what extent is it possible for a child to accurately describe or express these memories? The apparent simplicity of these queries belies the tremendous complexity and controversy that surrounds how we understand memory in both psychological and forensic settings. As described in Goodman, Bottoms, Schwartz-Kenny, and Rudy (1991):

How children and adults negotiate the reconstruction of a child’s past is a question of critical importance to developmental psychology. In recent years, it has also become a critical question for the legal system. There are few times when the child-adult negotiation of the past is more consequential—or more controversial—than when children are interviewed in a forensic context or when they testify in courts of law. (p. 69)

McMartin helped launch these questions into the national spotlight. Though McMartin was the highest profile and most widely publicized trial, the issues it raised continued to flourish and transfigure throughout the decade thanks in part to cases like *State v. Michaels* (Wee Care) in New Jersey, *State v. Fuster* (Country Walk) in Florida, and *State v. Kelly* (Little Rascals) in North Carolina. These large-scale trials, in which daycare providers faced multiple charges of child abuse, became important forums where questions about the reliability of memory and child testimony were refined and debated nationwide (Cheit, 2014; Lyon, 1999).

In order to make sense of this situation percolating in the 1980s, it is important to recognize that psychologists have long attempted to understand human memory and the various processes and limitations we associate with it. In clinical settings, this is perhaps most commonly demonstrated in the Freudian notion of repression, in short, that distressing knowledge or experiences are not forgotten but rather pushed from our awareness in unconscious efforts to minimize the anxiety they cause (Faller, 1996; Loftus & Loftus, 1976; Pope & Brown, 1996). In the same vein, more recent psychological conceptualizations of this phenomenon have been described in terms of “motivated forgetting” (Pope & Brown, 1996, p. 46) or dissociation (e.g. Faller, 1996). Regardless of semantics, the structure of psychotherapy can generally allow for the possibility of understanding experience and memory as fluid or inexact, because this ambiguity may be integrated into the therapy itself. For example, an adult individual might seek therapy with a sense that he or she may have been abused as a child, though with no specific memories of the abuse in question. This therapy could progress in any number of ways, but treatment does not hinge upon an abuse history that is definitively proven or disproven. In fact, a goal of therapy could easily become facilitating one’s processing or tolerance of never knowing with certainty what happened. However practical it may be for therapy, this goal is simply not feasible or appropriate within the current structure of the United States legal system.

From repression to suggestibility. Though different psychological orientations may assume a variety of perspectives on the functions or processes associated with memory, both clinical and research settings generally allow for a greater degree of acceptable ambiguity than historically has been supported in a legal context (Pope &

Brown, 1996). This discrepancy was brought into sharp focus through Elizabeth Loftus's pioneering work on memory, in particular, on eyewitness accounts (e.g. Loftus, 1975; 1979; Loftus & Loftus, 1976). In a number of experiments, Loftus and her colleagues looked not only at what participants exposed to stimuli (e.g. a video of a car accident) recounted when asked later to describe what they had seen, but also at how interactions with the post-stimulus interviewer influenced these descriptions, that is to say, their memories:

We suggest that information acquired during a complex experience is apparently integrated into some overall memory representation. Subsequent information about that event—for example, that introduced inadvertently via questions containing true or false presuppositions—is also integrated, and can alter the initial representation. When the person is later queried about the original experience, he forms a regenerated image based on the altered memorial representation, and bases his response on that image. (Loftus, 1975, p. 571)

Findings like these helped to introduce and popularize the concept of suggestibility, the theory that human memory is susceptible to the influence of others, and so potentially malleable as to cast serious doubts onto the degree with which one might trust the accuracy of any recollection.

Again, these influences and limitations to memory might be considered intellectually interesting in a psychology laboratory, but the practical implications of Loftus' research also were felt acutely in the courtroom. In 1975, Loftus herself became the first expert to testify in Washington State court on the subject of eyewitness identification limitations (Zagorski, 2005). As her oeuvre proliferated and expanded, the

notion of suggestibility continued to gain momentum, especially in cases that hinged on eyewitness testimony (Ceci & Bruck, 1995; Faller, 1996, Motzkau, 2010). The McMartin trial would become a critical point in this landscape. In 1983, the issue of suggestibility was established enough to raise questions about the influence of interviewing techniques on the reliability of eyewitness testimony, but still a fledgling area of research with limited large-scale practical application. McMartin and the other landmark cases of the 1980s hermeneutically reflected and contributed to the evolution of this emerging view of memory and its potential fluidity (Ceci & Bruck, 1995; Lamb, La Rooy, Malloy, & Katz, 2011; Lyon, 1999). These circumstances provided high profile, real-world forums for these suggestibility theories to be further cultivated, fanning the flames of interest in a very public, impactful manner.

Complicating factors: trauma and age. Even in her early work Loftus (1979; Wells & Loftus, 1984) mentions event type and age as significant variables when attempting to measure memory distortions and recall ability. Nevertheless, at the time of McMartin the growing body of suggestibility research did not focus in depth on memories of traumatic experience, nor on child eyewitness accounts (Faller, 1996). How both of these variables might influence memory demanded further inquiry in the context of preschool trials of the 1980s, where verdicts became so dependent on young children's accounts of their own experience.

How applicable are Loftus' findings to instances when the memory in question is a traumatic one? Though the exact categories vary, literature presents a general consensus that memories can be classified into type and that the processes involved in their development and expression may differ across these classifications. For example,

autobiographical memories tend to require different mental processes than semantic memories (Goodman & Bottoms, 1993), which tend to involve “more contextually free facts, ideas, or similar knowledge” (Pope & Brown, 1996, p. 32). When the autobiographical experience is one of trauma, there are compelling reasons to expect memory will be impacted in some way. Faller (1996) explains, “Some traumatic memory researchers and clinicians have countered that traumatic memory (e.g., memories of sexual abuse) is fundamentally different from narrative memory as represented in analog studies. Traumatic memory is more likely to be sensorimotor than verbal [and therefore] ... not subject to forgetting” in the traditional sense (p. 88).

Also important to consider are the longstanding psychodynamic understanding of repression (as outlined above), as well as *the current Diagnostic and Statistical Manual of Mental Disorders, which links traumatic experience with memory disruptions quite clearly* (5th ed.; *DSM-5*; American Psychiatric Association, 2013). In its possible diagnostic criteria for Posttraumatic Stress Disorder, the DSM-5 lists both “recurrent, involuntary, and intrusive distressing memories of the traumatic event(s)” and “dissociative reactions” (p. 271). Of course, it is important to note that not all sexual abuse is experienced as traumatic, and that not all child eyewitnesses have been abused or allegedly abused. These individual differences further frustrate attempts to generalize what is fair to expect of child eyewitnesses.

Developmental considerations also prove vital in suggestibility studies; thus another offshoot of Loftus’ research and the growing prevalence of child testimony during the climate of McMartin was a hunger for research that addressed potential age differences in the reliability of these accounts. Studies in this vein tend to acknowledge

two potential challenges to accurate child reporting: ability, the extent to which it is possible for a child to recount information and/or experience; and suggestibility, the extent to which a child's recounting may be influenced by post-event information (e.g. Bruck & Ceci, 2013; Goodman & Reed, 1986; Quas, Qin, Schaaf, & Goodman, 1997).

In terms of ability, memory research draws on the three main processes widely known as encoding, storage, and retrieval (Pope & Brown, 1996). The work of Loftus (e.g. 1975; 1979) and colleagues (e.g. Wells & Loftus, 1984) offers strong support that people of all ages may demonstrate fallibility at any of these stages. One example of this non-discrimination is addressed above, in terms of the challenges repression or dissociation may present to memory retrieval. Perhaps unsurprisingly, the literature suggests that "age is an important determinant of memory capacity" as relates to encoding, retrieval (Malloy, Johnson, & Goodman 2013, p. 109), and storage (Goodman et al., 1991). There is also research to suggest a logical correlation between memory capacity and verbal abilities such as comprehension and vocabulary, which of course also develop with age. As Faller (1996) argues:

Children's interpretation of recollections of sexual abuse may be another obstacle for the interviewer. The more a person knows, the more accurately he or she interprets an experience. Children may have encoding problems with experiences they do not understand (Brainerd & Orenstein, 1991). This might happen with sexually abusive experiences because children do not usually have background knowledge about sex and sexual abuse. Children may also have trouble interpreting and communicating their experiences because they do not have the language to do so. This may particularly be a problem with sexual activity

because children may have no names for the private body parts or words for sexual acts. (p. 88)

Malloy et al. (2013) suggest that in addition to these language limitations hampering children's memory encoding and retrieval, they may also affect how children interpret interview questions, stating that "children's concrete or literal interpretation of language means that they may fail to understand the true, underlying purpose of an interview question" (p. 110). Thus what researchers or interviewers might interpret as errors in memory may in fact be errors in communication, further complicating any conclusions one might draw regarding the accuracy of child memory.

Nevertheless, research has also found that in many cases even young children, especially those over age 4 (Faller, 1996), can demonstrate memory capacity comparable to or surpassing that of adults (e.g. Bruck & Ceci, 2013; Goodman & Bottoms, 1993; Goodman & Reed, 1986; Lyon, 1998). The influence of suggestibility, however, does seem to pervade children's recall responses to experimental interview questions and to affect children more than adults (Ceci & Bruck, 1995; Goodman & Reed, 1986; Malloy et al., 2013; Reyna & Lloyd, 1997). These findings are perhaps most foundationally explored in the work of Stephen Ceci and his colleagues (see Lyon, 1999 for a comprehensive summary). Ceci and Bruck (1995) begin their landmark book *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony* by plumbing various child interview transcripts from many of the most famous 1980s day care trials for examples of suggestive interviewing and its consequences. (Their methods and conclusions have since faced criticism [e.g. Cheit, 2014; Lyon 1998].)

Taken holistically, this body of research promotes a near-universal understanding that, individual differences notwithstanding, for a wide array of experience, young children appear both capable of accurate memory recall and vulnerable to suggestibility influences. Therefore one outcome of these studies has been an increased emphasis on ideal child forensic interview circumstances:

With considerable advances made over the last few decades, researchers are rarely asking, “Are children reliable or unreliable in forensic contexts?” Instead, the question has shifted to the more complex, “Under what circumstances are children more or less reliable?” There are numerous cognitive and sociomotivational influences on the reliability of children’s memory and event reports, and the influences may be different for children at varying points in development.

Furthermore, children’s (and even adults’) reports are affected by the manner in which they are interviewed. (Malloy et al., 2013, p. 108)

Indeed, this amended question has become foundational in the ensuing legal and forensic psychology handbooks, training materials for professionals faced with the thorny prospect of child testimony. It currently falls largely to the interviewer to gently coax forth an untainted account of a child’s experience.

In sum, questions regarding the opacity and porosity of memory have a long history in psychological and forensic contexts. McMartin demonstrates the beginning of a shift in understanding memory inconsistencies through the lens of repression to that of suggestibility, a perspective that continued to calcify through subsequent landmark cases over the next decade. In the 35 years since McMartin, psychological research has proliferated largely in response to these suggestibility concerns (Motzkau, 2007). Faller

(1996) describes the “commonsense argument” (p. 84)—that a child has no personal incentive to make false allegations against an adult—as predominant in the years preceding McMartin; one function of the emphasis on suggestibility was to doubt this assumption. This research seemed to make possible the fear that, tainted by interviewers who were at best ignorantly well-intentioned, at worst unethically litigious, children might give false testimony without even recognizing they are doing so.

Suggestibility in Legal and Forensic Psychology Handbooks

In research on the topic of child testimony, the framework of suggestibility maintains dominance even today, and the extent to which a child’s testimony may have been influenced by others remains one of the most significant and contentious aspects of this conversation (Faller, 1996; Malloy et al., 2013). Though varied in the extent to which they support children’s capacity for memory recall, these suggestibility studies share a unifying focus on identifying the factors that will preserve or sully a child's "accurate" account of the situation in question, especially in accordance with legal standards. Legal and forensic psychology handbooks and their best practice guidelines for professionals navigating child testimony and assessment have traditionally drawn heavily on the aforementioned body of suggestibility research (e.g. Fanetti, Fondren-Happel, & O’Donohue, 2013; Faust, 2011; Kuehnle & Connell, 2009; Melton, Petrila, Poythress, & Slobogin, 2007; Weiner & Otto, 2014). The result is a subsequent focus on interviewer responsibility to solicit a detailed and specific account of abuse without tainting it with the interviewer’s own biases. As Lamb et al. (2011) summarize:

We now know that children—even very young children—can provide reliable and accurate testimony about experienced or witnessed events. We also know that

children (like adults) are suggestible, and that we must be aware of ways in which suggestibility can be minimized. We further know that the level of accuracy and the amount of detail provided by young witnesses is largely dependent on the ways in which children are interviewed and that the role of the interviewer is thus paramount. (p. 4)

In stemming from a framework of suggestibility, these guides face the difficult task of reconciling the nebulous nature of human memory with the rigidity of the legal system and cry for a generalized structure for interviewers to follow when interacting with child eyewitnesses.

In many instances these handbooks, especially those directed towards mental health professionals, attempt to honor the highly individualized nature of allegations and the children recounting them, even as the guides argue for the particular best practices methodology they set forth. As Condie (2014) explains:

Because the band of possible referral questions is not narrow, adherence to a particular methodology in all instances is neither feasible nor indicated.

Nonetheless, enough is known about the basic features of commonly recurring referral questions in care and protection matters to develop relatively consistent methodologies. (p. 251)

Here is but one example of the tension that appears to underlie many of the conclusions set forth in such handbooks. On one hand, there is a clear message that to interview alleged child victims of abuse in a manner that is most ethically in service of the child, the accused, and the profession, one must adhere strictly to methods that have been developed systematically (that is, those outlined in the training manuals). On the other,

interviewers must also adopt the onerous burden of knowing how to tailor these methods to account for specific contextual circumstances and the imprecision inherent in human memory, without unduly influencing the child's account.

The way these handbooks discuss identifying and implementing an appropriate interview methodology is not the only area in which inconsistencies arise. In conveying the importance of these interviews, Lamb et al. (2011) aver "Information originating from investigative interviews may powerfully affect legal and administrative decisions that may profoundly affect the lives of children, families, and suspects, so it is imperative that children's reports are clear, consistent, detailed, and accurate" (p. 3). Sixty pages later, however, the guide warns interviewers not to place "unreasonable expectations on [child interviewees] regarding the amount or specificity of information recalled" (p. 63).

Kuehnle and Connell (2009), too, extoll the interviewer's quest for accuracy in child narratives, while in almost the same breath noting that in drawing any conclusions about said accuracy, professionals should always "adopt an appropriately humble tone" (p. 174), that is, temper the expectation that a child account of memory is wholly accurate.

Thus while forensics-friendly, this dichotomist conceptualization of memory as either true or false, accurate or inaccurate, remains a dramatic oversimplification. Forensic handbooks seem to recognize this even as they set forth an expectation for interview protocols that can elicit completely accurate accounts from their child interviewees. Clearly there is a dissonance here, and even some acknowledgement that current ways of addressing child testimony do not align well with the systems and standards in place. In fact, given the many challenges and controversies explored in the preceding pages, handbooks even evoke a sense of dread about the complexities of

addressing child narratives at all:

Children pose many dilemmas for the legal system. Yet to protect children and others from harm and ensure justice, society has little choice but to include child witnesses in legal cases, especially when other evidence is lacking or when the children's testimony plays a key role in a prosecution. (Hobbs, Johnson, Goodman, Bederian-Gardner, Lawler, Vargas, & Mendoza, 2014, p. 597)

This conceptualization locates blame for problematic nature of child testimony with the child—the child is the one failing to meet the criteria imposed by the established forensic system. Other handbooks are similarly forthright about the complexities surrounding child testimony, but allow more for the possibility that the system itself is flawed. Lamb et al. (2011) caution forensic assessors that “Memory has its own ‘laws’ which frequently do not fit neatly within legal systems that specify the need for specific and detailed evidence. How legal systems can better accommodate the workings and limitations of human memory remains a challenge” (p. 63). Regardless of where the gap between expectations of child memory and expectations of forensic standards originates, however, the general consensus is that it is the interviewer's responsibility to bridge it. This narrative conclusion surfaces again and again in training handbooks and the suggestibility research on which they are based: forensic interviewers must work to accommodate the peculiarities of how children process and recount their memories in order to meet existing, exacting, legal standards. Thus it is important to understand how, exactly, the handbooks present the evaluator's identity and role.

Another factor to take into account when considering the prevalence of suggestibility in forensic handbooks is the ways that our culture constructs and interprets

children. After all, these manuals hermeneutically serve as a manifestation of broader socio-historical norms even as they create and reinforce future understandings of children in the legal system and subsequent evaluator actions. It is therefore necessary to recognize that these texts do not exist in isolation, but rather are products of the systems they will go on to influence in return (see methodology section for further elaboration). Because the meaning of childhood has changed over time (e.g. Aires, 1962; Hart, 1991; Smith, 2002; Simms, 2008), so, too, have laws and public policy involving children (Grossberg, 2012; Haugaard, Reppucci, Laird, & Nauful, 1991; Smart, 1999). In the United States and the western world more generally, this has meant historically swinging between viewing children as vulnerably in need of protection and as individuals with “rights to self-expression and inclusion in decision making” (Cascardi, Brown, Shpiegel, & Alvarez, 2015, p. 1). Grossberg (2012) terms these two ideologies as “caretaking” and “liberationist.” He explains that the caretaking understanding resurfaced in the late 1970s, in part as a response to cultural shifts: more women were joining the workforce, divorce rates increased, and high profile cases of child abuse and abduction, including McMartin, received prolific attention.

In describing the history of how child testimony regarding sexual abuse has been taken up in forensic systems internationally, Motzkau (2007) discusses a related observation. She states that child sexual abuse was largely absent from cultural awareness from the turn of the 20th century until “the late 1960's and 70's, when the campaigning effort of the growing feminist movements gained political momentum and managed to put issues like domestic violence, rape and child sexual abuse back into the public arena” (p. 5). Nevertheless, Motzkau (2007) also recounts that “Children have traditionally

enjoyed a dubious reputation as witnesses in courts of law” (p. 4), and cites the “astonishing frequency” (p. 4) with which the Salem witch trials are cited in the literature as contributing to a trenchant distrust of child witnesses. She goes on to describe how the highly publicized backlash from cases like McMartin contributed to a simplistic public understanding of children’s suggestibility, and to the conceptualization of children as vulnerable, limited, and dependent. This would be in keeping with the caretaking discourse that was dominant at the time. In the legal setting, this translated to “a persistent wariness about the reliability of children's memory and their ability to testify in court” (Motzkau, 2007, p. 6), one that is reflected in forensic assessment manuals even today. Further exploration of these factors and their implications for this study is included in my discussion section.

The Lived Experience of Remembering

As mentioned above, suggestibility is by no means the only way that memory has been conceptualized; an array of scholarship explores facets of memory to offer supplementary and alternative frameworks. This literature encompasses a wide range of circumstances that influence the various processes of memory and recounting, including cognitive styles (Kahneman, 2011; Kahneman, & Miller, 1986; Tversky, & Kahneman, 1973), personal expectations (Mitchell, Thompson, Peterson, & Cronk, 1997; Redelmeier & Kahneman, 1996), and self-presentation concerns (Burhn & Last, 1982; Verger & Camp, 1970).

Still other scholars have proposed a more complicated view of child memory through the context of the lived experience of human development. For example, Winnicott’s (1964) theoretical contributions demonstrate that for children, the distinction

between self and other is far less clear than suggestibility research would conclude. Later research (e.g. Gerson, 2005; Nelson & Fivush, 2004) extends this Winnicottian concept of “other” from familial attachment figures to broader cultural forces, examining the individual as always embedded within and constructed by societal influences. Burkitt (2003) invokes Merleau-Ponty in factoring embodiment into children’s process of making sense of their experiences:

Because of our embodiment in the world, neither the world nor meaning is external to us: which is to say that meaning is not created from the abstract manipulation of symbols, then matched against an equally external world to judge in some objective way the precise fit between the meaningful categories and objective things. Meaning is derived not from its correlation with things but from the embodied experience of humans in the world. (p. 324-325)

Like the suggestibility model, approaching human memory through lived experience (referred to here as a phenomenological approach) similarly acknowledges memory’s fluidity and malleability. However, the “true → tainted → false” sequence set forth in suggestibility studies seems dramatically oversimplified when considering the palpable complexity of memory processes as we live them. For example, upon even cursory self-reflection, suggestibility’s tidy assumption that memories exist as *either* “true” *or* “false” quickly begins to fray. It seems this familiar, dichotomist way of thinking is indicative of a conceptualization of memory that aligns much better with the demands of the United States legal system than with the phenomenon of memory itself. This dissonance invites further questions about attaining a more comprehensively nuanced understanding of what is happening when human beings—and perhaps children specifically—remember.

In particular, the phenomenological works of Edward Casey and Paul Ricoeur explicate memory according to a descriptive, experience-near manner that accounts for the inherent fluidity of memory without automatically associating this quality with a memory's factual validity. By challenging the assumption that memory is a predominantly cognitive, individual process, this approach thoroughly complicates two of the apparent binaries assumed in the suggestibility model: that memories are *either* true *or* false, and that memories are *either* entirely personal *or* altered by others (and therefore invalid). These theories are grounded in thorough philosophical consideration of how people move through the world, of how we exist as humans. Because of these tenets, a phenomenological approach contends that in order to better understand how children remember, it is necessary to explore child experience more broadly. Scholarship from Maurice Merleau-Ponty, Eva-Maria Simms, and Richard Rojcewicz examines children's lived experience in the phenomenal world, offering additional context for understanding child experience and memory according to this perspective. While the phenomenological conceptualization of child experience/memory is elaborated in greater depth in later sections of this study, as are implications for applying this philosophy to children in forensic settings, a short summary of these issues is presented here to afford readers a foundational familiarity.

Memory and truth. Casey (2000) and Ricoeur (2004) both discuss the constitutive role of memory in human experience to help explain why the factual accuracy of our memories has become so prioritized. If my memory cannot be trusted, how can I know myself, my very existence? Casey (2000) identifies the introduction of computers and their subsequent rise to ubiquity as accelerating this dynamic and

heightening our prizing of factual accuracy in memory. In comparison to computers, human memory is deemed inferior, an issue that demonstrates only “tacit understanding of the authority, scope, and value of human memory in its own domain—in its ongoing performances in everyday life” (Casey, 2000, p. 5). Indeed, Casey (2000) argues that the factual, “mechanized” (p. 5) memory characteristic of computers is part of the human experience of remembering—known as a largely cognitive process and an area in which it is difficult not to appreciate a computer’s prowess. However, to consider memory in only these terms, he contends, is narrow and reductive.

Thus both Casey (2000) and Ricoeur (2004) acknowledge the inherent porosity of human memory, but challenge the notion that this malleability or forgetfulness is pathological, instead embracing these characteristics as basic structures of the phenomenon. As such, they each explore the aspects of memory that appear uniquely human, and go on to conceptualize memory as being lived through many interrelated dimensions of experience, or existentialia, including body, space, time, language, things, and others. As Ricoeur (2004) suggests, because human experience is not only cognitive, but rather fluidly enmeshed in these other facets of being, memory, too, cannot be considered as only cognitive, a shift which has implications for how we understand truth in memory. Casey (2000) thereby introduces the concept of experiential truth in memory, a complement to the fact-truth of cognitive (and mechanized) memory. He writes, “Implicit in all remembering is a commitment to truth concerning the past, a truth that reflects the specificity of this past even if it need not offer an exact likeness of it” (p. 283).

While Casey (2000) and Ricoeur (2004) are theorizing about human memory in general, there is scholarship to suggest that this experiential truth plays an especially prominent role in child experience. A phenomenological examination of child experience suggests that children are particularly embedded in the sensory, phenomenal world, rather than a more adult-like, cognitive abstraction from this world (e.g. Merleau-Ponty, 1962; Rojcewicz, 1987; Simms, 2008). Given this primacy of an embodied, sensory relationship with the world, the cognitive dimension of memory and its corresponding fact-truth appears less meaningful for young children than it is for adults (and the adult-centric legal system).

Memory and ownership. At the heart of the suggestibility model lies the incredibly fraught question of “Whose memory is this?” As demonstrated so vividly in cases like *McMartin*, viewing memory through the lens of suggestibility often renders child narratives tainted by outside influence. Phenomenology, on the other hand, loosens this dichotomy by proposing that memory can at once be autonomously “mine” and simultaneously related to and shared with others in my world. That is to say, from a phenomenological perspective, the fact that a memory has been influenced by “external” factors does not render it invalid. Again, Casey (2000) and Ricoeur (2004) draw on a study of human experience in general to ground their conclusions, largely by challenging the traditional notions of “internal” and “external.” Because, as we have already established, phenomenology asserts that human experience is fundamentally interwoven with various existentialia—including others—it is inter-subjective as a given.

Once again, issues of autonomy and dependence are especially acute and conflicted when considering child experience (e.g. Grossberg, 2012; Simms, 2008):

Children's cognition, then, is not merely an a-logical thinking, it arises from a different experience of the world: the world for children is not an external, objective, conceptual, hard "reality," it is suffused by the child's intentions and the feeling-tone of his or her social relationships. Young children have no interiority, and the world has no exteriority. (Simms, 2008, p. 71)

Simms (2008) goes on to focus on the indelible link between children's experience and the people populating their lives, explaining, "Self and other are distinct people for the three-year-old...but they participate in the same experience" (p. 71) which thereby fuses their existence. Because memory is experience, memory is similarly inter-subjective from its inception. Just as an individual is interrelated to and influenced by the others in her or his life without necessarily invalidating her or his own personal experience, phenomenology proposes the same can be true for our memories. Clearly this phenomenological scholarship offers fertile ground from which to harvest a complex, nuanced understanding of child experience, with memory as a cornerstone of said experience. Thus far, however, little research has been done on applying these theoretical contributions to the technical practice of forensic psychology.

Methodological Considerations

Discourse Analysis: Foundations

Given the emphasis on child memory in our post-McMartin legal system, the expansive breadth of research on memory and its contextual influences, and the apparent tension between these areas as demonstrated in training handbooks, it seems important to carefully analyze how child memory is constructed in forensic psychology manuals. To do so requires a method capable of examining the discourses around forensic evaluation

of children, that is, a discourse analysis. Interest in societal discourses emerged when the rise of social constructionism and the “turn to language” in the late 1960s and early 1970s generated a renewed attention to language, its meanings, and its functions (Parker, 1990). Discourse analysis gained popularity as a research method in the 1970s and 1980s as a means of studying the constitutive power of language in social psychology, principally in the United Kingdom. In the ensuing years, discourse analysis has proliferated widely, branching out through newly developing procedural elements and being applied to subjects beyond the realm of social psychology (e.g. Harper & Thompson, 2012; Potter & Wetherell, 1987; Schiffrin, Tannen & Hamilton, 2001; Wodak, 2001). Such an expansive means of inquiry affords incredible openness and flexibility as a qualitative research method, and with its dramatic variations of its use a potential for misunderstanding. In their seminal work on discourse analysis, *Discourse and Social Psychology* (1987), psychologists Jonathan Potter and Margaret Wetherell state that when it comes to defining the method, “perhaps the only thing all commentators are agreed on in this area is that terminological confusions abound” (p. 6). They go on to note, “It is a field in which it is perfectly possible to have two books on discourse analysis with no overlap in content at all” (p. 6). Given that the term *discourse analysis* can be taken up in so many ways, it becomes especially crucial for researchers employing discourse analysis to state their philosophical orientations and technical intentions with as much clarity and specificity as possible (Cheek, 2004; Wodak, 2008).

As a social constructionist approach, discourse analysis is generally taken up with the assumption that reality is systematically constituted and sustained through institutions and social practices. From this foundation, Georgaca and Avdi (2012) describe the

approach as encompassing “two distinct yet partly overlapping trends” (p. 148): discursive psychology and Foucauldian discourse analysis. Discursive psychology is philosophically rooted in linguistic philosophy, semiology, and ethnomethodology, and primarily focuses on “the ways in which speakers in everyday and institutional settings negotiate meaning, reality, identity and responsibility” (p. 148). Alternatively, Foucauldian discourse analysis is informed by post-structuralist theories and as such “examines the ways in which discourses construct objects and subjects, and create, in this way, certain versions of reality, society and identity as well as maintaining certain practices and institutions” (p. 148). For the present study, I have adopted elements from both of these traditions, but operated mainly from a hermeneutic orientation, described in greater detail below. In addition, while some discourse theorists assume the relativist view that there are no objective means by which to prove the truth of various conclusions (Potter, 1996), the study at hand instead maintained a critical realist position. This orientation assumes “knowledge is always mediated by social processes but propose[s] that underlying enduring structures do exist and that these can be known through their effects” (Georgaca & Avdi, 2012, p. 149).

Furthermore, a working definition of *discourse* for this study is in order, one that is more precise than Potter and Wetherell’s (1987) “all forms of spoken interaction, formal and informal, and written texts of all kinds” (p. 7). While intentionally inclusive, this magnanimous description ascribes a degree of stasis to the notion of discourse, while overlooking its dynamic functionality. It also does not explicitly affirm that discourse is not simply the product of a given individual but rather a framework within which said individual dwells. As Parker (1990) explains:

Discourses do not simply describe the social world, but categorize it, they bring phenomena into sight. A strong form of the argument would be that discourses allow us to focus on things that are not “really” there, and that once an object has been circumscribed by discourses it is difficult not to refer to it as if it were real. They provide frameworks for debating the value of one way of talking about reality over other ways. (p. 191)

In keeping with this sentiment, for this study I drew on Georgaca and Avdi (2012), who define discourses as “systems of meaning that are related to the interactional and wider socio-cultural context and operate regardless of a speaker’s intentions” (p. 147).

In addition, I have adopted a discourse analytic method grounded in the hermeneutic tradition. Given its emphasis on interpretation, hermeneutics seems to me quite well aligned with the present research questions regarding how child memory is constructed in forensic psychology. Indeed, when considering this phenomenon, questions about interpretation seem to be relevant at the intrapersonal level (i.e. memory encoding/formation), at the interpersonal level (i.e. the recounting of said memories, in particular to evaluators), as well as at the societal level (i.e. the implications of these accounts within the broader legal system and society at large). It is in these dynamic interactions that I have been most interested, given my sense that it is by more fully understanding these intersections between personal agency and situational context that we might better posit forensic practices that honor children’s accounts appropriately and respectfully. As a hermeneutic discourse analysis, this project devoted particular attention to discovering central themes in the discourse of child memory, as well as how these

central themes “are interrelated in broader augmentations both within texts and inter-textually” (Heracleous, 2006, p. 40).

The legal system at large presents an appropriate and fruitful area for discourse analysis, “especially since law is such a highly verbal field” (Shuy, 2001, p. 437). Since the 1990s, the subfield of forensic linguistics has begun to blossom, yet as the name would suggest, this work tends to implement a linguistic definition of discourse, rather than applying a hermeneutically-informed inquiry. It is important to note that because this study addressed “the way in which texts themselves have been constructed in terms of their social and historical ‘situatedness’” (Cheek, 2004, p. 1144), the discursive analysis extended beyond the level of linguistics, grammar, and syntax. Informed by a hermeneutic attunement, the methodology at hand recognized *discourse* as a set of statements that serves as a simultaneous product and perpetuator of both explicit and implicit assumptions, and is therefore necessarily laden with values in varying degrees of transparency. The forensic assessment training manuals employ a discourse that is constructive of a version of reality; however, the present hermeneutic discourse analysis acknowledges that no text exists in isolation from the intersecting sub-cultures from which it simultaneously arises and co-constitutes. Recognizing that these training manuals and the ways in which they are used form a complex hermeneutic process, the current study used discourse analysis to illuminate and explore that process and its implications, drawing on the manuals themselves as a point of access.

In Ricoeur’s contributions to a hermeneutic, philosophical anthropology, he acknowledges the significance of constructive influences and forces that in many ways constitute our experience while still allowing for personal agency in terms of how we

engage with that experience. He writes, for example, “What must be the nature of the world ... if human beings are able to introduce changes into it? [And] what must be the nature of action ... if it is to be read in terms of change in the world?” (*Ricoeur 1986/1991, p. 137*). In drawing from Ricoeur’s work, I have attempted to ground my discourse analysis in an epistemology that values the inevitability of interpretation without lapsing into a relativist perspective that risks minimizing the functional consequences of the interpretive act.

While no study as of yet has focused on the version of child experience/memory that is constructed in handbook instructions to evaluators, there is some precedent for employing discursive methods to examine child experience in various related contexts. Bergnehr and Nelson (2015), for example, analyzed how children were discursively positioned across 10 research articles on mental-health promoting interventions that implemented an array of methodologies. Blank and Ney (2006) applied a Foucauldian perspective to examine the legal and mental health discourses informing the concepts of “parental alienation” and “child alienation,” formulations prevalent in high-conflict divorce cases. Additional studies focus on exploring children’s discourse. In order to explore children’s knowledge, Edwards (1993) performed a discourse analysis of classroom talk between a teacher and a kindergarten class, while Aronsson and Hundeide (2002) examined children’s responses to examination questions as a means of exploring child thought processes. MacMartin (1999) offers a comprehensive theoretical argument for treating children’s reports of sexual abuse as discourses and proposes an integrative approach to understand these disclosures as “socially situated collaborations” (p. 503).

MacMartin's work proved influential to psychologist Johanna Motzkau, who has performed a number of studies most similar to my project. These include an examination of how child witnesses are positioned through "the interaction of legal rationales and paradigms of developmental psychology" (Motzkau, 2007, p. 1), and an application of Deleuzian theory to unpack "issues of experience, memory, suggestibility and self as they become relevant at the intersection of psychological and legal practices" (Motzkau, 2011, p. 58). Motzkau also focuses on the area of child suggestibility in particular by discursively analyzing child witness research and practice in Britain and Germany (2005, 2010). Clearly discourse analysis has proved a useful method in exploring children's experience and how it is taken up in various settings, including the legal and mental health systems. Further exploration of these study findings and their implications for the validity of this project are elaborated in the discussion section.

Discourse Analysis: Procedures

Potter and Wetherell (1987) outline a "systematic overview of discourse analysis methodology" (p. 159), even as they acknowledge that the diversity of discourse analysis applications is antithetical to the rigidly "conventionalized and formalized" (p. 159) methodologies of experimental studies. For the current project, I adhered to Potter and Wetherell's general procedural structure, modified slightly—as they suggest—to meet the particular pragmatic needs.

Stage 1: Research questions. As Potter and Wetherell describe, "The research questions discourse analysts do focus on are broadly related, as we have seen, to construction and function: how is discourse put together, and what is gained by this

construction” (p. 160). For the sake of clarity, my research questions discussed in the preceding pages are repeated here again:

- What version of child memory/experience is constructed in forensic psychology manuals, and what are the practical implications of these implicit and explicit assumptions?
- How does this conceptualization compare with phenomenological constructions of child memory/experience, and what are potential practical implications of accounting for the lived experience of remembering in this context?

In keeping with Potter and Wetherell’s (1987) guidelines, each of these questions is two-fold, with the first half inquiring about what has been included (and excluded) from the construction of a discourse, and the second half considering the functional consequences of those decisions.

Stage 2: Sample selection. To determine which texts would best enable me to address my research questions, I drew on preliminary research that provided ample evidence that forensic psychology training manuals can compose a dataset incredibly well-suited to the demands of my project. In addition to being accessible and directly intended for the evaluators in question, these handbooks serve as a concrete nexus at the intersection of the mental health and the United States legal systems, and one where the points of convergence and tension between these systems are apparent even upon an unmethodical reading. Furthermore, Ricoeur (see 1981; *1986/1991*) also significantly enmeshes written text and meaningful action in a way that resonates with the instructive

function of these handbooks; in offering guidelines for best practices, the boundary between text and action blurs in a particularly germane way.

The market is glutted with myriad forensic psychology handbooks, some devoted entirely to issues pertaining to evaluation of children and adolescents. In considering how to determine the most appropriate sample for a discourse analysis, Potter and Wetherell (1987) are careful to note that the sample selection must be determined by its alignment with “the specific research question” (p. 161). Given the present study’s questions about how the broad, *dominant* discourse of child memory is constructed and functions, it was most fitting to turn to the more generalized, widely used handbooks as a primary point of focus. Thus for my study, I selected as my sample two forensic psychology training manuals: *Psychological Evaluations For the Courts* (PEC) by Gary B. Melton, John Petrila, Norman G. Poythress, and Christopher Slobogin (2007) and *The Handbook of Forensic Psychology* (HFP) by Irving B. Weiner and Randy K. Otto (2014). These books were chosen based on careful consideration of a number of factors, including how relevant (year of publication), how popular (citation counts on Google Scholar), how definitive (number of editions), and how much emphasis on practical applications (American Psychological Association, 2011).

The first edition of PEC was published in 1987, and as of December 30, 2018 there are 2,214 citations listed on Google Scholar (citations of all editions have been counted in this total). This number could be attributed in part to the text’s appeal to an especially broad audience; the American Psychological Association (APA) promoted PEC as “the definitive reference and text for both mental health *and* legal professionals” (APA, 2011, emphasis mine). This sentiment is echoed in user reviews, informally on

Amazon.com as well as in academic contexts, for example in *The National Psychologist* where it is referred to it as “an indispensable and authoritative reference work” (Guilford Press, 2018). In addition, Mohan Nair of UCLA Medical Center, a practicing forensic neuropsychiatrist for over 35 years and contributing author to the textbook *Principles and Practice of Forensic Psychiatry* (Rosner & Scott, 2016) deemed PEC “an invaluable resource for child and adolescent psychiatrists who are significantly involved with the legal system and a must have for all forensic psychiatrists” (Nair, 2009, p. 211).

HFP was also first published in 1987. While PEC appears to be the dominant player in this market, HFP maintains 188 Google Scholar citations as of December 30, 2018 (again, all edition citations have been counted) and an equally high billing from users on Amazon and in formal reviews. For example, APA (2011) referred to HFP as “the top academic work in forensic psychology,” and forensic psychologist William J. Ryan, an experienced expert witness and instructor affiliated with Queens College CUNY, highlighted the enduring relevance of HFP in his review. Here he stated: “Like the prior three editions, this fourth edition of [HFP] provides an authoritative and comprehensive resource for understanding theoretical and historical foundations of forensic psychological issues” (Ryan, 2016, p. 553).

Indeed, in the field of forensic psychology, PEC and HFP are foundational texts. As I anticipated, this sample proved plenty capable of addressing my research questions. That being said, it should be noted that I was prepared to conduct a similar review and selection process to include additional, more specified handbooks had I discovered otherwise. Such an amendment would have been appropriate and allowed for within Potter and Wetherell’s (1987) framework. One challenge that did arise as I began to

engage with these texts in July 2017, however, was a new edition of PEC. This fourth edition was released in January 2018, and its publication required me to thoroughly compare the new version with its predecessor in order to determine which would be most appropriate to use here. In doing so, I discovered that aside from updated citations and some transitional sentences, the majority of the 2007 text in the sections on child eyewitness testimony and maltreatment evaluations was repeated nearly verbatim in 2018. The fact that there are few significant differences between the two texts is a primary reason my committee and I ultimately agreed that the 2007 third edition was a better fit with my research goals, a decision I discuss in greater depth in my analysis section.

Procedural modification. Stages 3-5 (collection of records and documents, interviews, and transcription) discuss steps relevant only to studies using spoken texts. Because this is superfluous to the focus of this particular study, I omitted them.

Stage 6: Coding. The authors describe this step of their methodology as a time “not to find results, but to squeeze an unwieldy body of text into manageable chunks” (p. 167) according to categories that are “obviously and crucially related to the research questions” (p. 167). As per the methodological guidelines, I first winnowed the text of these handbooks by identifying and concentrating on the sections that reference evaluations involving children, based on the manuals’ tables of contents and subject indexes. In making these early determinations, I made two important decisions about sections not to include in my analysis. Firstly, I narrowed the scope of the study to the discourse of evaluating children, rather than children and adolescents. As I began to collect data, it became clear that adolescents are treated very differently than children in

this area, and that those differences (while interesting) were too far beyond my research questions to align well with this project. Along similar lines, I excluded chapters covering education evaluations when it became apparent that introducing a third institution (the education system) would be too unwieldy for the scope of my study. Both of these areas would make excellent ground for research in the future. Apart from these sections, the remaining topics were directly pertinent to my research questions, and focused on child maltreatment evaluations, custody evaluations, and child eyewitness testimony.

From there, I carefully read these passages (roughly 160 pages total) and further pared down the text to focus on times when the handbook offered instructions or guidance to the evaluator. (See my analysis section for further elaboration on my process of making these classifications.) I then transcribed these excerpts in an electronic, searchable table, taking care to note the chapter, page number, and section heading of each for future reference. I also included a column where I could record any additional notes that corresponded with each entry. This text compendium is included here as an appendix. It should be mentioned that Potter and Wetherell (1987) encourage that Stage 6 “be done be as *inclusively* as possible” (p. 167, emphasis in original), that is, to exclude examples that may appear to fall on the borders of these criteria would be prematurely limiting. The intention at this point of the method was to generate a manageable compendium of text; the ways these excerpts are and are not relevant to the research questions was determined in the following step.

Stage 7: Analysis. Decisions about limits and further categorization were reserved for the analysis stage. At this point, I first re-read every entry in the text compendium I compiled, each time asking if the text was offering an explicit or implicit

instruction. While some examples were clearly at one end of this spectrum or the other, there were some that I termed “borderline” explicit or implicit, and a few that I deemed too far from any instructive function and omitted. I documented all of these decisions in the notes column of the table. During this reading, I also noticed and documented my observations and impressions about what I was seeing, keeping the following questions in mind:

- What are the instructions the manuals offer on how to conduct evaluations involving children?
- When offering instructions on how to evaluate children, what implicit assumptions are being made?
- What is the explicit reasoning or basis the handbooks offer for these conclusions?
- How are these manuals talking about child *memory* in these instances?
- Are there places of conflict/contradiction in these guidelines?
- Is there anything that seems to be missing or unaccounted for in these instructions?

As per Potter and Wetherell (1987), the primary exercise of the analysis stage is to search for patterns in the data vis-à-vis these issues. To do so, I formulated key words and phrases based on my initial notes and utilized the computer program’s search function to check how frequently and in what context these themes emerged. These terms ranged from directive words such as “should” and “recommend” to more content-based words like “memory” and “complex.” This process proved fairly hermeneutic, with me revising my expectations and next steps as I took into account the search results that emerged. For

example, I had not initially planned on searching for the word “important,” but soon realized the handbook authors introduced instructions with the phrase “It is important to...” at least as often as they wrote that evaluators “should” do something. These data searches offered me a means of accessing patterns that emerged from the compendium entries I compiled, and led me to identify four interrelated patterns regarding how the *evaluator* is constructed in these sections and six patterns about child memory and experience more specifically. I then considered and hypothesized about the potential functions and effects that might stem from these patterns, drawing on explicit linguistic evidence in which to ground my conclusions.

Stage 8: Validation. Potter and Wetherell (1987) explain that validation, as with any of the steps they list, is not sequentially confined to a particular point in a study, but rather an issue that is engaged with more and less figurally throughout the research. For example, I took steps to ensure the trustworthiness of my findings by systematically selecting which handbook text to analyze, and by grounding my analysis in textual evidence. Despite the acknowledgement that in some ways validity is a concern throughout a project, however, Potter and Wetherell (1987) still devote a stage of their methodology specifically to validation. I find the notion of dedicating specific attention to the validity of my findings quite resonant, as well as useful in my quest to perform a rigorous qualitative study. Here they suggest four measures by which to approach these questions: participants’ orientation, coherence, fruitfulness, and new problems. While participants’ orientation is not directly applicable to this study, which does not include human participants, the other three afford important lenses through which to consider my work.

In terms of coherence, Potter and Wetherell (1987) claim that “Analysis should let us see how the discourse fits together and how discursive structure produces effects and functions. ... If the explanation covers the broad pattern, and accounts for many of the micro-sequences, then we will take it more seriously” (p. 170). This principle was a guiding tenet as I conducted my analysis and reported the subsequent findings. It is further reflected in my research questions, which intentionally speak to both the content of the version of reality constructed in forensic assessment manuals as well as its functions. In addition, I have taken care to balance an explication of overarching patterns and observations with attention to specific textual examples of these themes. I have also included those instances when there appear to be contrasts between the two manuals making up the dataset, as well as textual divergences from the primary patterns. In doing so, I have endeavored to uphold Potter and Wetherell’s (1987) notion that the report of discourse analysis findings “constitutes part of the confirmation and validation procedures itself” (p. 172). In adhering to this level of transparency, it is my hope that readers can and will have the opportunity to follow my reasoning and contribute their own analyses, whether confirming my conclusions or drawing alternatives. By nature of the dissertation process, this report will already reflect contributions from my advising committee, but it is not meant to be a static document of reified claims—further readership will ideally provide additional validity checks. As Potter and Wetherell (1987) describe, “In this sense discourse analysis could be said to be more rigorous than experimental reports as it is often impossible to independently check the analysis in these cases” (p. 172). Another notable aspect of Potter and Wetherell’s (1987) coherence measure is that of “apparent exceptions to the analytic scheme” (p. 170). In these cases,

acknowledging an aspect of the account that does not seem to fit the general pattern can be categorized more definitively as an exception to the pattern, and thereby can serve as confirmation of that pattern.

Similar to coherence, fruitfulness is another measure of validity that is in many ways dependent on future readership. Fruitfulness “refers to the scope of an analytic scheme to make sense of new kinds of discourse and to generate novel explanations” (p. 171), and is rooted in the observation that across disciplines, research that resonates with the field to an extent that it offers these sorts of contributions tends to carry more validity (and power). One of my goals in conducting this research and composing my write-up as I have is that it can and will “be used to generate fresh solutions to the problems in a field” (p. 171). Nevertheless, this is, of course, a validity measure that requires the time and patience of waiting to discover how my work is taken up within the community at large and across disciplines. It certainly cannot be determined at the time of writing, aside from noting that fruitfulness is one validity dimension that will remain in my awareness in the years to come.

Finally, Potter and Wetherell’s (1987) concept of “new problems” offers a third measure by which to approach the validity of this discourse analysis study. The reasoning behind this dimension is not unlike that behind the importance of exceptions to the coherence of a discursive pattern; evidence of a problem (and of a solution to that problem) that emerges from the way a discourse is constructed ultimately affirms the presence of that hypothesized discourse. The authors look to car mechanics for a metaphor, explaining, “If we think of a car engine, it converts chemical energy into mechanical propulsion reasonably effectively, but in doing so it generates heat. Thus the

car needs a cooling system to mop the excess heat and keep the engine working smoothly” (Potter & Wetherell, 1987, p. 171). In the present study, this would likely manifest as instructions towards solving a “problem” that has been introduced by the text’s own discursive pattern.

Of course, there are inherent limitations to validating any findings in an interpretive discourse analysis, including mine. As Bell (2011) explains, “As discourse analysts, we know that we are not actually able to prove that our reading of a text is ‘right’ or even the best one” (p. 537). That being said, Bell goes on to draw from Ricoeur’s proposal that careful sensitivity to and analysis of the features of the text and its reception context enable us to “demonstrate that competing readings are less valid or probable” (p. 537). To more comprehensively address these particular validity challenges inherent in this project (and in interpretive discourse analysis more broadly), I enhanced this study’s rigor by expanding this stage of Potter and Wetherell’s procedural guidelines in two ways. Firstly, in an effort to consider how other scholars have interpreted the structure and functions of the discourse of child accounts, I compared my study’s findings with literature that specifically focuses on the discourse analysis of child experience and memory in an array of contexts, including forensic. Secondly, to the extent it is possible, I attempted to access and track my own process of forming questions and drawing conclusions by keeping a journal. Here I recorded my reactions as I engaged in this research, with particular attention to moments of frustration, anger, excitement, and shifts in my thinking. This knowledge proved useful in validating that my findings are grounded in the data rather than solely in my preconceived assumptions.

Stage 9: Report. Finally, Potter and Wetherell (1987) describe how the endeavors of the preceding steps are summarized and synthesized in a single document, one that is written with explicit transparency:

The goal is to present analysis and conclusions in such a way that the reader is able to assess the researcher's interpretations. Thus a representative set of examples from the area of interest must be included along with a detailed interpretation which links analytic claims to specific parts or aspects of the extracts. In this way, the entire reasoning process from discursive data to conclusions is documented in some detail and each reader is given the possibility of evaluating the different stages of the process. (p. 172)

This attunement in effect serves as an additional measure of validity, and furthermore highlights the non-rigid temporal fluidity of moving back and forth across many of these methodological stages throughout the project. In addition to what Potter and Wetherell (1987) outline here, my report also makes use of a phenomenological conceptualization of memory as a point of comparison to the findings I present. This organization helps elucidate the ways the manuals' discourse of child memory converges with and/or differs from a phenomenological discourse of child memory, with a discussion of explicit implications for how this perspective can inform the ways the current legal system handles evaluations involving children.

Stage 10: Application. It is my hope that the findings of this study will inform our understanding of how children's accounts are taken up in forensic settings, and help ensure our legal system can be one that more fully honors child experience and narratives.

Analysis

Global Differences and Similarities

This analysis will begin at the global, macro level before zooming in to focus on more detailed, nuanced aspects of the forensic assessment manuals that make up this dataset. This is not to suggest any sort of hierarchy, but rather to provide appropriate context in order to more fully understand the totality of this discourse and the reader's experience with it. In doing so, it is my hope that this report will come closer to capturing not only an analysis of the text but also of its greater meaning in the world. I also hope that this thoroughness will afford a degree of transparency to my work, in keeping with Potter and Wetherell's (1987) discourse analysis methodology. I invite the audience reading to speculate along with me about the findings I have identified and the meanings(s), function(s), and utility(ies) they may possess and serve.

The physical specifications of the manuals are virtually identical. According to Amazon.com, *The Handbook of Forensic Psychology* (HFP) measures 7.3 inches across, 10.3 inches tall, and 2.2 inches thick. It spans 944 pages and weighs 3.8 pounds. Amazon.com lists *Psychological Evaluations for the Courts* (PEC) as measuring 7.2 inches across, 10.2 inches tall, and 2 inches thick. It has 930 pages and weighs 4 pounds. Both books are encased in substantial hardcover binding. Published by John Wiley & Sons, HFP is in its fourth edition, published in 2014. At the time of writing the price for a new hardcover copy through the publisher is \$160.00 (WILEY, n.d.), though it is available from Amazon for \$101.89. PEC is published by The Guilford Press, which, as I mentioned in my methods section, released a new, fourth edition during the course of this study. After reviewing the new 2018 edition, however, my committee and I deemed it

most appropriate for my project to draw on the third edition, which was published in 2007.

Comparing the two editions revealed few significant variations in the sections pertinent to my study, but I did recognize two main ways the text differed between them. Firstly, many of the fourth edition's revisions reflect shifts in cultural norms about inclusiveness. For example, references to "mental retardation" in the 2007 edition were updated to "intellectual disabilities" in 2018. In the Special Populations subsection of Chapter 16 (on custody evaluations) the populations expanded from three in 2007 to seven in 2018, with amendments including "Multinational Families" and "Parents who are Batterers." This demonstrates the manual authors' attention to addressing the needs of a more diverse array of people and to using more sensitive language while doing so. This attitude reinforces the notion that these handbooks serve reflect the context in which they are created, and it appears that at least one driving factor behind these changes is that the body of research they draw on warrants such updates. Secondly, the 3-page subsection The Technique of Custody Evaluations in Chapter 16 was organized differently in 2018, with a new half-page additional text of more explicit guidelines to evaluators. The overall effect of this organization and detail is greater clarity and a somewhat more direct tone of instruction to the reader. Still, in overall tone, conclusions, and function, there is little divergence between the 2018 and 2007 editions. Additionally, given that my research questions focus on understanding a broad discourse and its functional consequences, my committee and I determined it would be more appropriate to use the version of the text that is more accessible and that has already been widely used, reviewed, and adopted rather than the brand new one. That is, while the new fourth edition could eventually

become as highly regarded and widely utilized as its predecessor, this assumption has not yet been proven. The third edition of PEC is not available for purchase from the publisher directly, but a new hardcover copy currently is listed at \$126.10 on Amazon.com.

In short, these books are substantial, expensive tomes. Their heft implies comprehensiveness, significance, and a certain gravity. Taken together, these physical properties send the message that these books are serious, and serious in a manner that befits the content inside. These are not pocket-sized guides that one might keep in a briefcase or backpack for handy reference; these manuals live on shelves or maybe a desk, demanding concerted attention from studious professionals. Also, given their girth (and price tags), it seems unlikely that evaluators would invest in more than one manual. They each appear to be designed with the intention of needing only one. Though I did not draw on virtual texts in this project, there is an e-book format of HFP available through the publisher for \$128.00 (WILEY, n.d.) and \$96.80 for a Kindle version through Amazon. The third edition of PEC is not available as an e-book from The Guilford Press or through Amazon.

Despite their physical similarities, the manuals differ in some significant ways, including in their intended audience and in their authorship. Regarding audience, PEC makes clear from its subtitle, “A Handbook for Mental Health Professionals and Lawyers,” that it endeavors to serve as a resource for individuals in both systems. HFP is a bit more opaque, but the publisher bills it as “Ideal for professional forensic psychologists and graduate students” (WILEY, n.d.). As a result, PEC tends to devote more text to legal precedent, procedures, landmark cases, and historical context about the

legal system. Notably, the vast majority of these examples were not offered as instructions to evaluators, and therefore not included in the text compendium.

In terms of authorship, PEC lists four principal authors (Gary B. Melton, John Petrila, Norman G. Poythress, and Christopher Slobogin) on the cover, and on the title page adds two more consulting authors underneath (“with” Philip M. Lyons, Jr., and Randy K. Otto). HFP, on the other hand, names two editors (Irving B. Weiner and, again, Randy K. Otto) on the cover, but a different contributor or team of contributors have authored each chapter. This contrast has three effects that are especially pertinent to the study at hand. Firstly, HFP’s more compartmentalized authorship makes it more transparent to the reader who is writing what. Secondly, PEC’s use of the same authors for the entire handbook conveys a sense that this text is more monolithic, and perhaps powerful, as opposed to a more diffused and multivocal narrative. That being said, the act of including more expert professionals writing according to their specialties, as in HFP, arguably assumes a certain power of its own. Thirdly (and relatedly) the title of editor introduces a layer of hierarchy and affords Weiner and Otto a bit more distance from the particular findings and instructions their chapters contain. These nuances are further reflected in the way that excerpts from each handbook are cited in the present study. Because it is formatted in APA style, quotes from and references to PEC will name the same group of authors, the same four names (Melton, Petrila, Poythress, & Slobogin) or more often the same one name (Melton et al.), regardless of the chapter from which they are drawn. In contrast, though I often refer to HFP as “Weiner and Otto” to preserve their presence in the account, using APA style ensures that direct quotes from their manual are

attributed to their specific contributing author(s). As a result, it will be more readily apparent in which chapter each quote is found.

Another difference between the two texts is in the formatting. Both use a font similar to Times New Roman, but the text in PEC is small, closer to 10pt, and placed into two columns. HFP has bigger text, closer to 12pt, and no columns. The resulting effect is that PEC is denser, with more text on each page and a more journalistic air.

Contrastingly, HFP looks airier and more similar to a novel. With fewer words per page, I turned pages more quickly while reading HFP than PEC, spending less time with a given spread. In addition, the handbooks are formatted according to different reference styles—HFP uses APA style, while PEC uses Chicago style. In terms of reader experience, the most glaring consequence of this difference is the way each cites reference sources. In HFP, the authors of the sources and years of publication are always embedded in the body of the text, whether as part of the narrative or as parenthetical insertions immediately following the paraphrased text. PEC also sometimes names the authors of a specific study or source in the body of the text, but more often, sources are denoted with anonymous superscript numbers directing readers to corresponding endnotes at the end of the last chapter. Thus although the same information about these sources is available in both texts, it is less visible and requires more effort from the reader to find it in PEC. In an effort to mimic the experience of reading the manuals for readers of this project, all parenthetical reference sources and superscript numbers will be included in the quoted passages. (The corresponding endnotes to the superscript citations, however, will not be included. Such an endeavor would prove too unwieldy for the project at hand, with

minimal effect.) As a consequence, HFP's use of APA citation style compounds the visibly embedded multivocality engendered by HFP's use of multiple chapter authors.

Lastly, the manuals differ somewhat with regard to the order in which they present the domains included in the current study: custody, child maltreatment, and child eyewitness testimony. In PEC, Chapter 15, "Child Abuse and Neglect," and Chapter 16, "Child Custody in Divorce," fall under Part IV (Children and Families), while their specific coverage of child testimony is in Part II (The Criminal Process), under the subsection of Chapter 7, "Other Competencies in the Criminal Process," called "Competency to Testify." This organization is not overtly accessible, and increases the likelihood that an individual interested in these issues will have to sift through the index to seek them out specifically. Similarly, in HFP, Chapter 6, "Conducting Child Custody and Parenting Evaluations," and Chapter 10, "Conducting Child Abuse and Neglect Evaluations," are also located in the same section of the book, Part Two (Applying Psychology to Civil Proceedings). However, here child testimony is discussed in a full chapter of its own in Part Four (Special Applications): Chapter 18, "Evaluating Eyewitness Testimony of Children." This composition affords the topic more prominence, and therefore may imply that Weiner and Otto have assigned it more priority, or perhaps deemed it more relevant to their readers than did Melton et al. Despite these differences in presentation, however, the handbooks' overarching conclusions and ways of talking about evaluating children remain similar, and offer ample overlap from which to draw conclusions about the account of reality being constructed. Indeed, while these matters are important to keep in mind, the two manuals ultimately prove more alike than they are different. This will be elaborated in the next

section through a number of patterns that emerge in the instructions they offer to professionals conducting evaluations involving children.

The Spectrum of Instructions

Before delving into an analysis of handbooks' instructions to evaluators, it is first necessary to discuss the process of determining what, exactly, to consider as an instruction. This task proved more challenging than initially anticipated, and quickly exposed my own assumption that the manuals in my data sample would clearly differentiate their instructions to evaluators from the remainder of the text. This binary view—that a sentence would be plainly either *instructive* or *not*—proved wishfully simplistic. While there were certainly instances of unequivocal, imperative directives to evaluators (e.g., “In young children, the evaluator should observe the way children and parents relate with one another” [Stahl, 2014, p. 154]), it became apparent that there were frequently instructive qualities in sections of the text even when they were not overtly phrased as such (e.g., “Evaluators may be asked to address not only what might be done to increase safety for a child, but also who might do it” [Melton, Petrila, Poythress, & Slobogin, 2007, p. 528]). At a broader level, in fact, there is an argument to be made that according to the fundamental tenets of discourse analysis, everything included in these manuals functions as instructive simply by virtue of being part of a “handbook,” created for the very purpose of guiding its readers. That is, there exists an implied, overarching meta-instruction that evaluators be familiar with the content in these manuals; that this is important information for those conducting forensic psychological evaluations to know. Thus it was necessary to adopt a more nuanced understanding of “instruction,” and more

effective to conceptualize the content of the manuals as on spectrum between implicit and explicit instruction.

This shift meant refining the criteria for inclusion in my text compendium, while still aligning with the goal of Stage 6 of Potter and Wetherell's (1987) methodology, "to squeeze an unwieldy body of text into manageable chunks" (p. 167) according to categories that are "obviously and crucially related to the research questions" (p. 167). Instead of simply compiling instances in which the manuals offer instructions to the evaluator—a task that could have meant transcribing the entire books—I revisited the task of defining "instructions" in a way that would best address my research questions. Preliminary analysis of the text led me to recognize two different functions the data seemed to be serving. Those passages on the explicit end of the instruction spectrum served as directive commands, what I had initially assumed I would find when I embarked on this project. Many of the sections that were implicitly instructive, however, guided evaluators by way of educating. It became evident that in order to best address my research questions, I would need to consider both definitions of the verb *to instruct*: *to teach* as well as *to direct* (Merriam-Webster, 2018). In practice, this meant including in my compendium any procedural explanations of what evaluations may entail and what is expected of evaluators, as well as any explicit instructions to evaluators. The most frequently omitted sections elaborated lengthy historical context and sample cases. Though interesting, the educating instructive function in these instances was deemed peripheral to the scope of this study.

While the handbooks contained a greater number of implicit, educative instructions than expected, the final compendium revealed that in both manuals this type

of guidance was still slightly less common than more explicit, directive instructions. In Melton et al. (2007), I classified 51 text compendium entries as implicit instructions and 65 entries as explicit. In Weiner and Otto (2014), I classified 70 implicit entries and 76 as explicit. It should be noted that despite their apparent precision, it is more appropriate to interpret these counts as my best attempt to provide a broad estimate of the proportion of implicit to explicit instructions in my compendium. As stated above, considering these entries according to a rigid binary of implicit or explicit belies their underlying fluidity across this spectrum.

Following my intended study procedures, after sorting through these issues and collecting and classifying the data in my compendium accordingly, I set out to analyze these instructions by posing the following questions to this assemblage of text:

- When offering instructions on how to evaluate children, what implicit assumptions are being made?
- What is the explicit reasoning or basis the handbooks offer for these conclusions?
- How are these manuals talking about child *memory* in these instances?
- Are there places of conflict/contradiction in these guidelines?
- Is there anything that seems to be missing or unaccounted for in these instructions?

However, as I began this undertaking, I quickly realized that my analysis questions now overlooked a basic but vital subject: What *are* the instructions the manuals offer on how to conduct evaluations involving children? The same fluidity that prompted me to broaden my definition of “instructions” now made the omission even more figural.

Clarifying at a content level *what*, exactly, the handbooks are advising readers to do is essential to the project of further analyzing *how* they are doing the advising, including their assumptions and reasoning. Per Potter and Wetherell (1987), a cornerstone of this stage of discourse analysis is searching for patterns of convergence and divergence in the data relative to these questions.

In posing these questions to the compendium text, a number of patterns emerged. For the sake of clarity, I have organized these patterns under two main headings, those that are foundational and those that concern child memory/experience more directly. The foundational patterns arose primarily in response to questions about what instructions the manuals are offering to readers performing evaluations involving children, and thematically, they generally focus on how evaluators should conduct themselves throughout the evaluation process. While child memory and experience are taken up less overtly in these sections, they are essential to understanding the manuals' discourse around *the evaluator assessing the children in question*. Thus the foundational patterns are so named because they serve as a foundation for addressing broader research questions about how child experience (memory in particular) is constructed in these manuals, and the functional consequences that potentially follow. The analysis then turns to patterns specifically regarding child memory and experience. For all of these patterns, my explication will be grounded in linguistic evidence such that the readers can better trace my reasoning and compare it with their own as I postulate about the functional consequences of the various patterns in this discourse. Although they will be taken up here as separate findings, it should be noted that these patterns are not understood as entirely discrete, but rather as having various areas in which they overlap or intertwine.

Furthermore, although the two handbooks were generally similar in the majority of their guidelines, each handbook of course contained its own particular idiosyncrasies and distinctions. When these divergences were significant, they are discussed below.

Foundational Patterns in Compendium Instructions

Exercise caution: a ubiquitous guideline. The plea for evaluators to exercise caution imbued virtually all of the instructions in the text compendium. Both in content as well as in tone, this guidance appeared over and over again, in each of the analyzed chapters and across a wide array of topics. The general directive to “be careful” manifested in a number of specific ways. For example, both handbooks were fairly straightforward in their advice that evaluators be careful in their use and interpretation of specialized psychometric assessments. Melton et al. (2007) warn, “these instruments may be helpful in clinical evaluation, but the fact that most have not been validated for use in child protection dispositions should make clinicians cautious in interpreting observations drawn from them” (p. 532). Similarly, Stahl (2014) notes, “no specific instruments can directly assess the complex issues inherent in [custody] evaluations” (p. 155), and thus “examiners should be aware of the controversies and arguments on both sides of the issues when choosing to use those particular instruments...” (p. 157).

Ethical considerations, such as obtaining informed consent and avoiding multiple relationships, were another area in which the manuals overtly espoused caution. In the context of urging evaluators to take precautions against potential repercussions from disgruntled parents, Stahl (2014) explains, “technically, informed consent is not obtained when the court orders an evaluation; custody evaluators are encouraged to obtain consent both in writing and orally at the start of the evaluation process” (p. 145). Regarding

multiple relationships, “clinicians must guard against inadvertently being drawn into a decisionmaker or advocate role when they have represented themselves as investigators or evaluators” (Melton et al., 2007, p. 521), and “when a clinician is employed as an *evaluator*, he or she should be careful not to slip into the role of *intervenor* unless the parties or the court so requests. Even for those mental health professionals who are also trained as lawyers, there are serious problems of dual practice and dual representation” (Melton et al., 2007, p. 542).

Clarify the evaluator’s role. These latter instructions also speak to a larger pattern present in the data: the importance of clarity about the evaluator’s role. The handbooks acknowledge the challenges of establishing and maintaining this differentiation, pointing out that cases involving evaluating children “are more complex, involve more people, and entail more procedures than most” (Stahl, 2014, p. 151), and (again, with superscript endnote reference included) that “drawing a bright line between ‘investigation’ and ‘assessment’ may be quite difficult¹⁴³” (Melton et al., 2007, p. 509). Melton et al. (2007) also acknowledge that “clarity in concept does not necessarily translate to clarity in practice” (p. 508). As in other psychology specialties, the manuals claim that clarity of professional roles in child-related forensic evaluations mitigates ethical problems, most primarily the risk of the evaluator slipping into a “fact finder” or “decision maker” position. In sum, the manuals instruct that the evaluator’s role constitutes *carefully* gathering case information relevant to the specific referral questions and synthesizing it with relevant literature to make *measured* interpretations. Evaluators may then offer suggestions or recommendations, being sure these conclusions are *meticulously* and explicitly grounded in the evidence that they have gathered.

Importantly, the texts make clear that the evaluator's role does *not* include making decisions about a child's living circumstances, necessary interventions, or accuracy/honesty, but rather provides information to assist other authorities (e.g. mediators, judges, juries, etc.) in making their ultimate determinations. In their discussion of custody evaluations, Melton et al. (2007) warn:

The superficial relevance of everyday clinical practice to custody disputes; the shifting boundaries and allegiances within families (and the resulting pulls on clinicians); and even the related gender politics may sometimes seduce mental health professionals into reaching unwarranted opinions.¹³ (p. 540)

Condie (2014) offers similar guidance in Weiner and Otto's (2014) chapter on conducting child abuse and neglect evaluations:

[I]t is important to remember that even the highest professional standards do not require an evaluator to be a good judge of a child's truth-telling capacity (APA Committee on Professional Practice and Standards, 2011). That task is left to the fact finder, and it lies beyond the scope of current scientific research and practice. (p. 267)

Here the manuals suggest that encroaching on the responsibilities of trier of fact is a phenomenon that can easily or unintentionally occur. Doing so can feel natural—even seductive—but is ultimately inappropriate, since it requires specialized training, knowledge, and experience beyond that of a forensic assessor. Therefore vigilant self-awareness is required on the part of the evaluator.

Though examples occur in both manuals, Melton et al. (2007) are particularly assertive that evaluators (frequently referred to as clinicians in this text) take care to

adopt an attitude of humility in order to minimize the possibility of taking actions or drawing conclusions beyond their knowledge base. In the chapter covering maltreatment evaluations they caution, “clinicians must remain mindful that although dispositional issues are *conceptually* within their province, their expertise on such issues may still be limited” (p. 508), therefore, “they should have great humility in making predictions and offering other opinions” (p. 518). Regarding custody, the authors go on to “remind readers of the point that [they] have made throughout this chapter: Careful attention must be paid to the limits of expertise in custody evaluations” (p. 558). And in the area of child eyewitness testimony, “Another preliminary issue clinicians must address is whether they have anything to add to what a trial judge will be able to discern with respect to observational, memory, communication, and moral capacities” (p. 185). Here, the authors’ reasoning for advising this humility is that human beings are fallible, and in the complicated realm of these sorts of evaluations it can be difficult to identify and remember how far one’s expertise extends. Throughout the manual, however, they also claim even more fervently that evaluators must recognize their expertise is necessarily constrained by limits in the relevant research literature, an explanation echoed in Weiner and Otto (2014). The ways in which the manuals instruct evaluators to engage with research merits analysis as a pattern in its own right, and will be discussed later in greater detail.

Whereas Melton et al. advocate humility, Weiner and Otto (2014) adopt a slightly different tack, emphasizing instead that evaluators should be thoroughly informed about case specifics, relevant literature, and pertinent legal proceedings. Doing so, they suggest, will minimize the risk of evaluators speaking beyond their expertise not only because

they will be accountably knowledgeable, but also because they will be able to better recognize the limits of what they know. In addition, Weiner and Otto present evaluations involving children—especially custody evaluations—as more contentious affairs than do Melton et al., and propose that this exhaustive knowledge base is one measure evaluators can take to protect themselves from angry or litigious parents. Thus part of an evaluator’s role is to “have the temperament to conduct very comprehensive evaluations and recognize that they may be subjected to anger from parents and an adversarial trial experience” (Stahl, 2014, p. 139). Later, they restate that “To be an effective evaluator, one must develop a thick skin, because one or both parents are likely to be upset with the recommendations” (Stahl, 2014, p. 163-164). Such a characterization adds another layer to the manuals’ efforts to situate the evaluator as a distinct, clearly delineated position.

What are the functional consequences of these manuals defining the evaluator in this way, as cautious, meticulous, and sharply distinct from those determining “facts” or making final decisions? To start, by presenting forensic evaluations involving children as requiring such abundant caution, these instructions position the evaluator as vulnerable, needing to actively and constantly protect oneself from ethical lapses, professional missteps, and even personal attack. Upon reading this characterization, it is possible that some psychologists may be discouraged from pursuing this work further, while others may be invigorated by the challenge set before them. Irrespective of where on this continuum a potential evaluator’s reaction may fall, however, the manuals are quite successful at implicitly arguing for their own necessity. The paramount importance of being thoroughly educated and prepared certainly affirms the need for forensic psychology training manuals (and the authors who publish them).

Understanding this vulnerability as humility offers perspective on another effect that stems from the way the manuals present the role of the evaluator, and that is a paradoxical relationship with accountability and authority. On the one hand, the manuals seem to place an incredible amount of responsibility on evaluators' shoulders. In addition to understanding "specific statutory or case law," (Stahl, 2014, p. 153), evaluators are expected to perform "comprehensive observation and interviewing of the parents and children, and gathering of interview and archival information from third-party sources" (Melton et al., 2007, p. 558). Moreover, the evaluator "serves as a consultant to the judge, providing critical data about the family for a better understanding of the family dynamics and the needs of the children" (Stahl, 2014, p. 141-142). The implications here are that evaluators must take seriously and assume accountability for their professional role and the many duties the court has assigned, and that doing so has significant bearing on the outcome of the case.

On the other hand, however, the manuals also assert that one of the most critical tasks evaluators face is recognizing the confines of and restrictions on their role and duties. Crucially, they are *not* accountable for determining facts (e.g. whether or not child maltreatment has occurred, whether or not a child is lying) or making ultimate decisions (e.g. placing a child in a particular custody arrangement). This differentiation establishes a check on the authority of the evaluator, despite also arguing for the prominence of the role. As Stahl (2014) puts it, "Because the evaluator is the only unbiased person providing information to the judge about the child (it is assumed that both parents will be biased), such information is vital to the court in helping it to make the ultimate decision about custody and parenting plans" (p. 154). From these handbooks, it would appear that

evaluators must strive to remain in a fairly narrow margin of acceptable authority. That the evaluator must relinquish control of how the results of her or his toil are ultimately taken up and applied may be experienced as a frustration, relief, or some combination. Regardless, the repeated guidelines distance evaluators from the final outcomes of their cases, exonerating them from ultimate culpability.

Furthermore, the manuals also assume that evaluators are capable of the self-awareness the authors argue is essential to the task of knowing the limitations of one's knowledge, expertise, and professional role. Take, for example, this set of instructions from Melton et al. (2007):

Although the issues typically are subtle, mental health professionals conducting custody evaluations should take special care to examine ways in which their own experiences and attitudes color their views about childrearing and “proper” roles—especially gender roles—of family members. They also need to be especially sensitive to ways that clinicians can be unwittingly drawn into taking sides with a family member. (p. 562)

In this instance (and at other places in both handbooks), the authors are advocating for some pretty sophisticated reflexivity on the part of the evaluator. The “experiences and attitudes” they allude to are not superficially apparent by nature, but rather are frequently deeply inveterate and habitual. Obviously there are practical restrictions on what can be included in these already lengthy manuals, but omitting further discussion about how evaluators might go about examining their inherent biases and proclivities assumes readers will be able to determine how to do so effectively on their own.

Be familiar with research literature, evidence, and its limitations. Another pattern is readily apparent in the multifaceted way these manuals take up and present research literature as they offer instructions to people conducting evaluations involving children. Most overtly, there are multiple instances in which the books directly advise readers to be familiar with a particular body of literature or research. For example, Condie (2014) states, “To understand risk of maltreatment, it is important to understand research on a variety of factors contributing to risk and mediation of risk” (p. 270), and Melton et al. (2007) assert, “The clinician who is invited to evaluate a child’s competency to testify should be aware of the large body of research on children’s skills as witnesses¹⁹¹” (p. 513-514). Directives such as these, which demonstrate the value the authors place on relevant research, tend to precede or follow the lengthier, more detailed syntheses of particular research studies that constitute the bulk of the manuals’ content.

In addition to these stark advisements, the handbooks also frequently reference research in more subtle ways as they present critical issues and offer instructions to evaluators throughout the texts. In a section on determining the scope of a custody evaluation for example, Melton et al. (2007) write, “Because of the significance of interparental conflict in the literature on effects of divorce, special attention should be given to the parents’ capacity for cooperation, the nature and intensity of disagreements about the children, and points of possible compromise” (p. 558). Here, the authors reference literature to justify the areas of focus they instruct evaluators to include during their work. While there is no outright directive that evaluators know this particular research, the phrasing implies that this literature is important, and that knowing it should shape one’s work as an evaluator. There are also numerous instances in which the

manuals cite, quote, or describe specific studies in greater depth, though the latter occurs most prevalently in the manuals' coverage of children's eyewitness testimony. (See pattern titled "Research is elaborated in detail, but conclusions are offered equivocally" for further discussion of this phenomenon.) Again, in Weiner and Otto (2014), which is formatted in APA style, these research studies assume a more visible presence than they do in Melton et al.'s (2007) Chicago style, where citations are noted with superscript numbers referring to endnotes in the back of the manual.

Indeed, these handbooks often read like literature reviews, with the authors carefully structuring their chapters around the research study topics they have deemed most prolific and/or important. The following passage from early in Weiner and Otto's (2014) chapter on evaluating children's eyewitness testimony provides a fairly typical example of this tendency:

In any case, it is clear that many factors play a role in children's memory for traumatic and stressful events—too many to review in this chapter. Here we first consider some of the theoretical issues involved in memory for stressful and traumatic experiences. We then turn to a subset of the factors that affect children's memory for stressful events, such as age when events occurred, language and parental factors, centrality of the to-be-remembered information, whether the individual is a participant or bystander witness, and whether events are repeated or single occurrences. Additionally, we review research on physiological stress responses—research that is furthering our knowledge about how stress affects children's memory of traumatic and stressful events. Clearly, a complex multivariate model of children's memory for stressful events is needed to

integrate disparate findings. (Hobbs, Johnson, Goodman, Bederian-Gardner, Lawler, Vargas, & Mendoza, 2014, p. 564)

We will return later to consider how the manuals engage with the topic of children's memory in its own right. What is notable about this excerpt for the present discussion is the way in which research literature is foregrounded and prioritized over drawing conclusions, that is, before offering any instructions. Eventually, the authors ultimately direct evaluators to adopt "a complex, multivariate model of children's memory for stressful events," but they also make explicit that this recommendation is absolutely dependent on the data from the research they have reviewed. Their passive voice phrasing even serves to distance themselves as interpreters of the data; rather than actively advising readers to conceptualize memory a certain way, they simply draw attention to what is "clearly" already there from the research that will be outlined, (despite apparent discrepancies in said research).

The handbooks engage with research literature in many different ways, and taken as a whole it becomes apparent in these manuals, research is granted the ultimate authority. In keeping with their own instructions, however, the authors are also careful to recognize and state the numerous instances when research is incomplete, flawed, or contradictory. As alluded to in the previous section, the manuals caution readers about the limitations of this body of literature, for example, gaps in research subtopics (e.g., "There is limited research on the effect of parental relocation on children." [Stahl, 2014, p. 150]), as well as issues with particular study designs. These advisories can be quite granular, as when Melton et al. (2007) describe maltreatment evaluations where there is the possibility of intimate partner violence in the family to consider. They note, "The

information that *is* available from small, single-site studies gives ample additional reason for modesty in making ideologically grounded assumptions, at least until large-scale, more representative studies are available” (p. 527).

In addition, the manuals do not shy away from presenting contradicting research findings. In fact, a common pattern throughout both manuals is for the authors to introduce an issue relevant to evaluations involving children, present research findings that suggest one conclusion about the issue, then describe research with an alternative outcome:

When it comes to children, the courts’ obsession with truth-telling seems overblown. There is in fact little correlation between age and truth-telling; in other words, children are not more prone to lie than adults or to misunderstand the concept of truth.²⁰¹ Bussey found that “even preschoolers could differentiate between lies and truthful statements about misdeeds [and] appreciated the naughtiness of lying.”²⁰² Another study of children ages four to six also found that most understood the difference between the truth and a lie.²⁰³ However, consistent with the research on suggestibility, these researchers did caution that “there may be a small percentage of children whose definition of the truth may be influenced by parental direction or its helpfulness to a friend.”²⁰⁴ (Melton et al., 2007, p. 184)

The authors then frequently “resolve” the stated discrepancies by stating that more research is needed in this area and/or advocating the need for caution in one’s evaluations. One example of this tendency occurs in Weiner and Otto’s (2014) conclusion of their chapter on conducting child abuse and neglect evaluations, “Analysis of child maltreatment risk should acknowledge appropriate caveats. Further research is

needed to better understand the degree of concordance or possible discordance in risk studies relevant to other samples of individuals and those involving risk of child maltreatment” (Condie, 2014, p. 270). Melton et al. (2007) offer this analog, “Thus, although research and theory on the dynamics of child abuse and the nature of children’s experience in the legal process may be helpful in suggesting the possible effects of alternative procedures, there is little research direction on the point, and that which is available gives more reason for caution in predictions” (p. 512). Indeed, the authors of both manuals strive to present a comprehensive overview of relevant research literature and the potential challenges one might encounter when interpreting it.

This attitude of prizing thoroughness by integrating all findings, even those that may contradict, is also expressed when the handbooks instruct evaluators about the importance of balance in their work. Stahl (2014) asserts, “Examiners should be aware of the controversies and arguments on both sides of the issues when choosing to use those particular instruments, as presented in balanced reviews by Craig (2006), Dyer (2008), Erard (2005), and Evans and Shutz (2008)” (p. 157). In this instance, the author suggests that the balance in the reviews he cites is laudable and important, as it helps to offer evaluators an exhaustive understanding of the issues—in this case, psychological testing and parenting questionnaires in custody evaluations. This emphasis on balance sheds light on another facet of the manuals’ treatment of research literature: that extensive familiarity with research is essential tool for evaluators as they endeavor to achieve objective neutrality in their interactions and reports.

Both manuals seamlessly describe evaluators as adopting the role of “neutral experts,” though the intended meaning of “neutral” is twofold. At times, the word

“neutral” appears to be drawn from a forensic lexicon to describe an individual who does not formally represent any one party, as a lawyer would. For example, Stahl (2014) explains, “a neutrally appointed child custody evaluator will spend considerable time with both parents trying to understand their concerns and their perceptions of their child’s needs” (p. 142). There are other instances, however, when the authors extend this neutrality to encompass objectivity or a lack of bias. Melton et al. (2007) cite the American Psychological Association’s *Guidelines for Child Custody Evaluations in Family Law Proceedings* to remind readers that “child custody evaluators are often pulled in conflicting direction by their concerns for the various individuals involved.... They note that the psychologist’s role is ‘that of a professional expert who strives to maintain an objective, impartial stance’” (p. 542-543). It is interesting to note that the notion of evaluator neutrality is fundamental in both the legal and mental health systems, despite variations in the connotations of the phrase.

The manuals also acknowledge factors or circumstances in which impartiality may prove challenging. As discussed above, the authors name evaluator reflexivity as one way to protect against the encroachment of personal biases, but thorough knowledge of the research base is presented as an even more potent means of maintaining objectivity. Melton et al. (2007) offer an example of this attitude in their chapter on child maltreatment evaluations, instructing, “neither clinicians nor legal authorities should infer from a diagnosis that a parent is unfit. To guard against such inferences, clinicians should make clear in their reports and testimony that conclusions as to parental difficulties based on the presence of a mental illness per se are at present scientifically unsupportable” (p. 522). Condie (2014) similarly demonstrates the importance of “empirically

substantiat[ing],” calling on researchers and evaluators alike to be thoroughly familiar with existing research and theory in order to appropriately inform and ground their conclusions. “The multidetermined nature of child maltreatment must be considered by both researchers and clinicians in order for them to better understand and empirically substantiate the transactional process presumed to contribute to child maltreatment (Belsky, 1993; Condie, 2003)” (p. 247). Indeed, throughout the manuals there is an implication that knowledge of research keeps evaluators true to their role as “neutral experts.”

While there are considerable likenesses in the ways both manuals take up research literature, however, there is also a significant difference worth noting. This deviation comes with regard to the instructions the authors offer about research limitations or contradictions. Again, the direction to exercise caution in these instances is foundational in both manuals, but Melton et al. (2007) appear more commonly explicit in directing evaluators to be explicitly careful, with statements like:

Although the existence of mandatory reporting and central registries potentially provides the foundation for actuarial determination of risk, the data analyses that would enable empirically based predictions have not been performed.²²⁸

Moreover, the research on the effectiveness of various dispositional alternatives is woefully thin. ... Therefore, even when experts are involved in the relatively uncontroversial context of dispositional decisionmaking, they should have great humility in making predictions and offering other opinions. (p. 518)

They overtly present caution as a sort of solution when an evaluator faces problematic research issues, framing these challenges as an extension of the evaluators’ responsibility

to know the limits of their expertise. They implore additional research occasionally, in a passing and matter-of-fact way, saying, for example, “More research needs to be done, however, on whether children’s memory fades more quickly than adults’ when a particularly negative event is involved” (p. 181).

Weiner and Otto’s (2014) manual is much more likely than Melton et al.’s (2007) to advocate for additional research, and they regularly address researchers directly as they make instructions, in imperatives like, “Therefore, researchers should study the veracity of eyewitness statements when children disclose to a familiar person, such as a parent” (Hobbs et al., 2014, p. 578). Examples like this elucidate a more openly critical attitude towards the body of available research, and also express a greater sense of urgency, as when they implore, “Researchers should address such discrepancies to identify the most effective means of administering lineups to children. Moreover, instructions to improve lineup performance in young preschoolers (e.g., 3-year-olds) still are sorely needed” (p. 589). This is perhaps unsurprising given the tremendous value we have already seen these manuals place on their research base.

Hobbs et al. (2014) even go so far as to make recommendations for specific elements of research study designs:

These findings offer further support for the importance of rapport building between the interviewer and child eyewitness as well as researchers examining the full range of ecologically valid factors that may influence children’s suggestibility: Research on the effects of misleading questions should address not only *what* is asked but also *how* and *by whom*. (p. 579)

They later state:

Researchers should therefore avoid overgeneralized assumptions that repeated interviews compromise children's memory accuracy; instead, these findings should enlighten debates on the complexity of factors influencing children's reports and their interactive or culminating effects (delay since the event, number of previous interviews, exposure to misinformation, etc.). (p. 580)

By addressing researchers in this manner, Weiner and Otto's manual subtly distributes the accountability for managing these difficulties to include external "researchers," rather than lying solely or even primarily with evaluators. This trend is especially apparent in Hobbs et al.'s (2014) chapter on evaluating children's eyewitness testimony and interviewing children, which will be more fully analyzed in the later discussion on children's memory in these manuals. Nevertheless, it is noteworthy that eyewitness testimony seems to be an area in which research and practice are particularly enmeshed, and perhaps one in which the authors may be especially compelled (consciously or otherwise) to relieve evaluators from the burden of perfectly eliciting testimony from children.

Regardless of exactly how the authors engage with research in these manuals, however, it is virtually always manifest as the reasoning behind the conclusions they draw with regard to instructing evaluators. In other words, if one were to ask why a manual is offering particular guidance, more often than not the answer will be "because it is indicated in the literature." Yet, as in any discourse, this pattern also is informed by and perpetuates implicit assumptions that are important to consider and bring to light. Perhaps most fundamentally, within the authors' prizing of research and pleas for more and/or better studies lies the assumption that more research will provide more and/or

better knowledge, practices, and resolutions for evaluators. Their attitude suggests it is a given that when it comes to these incredibly complicated issues, there is truth, definitive answers, and an abundant, high-quality research base is the key for unlocking them. This is only part of the picture, though, because the manuals also imply that in order for the research to be effectively interpreted and utilized, it must be thoroughly examined by a neutral, impartial evaluator. In these handbooks, the ideal robust body of literature and the perfectly objective evaluator are in a sense co-constituted. Unbiased professionals in this field create the research base by performing well-designed and balanced studies, and the neutral expert status of the evaluator can be preserved by “just doing what the research says.” Interestingly, while the handbook authors do reference limitations of both research and evaluators, their cautions belie an assumption that it is possible (and highly desirable) for research studies and evaluators alike to achieve objective neutrality.

The narrative that research literature, if properly employed by evaluators, will provide them with definitive answers on how to properly perform their duties is readily apparent in this example from Melton et al. (2007):

Drawing from research and theory about the nature, causes, and sequelae of child abuse and neglect ... clinicians may be able to ask the “right” questions to identify the precipitants of abuse and neglect, the particular needs of the family as a whole and as individuals, and the nature of relationships within the family. (p. 518)

This excerpt also speaks to some of the functional consequences that arise from the ways the handbook authors engage with research literature. Presenting the ideal evaluator as scientific, objective, and impartial serves to distance the evaluator from the complicated,

potentially high stakes responsibility of making recommendations to the court. It offers a means for evaluators to claim authority (as professional experts fluent in a relevant body of knowledge) while still lessening personal accountability for their actions and conclusions (as professionals simply carrying out best practices described by other experts, in this research base). By adding quotation marks around the word “right,” Melton et al. further distance themselves from the research they reference by hinting at their hesitance to claim that these procedures will yield definitive and proper answers. (For more on Melton et al.’s apparent skepticism, see pattern “Research is elaborated in detail, but conclusions are offered equivocally.”) Thus this treatment of research literature affords some potential relief in the ambivalence with authority that is apparently inherent in the evaluator’s role, as described previously.

Another function that the manuals’ way of engaging with research literature serves is to demonstrate to readers that the authors are following their own instructions to be thoroughly familiar with relevant research and its limitations. By presenting conflicting findings and working to integrate them, the manuals are in a sense practicing what they preach, modeling for evaluators how to follow the instructions the authors propose and fulfilling the ethical obligation they describe as linked to this practice. They set an example for evaluators of the very type of comprehensive familiarity with the literature that they are recommending. Relatedly, by embodying these values as a synthesis of such a vast array of relevant research studies, these manuals again validate their own existence and authority. By drawing on extensive research while simultaneously instructing readers to draw on extensive research, the manuals implicitly

emphasize that a handbook of this sort is at the very least useful, and likely preferred or even indispensable.

To best serve children, conduct thorough evaluations and write balanced reports. The manual authors' call for thoroughness and balance as a way for evaluators to navigate the incredible complexity of conducting evaluations involving children extends beyond an attitude towards research literature to other aspects of the process as well. This pattern emerges primarily in the context of custody and child maltreatment evaluations, since the handbook authors designate these areas as evaluation processes in which an evaluator will be responsible for composing a report of findings and recommendations to a judge or other decision maker. As will be discussed later, the manuals at times advocate for thoroughness in the context of children's eyewitness testimony, but with different intentions and purposes.

Before providing instructions on *how* to conduct these kinds of evaluations, the handbook authors first introduce readers to *what* this work may entail. In his introduction to child custody and parenting evaluations, for example, Stahl (2014) details some of the complexities that evaluators encounter when taking on this type of work:

Child custody and parenting evaluations are among the most difficult and challenging of all psychological evaluations. Reasons for this include:

- The number of people and relationships in the family to be evaluated.
- The different ages of the children.
- The range of possible psychopathology.
- The presences of significant situational factors affecting psychological functioning.

- The limitations of psychological tests or interview methods designed for the type of assessment.
- The changing nature of a child’s developmental or psychological needs relative to future time-sharing plans.
- The expansive nature of individual questions a court may have about a particular family.

In addition to these complexities, child custody evaluators must have knowledge of relevant statutes and case law. (p. 138)

The implication here is that evaluators should have in mind these many factors when conducting their work, and endeavor to ethically address them all. Similarly, Melton et al. (2007) state, “In view of both the breadth of the best-interest concept and the multiplicity of factors potentially affecting the outcome of various custody and visitation arrangements, a child custody evaluation can be best summarized as *comprehensive*” (p. 558). Furthermore, regarding child maltreatment cases, Condie (2014) asserts “flexibility in methodology across referral questions is needed to accommodate the degrees of breadth and depth necessary to answer a given referral question or set of questions” (p. 248). Melton et al. (2007) echo, “given what is known about the multiplicity of factors involved in child maltreatment, the evaluation should be wide-ranging” (p. 530). Clearly, the manuals present evaluations involving children as intricate, challenging affairs that require appropriate comprehensiveness and care on the part of the evaluator. Just as evaluators were instructed to be fluently familiar with research literature pertaining to their cases, they are advised to adopt similar measures when gathering and synthesizing information beyond the pages of research studies.

The manual authors instruct that this information should be gathered primarily by observing and interviewing parents and children, as well as interviewing and reviewing archival documents from third party “collateral” sources. Doing so provides rich and robust context from which evaluators can base their recommendations, a process that the manuals suggest is of utmost importance in meeting the ultimate goal of serving the needs of the child(ren) at hand. For example, when discussing the evaluator’s position during child custody evaluations, Melton et al. (2007) describe, “Starting from the premise that the child’s needs must be paramount,³⁹ the American Psychological Association’s *Guidelines* advise clinicians (as do we) to undertake a functional assessment of the skills and values of the parents and their match to the needs of the child” (p. 542). Weiner and Otto (2014) take a similar approach by instructing evaluators to adopt a strategy of weighing potential risks and benefits of various custody arrangements for the child(ren) in question as they present various options to the court. Stahl (2014) advises, “Given that, in most evaluations, there is a range of custodial options, it is important for the evaluator to provide a thorough risk-benefit analysis of each custodial option and those data that support his or her conclusions” (p. 162). The position that the interests of the children involved in these evaluations are the driving focus of an evaluator’s work, and that thoroughness is essential in this endeavor, also arises in the context of child maltreatment. Melton et al. (2007) aver, “clinicians conducting dispositional evaluations should consider the nature of the supports that will best facilitate healing, safety, and healthy development for the child” (p. 529). In their argument for caution and comprehensiveness, Weiner and Otto (2014) inform readers, “child maltreatment is multiply determined by factors operating at multiple levels of

analysis that include evolutionary, developmental, situational/contextual, individual, microsocial, macrosocial, and demographic” (Condie, 2014, p. 247). Pointing to the various complicated, intertwining aspects that contribute to child maltreatment helps bolster the authors’ argument that evaluators’ work and recommendations should be grounded in knowledge from an array of interviews, observations, and all available case materials in tandem with pertinent research literature.

Indeed, though one of these manuals’ implicit functions is to help evaluators understand and navigate these complex terrains, they are careful not to do so by oversimplifying the complicated issues that evaluations involving children present. One area in which this is apparent is in the way both handbooks emphasize the parties being evaluated as always embedded in larger, overlapping systems. These include socio-historical and political contexts, but the authors devote more priority to relational ties, particularly between parents and children. Yes, they do instruct evaluators to “provide complete and relevant information about each parent” (Stahl, 2014, p. 161) and “thorough and relevant information about each child” (Stahl, 2014, p. 161), as well as and a descriptive record of various demographics and available tangible supports. However, as Stahl (2014) summarizes, “Each step of the evaluation process is designed to help the evaluator gather information critical to understanding the *family*” (p. 152, emphasis added). He goes on to explain, “Although there is no reliable and valid way of measuring whether a child is more bonded to one parent or the other, the job of the evaluator is to describe the behavioral dynamics of the bond for the judge” (p. 154). Thus the manual presents the evaluator’s task as not only to evaluate any one person or persons in

isolation; the evaluator is additionally charged with assessing a network of relationships, of emotional bonds and interpersonal dynamics.

Melton et al. (2007) echo this sentiment, here referring to dispositional evaluations in child protection cases, stating, “ultimately the questions should shift from parental competence as a personal characteristic, because the critical problem is one of *relationships*” (p. 530). Melton et al. (2007) also exhibit this approach regarding child custody evaluations:

Parents, stepparents, and children should all be interviewed as to their perceptions of relationships in the family (past, present, and future), their preferences about custody, and any special needs of the children. Because of the significance of interparental conflict in the literature on effects of divorce, special attention should be given to the parents’ capacity for cooperation, the nature and intensity of disagreements about the children, and points of possible compromise. As a means of observing parent-child relationships in a realistic environment, home visits may be advisable as well. Nor should the evaluation stop with interviews of the immediate family. Contact with extended family, teachers, social service agencies, and even babysitters can illuminate potential sources of support (or lack thereof) under various custody arrangements (e.g., switching between parental homes). (p. 558)

Explicitly, this excerpt embodies the value the manuals place on evaluators performing thorough investigative interviewing and research from multiple sources and methods. More subtly, the authors capture the complex interrelatedness of a child’s existence, even speaking to the temporal (“past, present, and future”) and spatial (home visits to observe

“a realistic environment”) dimensions of the relationships that constitute a family and, they argue, are important to consider when determining recommendations about children’s well being.

By not retreating from these complexities, the handbook authors position themselves to instruct evaluators on strategies to manage them. As in the case of negotiating the challenges that arise when engaging with research literature, the manuals again turn to advising evaluators to strive for balance and impartiality as they approach challenges and conflicts in these other aspects of evaluations and their subsequent reports. Weiner and Otto (2014) again offer specific instructions to evaluators working to interpret a range of potentially disparate information, with statements like, “The child custody evaluator looks for convergent and divergent data between collateral and other data to help in understanding the various allegations and assertions made by the parties” (Stahl, 2014, p. 158) and, “Examiners should pay particular attention to disparities between what the child says during individual interviews compared with the observation sessions” (p. 155). In addition, Stahl (2014) directs evaluators to “show your work and explain the bases for all conclusions. It is important to detail the basis for any expert opinions reached” (p. 162), but he is also careful to mention that “The Specialty Guidelines also instruct the forensic evaluator to disclose data and information that is not supportive of or contrary to the conclusions and recommendations offered by the evaluator” (p. 160). Once again, the manuals propose that frankly incorporating a variety of perspectives and interpretations, even those that appear in opposition, is an important step that evaluators can enact to achieve balance in their work and reports.

The concept of balance in these manuals is very closely related to the concept of objectivity, or neutrality. In fact, according to Stahl (2014), “child custody evaluators strive to use a balanced process in order to achieve objectivity, fairness, and independence” (p. 145). As they did regarding research literature, Melton et al. (2007) similarly advocate evaluators’ objective impartiality with regard to interview, observation, and collateral information. For example, they advise:

Recognizing that the multiple lenses through which family members embroiled in a high-conflict divorce are apt to be clouded by emotion, and that the scientific foundation for prediction of postdivorce behavior is thin, the American Psychological Association also admonishes clinicians to interpret clinical information “cautiously and conservatively, seeking convergent validity.”⁴² (p. 542-543)

Here, the authors not only acknowledge “multiple lenses,” the various perspectives evaluators will be soliciting and required to make sense of during the evaluation process, but also frame these viewpoints as “clouded by emotion,” that is to say non-objective and ultimately unreliable. Coupled with what the manual characterizes as problematically a “thin” research base, the evaluator is instructed to look for areas of overlap (“convergent validity”) in these accounts, and warned to draw conclusions carefully and humbly. Indeed, the pull for finding valid, unbiased facts appears so strong that Melton et al. (2007) even suggest viewing case history as “experiments” to facilitate evaluators’ interpretation:

Sources outside the nuclear family may also give important, relatively objective glimpses of children’s responses to arrangements developed during separations

and under temporary custody orders. In that regard, the existing and previous custody arrangements can be conceptualized as natural experiments of a sort. The clinician should be sure to elicit information as to the parties' attitudes and behavioral responses to those arrangements. (p. 558)

The value these handbooks place on science, facts, and objectivity shines through in this passage. With this pervasive attitude, the evaluator once more assigned the role of neutral expert analyzing imperfect data, instructed to navigate the complexities of evaluations involving children by exercising caution, thoroughness, and awareness of limitations.

In addition to the implicit assumptions and functional consequences already discussed regarding the discourse in the handbooks around evaluators' neutrality, comprehensiveness, and balanced approach to their work, what refinements and new conclusions can be drawn from analyzing this pattern? To start, considering objectivity in the context of non-literature based data such as family interviews and observations demonstrates more clearly the manual authors' attempts to understand amorphous phenomena such as family dynamics as concretized, "real" data, or facts. The authors are careful both to emphasize the relational aspects of families as the focus of an evaluation process as well as to name the complexities of such an endeavor. When instructing evaluators as to how to navigate this challenge, however, the manuals seem to make an implicit assumption that it is possible, in fact most appropriate, for evaluators to consider these relationships as they would consider a body of research studies or perhaps as an experiment they are conducting themselves. When the manuals advise evaluators to seek "convergent validity" among the accounts of various parties, or to attend to "disparities" between what children describe and what evaluators observe, the handbooks could just as

easily be offering instructions as to how to approach a body of research literature as a network of human beings. In practice, one outcome of this attitude is the message that a high degree of rigor is valuable and necessary for evaluators to effectively, ethically do their work. They must be attentive, thorough, and exercise critical thinking in order to collect and interpret all of the data that will be pertinent to the question at hand. There is also an appreciation for the likelihood (if not inevitability) that there will be diverging perspectives and disparities that evaluators must work to make sense of through this attention, thoroughness, and critical thinking.

One function of presenting this non-research information as data akin to that found in research studies is to reinforce the persona of the evaluator as the neutral expert. In the legal system, where impartiality and facts are highly valued, conceptualizing interviews, observations, and collateral accounts as research data might be one way of granting this information validity or perhaps even elevating it in the eyes of the court so that it will carry more gravity. In turn, rendering evaluators as unbiased, skilled professionals who simply convey the facts they have carefully amassed could serve to elevate evaluators in a similar manner. This portrayal in a sense serves to make evaluators more reliable, trustworthy, and less susceptible to the sullyin inaccuracies believed to stem from one's personal biases. Once again, somewhat paradoxically, promoting evaluators in this way also releases them from a degree of accountability, enabling them to more easily assume a position of reciting objective data while minimizing their own role of interpreting said data. By advocating so much caution and humility, the handbook authors are in their own way arguably ceding some of their personal responsibility, softening the directness of their instructions as if to distance

themselves from many conclusions and to empower (or abandon) readers to stand on their own.

The manual authors advise caution, humility, and balance in how evaluators interpret and present their findings, and repeatedly reiterate that evaluators are not ultimately decision makers, and must write reports as consultants to a separate authority. However, for all of the efforts the handbooks take to minimize role confusion and present evaluators as separate entities, it is notable that there do not appear to be the same cautions about delineating between evaluators and researchers. Furthermore, invoking the language of science, of the “neutral expert,” introduces a complicating factor to this narrative. In doing so, the manuals foreclose some of the possibility to understand truth as perspectival or multifaceted, and instead steer the evaluation process towards finding one actuality. As in the colloquial discourse of science in general, there becomes an answer, a truth, a best solution; it may not be the evaluator’s role—or perhaps solely the evaluator’s role—to decide it, but it does exist, and even if it cannot be definitively determined, the quest of the evaluator is to get as close as possible. The manual authors might instruct evaluators to strive for fairness and transparency, but largely absent in these handbooks is the acceptance that evaluators (people) are not inherently unbiased, and that the issues they are evaluating are fundamentally not objective. The authors seem to champion attempts to find “truth” or “facts” in areas where those concepts as we commonly understand them may be nonsensical.

Summary: Constructing the Evaluator and Implications for Child Memory and Experience

Before moving to explore in depth how the manuals take up child memory and experience, let us pause to reflect on how they have constructed the identity and role of the people conducting evaluations involving children. In examining the instructions the handbooks offer, we begin to get a picture of how the handbooks construct these evaluators; their needs, their responsibilities, their authority, their limitations, and more. The manuals' ideal evaluators are cautious above all else. They are exhaustively knowledgeable about all areas pertinent to their cases, including specific legal precedents and procedures, family dynamics, socio-cultural issues, and especially relevant research literature. Nevertheless, they remain humble with regard to the limitations of their knowledge and expertise as well as to their role in the legal process. The ideal evaluators never forget that they do not make ultimate decisions, but rather serve as consultants who offer informed recommendations to the court. Relatedly, these ideal evaluators also strive for the balanced neutrality in all of their endeavors, thoroughly discussing disparate study findings and observations, and never showing preferential treatment to a particular party. By embracing the role of the "expert" whose duty is to collect data and report it to the court, they maintain a certain distance from the case and the parties at large. According to the manuals, accomplishing all of these qualities lends credibility, validity, and power to evaluators and the recommendations they set forth.

What might this conceptualization mean vis-à-vis the area of child memory/experience? To start, the distance that the manuals appear to ascribe to the expert evaluator might be especially problematic for children, especially those in the

imaginably vulnerable circumstances that would require an evaluation. Even as the handbooks describe these cases (especially custody cases) as involving myriad people and relationship dynamics, there is not much attention to the ways the evaluator is by nature similarly entrenched in this web. Children are arguably particularly acutely embedded within larger family and social systems, and therefore expecting children to confide in someone intentionally separate from these structures (even if illusorily) could be inappropriate. For a child in the evaluation process, the evaluator is likely one of many adults who is unfamiliar and yet important, and by design a thoroughly curious or perhaps intrusive presence.

In addition, as mentioned above, it seems that the manuals set up evaluators to pursue the difficult if not impossible task of searching for objective facts in areas that are inherently fluid, transient, and knotty (e.g. family relationships). This is certainly true of child experience, with the complicating layers of developmental and communication considerations. The handbooks seem to suggest that if an evaluator ideally can serve as a sort of super recorder, transcribing children's accounts and supplemental information about their experiences with meticulous precision, then these "facts" will guide the court to fully understand the issues at hand and make proper decisions accordingly. This notion does not account for the likelihood that even if it were possible to achieve a perfect, complete representation of a child's experience, it remains only one representation. The accounts are always by nature situated and perspectival—elements may shift, or be added, omitted, or emphasized differently in another conversation with somebody else or over time. I do not mention this as a particular shortcoming of children, but rather as a reality of a human condition that is complicated and dynamic.

This leads us to the issue of truth. The handbooks' instructions clearly present the idea that evaluators' work is in service of the pursuit of truth. The emphasis on thoroughness, on research, on balance; it may not be the evaluator's job to determine truth, but helping the court to determine it remains the ultimate goal. Indeed, the manuals state that one reason they advise evaluators to collect so much information when performing these evaluations is the goal of finding verification, or lack thereof, for children's accounts. Seeing this focus, we can begin to understand the energy devoted to determining the truthfulness and accuracy of child testimony/memory, and (coupled with the particular embeddedness of child experience) why the threat of suggestibility would loom so large.

Examining how the authors of these handbooks present the identity and role of evaluators conducting evaluations involving children affords an adequate foundation from which to consider more specifically how the manuals engage with the topic of child memory and experience. Again, addressing this study's research questions requires a comprehensive analysis of how child memory/experience is constructed in these manuals and the functional consequences of this discourse. In keeping with the principles of discourse analysis as a method, this undertaking would lack appropriate nuance without the context afforded by first studying the way the discourse in the manuals constructs the forensic evaluation of children more broadly. (This attention to context is further reflected in the analysis questions outlined in Stage 7 of the procedures section.) Now that we have a clearer sense of how these handbooks reflect and participate in the systems at large, it is possible to more mindfully shift the focus to the patterns that arise in the compendium instructions particular to the topic of child memory and experience.

Child Memory and Experience Patterns in Compendium Instructions

Indeed, given that this study focuses specifically on instances when the manuals are offering instructions, the role of the evaluator remains present in the discourse even when not being explicitly addressed. For example, the version of reality these handbooks promulgate reveals a number of assumptions about child memory/experience, but they do so in a manner that implicates evaluators as well. The following patterns present in the text offer further insight as to how the manuals conceptualize child memory/experience, but by extension this discourse also demonstrates how the authors propose evaluators should understand (and work with) children.

Child experience is deeply intertwined with and influenced by adults. In examining the instances when the compendium instructions discuss child memory and experience, one dominant theme that emerges is the extent to which children involved in evaluations are interrelated with adults—evaluators, parents, jurors, and whoever else may be interviewing them. Discussion of this influence (or potential for influence) most frequently arises in the context of suggestibility and credibility, that is, when considering whether children’s accounts can be trusted as true representations of their experience:

Evaluators must keep in mind that one or both parents may influence their children. To reduce the risks associated with this influence, appointments should be scheduled equally with each parent bringing the children to appointments.

Although children’s suggestibility and the potential for being influenced by parents or siblings is a topic that is beyond the scope of this chapter, it is critical for those evaluating custody and parenting plans to understand this research.

(Stahl, 2014, p. 154-155)

Here, the handbook names suggestibility as a “critical” area for evaluators to attend to, the implication being that the sway “one or both parents” may hold on their children might be so great as to color or even supplant the child’s own narrative. This scenario would in turn make it difficult for the evaluator to know how to separate the children’s *true* responses from the influence of their parents. Also apparent in this excerpt is the attitude that in addition to being familiar with relevant research, evaluators can and should take specific measures to mitigate the risk of this undue parental influence and its effects. As Melton et al. (2007) echo, “In view of the small percentage of cases that reach the courtroom, much more important from the standpoint of obtaining the ‘facts’ is avoiding stress, suggestiveness, and other accuracy-reducing aspects *of the investigation process....*” (p. 185). This trend appears throughout both manuals and will be discussed in greater detail later.

Melton et al. (2007) likewise portray child experience as intricately interlaced with adults, and elaborate a number of ways this interrelatedness may affect a child’s perception and narrative account:

A court would generally also benefit from insight into whether the witness’s memory of *the legally relevant event* is “genuine” and is being accurately recounted, or instead is the product of suggestion or fantasy. As already indicated, the difficulty is that by the time the question of competency is raised, the potential witness is likely to have been asked about the alleged offense numerous times. If it was perceived as a traumatic event or if a family member is the defendant, the witness may also have been bombarded with diverging interpretations of the event. Moreover, especially with a child, when the event in question was one

previously outside the witness's experience or one that he or she had not previously identified as deviant, the witness may be dependent upon others to provide meaning to the experience.²²³ (p. 186)

In this example, the binary conceptualization of memory as being *either* "genuine" and "accurately recounted" *or* "the product of suggestion or fantasy" that is fundamental to suggestibility theory is at the forefront. In addition, this passage goes on to list factors linked with the perspectival nature of human existence, but that here are believed to further complicate one's ability to preserve and recount a memory: being asked about it repeatedly, and being "bombarded with diverging interpretations." The authors even go as far as stating that the child witness "may be dependent" on adults to superimpose or assign meaning to a particular experience, further underscoring the degree to which the manuals give power to the adults in these cases. This attitude reflects the reality of the legal system, in which (as with most of the world) adults control the ultimate fates of the children whose cases come before them. Hobbs et al. (2014) state, "When children testify in court at jury trials, judges and jurors have the difficult task of assessing the accuracy of the children's testimony. Characteristics of children and of the jurors themselves may affect whether children are believed or not" (p. 589), while Melton et al. (2007) remind evaluators that an outcome "is based at least as much on juror's competency in weighing children's testimony as it is on children's skill in presenting it" (p. 513-514). In instances like these, the handbooks acknowledge that children also influence adults' experience; however while this influence may be reciprocal, the power to make ultimate determinations is largely unidirectional.

Importantly, even as they discuss the risks and challenges evaluators face with regard to the interconnectedness of child and adult experience, the handbook authors also speak to the potential advantages of such impactful dynamics. In one such example, Hobbs et al. (2014) cite research proposing that adult influence can serve to help children feel secure enough to maintain confidence in their accounts to an extent that will prevent suggestive distortions:

These findings suggest that children, when comfortable and familiar with the interviewer, correct errors and resist suggestion more easily than with a stranger. These findings offer further support for the importance of rapport building between the interviewer and child eyewitness as well as researchers examining the full range of ecologically valid factors that may influence children's suggestibility: Research on the effects of misleading questions should address not only *what* is asked but also *how* and *by whom*. (p. 579)

They also refer to research purporting that adult interactions with children can be beneficial at the level of improving memory processes, stating, "These findings suggest that discussions parents have with their children about traumatic events can assist with the encoding and storage processes necessary for memory retrieval (Chae, Ogle, & Goodman, 2009)" (p. 567). Notably, these conclusions still assume the suggestibility model of memory, and the understanding that adults (evaluators, researchers, and parents) can and should take measures to preserve children's intact, accurate narratives.

Child experience is defined relative to adult experience, and as such is often presented as deficient. Another example of the relatedness of adult and child experience

in the manuals is evident in the authors' tendency to describe child experience as a comparison to adults', particularly in the area of memory abilities:

Even children as young as three and four appear to perform as well as adults on some recognition memory tasks. For instance, a child who is asked to identify previously seen pictures or faces should be able to do almost as well as an adult, as long as no intervening suggestions have taken hold.¹⁴⁹ Research also indicates that even when a previously *unfamiliar* perpetrator is present in a lineup, five- and six-year-olds' identifications are as accurate as adults'.¹⁵⁰ However, when the child has had only brief exposure to the perpetrator or is very young, accuracy decreases. Furthermore, when the suspect is not present in the lineup, children as old as nine tend to make more errors than adults,¹⁵² and there is some evidence that young children may sometimes place familiar people at an event who were not actually there.¹⁵³ (Melton et al., 2007, p. 181)

Hobbs et al. (2014) adopt a similar position:

“[R]esearch reveals that, by the age of about 5 or 6, children are often as accurate as adults in identifying people with whom they have interacted when presented with target-present lineups (i.e. lineups that include the target person—the “culprit”). However, when the actual culprit is not in the lineup (i.e., “target-absent” lineups), even older children (e.g. 10-year-olds) are more likely than adults to falsely identify an individual and less likely to report that the target person is not included in the lineup (Pozzulo & Lindsay, 1999).” (p. 587)

In instances like these, adult performance in various domains becomes a standard by which children are measured, and should aspire to achieve. From this position, it is

almost taken for granted that children are inherently inferior to adults, and sets up a paradigm in which young numerical age is an automatic disadvantage to be overcome. Consequently, these manuals draw heavily on research to complicate the assumption that by virtue of her or his age, no child is capable of remembering or reporting their memories accurately. The authors take care to parse out the intricacies of performance at various ages in an array of contexts. These endeavors appear to be at least in part a means of advocating that children's skills and competence should not be automatically underestimated, and indirectly acknowledge that human memory and testimony processes are fallible at any age.

Somewhat paradoxically, however, in adopting this comparative language the handbook authors' efforts to advocate for children also wind up presenting children as deficient. The manuals seem to suggest that performing "as well as adults" lends legitimacy to children's experience, but this framing exposes subtle yet profound assumptions of superiority. In other words, the manuals do not challenge the assumption that adult experience and performance is, in fact, a standard by which child experience should be measured and understood. Doing so sets children (especially young children) up to be inherently inferior, lacking in certain skills and abilities. There is an implication that their memories and narratives are especially fragile. Given the emphasis the manual authors devote to these age trends, there is a message to evaluators that young children require the greatest amount of care when being interviewed, and that their accounts necessitate the greatest amount of skepticism. On the subject of child memory and testimony, the discourse in the manuals is a strongly adult-centric account, relying heavily on a prolific research base that appears to attempt to make sense of child

experience through the adult lenses that are available. This tendency speaks to the manuals' place within a broader adult-centric system of forensic psychology, which requires that children's testimony be elicited and interpreted by adults, and that outcomes be determined by adult decision makers.

It is also worth noting that in these instances the manuals are not comparing child memory performance to just any adults, however. Melton et al. (2007) states matter-of-factly, "the four categories of individuals most likely to trigger testimonial capacity concerns are children, people with mental retardation, people with mental illness, and those who have abused substances" (p. 180). Indeed, as in many systems, there are particular adults in power here. It is their memory performance that becomes the baseline, the control, the appropriate standard by which individuals from other "concerning" populations should be measured and assessed, and it is expected that these latter groups will not perform as well. By their very nature, certain populations—including children—should "trigger" doubts about their "testimonial capacity," the implication being that the people who are categorized in these ways are not only special cases or in need of accommodations, but also subtly framed as deficient adults.

Language impacts children's memories and accounts of those memories. Both manuals discuss language as an area of particular importance when instructing evaluators about the challenges of child testimony. The topic arises in three contexts: the relationship between children's linguistic and memory abilities, the implications of evaluators' language when interviewing children, and the ways children verbally communicate their testimony to the court. In the first domain, Hobbs et al. (2014) touch on research discussing how children's verbal fluency affects their memory processes:

Generally, research reveals that children's proficiencies in communication assist them in being more accurate in recalling past experiences and more resistant to suggestions from others. ... These results imply that children with greater verbal skills were more accurate and less suggestible than their peers. However, in other studies, no significant associations emerged between verbal skill and suggestibility (e.g., Bright-Paul & Jarrold, 2009; Quas & Lench, 2007), and the opposite effect has even been reported, with verbal skills being positively associated with children's increased suggestibility (e.g., Kulkofsky & Klemfuss, 2008). This inconsistency could in part be due to methodological differences in how the *type* of verbal ability (e.g., vocabulary, receptive language, narrative quality) was assessed. (p. 581)

Though this topic is not a main focus in the manuals, here the authors summarize an array of research that demonstrates the breadth of study in this realm, the general conclusion that greater verbal fluency facilitates memory processes despite some conflicting findings, as well as the types of linguistic skills that may be relevant in an evaluation.

In addition, Melton et al. (2007) point to questions about language, memory, and comprehension of an occurrence, stating, "Children may also have difficulty grasping the meaning of sophisticated conversations. At the same time, children still seem to be able to register an event even if they do not understand it¹⁴⁸" (p. 180). Differentiating between memory, comprehension, and verbal communication adds important nuance to the conversation. Doing so affords various possible areas in which children may excel, and a number of ways for evaluators to more fully consider their interactions with the children whom they are interviewing. On the other hand, the way these issues are framed—as

prioritizing adult experience—again seems to imply that even when children can function as adults, their immaturity is problematic, making them dependent on adults to determine the correct meaning of events the children have “registered.” Along similar lines, Hobbs et al. (2014) cite research that “children who remember an event up to 14 months after it occurred do not use language in their descriptions that was not in their vocabularies when it occurred (Hayne & Simcock, 2009)” (p. 567). Introducing this notion not only speaks to another way that language and memory processes appear intertwined, but also complicates any impulse to conflate children’s numerical age with verbal communication abilities. It furthermore brings into question the extent to which children can “recall information for which they did not have those specific words earlier” (p. 567), a challenge that informs the manuals’ treatment of language and suggestibility concerns.

Perhaps unsurprisingly in light of the instructive nature of the manuals, the subject of how evaluators’ language can influence the quality of the account given by the child being interviewed receives the most attention. For example, Melton et al. (2007) caution:

Although adults who know better still often use difficult vocabulary and complex grammar in questions to children, such linguistic lapses may be the most common inhibitors of effective communication between interviewers and children.

Linguistic complexity lowers the accuracy of statements and testimony by witnesses of all ages, but it especially does so in communication with children.³⁶⁹

Good practical guides are available, however, to prompt adults to avoid such miscommunication. (p. 531)

Here the authors suggest that using inappropriately complicated diction and syntax is a very frequent impediment to eliciting accurate narratives in general, but again, communication with children is particularly fraught and therefore requires additional care on the part of the adult evaluator. Also apparent in this excerpt is the message that these “linguistic lapses” are habitual; evaluators may have the common sense to use clearer, more simplified language when engaging with children, but this knowledge in and of itself often is not enough to prevent evaluators from communicating ineffectively. This phenomenon begs the question of whether there are facets of forensic evaluation that inherently call for more complicated, sophisticated, specialized, and/or esoteric language such that it actually requires more effort for evaluators to speak plainly and accessibly than to use the “difficult vocabulary and complex grammar” of the system in place. Instead, the existing discourse places adults and children on opposite sides of a gulf that must be bridged by the evaluator adopting specialized communication strategies in order to accommodate children’s semantic immaturity and retrieve accurate narratives. There is no overt condescension or hostility towards children here, and the manual authors place accountability on the adult evaluator (rather than the child) to manage these linguistic challenges. However, this framing again implies children’s inferiority when compared to adults, and portrays children’s deficient linguistic abilities as the predominant reason such difficulties occur and accommodations need to be introduced.

In addition to the mechanics of evaluators’ language, the manuals also discuss the importance of using open-ended questions when interviewing children:

How questions are asked affects the way answers are given. When interviewing children, particularly in a forensic context, it is vital to ask open-ended questions

(Lamb, Hershkowitz, Orback, & Esplin, 2008). These questions are far more likely to yield useful, accurate, and honest responses. Asking leading or categorical questions limits the way that the child responds, and, therefore, limits the usefulness and validity of those responses. (Stahl, 2014, p. 154)

These instructions demonstrate the threatening quality of suggestibility, emphasizing that giving children as much freedom to recount their experience as possible will yield accounts that are “useful, accurate, and honest.” The handbooks propose that affording children the space to present their narratives in a manner that is their own is indisputably the best approach for evaluators to take. However, while this position certainly appears supportive of children and fostering an experience in the legal system that will best meet their interests, the authors do not name these potential advantages as reasons for (or even positive byproducts of) adopting this method. Rather, the focus here is entirely on eliciting an account that is true, and therefore valid in a forensic context. In assuming this emphasis, the authors implicitly contribute to a conceptualization that child memory/experience is either accurate or inaccurate, and that as such it can be easily “tainted” by influence from others (e.g., via “leading or categorical questions”).

Finally, the manuals also mention communication issues between children and adults in the context of how child accounts are taken up by the court at large. Introducing more adults into the picture introduces a new set of complications, and can position the evaluator expert as a translator of sorts, responsible for communicating effectively with both the child witness and an audience of adults:

[S]teps can be taken to increase the likelihood that the child’s testimony will be understandable. In the typical abuse case, children *will* appear incompetent if the

examiner uses technical vocabulary rather than slang or dolls or drawings. ... Furthermore, several courts have permitted a child witness to have an “interpreter” (e.g., a parent or child psychologist) when it appears that a child cannot express him- or herself in a nonidiosyncratic manner.¹⁹⁶ (Melton et al., 2007, p. 184)

Again, passages like this one do show sensitivity in how they acknowledge the challenges of asking children to participate in such an adult-centric system and discuss ways to manage these difficulties and support children. Yet at the same time, these instructions also reflect and perpetuate a version of reality in which children are lacking, and in which any misalignment between children’s needs and the needs of the court is more a result of children’s deficiencies than deficiencies with the forensic system itself. For example, in a hypothetical handbook that adopted the latter perspective, the first sentence of the above quote might read, “Steps can be taken to increase the likelihood that the *court will understand the child’s testimony.*” The overarching sentiment may be the same as in Melton et al., but this new phrasing subtly shifts the locus of the problem towards the adults in the court, rather than characterizing a child’s account as potentially problematic and not “understandable.”

Research is elaborated in detail, but conclusions are offered equivocally. As is evident from many of the quotes analyzed above, the manual authors continue to rely heavily on research literature in their instructions regarding child memory and experience. While this is a pattern that has been discussed earlier in the context of other topics, there are some notable differences in the ways research is engaged with on this subject. To start, the manuals are more likely to outline specific studies related to child

memory and testimony in greater depth than in other domains (e.g., effects of single parent custody, child maltreatment factors), as in this example from Hobbs et al.'s (2014) section on misleading questions:

In contrast to children succumbing or agreeing with a forensic interviewer suggestion as found in several studies (e.g., Leichtman & Ceci, 1995; Poole & Lindsay, 1995), children in the Gilstrap and Ceci (2005) study were more likely to respond to misleading questions with denial. Instead of interviewer bias predicting children's acquiescence, the children's own behavior preceding the misleading question was more strongly predictive of whether they succumbed to suggestion. These findings were obtained by a novel approach of analyzing children's reports, as they occurred in a transactional exchange throughout the interview, rather than considering only the immediate antecedent (i.e., interviewer's misleading question) of a child's error. (p. 577)

Indeed, here the manual commits to elaborating the details of this study by Gilstrap and Ceci, which is included to serve as a counterpoint to other research suggesting contradicting findings. The handbook not only presents the main takeaway of the study, but also offers further particulars about the findings and even the research design. This degree of specificity resounds throughout the manuals' coverage of child eyewitness testimony, wherein the authors explain elements of research studies like numeric age trends, question types, time delays, and methodological designs in great detail. It seems that the tendency to quantify and determine concrete facts that was evident in the handbooks' other chapters on evaluations involving children is even further magnified in their discussion of child memory and experience.

Relatedly, it appears that in this subject area, the handbook authors' commitment to presenting a balanced picture of literature is similarly magnified; one reason why so many studies are referenced in these sections is that the manuals are careful to cite studies with contradicting findings. In this climate, the authors display even greater hesitance to draw definite conclusions in the form of instructions about the theories or techniques recounted in the literature. Instead, once again they frequently call for caution from evaluators and/or additional research to help reach more definitive answers. In this prototypical example from Weiner and Otto (2014), Hobbs et al. (2014) discuss contradicting literature on how being interviewed repeatedly may affect children's memory via suggestion, before urging further research:

There are several reasons to suspect that repeated interviews may increase errors in children's reports, especially if misinformation is included in the interviews. ... In contrast, however, others argue that repeated interviews (even those with misleading questions) do not necessarily have negative effects on children's reports and, under certain conditions, that they actually may assist children in denying new false information by solidifying accurate memories reported previously (e.g., Goodman & Quas, 2008). ... Researchers should therefore avoid overgeneralized assumptions that repeated interviews compromise children's memory accuracy. (p. 579-580)

For an evaluator seeking guidance about how many times it might be appropriate to interview a child eyewitness, reading this synopsis of the literature will not provide a definitive answer. Based on the literature, repeated interviews may have deleterious, beneficial, or no effects on children's ability to report their memories accurately.

Paradoxically, the manuals may exhaustively reference facts and figures as they outline relevant research but they offer virtually no quantitative conclusions or instructions, advocating instead for balance and caution about overgeneralizing findings and rigidly applying theory or techniques.

This pattern of presenting one finding, an opposing finding, and a call for additional research appears over and over again. For example, to the question of whether children can remember events accurately after a time delay, Melton et al. (2007) expound:

When the time interval between the event and the attempt at memory recall is short, children apparently do not do appreciably worse than adults. ... As the time interval between event and recall lengthens, however, children do not do as well as adults in recalling events.¹⁵⁶ ... More research needs to be done, however, on whether children's memory fades more quickly than adults' when a particularly negative event is involved.¹⁶⁰ (p. 181)

On the subject of whether or not adults can detect children's lying, Hobbs et al. (2014) state:

Most studies indicate that adults are not accurate at detecting children's lies (Crossman & Lewis, 2006; Goodman et al., 2006) and that they are no better at detecting children's lies than adults' lies (Goodman et al., 2006). Coached lies by older children may be particularly difficult to detect (K.L. Warren, Dodd, Raynor & Peterson, 2012). However, Nysse-Carris, Bottoms, and Salerno (2011) found that adults could detect 3-to-6-year-old children's lies about their parents'

transgressions at above chance levels. A goal for future research is to better explain the difficulty in detecting children's lying. (p. 585)

Clearly, there appears to be something about the subject of child memory and testimony that evokes this particular equivocation and reliance on research. Notably, in their exposition of issues related to child testimony, Weiner and Otto (2014) shift to instructing *researchers* as much if not more often than *evaluators*, as they are more likely to do on other topics. This occurrence is less striking in Melton et al. (2007), who at times suggest that additional research would be helpful or even necessary, but rarely use phrasing as direct instructions to researchers. Still, when the text does overtly point to a need for more research, it is in the context of child testimony. Again, this tendency seems to show the manual authors' hesitance to offer specific instructions to evaluators, but it also implies a desire or need to include some sort of directives or guidelines. As described earlier, there are a number of ways to understand the handbook authors' emphasis on needing more research, none of them mutually exclusive. It can be viewed as an assumption or hope that research—or perhaps “science” more broadly—will offer more concrete and definitive answers in such a complex area. It may demonstrate prizing of special knowledge to validate the evaluator's identity as an expert. Or perhaps it can be understood as an effort to externalize or disperse some of the accountability to determine definitive “answers” when making recommendations to the court based on nebulous information. If these dynamics were at play regarding the other manual sections involving evaluating children, they appear to be even stronger in the context of child memory and testimony, given the exceptional fervor about research here. What is it about this topic that evokes this response so potently?

One clue may be found in the uncertainty the handbook authors display about the current body of research literature in this area. For Weiner and Otto (2014), this skepticism tends to manifest in their emphasis on individual variation and questions about generalizability of research findings. In a section discussing children's memory for traumatic events, for example, the chapter authors explain:

[Q]uestions arise concerning the external validity of laboratory research (e.g., how well laboratory research sufficiently mimics the levels of distress induced by criminal events) and the internal validity of field research (e.g., how well field researchers can pin down cause-effect relations). Ideally, findings from laboratory and field research lead to the same conclusions, but this is not always so. (Hobbs et al., 2014, p. 564)

This tension seems to be consistently in the background as they synthesize research on child memory and testimony, often adding caveats such as, "That said, there are important individual differences in suggestibility and misinformation effects within any age-group" (p. 572). Again, the authors model caution against overgeneralizing based on research, even when there appears to be a general consensus among pertinent studies.

Melton et al. (2007), however, demonstrate their reservations about the research in this area with outright skepticism:

Since the mid-1980s, there has been extraordinary attention by researchers to issues related to children's ability as witnesses,³⁶³ especially their suggestibility.³⁶⁴ In our view, this concern has been overblown.³⁶⁵ Research shows that most children are resistant to suggestion for salient events, although the risk of inaccurate reports in response to direct questions is highest among very young

children (e.g., three-year-olds).³⁶⁶ ... Furthermore, much of what is known about ways to minimize distortions in children's memory (as in that of adults) and to maximize the quantity and accuracy of information reported borders on common sense. (p. 531)

This argument is a bit circular; Melton et al. criticize researchers' concern with children's suggestibility as being "overblown" and then cite findings from that very research to explain why. Nevertheless, it does offer some insight as to why research is taken up in this particular way. If the authors of both manuals are in fact dubious about this particular research, it would stand to reason that their reporting of it would be infused with both detailed, equivocal exposition and a desire for more, theoretically better information.

Children's suggestibility remains a principal concern. Another factor contributing to the handbooks' simultaneous devotion to and skepticism of research in the area of child memory and testimony may be the reliance on the suggestibility model of memory that so robustly proliferates these studies. Indeed, even when Melton et al. (2007) express their explicit criticism that researchers have devoted too much concern about children's susceptibility to suggestibility, their argument is similarly dependent on a conceptualization of memory as primarily cognitive and truth as binary. In other words, defending children's general capacity to resist suggestion during the forensic evaluation process is based on the same understanding of memory that underpins the research with opposing findings. As such, it is perhaps unsurprising how clearly the manual authors instruct evaluators to be aware of, acknowledge, and manage the possibility of suggestibility when interacting with children, even as they name the difficulties of such an endeavor. Melton et al. (2007) explain:

Determining with certainty the origins of a witness's memories in such situations may not be possible. But it will obviously be useful in this regard to determine as precisely as one can when and with whom the child has talked and the content and process of these discussions. If depositions have already been taken, they should be reviewed and compared with the interview notes. As Christiansen stated in the expert above, a "child's competence as a witness cannot be determined unless these procedures have been taken into account and any effects they may have had on the child's memory have been weighed." ²²⁴ (p. 186)

Even though these authors have in other sections stated their questions about the extent to which children's memories might be vulnerable to suggestion, it is evident that the threat of suggestibility still looms large enough to declare a child incompetent to testify.

Weiner and Otto (2014) offer similar directives, advocating that evaluators be vigilant about the possibility of how outside influences may affect children's memories as well as the specific ways this suggestion might manifest in children's accounts:

Although it is difficult to predict such individual differences, child forensic interviewers should be knowledgeable about the possibility that children may incorporate interviewer suggestions or misinformation and should have appropriate expectations for children relevant to the children's ages (Lamb, Malloy, & La Rooy, 2011; Malloy & Quas, 2009). It is important for investigators and interviewers to consider how children's suggestibility can influence their reports. (Hobbs et al., 2014, p. 572)

Therefore, regardless of what the manual authors or the studies they cite say about the extent to which children's memories are affected by suggestion, they continue to

simultaneously reflect and perpetuate an account in which memory is dichotomistically true or untrue, accurate or inaccurate, pure (not influenced by others) or tainted (distorted by outside suggestion).

In addition to this understanding of memory as binary, memory is also a primarily cognitive phenomenon in this version of reality. That is, memory is also understood as a product of children's abilities to mentally encode, store, and retrieve information about various events. In fact, Hobbs et al. (2014) draw on exactly this computer science language in this example from their discussion on traumatic memory:

In any case, it is clear that, despite relatively strong retention, memories of highly stressful and traumatic events still may be subject to distortion and forgetting in children and adults (Otgaar & Smeets, 2010). ... [A]lthough memory in general is often particularly accurate and enduring for central details of events relevant to survival (Christianson, 1992), defensive processes may inhibit encoding, storage, and/or retrieval of memories of such experiences, leading to memory deficits or distortions in some individuals (Deffenbacher et al., 2004). (p. 565)

Viewing memory as a mental process performed by humans' computer-like brains is certainly not unique to these handbooks and the research they cite. Coupled with an understanding of children as having brains that are immature or underdeveloped compared to adults, however, further reinforces the discourse that children and their memory are inherently deficient. As Melton et al. (2007) instruct, "Given the realities of the courtroom situation, cognitive-developmental factors are an important consideration in evaluating the testimony of children who are younger than seven.¹⁸⁹ They should also be taken into account when interviewing such children;¹⁹⁰ several age-sensitive

techniques have been suggested¹⁹¹” (p. 184). This is the assumption used implicitly and overtly regarding age trends in memory capacity; broadly speaking, it is espoused that adults have better memories than older children and that older children surpass young children.

Memory is frequently conceptualized in terms of performance.

Conceptualizing memory as predominantly binary and cognitive leads the manuals and the research they reference to frequently discuss memory in terms of performance. Hobbs et al. (2014) make declarations like, “Overall, memory *performance* tends to improve across childhood and into adulthood, including on eyewitness memory tasks” (p. 563), “the predictors account for relatively little variability in [memory accuracy] *performance*,” (p. 580), and “instructions to improve lineup *performance* in young preschoolers (e.g., 3-year-olds) still are sorely needed” (p. 589). Melton et al. use similar language, asserting, “children as young as three and four appear to *perform* as well as adults on some recognition memory tasks” (p. 181), and stating that a particular technique “*increases* [children’s] resistance to leading questions” (p. 532). Along with this performance narrative comes the implication that both adults and children can be trained to take measures that will elicit “better” memories or statements. Hobbs et al. (2014) note, “Researchers should embrace multiple approaches to fully understand conditions that minimize or exacerbate children’s suggestibility. And there may be multiple suggestive influences on children” (p. 577-578). Along similar lines, Melton et al. (2007) explain:

Children under the age of five are likely to have more difficulty with long-term memory, resisting suggestions, and effectively communicating their observations,

but with assistance even some three-year-olds may have the capacity to report their observations accurately and understand the difference between a lie and the truth. (p. 185)

Here the authors again draw on age trend concerns, but draw attention to the potential benefit of “assistance” in shoring up a child’s ability to recount their memories accurately.

This attitude and the corresponding interrelatedness of adult and child experience during these evaluation encounters are also underscored in Melton et al.’s (2007) discussion of a structured protocol called the cognitive interview:

[T]he cognitive interview increases elementary-school-age children’s recall of facts without a decrease in accuracy, especially when the children have an opportunity to practice the technique.³⁷² Again, however, children’s level of performance depends on adults’ skill in communication. ... Other techniques that have been shown to improve elementary-school-age children’s recall include training in comprehension monitoring³⁷³ and narrative elaboration³⁷⁴ (p. 532).

These instructions presuppose that children’s memory processes can be improved with augmenting cognitive techniques; these additional strategies help compensate for the inherent cognitive deficiencies of youth. A model of memory like this one, which allows for enhancement via specific strategies and techniques, lends itself to more specific instructions to the evaluators drawing on these handbooks to interview children about legally relevant events in their lives. Melton et al. (2007) summarize a number of approaches to improve child testimony by managing suggestibility. In addition to

outlining in greater detail the cognitive interview mentioned above, they mention other approaches as well in their section on eyewitness testimony:

The clinician must also try to avoid “creating” memories. One should avoid asking about the event entirely, instead simply carrying out the third-party investigation described above. The problem with this approach is that there may be no current version of the story with which to compare earlier versions; furthermore, useful information about communication skills may be obtainable only by having the witness recount the event once again. If such an account is viewed as necessary, Yuille et al. have described the following several-stage process as a way of maximizing information while minimizing suggestion: building rapport; asking for a free narrative account; and, only if the latter appears ineffective, proceeding to open-ended questions, specific yet nonleading questions, and finally leading questions.²²⁵ (p. 186)

Here, the authors fully own the suggestibility model, and offer firm and specific instructions to evaluators (clinicians) to extract children’s accounts of their memories without distorting or “creating” false memories.

Weiner and Otto (2014) take a somewhat different approach. In their separate chapter by Hobbs et al. (2014) devoted to child eyewitness testimony, they thoroughly outline the theoretical issues and research findings regarding child suggestibility concerns. Then, in their other chapters, the authors advise evaluators to be proficient with this literature. In terms of offering particular directives, Weiner and Otto (2014) tend to focus on instructing about the conditions of the interview to be optimally supportive of children’s honesty and remembering more so than steps to minimize suggestibility. In

their section on interviewing children in maltreatment evaluations, for example, Condie (2014) advises:

The main goals in the initial appointment with a child are to set the child at ease, develop an understanding of the child's linguistic abilities, and provide a notification of the limits of confidentiality suitable to the child's comprehension (Condie & Koocher, 2008). It is helpful to begin with innocuous questions, but the questions should not inadvertently confuse the child's understanding of the purpose of the evaluation. Similarly, the evaluator should not immediately launch into discourse or questions that will raise the child's anxiety about loyalty bonds with parents. The evaluator must be alert to the possibility that some children will have been notified in advance of the evaluator's role and evaluation goals, either with accurate information or misinformation. Thus, gleaning information from the child about his or her preconceived notions of the evaluation should take place at the outset. ... An artful approach is required to determine if information provided by a child has been unduly influenced by other individuals due to recent contacts, gifts, promises, or other methods of persuasion (Stahl, 1996). (p. 265-266)

Here the emphasis is less on preventing the evaluator's influence on children's memories and more on providing appropriate interview conditions and then relying on one's expertise (and "artful approach") to determine the extent to which a child's account has been altered by others. In other words, the handbook appears to make a distinction between "whether *the memory* of the event has changed or whether *the report* of the memory has changed" (Hobbs et al., p. 577) and to offer more explicit instructions about analyzing the latter than preventing the former.

Summary: Forensic Handbook Account of Child Memory and Experience

The preceding analysis of two widely-used forensic assessment training manuals' instructions to individuals conducting evaluations involving children offers an in-depth examination of both *what* reality the discourse in the handbooks assumes and *how* they present it. At the global level, the two manuals in the dataset are quite similar in terms of physical characteristics, and have considerable overlap in terms general content. There are some differences between the handbooks, though, and for the purposes of this discourse analysis, the most important divergence between these handbooks is in visible multivocality. PEC (Melton et al., 2007) is authored by three primary individuals and formatted in Chicago style, which cites references using anonymous superscript numbers corresponding to endnotes at the end of the book. These factors downplay individual contributions to the text, thereby lending a more monolithic quality to the discourse therein. HFP (Weiner & Otto, 2014), however, is composed of chapters each written by a different contributor or team of contributors, with two editors named as the primary authors of the manual at large. In addition, this handbook is formatted in APA style, citing sources by their author(s) last names and year of publication in parenthetical notes embedded in the body of the text. These features make the multivocality of the text more prominent, and draw more attention to the great number of experts contributing to this version of reality. .

Moving to a more granular analysis revealed a total of ten of patterns across the handbook instructions. I have categorized four as “foundational patterns” because they provide foundational context about the evaluation process from which to more fully understand how child memory and experience are taken up in the handbooks. They are:

- Exercise caution.
- Clarify the evaluator's role.
- Be familiar with research literature, evidence, and its limitations.
- Conduct thorough evaluations and write balanced reports.

Unsurprisingly, these patterns emerged largely in response to questions about what, exactly, the manuals are instructing. As such, they tend to focus on how evaluators should best approach evaluations involving children. In doing so, the manuals present the identity and role of the evaluator as a cautious, neutral expert who is thoroughly meticulous in studying relevant research literature, gathering supplemental data, and writing balanced reports. This evaluator remains humbly aware of the limitations of her/his expertise and of her/his role as consultant to the court rather than ultimate decision maker.

In addition, I have also described six patterns that specifically surfaced within the context of child memory/experience:

- Child experience is deeply intertwined with and influenced by adults.
- Child experience is defined relative to adult experience, and as such is often presented as deficient.
- Language impacts children's memories and accounts of those memories.
- Research is elaborated in detail, but conclusions are offered equivocally.
- Children's suggestibility is a principal concern.
- Memory is frequently conceptualized in terms of performance.

These patterns are in keeping with the first research question guiding this study: What version of child memory/experience is constructed in forensic psychology manuals, and what are the practical implications of these implicit and explicit assumptions?

To start, the handbooks portray child experience in general as profoundly intertwined with and influenced by adults. While their embeddedness within family and social systems might be inevitable, tolerable, or even useful in many contexts, the manuals present a narrative in which this interrelatedness poses a threat to the integrity of children's memories and accounts. The handbooks assume that in the realm of memory, influence from adult parties—including parents, teachers, evaluators, and other members of the forensic system—distorts children's accounts and is therefore to be protected against and ideally avoided completely. The implication here is that memories are one aspect of child experience that is fundamentally self-contained, that is, not related to other people until the memories are voiced in conversation. Additionally, in the manuals, these memories must remain unaffected by others in order to be considered accurate and valid. These features are in keeping with the suggestibility model of memory, which is heavily drawn upon in the handbooks.

Another tenet of the suggestibility model that is espoused by the manuals is conceptualizing memory as a cognitive enterprise, an amalgam of encoding, storage, and retrieval processes performed by the brain. Because the handbooks echo a larger societal position that children's cognitive capacities are immature and thus inferior to adults', viewing memory this way also deems children's memory processes as deficient, or lacking. The manuals tend to describe children's communication, particularly verbal communication, in similar terms, and cite these issues as further complicating the

prospect of obtaining an *accurate* account from a child being evaluated. Adopting this approach to memory lends itself to considering the act of remembering in terms of performance (e.g., how much or how accurately a child can recall and report), and consequently suggesting strategies to help optimize a child's performance. Even as they refer to and outline these strategies, however, the manuals also reveal deep uncertainty, skepticism, and/or equivocation about drawing definite conclusions regarding children's memory capacities. This ambivalence is expressed through presenting an array of opposing research findings before advocating for additional research, or more directly by espousing additional caution or criticizing the current body of literature outright. It seems that the handbooks construct an account that reveals the limitations of conceptualizing child memory in this way, but this account then also suggests these problems might be best addressed with further research that assumes the same suggestibility model. The following discussion section offers further elaboration of the assumptions informing these conclusions, as well as some of their potential functional consequences. It also explores an alternative approach to child memory/experience—phenomenology—and possible implications of applying this framework in forensic settings.

Discussion

To consider these manuals as employing a discourse is to recognize them as both reflecting and perpetuating their narrative within a broader institutional landscape, and to appreciate the functional power that comes with presenting the narrative in an authoritative manner. What are the assumptions that underlie this discourse about child memory and experience, and what are the practical implications that follow? One theme that warrants further elaboration in this context is the assumption that adult memory and

performance is superior to that of children. It is important to note that the version of reality in constructed in the manuals does not overtly vilify children for their immaturity; on the contrary, there are times when the account appears quite sympathetic to what it presents as children's vulnerabilities:

It is important to avoid emotionally or morally laden phrases, such as “Bad things that happen to children.” Developmentally, children are likely to blame themselves for “bad things,” and they are unlikely to desire permanent separation from parents even when those parents have maltreated them (Condie, 2003). From their limited points of reference and experiences, “bad things” might be interpreted quite differently by children, or may pale in comparison to other events or qualities of individuals. There should be an assumption that their egocentric interpretation sometimes precludes comparisons and contrasts. (Condie, 2014, p. 266)

Still, despite the apparent concern and even respect for children's experience and the ways it differs from adults', the language the author uses continues to perpetuate the narrative that children's differences make them inferior. They have “limited points of reference” and are at heightened risk of overly “egocentric interpretation.” The assumption that adult experience is superior to children's is certainly not unique to the realm of forensic assessment—one need only compare the connotations of what it colloquially means to say an individual is acting “like a child” versus “like an adult.” When considered in the current study, however, one consequence of this narrative is the proclivity to presume that adults know what children's experience should be rather than being open to what arises on its own terms. Relatedly, imploring the evaluator to take

steps to manage these risks on one hand adopts a sympathetic view, but also assumes that adults have the power and authority to enable children to give their “actual” or “appropriate” voice (i.e. one that will be understood in court, or memories that are true, accurate, etc.). This is also a functional consequence; in making this assumption, the manuals continue to cede this power to adults.

Furthermore, perpetuating a hierarchical schema based largely on age demonstrates an implicit expectation that children fit into an adult system, and that a predominant role of evaluators is to facilitate this mission. Given that the forensic system leans incredibly adult-centric, evaluators are instructed to take measures to solicit accounts from children that are appropriate for the court, even if this means having to “translate” or “interpret” young children’s language. Though the manual authors devote more energy to the ways evaluators can help children adapt to the system rather than suggestions for systemic adaptations, both handbooks do mention the possibility of the latter, most often using the language of “accommodations.” Both handbooks also report a tepid or even controversial view of these actions in the field. For example, when talking about mitigating potential testimony altering stress on child eyewitnesses, Melton et al. (2007) state:

Concern over these effects has led some states to construct elaborate procedures for taking juvenile testimony in abuse cases, including use of screens and television monitors to distance the witness from the defendant and the trappings of the courtroom.²¹⁵ Yet these procedures are seldom used,²¹⁶ apparently because prosecutors perceive live testimony to be more influential, fear creating appealable issues, and lack the necessary financial resources.²¹⁷ (p. 185)

Weiner and Otto (2014) echo this sentiment in their discussion of closed-circuit television (CCTV), which allows children to testify in cases without being physically in court, again to alleviate the associated stressors. In their chapter, Hobbs et al. (2014) explain that variations of this method and other video technology is standard in many countries, including Australia, New Zealand, the United Kingdom, Finland, Norway and Sweden, before turning to the United States:

One-way CCTV is employed at times in the United States although it remains controversial as some argue that it violates the 6th and 14th Amendments of the U.S. Constitution, which provide defendants the right to confront their accusers during criminal trials and to due process, respectively (Hall & Sales, 2008). (p. 595)

The implication here is that while children may benefit from systemic modifications, this is not happening regularly or readily in the United States. One factor contributing to this occurrence may well be the assumption that children are lesser than adults, a narrative which subtly places more responsibility on children to change than on a need for institutional shifts. There is little mention in these sections or in the manuals more broadly about the system's contribution to this dynamic, for example the fact that it requires particular language and a particular model of memory, neither of which seem especially well suited for children.

Indeed, the manuals frequently follow their own instructions by transparently naming the problems and limitations of the research they draw on and the practices they recommend. However, when advising about how to manage these challenges, the handbooks often suggest that evaluators proceed cautiously or that researchers perform

additional studies according to the suggestibility model of memory. These measures may be useful in some ways, but both maintain the adult-centric viewpoint. Another way of addressing the limitations outlined in the manuals is to put their existing discourse on child memory and experience into dialogue with another perspective, one that prioritizes understanding the lived facets of child memory and child experience. For this we now turn to phenomenology, and the second research question guiding this study.

Memory and Child Experience: Phenomenological Perspectives

By relying largely on a suggestibility model of memory, the forensic psychology handbooks in this dataset both reflect and perpetuate a discourse that assumes child memory is primarily cognitive. As such, memory is situated as a fundamentally personal, private process, which in turn makes it vulnerable to distortion when brought into the public realm via recounting, conversation, or interviewing. In addition, memory becomes measurable in terms of performance, and therefore can be enhanced by introducing particular techniques and strategies, or hindered in their absence. This notion heightens an emphasis on determining the factual truth and accuracy of children's memories, and assigning value or credibility based on this standard. Now that we have some idea of the version of child memory and experience constructed in these manuals, we can build on the analysis elaborated in the preceding pages by turning to the second question guiding this research: How does this conceptualization compare with phenomenological constructions of child memory and experience, and what are potential practical implications of accounting for the lived experience of remembering in this context?

Perhaps the most significant way a phenomenological approach complicates this discourse is by approaching cognition as only part of a much broader, more nuanced

picture of how people—and children in particular—remember. In his comprehensive phenomenological study of memory, Casey (2000) pointedly “pursue[s] memory beyond mind by recovering its roots in the world itself” (p. 144), specifically in terms of body, space, things, and the social realm. Emphasizing these external loci of memory dovetails especially seamlessly with phenomenological understanding of child experience, where scholars like Rojcewicz (1987) and Simms (2008) expound on “children’s natural tendency to attend to the *bodily*, sensuous world around them” (Simms, 2008, p. 221), as well as to the role of adults in influencing and interpreting child experience. Language is a related area of particular bearing in considering these issues (Simms, 2008; Ricoeur, 2004). Allowing for the fluidity of memory across body, world, and others, however, problematizes our traditional notion of truth, including pull to categorize memory *either* factually true *or* false. The following pages explore these primarily non-cognitive dimensions of memory as they apply to children, as well as the impacts of this endeavor on our way of viewing truth in child memory, and finally implications for forensic evaluations involving children.

Memory, experience, and cognition. Again, conceptualizing memory as a predominantly cognitive process is a hallmark of the version of child memory and experience constructed in these handbooks and the suggestibility framework from which they draw. This is abundantly clear, for example, in the lengthy discussion of various theoretical perspectives explaining the origins of suggestibility and the “memory report errors” (Hobbs, Johnson, Goodman, Bederian-Gardner, Lawler, Vargas, & Mendoza, 2014, p. 572) included in Weiner and Otto (2014). Interestingly, though the authors claim that both “cognitive and psychosocial mechanisms that develop throughout childhood

bolster one's abilities to resist suggestion or misinformation" (p. 573), there is little additional mention of such "psychosocial" contributions. Instead, the manual describes a number of specific understandings of how memory works (or doesn't), related entirely to cognition. They aver:

From a memory trace theoretical perspective, memories are preserved as traces, a consolidation of current features or attributes related to the person and event. When activated, these traces assist in recalling the details associated with that memory. Pezdek and Roe (1995) asserted that when memory traces are strong (i.e., they contain elaborative details, such as of time, place, individuals involved in the event) and are preserved during memory storage, they will be most resistant to suggestion. (p. 573)

They continue:

This idea of strong versus weak traces is also relevant to Brainerd and Reyna's fuzzy-trace theory (FTT, 2002), which stipulates a dual process model for memory encoding and retrieval processes. Memories are represented as either verbatim traces, which hold specific details about the memory, or gist traces, which hold the general meaning of the memory. ... As verbatim traces hold more details that cannot be maintained for every memory experienced, these traces decay more quickly, often leaving only the gist trace behind. (p. 573)

And finally:

According to [source monitoring] theory, details for memories are discriminated against one another via a decision process in which one attributes the source of these details using perceptual processes (i.e., perceiving a cue) and cognitive

processes (e.g., retrieval strategies). During retrieval, individuals engaged in decision processes regarding source information (*where, when, what, and with whom* details of events). Cues that are retrieved are evaluated with reality monitoring (i.e., deciding if the detail actually occurred in reality or if it only were thought about), and external monitoring (i.e., deciding if details were from this event or another event) processes. (p. 574)

The mentalistic framing in this discussion is prolific and robust, with language that often subtly likens human brains to computers or other machines. It is unclear if this conceptualization stems from the research the manuals are citing, the chapter authors themselves or, (most likely) both, but regardless the effect is to locate memory processes squarely in one's brain.

Given that Weiner and Otto (2014) have an entire chapter devoted to children's eyewitness testimony, textual evidence of this trend is more abundant in their manual than in Melton, Petrila, Poythress, and Slobogin (2007). Melton et al. (2007) (again, with superscript endnote references included here) also mention two non-cognitive explanations contributing to children's suggestibility in a bit more detail than Weiner and Otto (2014):

This correlation between age and suggestibility can be explained in a number of ways, none of them mutually exclusive. It is likely due in part to children's weaker memory over time, discussed previously. It is also likely due to young children's greater respect for authority—a hypothesis bolstered by simple learning theory, which suggests that children's behavior will be shaped by their perceptions of adults' expectations.¹⁷¹ Finally, it may have something to do with

children's moral development. As Fodor discovered,¹⁷² children who yield to the suggestions of an adult interviewer tend to score lower on assessments of level of moral judgment (according to Kohlberg's criteria) than children who resist such suggestions. (Melton et al., 2007, p. 182)

Still, there are multiple instances from which it is clear Melton et al. (2007) consider memory itself to be primarily cognitive, such as when they inform readers that "Recall memory requires more sophisticated cognitive processes than recognition memory" (p. 181). They also outline a specific evaluation technique called "the 'cognitive interview,' which relies on mnemonic principles to increase the amount of information provided" (p. 531) by children being asked to recall the circumstances of a crime in maltreatment evaluations.

This appreciation for memory as a cognitive process also manifests in both manuals when they attribute children's memory "errors" to their cognitive immaturity. As elaborated more thoroughly in the analysis section, both handbooks frequently measure child experience according to how closely their memory performance can match the standard set by adult memory performance. This results in statements like, "According to Ceci, children over 10 or 11 years of age tend to show adult levels of resistance to leading questions.¹⁶⁷ But children under 6 may acquiesce fairly frequently..." (Melton et al., 2007, p. 182), and "the ease with which false memories can be implanted tends to decline as children age and acquire more cognitive abilities that allow them to create lasting memories and monitor intrusions (e.g., Ghetti, 2008; Otgaar & Candel, 2011)" (Hobbs et al., 2014, p. 575). In contrast, adopting a phenomenological approach loosens this adult-centric conceptualization. Rojcewicz (1987) draws on Merleau-Ponty to succinctly

summarize a critical aspect of child experience that is often naively overlooked. He asserts, “the consciousness of the child has its own structure; the child is *not* an adult in miniature, with a consciousness like that of the adult, only imperfect, incomplete” (p. 201, emphasis added). Here Rojcewicz reveals a societal tendency—both overt and implicit—to prize adult being-in-the world as the aspirational culmination of human maturation, and therefore to view child experience in terms of its relative deficiencies. Considering child experience in its own right, however, frees the endeavor from predetermined evaluative measures, and enables one to appreciate what distinguishes this way of being without necessarily interpreting its qualities as lacking. What this practice reveals, Rojcewicz contends, is that children live in the realm of the phenomenal (i.e. the lived, sensory world) rather than in the scientific, intellectual adult realms.

A conceptualization of child memory as reductively mentalistic simply does not make sense when one appreciates the primacy of the phenomenal in children’s habitual way of being. Given the constitutive link between memory and experience, we must begin by inquiring about how children live, how they experience the world, in order to begin to understand how children remember. Consequently, we must turn our attention to the foremost non-cognitive dimensions of child experience—body, space, things, and others—to explore their role in child remembering. Not wanting to fall into the trap of defining child memory in terms of how well or poorly it aligns with the framework of adult memory, I will explicate how each of these dimensions is experienced by children, as well as phenomenological understandings of memory structures in general. Doing so will facilitate my inferring what this might imply for child memory, particularly in a forensic context. It should be noted that the distinctions among these categories of

experience are in some ways illusory, as is referring to them as “non-cognitive.” Drawing on a phenomenological stance assumes the profound interconnectedness among the various dimensions of experiences like memory. As we shall see, phenomenological inquiry about body memory, for example, implies a non-objectified body that is not entirely divorced from space, things, others, or even cognition. Nevertheless, naming each dimension allows us to access and communicate what is particular to it, as well as how it interacts with other dimensions.

Body and space. In the context of child experience, it is difficult to overstate the significance of the body, but it is also impossible to speak about the body without also speaking about space. For children, body exists only as the lived body, which is to say the body that exists in profound reciprocity with the world. In the realm of the phenomenal—where children dwell—space is primarily, richly sensory, and these sensory experiences occur through the body. This interaction can be so profound that it is not uncommon for toddlers to unintentionally fuse their own consciousness with the spatial features of the world around them:

[T]he concept of the body as a self-enclosed entity remains vague for a long time. Children, like adults, encounter the body’s limits in pain: falling down hurts, touching the hot stove burns. Pain recoils the body upon itself for a while and reduces the action space. But we know from preschoolers that even pain is not so much located in the body as in the thing that causes it. There are many stories of children crying when someone else is hurt: one’s own body is confused with that of the other. Or a toddler might slap the door after bumping into it... *The body as mine is given to me not in itself and through the recognition of the boundedness of*

its skin but as an element in the equation of action space. Space clings to bodies because bodies have an action history. (Simms, 2008, p. 42, emphasis in original)

This body-space nexus has implications for identity development as well. Rojcewicz (1987) claims that children only know their bodies as the means of “mak[ing] contact with the world” (p. 203), while Simms (2008) draws a similar conclusion from the other direction, explaining that “people, spaces, things, time, and language are part of the evolving fabric of a child’s embodied self” (p. 24). Therefore we see that the child’s lived body makes the world, even as the world makes the lived body, in an ongoing interaction that forms one’s identity.

This body-space primacy may be especially applicable to children, but Casey (2000) also underscores the significance of body memory to human memory more broadly. Invoking Whitehead (1978), Casey (2000) contends that because “the body is ‘our most immediate environment’” (p. 174) through which we encounter all experience, “*there is no memory without body memory*” (p. 172, emphasis in original). He also describes three types of body memories in depth: habitual, traumatic, and erotic, comparing differences in affective quality and temporal orientation among them. These distinctions hold particular relevance when considering memory in a forensic context, especially given how frequently questions of suggestibility effects arise in cases of suspected child sexual abuse. Whereas Casey (2000) defines habitual body memory as “an active immanence of the past in the body that informs present bodily actions in an efficacious, orienting, and regular manner” (p. 149), he describes traumatic body memories as those that “arise from and bear on one’s own lived body in moments of duress” (p. 154). Casey (2000) recognizes a number of attributes as specific to traumatic

body memories, including their particular (rather than habitual or repetitive) nature and the fragmentation of the lived body (in contrast to the coordinated body of habitual memory). He also reasons that traumatic body memories are more distinctly situated in the past than are other forms of memory, in part because of a defensive distancing that seems to occur automatically. “If the trauma I am now remembering occurred *there* and *then*,” Casey (2000) explains, “it cannot have such a devastating effect on me *here* and *now* as I remember it” (p. 157).

This conceptualization in many ways aligns well with current psychological thinking about trauma, including that one of the accomplishments of productive psychotherapy is that it creates a space in which to safely bring the many complicated dimensions of past memories into the present. Yet Casey (2000) does not discuss instances in which the memory is of a trauma that has been inflicted upon one’s body by somebody else. He briefly mentions a traumatic body memory of falling down the stairs in his childhood as an example of how “the pain and poignancy of most traumatic memories recede with time” (p. 156), a process facilitated by one’s ability to “transform these memories into reminiscences and recollections” (p. 156). How might this process, and perhaps the structure of the memory itself, might be different if, say, Casey’s mother had intentionally pushed him down the stairs? In addition, what happens to the memories of repeated trauma that is so tragically common in cases of child abuse? Do they become less particular, less fragmented, and less finite than the isolated event of a tumble down the stairs?

These questions are even further complicated in the case of sexual traumas. Casey (2000) draws a clear distinction between traumatic body memory and erotic body

memory but does not mention sexual assault or abuse. He only addresses erotic body memories as positive, pleasurable experiences, so much so that he includes the anticipation of a future erotic experience as a significant temporal component characteristic of this sort of memory. But of course there are many instances of erotic experiences that are not pleasurable, and are not remembered as such. Based on Casey's (2000) work, it would stand to reason that the more categories a memory fits into (habitual, traumatic, erotic), the more affectively and temporally conflicted it becomes. Subsequently, it would also seem that the more conflicted these memories are, the less they fit with the forensic system's assumption that accurate memories originate as perfect recordings of events that are then at risk of becoming distorted by external factors through the process of being recounted. For children, in whose experience bodies and worlds are especially figural and especially joined, the potential for these conflicts warrants even greater respect and sensitivity.

Things and others. Simms (2008) demonstrates once again the fluidity among dimensions of experience in her rich description of the relationship between children and things. Children navigate a world brimming with things, each inviting engagement and texturizing the other dimensions of lived experience. The diction here is intentional, for Simms (2008) refers to the German use of word *thing*, that is, as a *gathering*. For children in the phenomenal realm, a thing “gathers sensory, spatial, social, and temporal meaning around it” (p. 83). Things hold this gathering of lived experience and thus become handles, portals to these not-presently-manifest experiences, homes for memories. Things function in similar ways for adults (Casey, 2000), but seem to have a particular resonance in child experience (Simms, 2008). This becomes quite clear in a child's often

inconsolable distress when a beloved thing gets lost or breaks. The experience for a child is not only of a material loss, but also an existential one. In addition, things, with their stable, material concreteness, offer children a means of accessing the liminal space between a not-yet-fully-formed self and the ever-expanding environment. This function is well captured by “transitional objects” (in this context, “transitional *things*” is more apt), which Winnicott (1971/2005) introduces as “objects that are not part of the infant’s body yet are not fully recognized as belonging to external reality” (p. 3). The transitional thing tangibly manifests the lived fluidity between body and world for children.

The transitional thing also points to the important role of others in child experience. With its soft and body-conforming properties, the transitional thing serves as “an extension of the maternal field” (Simms, 2008, p. 98), a vital function for the infant whose experience is so dominated by the most intimate coexistence with the mother (and then other caregivers). While physical proximity and interconnectedness between parent and child wane as the child ages, children remain firmly and thoroughly embedded in the world with others. As a result, our experience, our identities and worlds, are all co-constituted by these others. In terms of child memory, Simms (2008) sums up the implications of a highly interpersonal lived experience by stating concisely, “Our early memories are cocreated by others” (p. 149). Casey (2000), too, masterfully complicates the notion of personal authorship and ownership of human memory, of arguing that if “there is no such thing as strict self-identity, or rather, such identity is thoroughly inter-subjective from the beginning” (p. 244) then the same can be said for memory. In other words, the inter-subjective experience of the phenomenal realm into which we are thrown yields inter-subjective memory of that experience.

The notion of a memory as an amalgam of multiple inter-subjective experiences is as present in a suggestibility model of memory as a phenomenological one. In the suggestibility dependent forensic system, however, this amalgam memory is regarded as “tainted,” “distorted,” and/or “inaccurate,” the unfortunate and possibly outcome of undue external influence or improper interview techniques. A fundamental philosophical difference in phenomenology is conceptualizing memory as *always* inter-subjective; there is never a time when it is not influenced by the rememberer’s situated context. As such, the idea that a memory can be invalidated due to outside influence is simply nonsensical.

Indeed, as opposed to the all-or-nothing, either-or dichotomy that underpins a suggestibility framework and frequently renders child narratives unreliably tainted, phenomenological study describes a conceptualization in which memory can be both intimately personal and indicative of my autonomy even as it is shared with and influenced by others in my world. Casey (2000) goes on to eschew concern that these worldly influences will dilute the potency or truth of a memory in some way, instead claiming the opposite:

I am more, not less, autonomous when I remember in place and about place, in and with my body, in and through others. The range as well as the subtlety of my remembering is enhanced as I enter more fully into my memorial *in-der-Welt-Sein*. The same is true of the mnemonic modes studied in Part Two. By reminding myself and others, I am a more autonomous agent in the world, less dependent on the whims of others or on the vagaries of circumstance. ...At every step, an increased density goes hand in hand with an undiminished autonomy. (p. 266)

Rather than decrying inter-subjectivity as a threat to personal experience, Casey (2000) affirms that memory's reciprocal influence on and from the world, including other individuals, actually promotes autonomy.

In a related vein, Ricoeur (2004), too, places the issue of "mine" and "not-mine" at the core of his work, affirming early on that, "This conjunction between (external) stimulation and (internal) resemblance will remain, for us, the crux of the entire problematic of memory" (p. 17). Grounding his text in comprehensive historical examples, Ricoeur (2004) devotes a large section of his Part 1 to gently wending his way towards a harmonious negotiation of seemingly opposing limit theories (i.e. Augustine's "tradition of inwardness," (p. 96) with Maurice Halbwachs "external gaze" (p. 120)). In the case of personal and collective memory, Ricoeur (2004) finds a way of navigating the personal and social spheres of memory through the work of Alfred Schutz:

For [Schutz], the experience of others is a given as primal as the experience of the self. Its immediacy is less that of cognitive evidence than that of practical faith.

We believe in the existence of others because we act with them and on them and are affected by their actions. The phenomenology of belonging is then free to provide itself with its own conceptual system without any concern with deriving it from an egological pole. (p. 130)

Ricoeur contributes an original thought to this sentiment, reminding readers that the collective other is in fact populated by many individual others, and that our "close relations" (p. 131) can be drawn on to help bridge a potential gulf between memory that is entirely personal (perhaps blocked or unable to be languaged), and memory that is shared at the level of the collective.

In a similar vein, the forensic manuals also note that children involved in these evaluations speak more freely and openly to people with whom they feel a certain degree of security. Hobbs et al. (2014) report that “the person to whom children most often disclose certain crimes (e.g., child sexual abuse) is a nonoffending parent, typically mothers” (p. 578), and also cite research whose “findings suggest that children, when comfortable and familiar with the interviewer, correct errors and resist suggestion more easily than with a stranger” (p. 579). Melton et al. (2007) also emphasize the importance of first “building rapport” (p. 186) with children being interviewed, in service of “maximizing information while minimizing suggestion” (p. 186). Weiner and Otto (2014) even reference evidence that these conversations can facilitate memory processes, saying, “discussions parents have with their children about traumatic events can assist with the encoding and storage processes necessary for memory retrieval (Chae, Ogle, & Goodman, 2009)” (Hobbs et al., 2014, p. 567). Just as with body, space, and things, children’s worlds are acutely interrelated with others, and thus their experience of remembering is likewise intertwined with these existentialia (facets of our lived world). Both suggestibility and phenomenology models suggest that providing different conditions and contexts for children to engage in remembering will likely impact the recounting of the memories. It seems that utilizing close, familiar relations in forensic evaluations may be one area that could better support children in the process of reporting memories, especially those that are (in Casey’s (2000) terms) highly conflicted in terms of moodedness and temporal orientation.

Memory, experience, and language. In both the handbooks as well as phenomenological studies of memory and child experience, the topic of language

receives a great deal of attention. Verbal language serves as a primary point of intersection via which children interact with the adult others in their lives, especially in the context of forensic evaluation. As such, the ways evaluators and children speak to one another becomes a point of focus in the forensic assessment manuals. As the analysis section of this study describes in depth, the way the handbooks discuss this issue again demonstrates many of the broader assumptions their account adopts about child experience. In short, they tend to operate from the narrative that because of children's cognitive immaturity relative to adults, their linguistic capacities are underdeveloped and potentially lacking. Thus evaluators need to be cautious when interviewing children, adopting carefully researched strategies and techniques when appropriate, and a degree of skepticism when managing children's testimonies, which can require interpretation in order to be meaningful to adults. In Weiner and Otto (2014), for example, Stahl (2014) issues this cautionary instruction to evaluators interviewing children in custody cases:

Evaluators must recognize that children's language skills are not the same as adults'. It is important to know that, although children often do not understand their questions, they may respond as if they do. It may be useful to ask children to repeat or to explain the questions to be sure that they understand them. (p. 154)

Similarly, Melton et al. (2007) warn evaluators that "If an event cannot be communicated in a coherent, meaningful way, a witness's observation and memory of it are useless to the factfinder. Consequently, a person's ability to conceptualize complex events and to order them in space and time are of major legal importance" (p. 183). Excerpts like these reveal the sentiment that not only do children and adults communicate differently, but

also that the way the forensic system is currently structured habitually prioritizes adult ways of communicating and remembering.

Thus it is logical that Melton et al., (2007) devote a section of their section on eyewitness testimony to advising evaluators on factors to consider when determining just how much like adults children are capable of communicating:

Shaffer has stated that “by age 5, children not only understand most of the grammatical rules of their native tongue but are also constructing remarkably complex, adultlike sentences.”¹⁷⁹ But children below that age, and indeed some children above it, may not be able to communicate their observations effectively. For example, to Piaget, the well-known theorist of child development,¹⁸⁰ it was a truism that “preoperational” children, often up to age seven, are unable to “decenter” from the most obvious attribute of a stimulus and make use of all relevant information. (p. 183)

Demonstrating a thoroughness typical of these manuals, they then go on to describe research from critics of Piagetian theory, questioning if children’s responses to Piaget’s now famous tasks result more from cognitive immaturity or “linguistic deficits”¹⁸³ (p. 183). They also note that “preschoolers can be trained in conversation skills, contrary to the Piagetian hypothesis that the necessary cognitive structures would not be expected to have developed adequately” (p. 184). Still, Melton et al. (2007) ultimately conclude that children are lacking when compared to the adult standards the courts require, and that limitations of the system pose further challenges to the task of “enhancing” children’s language abilities and ensuring better communication:

These studies do not moot the point, however, that young children are likely to have difficulty in conceptualizing complex events. Borke, for example, has admitted that some of Piaget's tasks are "cognitively too difficult" for children below the age of five.¹⁸⁷ And although the work of Brainerd and others indicates that children's capacities can be enhanced with training,¹⁸⁸ such training is not always available or feasible. (p. 184)

In the manuals and the suggestibility model of memory they promulgate, language appears to be another way children are inferior to adults, and as such operates as another barrier to the encoding, storage, and retrieval of "accurate," "true," and "valid" memories.

From a phenomenological perspective, language serves as an example of the complex interrelatedness of the perceived, felt world and the constituted world of mentalistic abstraction. In languaging an experience, a memory, one has entered the human, symbolic world of reflexivity. To flesh out the consequences of this shift, it is helpful to consider phenomenologist Merleau-Ponty's (1962) hyperdialectic, which conceptualizes human experience (and time in particular) structured not as a linear causality, but rather as a "web of intentionalities" (p. 373). Here Merleau-Ponty refutes the popular assumption that past circumstances precede and cause present circumstances, which precede and cause future circumstances, proposing instead that time is a web, such that change in one area affects change in all the others in intricate ways. The hyperdialectic offers a model for understanding that in language, the move to the symbolic realm alters the perceptual field, and thus time, body, place, affect, etc. From a phenomenological position, putting language to memory, especially in speech, invariably

alters the memory experience. In contrast to a suggestibility framework, this is inherently given, and not inherently problematic.

Ricoeur (2004), too, takes up the issue of how languaging experience (memory) can alter the experience itself, and extends the discussion to consider its interpersonal implications as well. In his section chapter titled Personal and Collective Memory, he writes:

In its declarative phase, memory enters into the region of language; memories spoken of, pronounced are already a kind of discourse that the subject engages in with herself. What is pronounced in this discourse occurs in the common language, most often in the mother tongue, which, it must be said, is the language of others. But this elevation of memory to language is not without difficulties.

This is the place to recall the traumatic experiences mentioned above in connection with thwarted memory. Overcoming obstacles through remembering, which makes memory itself a work, can be aided by a third party, the psychoanalyst among others. (p. 129)

In this excerpt, Ricoeur elucidates that ascribing language to memories is in and of itself a move away from direct experience (even though we know our direct experience can never fall away entirely). This passage introduces Ricoeur's (2004) discussion of how the highly personal, intimate, individualized qualities of what he calls personal memory enter through language into the shared domain of the other, i.e. collective memory.

Here Ricoeur explicitly alludes to some of the implications for this process, mentioning psychoanalysis as a model example of a situation in which speaking "the language of others" with a "third party" facilitates the therapeutic project of "overcoming

obstacles.” Notably, the nuances of his description are to some degree the inverse of suggestibility model, which operates out of fear that speaking with another person will impose obstacles to accessing the most truthful account of one’s experience. Again, in thinking phenomenologically about memory, we can start to appreciate how at the level of lived experience, boundaries between self and world are quite permeable, a phenomenon very clearly associated with our experience and understanding of remembering.

It is important to point out, however, that this focus on verbal language is another example of the adult-centric lens through which the manuals tend to view child experience. Just as a phenomenological perspective broadens the notion of memory to include non-cognitive dimensions, it similarly expands the notion of language to consider means of communication beyond the lexical. This view is again rooted in the assumptions that in human experience, and for children in particular, the lived body is primary, and that it is intricately enmeshed in the lived world (including space, things and others). This mutually hermeneutic relationship is most figural in infant and pre-verbal child experience, and is in part due to the communicative capacities of the lived body. In infancy and childhood, the incredibly expressive gestural functions of the body-in-the-world are relied upon in more explicitly than they are for a literate, linguistically fluent adult (Simms, 2008). Regardless of the extent to which adult society prioritizes verbal communication, however, speech is embedded in the lived body, which co-constitutes the lived world. As Simms (2008) describes, “gesture arises out of the chiasm between body and world” (p. 180). The symbolic properties of language are especially germane to the subject of memory, given the power of language to summon the presence of a

phenomenon even when it is no longer in our immediate domain. In this way, experience “becomes memory because it has been preserved in narrative” (p. 190). Ricoeur (2004) speaks to the therapeutic power of narrating past experiences, especially traumatic ones, in the presence of a trusted third party, as bringing this memory into a common language enables it to be collectively shared and thus experienced in a new way. In terms of children, Simms (2008), too, draws parallels between language and play, and both she and Winnicott (1971/2005) offer illustrative examples of play therapy as analogous to the process Ricoeur (2004) describes.

Though perhaps not as readily accessible to our cerebral adult sensibilities, one might wonder whether our bodies and spaces communicate in their own languages. Given how intrinsically meaningful these dimensions of experience are in child experience, it would seem likely that they each carry their own way of narrating the lived past such that it can again become a lived present. Casey (2000) concludes that the body does, in fact, have its own non-verbal way of remembering, as he affirms, “many body memories (above all, habitual ones) need not be accompanied by consciousness in any explicit form” (p. 178). In children this body memory is perhaps demonstrated by the neonates who pre-reflectively recognize their mothers’ voices, or the preschoolers whose daily routine is so internalized that their legs habitually carry them to the music circle after cleanup time. As for space, there is evidence to suggest its language is an affective one, as with Simms’s (2008) conclusion that “early spatial experience is suffused with feeling” (p. 45). Like Simms—and Rojcewicz (1987)—Casey (2000) also emphasizes the inextricability of body and space, and notes that they infuse one another with a particular and enduring affective quality. This emotional charge engenders a body-space amalgam,

such that one will not be remembered without the other. With language, both verbal and otherwise, we see even further examples of the fluidity between self, world, and others, and the implications for children's memory are perhaps even more visible.

Memory, experience, and truth. This section began by elaborating four non-cognitive dimensions of child experience through a phenomenological lens. Each of these dimensions, however, also exists in an objectified, scientific form: the anatomical *body*, the *space* of physics and geometry, *things* as objects, and *others* as rational, skin-bounded individuals who operate as intentional entities discrete from one another. Adults will no doubt be familiar with these Cartesian analogues, since for a number of reasons, history has distanced adults from the phenomenal realm, even naming this distance as one achievement of development and maturity (Van den Berg, 1961/1983). There are instances for which the non-phenomenal ways of conceptualizing these aspects of existence are quite appropriate, as in the work of a surgeon or structural engineer, for example. Phenomenology, however, inverts the traditional discourse of developmental psychology and proposes adult experience as an impoverished version of child experience (Rojcewicz, 1987). This discussion reveals two factors that must be taken into account when considering how to understand "truth" in child memory: the distinction between factual truth and experiential truth, and the related role of imagination in child memory.

To the first point, in our predominantly objectivistic, Cartesian, adult-dominant world, our reigning assumption is to equate truth with factual accuracy. This makes truth a binary entity, and one that is readily quantifiable. As the findings from this study's analysis chapter suggest, this is the conceptualization of truth that guides the

suggestibility model and informs the discourse of child memory and experience espoused in forensic assessment manuals. This notion is evident in the ways these handbooks approach research and collateral information (i.e. interviews and observations)—as data through which to locate “facts” to best devise “answers.” It is also apparent from the energy they devote to instructing evaluators on soliciting “accurate” accounts from children involved in these cases, and on helping the court determine whether or not a child has been “honest” in her or his recounting of experience.

As in the suggestibility model, truth similarly emerges as a significant facet of the phenomenological study of memory, as do the related issues of forgetting and imagination. Both Casey (2000) and Ricoeur (2004) offer the same compelling explanation as to why we tend to place such a high priority on the presumed accuracy of our memories: these memories *are* our experience, confirmation of our very existence and the existentialia that qualify it. Though this recognition informs our understanding of why we seem to prize factually correct memory, both authors are quick to reframe the common characterization of memory’s porosity as a deficiency. This so-called flaw contributes to what Casey (2000) terms “memory’s decline in prestige” (p. 4) that is, the historical shift from revering memory in Ancient Greece as a divine attribute to our modern relegation of memory to a depersonalized (though consistently reliable) mechanistic process made possible by computers. Ricoeur (2004), too, softens the traditional view of memory as shamefully fallible early in his 2004 work, *Memory, History, Forgetting*:

To memory is tied an ambition, a claim—that of being faithful to the past. In this respect, the deficiencies stemming from forgetting, which we shall discuss in

good time, should not be treated straight away as pathological forms, as dysfunctions, but as the shadowy underside of the bright region of memory, which binds us to what has passed before we remember it. If we can reproach memory with being unreliable, it is precisely because it is our one and only resource for signifying the past-character of what we declare we remember. (p. 21)

A phenomenological conceptualization of memory includes forgetting as an automatic complement to remembering (with the possible exception of the rare individual with exceptionally atypical memory capacity that borders on pathological). Recognizing this givenness as embedded in the nature of memory invites new ways to make sense of forgetting and the functions it serves.

Viewing forgetting as an absence further suggests the phenomenon of remembering can comfortably be situated as a fundamental dimension of *Dasein* (Being). To help unpack this notion, we can again turn to Merleau-Ponty's concept of the hyperdialectic:

Being is made up out of bound wholes. Merleau-Ponty's hyperdialectic is an attempt to conceive of a set of principles that describes the complexity and transcendence of Being as the constellation of bound wholes. It manifests itself in the concrete presence of people, things, and events as they morph in time. This presence, however, is permeated with absence. The unconcealed is surrounded by the concealed. Things show some of their profiles, but withhold others. (Simms, 2017, p. 146)

Of course part of Simms' point in highlighting the necessary presence of absence in Merleau-Ponty's theory is that an individual's understanding of his or her being-in-the-

world is always incomplete, in ways that extend far beyond forgetting. But in the present context, the hyperdialectic seems to offer a theoretical model supporting the idea that forgetting may be just as existentially significant as its positive counterpart.

We may find it comforting to believe—and suggestibility studies most certainly assume—that a truthful memory is one which functions as a recording, perfectly duplicating a scene in a manner devoid of subjectivity. Nevertheless, the phenomenological approach to memory, one grounded in lived experience, offers a compelling refutation. Casey (2000) proposes there are two different facets of truth that memory can speak to, the truth of the “factuality of the event experienced” (p. 281), and the truth of the personal experience of that event. A memory declared inaccurate or distorted using the framework of suggestibility essentially recognizes only the first of Casey’s (2000) truths. Being unable to “affirm that the past was thus-and-so as a fact” (Casey, 2000, p. 282) renders the memory meaningless and could be enough to completely discredit the rememberer as unreliable, given that suggestibility leaves little room to value personal experience. In presuming truth as a binary entity, however, we do not realize that this “fact-truth” is a concept that stems from our non-phenomenal perspective, and one that is in actuality an abstraction from lived experience. Because experiential truth is a fundamental and important aspect of memory, our memories dwell in the ways we experience these various dimensions of being. Casey’s (2000) model not only can accommodate both of these strands of truth in memory, but also gives them equal respect as similarly implicated in the process of remembering.

Ricoeur (2004) implies there are many ways of understanding why one’s memory might change over time, or why one’s account of a memory might be unintentionally

different upon a retelling, and these ways have everything to do with Casey's (2000) second truth, that a memory is "true to experience" (p. 282). Because from a phenomenological standpoint, human experience is vastly complex, ever-changing, and non-dualistic, it is fitting that Casey (2000) would apply these same qualities to memory as well:

What memory ... brings back is not the ever-the-sameness of an essence. It retrieves a past that is ever-different—different not just because of the erosion effected by time or because of the different act-form of remembering it corresponds to, but *intrinsically* different thanks to the action of thick autonomy. (p. 286)

By "thick autonomy," Casey (2000) is referring to the many ways in which memory is a highly personalized experience. The very act of remembering, because it is a human act and therefore subject to the intertwined embeddedness of all human experience, cannot be completely divorced from the memory itself; in fact, the lines between noun and verb are invariably blurred.

An illustrative example may be helpful in demonstrating how this phenomenological picture of experiential truth in memory applies specifically to child experience. Again, as elaborated above, children do not live space according to geometric properties; thus asking a child how high she threw the ball yesterday likely will not yield a response in terms of mathematical distance. When the child responds that she threw it "As high as the clouds!" would one accuse her of being untruthful, or deem her memory false? The notion is laughable. Her recounting may not have fact-truth, but most would understand it as undeniably true to phenomenal experience. One can even imagine a little

girl excitedly raising her voice and pre-reflectively pantomiming the act of throwing a ball into the air with both hands, possibly even giving a little jump as she responds. The image is teeming with the child's initial lived sensory experience flooding back to her via the act of remembering. And before dismissing the account as merely "cute" or "silly," as we adults are wont to do, it is important to appreciate it as an expression of the richly nuanced domain of child experience. As Casey (2000) notes, "remembering cannot do without reference to the actual—whether straightforwardly in allusion to the past, or indirectly via perception—but it always manages to exceed any simple actualism of experience" (p. 279).

Simms (2008) similarly points to the value of experiential truth in child memory with the example of a four-year-old who claims to have been present at the birth of his older brother. Though factually impossible and therefore untrue by that standard, Simms elucidates the experiential truth in his memory, even though it differs somewhat from the sensorial truth of the previous example. Instead, this boy had experienced his family's narratives about his brother's birth, imagining the experience as he heard it recounted. Because children's understanding of existence is different from adults', at age four this boy has no way of comprehending his previous nonexistence. Through living among others in the phenomenal realm, however, his "participatory consciousness internalizes the family narratives, so that the impersonal past of [the other] ... becomes the personal past" (p. 149). Furthermore, Ricoeur (2004) recognizes that evaluating truth in memory only according to fact-truth is to define memory only in terms of its mentalistic processes. He writes, "a specific search for truth is implied in the intending of the past 'thing,' of *what* was formerly seen, heard, experienced, learned. This search for truth

determines memory as a cognitive issue” (p. 55, emphasis in original). As we have already seen, valuing only the cognitive properties of memory, however, thoroughly ignores or devalues the non-cognitive contributions to memory that are so profoundly inextricable from human experience, particularly for children.

Simms’s (2008) example anticipates another way of speaking about experiential truth in child memory, that is, to invoke the notion of imagination in understanding those accounts of the past which are faithful to some aspect of the child’s experience but conflict with fact-truth. Indeed, Casey (1977, 2000), Simms (2008), and Ricoeur (2004) all persuasively demonstrate the ways imagination and memory are co-constitutive. The “short-circuit between memory and imagination” explains Ricoeur (2004), “is placed under the sign of the association of ideas: if these two affections are tied by contiguity, to evoke one—to imagine it—is to evoke the other—to remember it” (p. 5). Casey (1977) implicitly draws on the phenomenological tenet that human perspective is by nature only partial to help illustrate an example of when imagination fuses with memory to serve “as a single (though internally complex) unit of mental activity” (p. 195) in a compensatory effort that is not fully conscious:

No amount of historical evidence, however copious or firsthand it may be, can restore the past event itself as seen from every significant perspective. It cannot, in particular, incorporate the historian’s *own* perspectival position, which has to be imagined *into* the event. And, still more generally, the historian must imagine how the event as a whole held together and was experienced as a single, datable happening. (p. 195)

Though perhaps more exaggerated in the case of the historian, who is very obviously required to negotiate so many perspectives, Casey (2000) goes on to describe how echoes of this phenomenon reverberate in more subtle, commonplace instances as well. He frequently references memory as a phenomenon that “deals with past actualities, which it transforms rather than transmits” (p. 272). In addition, Romanyshyn (2001) contends that imagination, or “story,” is more than simply an ancillary facet of phenomenon of human memory; it subsumes the facts of existence and becomes the very “form of psychological life and psychological experience” (p. 86). From this view, it is imagination’s experiential truth, not the objectified facts of an experience, which holds the primary *meaning* of our existence, and preserves it over time.

Summary: Phenomenological Account of Child Memory and Experience

In the preceding pages, we have explored in depth the places of overlap and divergence between a suggestibility model of child memory/experience and a phenomenological model of memory/experience. What is readily apparent is that while these two approaches may highlight similar features of this human experience, the meanings each position assigns to these qualities are strikingly different. According to a suggestibility framework, memory is above all a cognitive process, the result of the brain successfully encoding, storing, and retrieving data. In addition, memory is either “mine” or “not-mine.” If it is “mine” (and therefore reliable), it is the product of an individual’s brain successfully encoding, storing, and retrieving information without influence from external factors. When a memory is affected by influences that are outside the individual, it becomes tainted (no longer accurate or valid), and is therefore “not-mine.” The risk of these influences distorting a memory is especially prevalent during the challenging, albeit

necessary, process of recounting it through verbal communication. Therefore a truthful recounting of a memory is one that functions as a recording, perfectly duplicating a scene in a manner devoid of subjectivity or factual inaccuracy. Finally, because this conceptualization relies so heavily on adult valuing of cognition and verbal language, children's memory capacities are viewed as in all likelihood lacking, their accounts especially susceptible to these invalidating external influences.

A phenomenological perspective, however, espouses that as a human experience, memory by nature extends beyond the cognitive. Human beings live memory in relation to various existentialia, including, body, space, things, and others; these dimensions serve as different though interrelated means of constituting, housing, and narrating memory (and not always verbally). On the subject of ownership, because human experience is inter-subjective as a given, "not-mineness" is present from a memory's inception. Therefore memory can be intimately personal and indicative of one's autonomy even as it is shared with and influenced by others in one's world. Memory is fundamentally fallible, and forgetting and imagination are inherent complements to remembering, serving equally important functions in human experience. Thus, in addition to factual truth, memory can also carry experiential truth (i.e. the truth of the personal experience of that event). Both are valuable and to be respected. Because children inhabit the phenomenal world more acutely than adults, these findings are even more applicable. For children, the non-cognitive elements of experience and memory may be more primary, and fluidity across these dimensions is even more prevalent than for adults but these differences do not indicate that child experience is immature or impoverished compared to adults' (if anything, phenomenology proposes the opposite). From these findings, it would appear

that phenomenology's different philosophical approach to child memory/experience affords many new ideas for improving the system such that it can better align with the needs of the children being evaluated within it. These ideas are considered in greater depth in the sections that follow.

Implications of a Phenomenological Account of Child Memory in the Forensic System

In performing this study, I set out to better understand how child memory and experience is constructed in the discourse promulgated by forensic assessment handbooks, how this conceptualization compared with a phenomenological perspective, and the existing and potential functional consequences of each. My research has yielded many findings in keeping with this goal. To start, my discourse analysis of the manuals revealed a conceptualization of children's experience as deeply intertwined with adults' to an extent that makes it difficult to determine what is a child's "original" experience and what may have been subject to distorting external influence. In this version of reality, children are judged according to adult standards, and thus presumed intrinsically deficient because of their developmental, linguistic, and cognitive immaturity. This holds particular consequences for children's memory processes, which are deemed predominantly cognitive. Therefore their memory's accuracy and reliability is threatened by children's acute susceptibility to outside influences. To help combat the threat of suggestibility, the handbooks instruct evaluators to strive for objective neutrality by exercising caution and performing thorough research and evaluations. The manual authors themselves model this attitude by relying heavily on research literature, much of which assumes a similar suggestibility model of memory.

A phenomenological view of children's memory emphasizes children's experience as primarily sensory, rather than cognitive, and as such it is characterized as thoroughly interrelated with various dimensions of being (e.g. body, space, things, other people) more acutely than for adults. According to phenomenology, because memories constitute human experience, memories are similarly fluid and intersubjective by nature. Expanding the notion of existence as one that extends throughout the phenomenal world—including other people—challenges the assumptions that the world is external and that influences from it can invalidate one's experience or memory. It also complicates traditional views of objectivity and bias for children and adults alike, and introduces the possibility of acknowledging experiential truth in memory in addition to factual truth. I have already mentioned some functional consequences of both the forensic conceptualization as well as a phenomenological discourse, but questions still remain regarding how a phenomenological perspective might inspire changes in the legal system that more fully support child experience.

Looking at the preceding explication of how child experience/memory is conceptualized in both forensic assessment manuals and phenomenology alike, it seems that both discourses offer a number of similar conclusions. In each, human memory is malleable; we are prone to forgetting and to shifting our narratives. This fluidity in large part stems from the influences of our own imaginations and more visibly by other people in our lives and the complex relational dynamics at play in our interactions. Relatedly, our experience/memories are also affected when we put them into words and try to recount or communicate them verbally. Finally, these qualities are especially potent for children, whose experience is different from adults' in many ways.

While the forensic discourse and phenomenological perspective appear largely in agreement about these structures of child memory/experience, the meanings attributed to said features are incredibly different in each. As we have seen, according to the suggestibility framework espoused in the handbooks, influences threaten to distort or “taint” a once-pure memory. Children are especially *vulnerable* to these risks because of their dependence on adults, their active imaginations, and most acutely, their immature cognitive and language abilities (relative to adults). From a phenomenological standpoint, both truth and ownership of experience are intrinsically non-binary. Thus all of experience/memory is always already constituted by varying degrees of influence from the context in which one exists, and this influence need not invalidate one’s experience/memory. Children are especially entwined in the phenomenal world in which the cognitive dimensions of experience are not figural or prioritized. Taken together, it seems the particularities of child memory/experience are not inherently faulty or problematic, but are situated within a legal system that makes them so. What can phenomenology offer regarding systemic modifications—both practical and ideological—to alter the system such that forensic evaluations involving children are more supportive of the nuances of child experience/memory?

One important way phenomenology could inform the current dominant discourse about child memory/experience in the legal system is by softening the complete focus on “fact-truth” to include room for “experiential truth(s)” in child accounts as well. This is not to suggest a total disregard for fact-truth, but rather to instruct evaluators and the system at large to consider children’s accounts also in terms of experiential truth. This may hold particular bearing when the memories in question include those of trauma,

bodily trauma, and especially sexual abuse. Viewing these experiences as exceptionally conflicted for children in terms of temporality and affect affords greater sensitivity to the fact that though they may not be recounted in ways that align with adult notions of cognitive fact-truth, *this need not invalidate the child's narrative*. In general, this would require operating from a baseline position that there is truth in child narratives and then taking thorough measures to investigate the specific nuances of what that truth might be. In addition, approaching child experience on its own terms opens up opportunities to bring in ways of respecting and valuing children's non-verbal communication, perhaps through art, behavior, and symbolic play. Again, it is important to recognize that one would not be considering these modes of communication as relaying purely fact-truth, but experiential truth as well.

There is some evidence that the manuals already recognize the limitations and impossibility of attaining this fact-truth; introducing the notion of experiential truth as a complementary consideration may be one way of mitigating this concern and better representing a child's experience. Experiential truth may also be a useful notion to bring up in interviews with other people who know the child well. Asking the parents, teachers, neighbors, siblings, or other individuals who are being interviewed as part of these evaluations for their ideas about what a child might mean when s/he says "X," or if from their perspective an element of a child's account might have a particular meaning for the child could offer invaluable context to consider. Importantly, these ideas would need to be considered not as supplanting or "correcting" the child's account, but rather as enriching them. Along similar lines, phenomenology suggests that inviting people with whom a child feels familiar, comfortable, and secure (such as a non-offending parent) to

share in the interviewing/evaluation process would better enable children to provide accounts that most fully express their experience.

The handbooks also cite some research in support of this idea but fully enacting this strategy would require a loosening of the discourse's current conceptualization of the evaluator as a neutral expert and subsequent prizing of this objective ideal and its corresponding privilege of authority. Indeed, many of these amendments would require unseating long held assumptions about children, childhood, memory, and human experience more generally. To this end, another takeaway from accounting for the lived experience of children's remembering could be to find ways of appreciating children's experience on its own terms, rather than as an undeveloped version of adult experience. Doing so would alleviate the current pressure on evaluators, researchers, the court, and any other adults involved in forensic evaluations of children to determine the extent to which a given child is able to give "reliable" testimony. Allowing for children's direct input in how evaluations proceedings unfold and following children's lead whenever possible could help challenge the current paradigm but again, it would necessitate some dramatic ideological shifts. Given the hermeneutic grounding from which I conducted this study, it is important to understand the discourse in the handbooks as embedded within a particular socio-cultural context. The handbooks served as a means of accessing this historical context, but they also function as producers of future contexts; that is, readers' beliefs and actions have been and will continue to be influenced by these texts and their broader discourses. Thus in order to suggest modifications to the current legal system, we must try to comprehend the particular challenges of enacting change in this

setting, which requires some reflection on how this discourse came to be. To meaningfully look forward, we must also look backward.

Socio-historical context of childhood and suggestibility. As I alluded to briefly in my literature review, the meaning of childhood has changed over time (e.g. Aires, 1962; Hart, 1991; Simms, 2008; Smith, 2002). One way these fluctuations have historically manifested is in laws and public policies involving children (Grossberg, 2012; Smart, 1999). As Hart (1991) summarizes, “prior to the 16th century most children beyond six years of age were considered to be small adults and were not separated from adults as a class. ... Parents were accorded almost unlimited power over their children, and the children were ignored, abandoned, abused, sold into slavery, and mutilated” (p. 53). During this time, children were largely viewed as property—with no rights to speak of—a conceptualization that gradually softened over the next three centuries. By the time the 19th century ushered in mass industrialization, the cultural discourse had begun to recognize children as a special class, and the future of industry, a population vulnerable enough to the threats of urbanization to foster “a *child-saving* era to assure the health and welfare of children” (Hart, 1991, p. 53, emphasis in original). A defining aspect of this era was the beginning of governmental, private, and religious agency intervention in family life to protect children.

Early common law followed a similar trajectory, with children initially being deemed “incompetent to testify because of their presumed inability to remember and describe events accurately” (Haugaard, Reppucci, Laird, & Nauful, 1991, p. 255). This changed formally in 1895, when the Supreme Court ruled that “the admissibility of [young children’s] testimony should be determined by the trial judge on a case-by-case

basis through an examination of the child” (Haugaard et al., 1991, p. 255). Shortly thereafter, the world saw the advent of juvenile court, first in Chicago in 1899; by 1919, there was at least one juvenile court in 47 states (Myers, 2008). Cultural and legal efforts to protect “vulnerable” children continued to proliferate until the 1940s, when post-World War II attitudes concerning children began to shift again:

In reaction to a society too paternalistic in its handling of children and lacking respect for the basic integrity of children in their own right, children were declared "persons" under the law (*Tinker v. Des Moines*, 1969). They were assured due process in juvenile courts and, *under some conditions*, were recognized to be competent and worthy of limited freedoms. (Hart, 1991, p. 54, emphasis in original)

Indeed, the tumultuous decades following World War II saw the expansion of civil rights for many marginalized populations, and children were no exception. By the 1980s, however, various cultural factors caused the dominant discourse on childhood to change once more (Grossberg, 2012; Myers, 2008), and in ways that continue to impact our current legal system and the handbooks in this study.

These vacillations reveal a longstanding conundrum that children have presented in the forensic system and more broadly: how can we best understand and support people who are autonomous even as they are profoundly dependent on others? In general, it seems that laws and policy have swung back and forth between emphasizing these two features of child experience, reflecting whichever conceptualization more dominated the public discourse at the time. This pattern is described as alternating between children’s “protection rights” and “self-determination rights” (Hart, 2001), “protection” and “rights

to self-expression and inclusion in decisionmaking” (Cascardi, Brown, Shpiegel, & Alvarez, 2015), and “protection” and “autonomy” (Melton, 2008). Grossberg (2012) explains that these two contrasting conceptions of childhood have a long history of existing in tension in the United States, and helpfully draws on the work of British political philosopher David Archard in terming them the “caretaking” and the “liberationist.” These ideologies differ most in their “understandings of children’s competence, capacity, and maturity,” (Grossberg, 2012, p. 20).

Grossberg (2012) demonstrates how in the late 1970s, a caretaking understanding of children’s rights resurfaced, reflecting a number of socio-cultural changes (e.g. women joining the workforce, a spike in divorce rates, high profile cases of child abuse and abduction) that contributed to a view of children as inherently vulnerable, incompetent, and dependent on adults. (Notably, the events that spurred the McMartin preschool trial and its ensuing concern about child suggestibility began in 1983.) The caretaking discourse was bolstered throughout the 1990s by instances such as the exposure of mass child abuse by Catholic priests and the Columbine High School shooting. Also, the rise of technology, including the Internet, fueled societal anxieties about children’s safety and moral corruption. Grossberg (2012) describes that legally, this return to caretaking is evident in examples including states raising the legal drinking age, the Supreme Court enforcing stricter censorship on student speech and expression, and imposing restrictions on medical rights:

As part of a broader effort to restrict abortion and to increase the control of parents over the sexual decisions of their daughters, state legislatures passed increasingly stringent parental notification laws despite earlier decisions

expanding teenagers' abortion rights. By 2008, thirty-five states mandated some form of parental involvement in a minor's abortion decision. Though the laws varied, most ordered pregnant teens to include one or both parents in the decision to terminate a pregnancy. (Grossberg, 2012, p. 34-35)

In considering this timeline, it is worth remembering that the handbooks I used in this study were published in 2007 and 2013, very much in the midst of this caretaking atmosphere.

The history of how child eyewitnesses and child testimony has been taken up in the legal system is similarly intertwined with shifts in the public discourses involving childhood. Again, Motzkau (2007) cites numerous sources tracing public skepticism about child witness reliability back to the Salem witch trials in the 1690s. Suggestibility as a concept, however, did not gain traction until the late 1880s, when it became a central research topic for pioneering psychologists including Wilhelm Wundt and Albert Binet (Motzkau, 2005). The initial prominence of suggestibility, however, was relatively short-lived:

While memory remained a central topic, the interest in suggestibility waned in the early twentieth century, and between the 1950s and the late 1970s suggestibility vanished completely from the scientific agenda. ... Suggestibility only re-emerged as a research topic in the 1980s in the context of the growing concern over children's evidence in sexual abuse cases. (Motzkau, 2010, p. 67)

Indeed, because child sexual abuse is "the most frequent reason for children to be called as witnesses in criminal courts" (Motzkau, 2007, p. 4), the history of child testimony is largely a history of the public discourses surrounding child sexual abuse. Though there is

some evidence to the contrary (e.g. Smart, 1999), there is general consensus that attention to child sexual abuse as a rampant problem in need of legal and societal addressing really rose to prominence in the public discourse of the 1970s (MacMartin, 1999; Motzkau, 2007; Myers, 2008) (contributing to a resurgence of the caretaking ideology). This was also the same decade that Elizabeth Loftus was conducting her landmark work that called into question the assumed reliability of eyewitness testimony.

This history helps put into context the reliance on child witnesses in the McMartin trial and others like it, as well as the backlash triggered when children's accounts were called into question as having been the product of suggestive interviewing:

Driven by the climate of intense concern about child abuse, parents and professionals had been absolutely convinced something must have happened, and this spurred their (well intentioned) eagerness to get a disclosure. These cases sparked a sudden and intense research interest in children's suggestibility, a topic that had so far not been on the scientific agenda at all. (Motzkau, 2007, p. 6)

As discussed in my literature review and in the handbooks themselves, this research, while prolific, is marked by contradicting and inconclusive findings. Nevertheless, its prominence both reflected and fuelled the narrative that children's vulnerability to suggestion is of primary concern when determining their credibility. Taking this socio-historical background into account, we can see that what adults expect from children (and childhood) unavoidably influences how we interpret the veracity of children's memories in a forensic context and beyond.

Assuming, as does Grossberg (2012), that our current society still leans more heavily towards a caretaking attitude, what would the adult co-constituting this society

habitually expect child memory to look like? What does twenty-first century America expect from children, including their memories, and how do these assumptions influence what we then experience? Through this caretaking lens, it makes sense that children would tend to be viewed by adults as naively vulnerable to influences from the outside world. According to the suggestibility framework, this influence would in turn easily taint the veracity of their remembered accounts. However, since children are likely to struggle with fact-truth, they will therefore paradoxically depend on responsible adults to educate them about the world and to coax forth “accurate” memories. One possible result of this dynamic is that children’s memories often will be interpreted as unreliable and flawed, i.e., factually untruthful. Another result, however, is to position evaluators as neutral, objective, and balanced, thereby enabling them to accurately assess for competency, reliability, and truth in child accounts, even if the manuals are careful to state that evaluators are not the ultimate decision makers in a given case. Indeed, as views about children’s competency have shifted, so have views about adults’ role in determining that competency. Inquiring about experiential truth, moving towards understanding experience as “intersubjective” rather than “biased,” and being open to sharing some evaluator responsibilities with the important others in children’s lives are all efforts that could contribute to better aligning this current dynamic with children’s experience.

Reviewing the socio-cultural history of childhood and child testimony also affords context to the reigning inclination to define child experience in comparison to adult experience, a tendency that informs so many aspects of the forensic handbook version of reality. This occurrence seems to be one byproduct of childhood gaining status as different from adulthood, and then adults believing that population is one that should be

more protected, held accountable, or both. In addition, because babies and young children are dependent on adults in very concrete ways, there is a perpetual power differential, with adults having the authority to generate discourses and enforce their corresponding laws and policies and children largely subject to them. I am aware that in some ways I speak as a product of the caretaking ideology that has been dominant throughout my lifetime, but I certainly want to be clear that I am not advocating for adults to shirk their responsibilities to care for and protect children. That being said, I also recognize the ways that an unexamined adult-centric system operates according to what adults assume/perceive/believe is “best” or “right” for children, often guided by the implicit presumption that children are too immature to know what is “best” or “right” for themselves.

One way to change this is quite simple, at least in theory: involve children more in the decisions about the forensic evaluation processes in which they are involved. Inquire about their feelings and preferences, and take their input seriously. Have ongoing interactions that include opportunities for verbal and non-verbal expression, and allow children space to change their minds or be uncertain. The goal of doing so isn't to have children take full control over their situations per se, but to make these difficult, complicated processes as collaborative as possible. One could think of this different position as adults ceding some of their power, a difficult practice for even the best intentioned, but another way to conceptualize it is as wielding one's power in a way that is more supportive of children.

How can these changes be implemented? Another takeaway from this historical reflection is that although discourses about childhood and child testimony are transient,

systemic change takes time. It seems probable that a return to a liberationist conceptualization of childhood, or at least a 21st century version of one, is imminent, but of course the future is impossible to predict. Based on my study findings, however, it seems that if we want to work towards amending the current dominant discourse, one place to start is in the forensic assessment manuals. Educating the adults involved in these cases—evaluators, but also judges, juries, lawyers, police investigators, social workers, parents, etc.—about alternative ways of viewing and honoring the particularities of child experience/memory could have monumental impact. Doing so could spur changes in protocols, policy, and public discourse that are beyond even my speculation at this point. Because these manuals rely so heavily on research literature, drawing on research that supports more child-centric practices seems to be one way for forensic evaluations involving children to become more aligned with child needs.

The area of child advocacy offers many studies in support of taking children’s perspectives seriously (e.g. Cascardi et al., 2015; Smith, 2002), as does psychology (e.g. Hart, 1991; Motzkau, 2007). *Psychological Evaluations for the Courts* lead author Gary Melton himself has published numerous works advocating for a more comprehensive approach to child services, including increased child participation (e.g. Melton, 1999; Melton, 2008). Still, while the forensic manuals in my study were in many ways sensitive to the complexities of evaluations involving children, their account remains largely adult-centric, especially where child memory is concerned. This appears to reflect the degree to which the suggestibility model of memory maintains dominance in these handbooks and the research from which they draw. As discussed in my analysis section, both manuals staunchly advocate for additional research, frequently after presenting conflicting or

inconclusive findings from empirical suggestibility studies. Instead of encouraging additional studies with the same assumptions about child memory and experience, research that offers an alternative perspective of child memory and experience—such as phenomenology—could shed new light on ways to support children in forensic contexts. While there is currently some research of this nature already available for the manual authors to draw upon, these studies number nowhere near the prolific oeuvre of studies that use a suggestibility framework. Clearly, there is more work to be done.

Contextualizing My Findings: Comparable Studies

Despite this apparent disproportion in the existing literature, my project and its findings certainly do not exist in isolation—they participate in a larger body of research. Thus it is important to recognize that another means of hermeneutically contextualizing my work is to place my findings in dialogue with what other researchers have discovered about ways that child experience and memory are discursively constructed. Considering my work within this broader research context also affords the opportunity to uncover possible alternative and conflicting interpretations of the phenomena in question. (This endeavor also enhances the study's rigor by serving as a further validity check.) Because discourse analyses of child memory and experience in the United States legal system are quite rare, here I also engage with the findings from other discursive studies of related aspects of children's experience and compare them to my own.

Findings from non-forensic child discursive studies. As I discuss in my literature review, while there are few other discourse analyses focusing on children's accounts in the United States legal system, discursive studies of children in other contexts offer useful findings for comparison. Bergnehr and Nelson (2015), for example, use

discourse analysis to study how children are positioned in research articles on mental health intervention. Similar to my motivations for the sample selection of this study, the authors describe selecting their dataset in part because, “it is of great relevance to investigate the conceptualisations [sic] of children and children’s health found in *texts that have high societal status and are likely to have an influence on praxis*” (p. 187, emphasis mine). The authors find variation across the ten articles they study, with some “instances in which children are positioned as active subjects, their opinions are in focus, and their health and wellbeing are connected to social relations and context” (p. 184). These examples prove to be exceptions, however; the study describes a general positioning of children as “passive and formed by adults” (p. 186) within this discourse. Though the discourse in forensic assessment manuals here does not employ the language of passivity and agency in its construction of child memory/experience, this sentiment is comparable to the ways the handbooks describe (and assess) child experience in relation to the standard of adult experience.

Along similar lines, Bergnehr and Nelson (2015) also find that in the mental-health article discourse, “Children’s participatory rights are restricted vis-à-vis adults due to their ‘immaturity,’ that is, their age” (p. 186). The forensic manuals in my study similarly position children as deficient because of their immaturity, and charge evaluators with determining the extent to which a child’s participation (e.g. testimony) is appropriate for a case. Still, the immaturity the handbooks describe is more related to cognitive abilities than numeric age (despite a frequent correlation between the two factors). Lastly for the purposes of this discussion, Bergnehr and Nelson (2015) furthermore note a somewhat paradoxical treatment of children in the discourse they study as being formed

by adults but not influenced by their situated contexts. They describe, “Most of the texts do not reflect global ambitions to consider children’s experiences and objectives, ... or sociology of childhood perspectives on health and wellbeing as contextualised [sic] and relational” (p. 192). This sentiment is echoed in the forensic handbooks, which draw on a suggestibility framework to present children as at risk of undue outside influence without emphasizing the fundamental interrelatedness of child experience.

The intersubjectivity of children’s experience is a theme that emerges in studies that focus on discourses *about* children as well as on children’s discourses themselves. MacMartin (1999) for example, argues that children’s disclosures of sexual abuse are best honored as discourses because doing so offers an effective means of appropriately underscoring the intersubjective nature of a disclosure and child experience more broadly. She explains, “a discursive approach to children’s reports of sexual abuse treats disclosure as talk, emphasizing the historical, cultural and communal processes involved in its production” (p. 504-505). (Johanna Motzkau, whose work will be discussed here shortly, often adopts a discursive approach to child suggestibility in forensic settings and explicitly cites MacMartin as a key influence.) Edwards (1993), too, emphasizes the interrelatedness of child experience in his discursive study of children’s knowledge. Here Edwards (1993) performs a discourse analysis of classroom talk between a teacher and a kindergarten class to explore conceptual content in children’s talk. He concludes that children’s discourse is “*social-psychological*” (p. 211, emphasis in original), and therefore its particulars are determined by children’s previous experiences and contexts, as well as the circumstances of their recounting:

We can study how children's explanations are derived from and are subjected to a

discursive process, so that the psychology of conceptual development would at the very least be unwise to ignore how concepts are culturally derived, culturally formulated (in words that make sense to a common culture), and culturally processed, in that their articulation is called for and takes shape within organization and conventions of current talk and action. (p. 219-220)

As in a phenomenological perspective, Edwards' (1993) embrace of the cultural embeddedness of child (and human) experience as given dovetails easily with his expansion of truth in discourse from a binary entity to a perspectival one. Though he does not use the term "experiential truth," Edwards (1993) concludes, "It is not so much a matter of lies and deceit but of taking seriously the content of what [children] say for what it tells us about what they think, know, or believe" (p. 209).

In addition, Edwards (1993) speaks specifically about the role of memory in understanding how children think, reporting some instances in which it appears that the children in his analysis are "remembering somebody else's words rather than ... formulating their own conceptual understandings" (p. 213). He wrestles with the possibility that these memories are clouding his pursuit of analyzing children's "original" thoughts, but quickly dismisses this notion in light of the primacy of memory in experience and therefore in discourse, stating, "it is not clear that there ever could be a discourse without remembering. All discourse has a history" (p. 213). He goes on to remind readers that memory, and verbalized memory in particular, "is not merely a reduplication of experience, altered not only by error and omission but also rich in constructive and reconstructive conceptualizations where reports and repetitions are altered, embellished, schematized, and imbued with the psychological and

communicational concerns of the rememberer” (p. 213). Here, as in the discourse in the training manuals, the malleability of children’s memory is acknowledged and afforded a primary role in children’s narratives. Unlike in the handbooks, however, this fluidity is not problematized as yielding distorted accounts, but rather taken as an invitation to approach children’s responses through a different lens that better aligns with their experience. Therefore, in keeping with my own findings, Edwards’ (1993) work affirms that 1) children are suggestible by nature, and 2) this suggestibility need not invalidate or discredit their experience.

In their discourse analysis of children’s interview responses, Aronsson and Hundeide (2002) argue these points even more fervently. After analyzing children’s responses to adults’ examination questions (questions designed to test children), the authors conclude that “children’s interview responses should be read in terms of a *relational rationality*” (p. 174, emphasis in original). In other words, when responding to interview questions formulated and posed by adults, children follow a logic that is rooted in their relational allegiances and motivations, as opposed to the “scientific rationality” (p. 174) on which adults base their own answers and standards for judging children’s. Though Aronsson and Hundeide (2002) propose that children communicate in particular ways different from adults, they do not attribute these divergences to cognitive immaturity (as in the forensic training manuals) or an acute existence in the phenomenal realm (as do phenomenological perspectives). Instead, they place social desires/needs as primary for children, and thus attribute children’s thinking and response patterns as in service of addressing those desires/needs. They state, for example, “To the young child, it can be more important to be part of a dominant group than to be truthful in terms of

scientific norms” (p. 181) and that, “‘immature’ responses can be understood in terms of children’s desire to please the interviewer” (p. 174). This notion introduces another alternative explanation for a phenomenon that has been identified in both this discourse as well as that of the forensic handbooks: challenges arise when using adult standards to interpret children’s language.

Yet again, these challenges complicate the conceptualization of truth as binary. Aronsson and Hundeide (2002) might not use the phenomenological phrasing of fact-truth and experiential truth, but they make a similar comparison between logic that stems from the “deductive logic and correspondence norms of scientific rationality” (p. 182) and their proposed relational rationality. They explain, “A relational rationality can be seen as a sensitive *attunement to the attunement of others*. We have a feeling about what other persons expect and want. Truth values do not form the essence of the tacit meta-contract of the conversation, and we adjust our comments to what seems appropriate according to local alignments.” (p. 182) Here once more, the authors offer a proposal that truth transcends the question of scientific, factual accuracy and instead reflects the intimate and intersubjective reality of the child respondent. For Aronsson and Hundeide (2002), this reality is fundamentally a relational one, to the extent that a child’s truth will adapt based on the child’s attunement to the expectations and desires of the adults in question. The suggestibility framework in the handbooks also accounts for this possibility (as do phenomenological perspectives), but in a way that presents this dynamic as a dangerous, deeply problematic distortion that is to be avoided. To speak this particular relational truth according to the manuals’ version of reality is essentially to lie, a phenomenon Aronsson and Hundeide (2002) blatantly acknowledge:

In several different dialogue genres in modern schooled societies—family argumentation, psychological experiments, police interviews, clinical testing situations—children have other agendas than their adult co-participants. Traditionally, young children’s responses have been classified as unreliable, suggestible, or at worst untruthful. We argue that their response modes can instead be understood in terms of different notions of what communication is about, a relational rather than a scientific rationality. (p. 184-185)

Whereas the handbook discourse locates the problem in the child and instructs evaluators to exercise techniques to enhance children’s memories and minimize suggestive influences, Aronsson and Hundeide (2002) implicate problematic societal structures and recommend adjusting the lens through which adults view children’s interview responses.

Findings from forensic child discursive studies. In addition to discursive studies focusing on children in a variety of contexts, there are some studies that use discourse analysis to explore children’s experience in legal settings in particular. In their theoretical paper, Blank and Ney (2006) apply Foucaultian theories to the legal and medical discourses in high-conflict divorce litigation, with particular interest in how children are positioned. They present “a discursive examination of two formulations often employed by psychologists, psychiatrists, mediators, and lawyers to deal with and explain high-conflict divorce cases: “parental alienation” and “child alienation” (p. 137). As in the discourse employed by forensic manuals, Blank and Ney (2006) emphasize the weight that evaluations carry in the discourses they study. Nevertheless, the handbooks appear more greatly concerned with establishing and maintaining the neutrality of the evaluator despite the pressures that come with needing to offer consequential

recommendations to the court. Blank and Ney (2006), instead contend that the reality of power dynamics and a legal system that does not easily allow for ambiguity blurs the line between evaluator and decision-maker that the manuals so fervently delineate, stating, “Significant pressure is put on those who produce such assessments to arrive at a formulation that has the unambiguous clinical authority to fit with the court’s need to administer—legislate—a ruling (p. 135). They further explore the implications of the black-and-white, binary thinking that dominates both the medical and legal discourses at play in child custody cases, concluding that this rigidity aligns poorly with human experience:

Neither the medical nor legal systems are efficient at working in gray areas of human complexities, yet our culture chooses to value them over other realms. The dynamics and nuances of the situation are either ignored, lost, or forced into the simplistic dichotomies and oppositions. Unfortunately, a more flexible and mutually compliant construction of the conflict is denied and obscured in order to legislate “right” from “wrong.” (p. 141)

Furthermore, the authors find that an important consequence of this way of thinking is that it forecloses opportunity to honor individual experience—especially that of children, who are already subjugated within these adult-centric systems. They conclude, “The child’s narrative (her/his personal discourse) is often co-opted or marginalized by these competing and dominant discourses; here, agency is lost” (p. 139).

While these patterns resonate with my findings about how child memory is taken up in forensic manuals, Blank and Ney (2006) notice a greater emphasis on pathology and medicalization in their study than seems apparent in the handbooks I analyzed.

Specifically, they draw attention to the power of the “iatrogenic features of these discourses” (p. 135) in diminishing children’s position and agency. This topic was largely absent in the handbooks, which do not offer instructions regarding diagnoses or other means of potential pathologizing. If anything, the manuals advise exercising caution before interpreting symptoms of the parties being evaluated or the results of psychological tests that offer diagnostic implications. They also direct evaluators to avoid drawing unwarranted causal conclusions between apparent symptoms and their behavioral implications (e.g. the relationship between parental depression and child neglect)—this is one example of the discourse pattern of remaining aware of the limitations of one’s knowledge and expertise. It is possible that an emphasis on pathology may be greater in manuals that are devoted entirely to child testimony and take up issues like parental alienation in more depth, but I did not find this tendency to be a part of the general discourse to a significant degree.

Though Blank and Ney (2006) offer comparative insight regarding child experience in the United States legal system, a number of studies by Johanna Motzkau explore areas most similar to my own research presented in this project. Motzkau’s (e.g., 2005, 2007, 2010, 2011) work uses discursive theory and methods to specifically address questions about how children’s memory is constructed in forensic settings (albeit those in Britain and Germany), taking into account socio-historical factors as well as practical applications and implications. Across her work in this area, Motzkau finds that suggestibility concerns dominate many discourses concerning child memory, despite discrepancies that arise in the research literature in this area. For example, she summarizes:

Intense controversies around memory development, children's suggestibility and the influence of different interview styles have continued to dominate both research and practice. In particular, the question of children's suggestibility has sparked an immense research interest, resulting in a number of studies that have produced valuable insights into the possible developmental, circumstantial and personal factors underlying children's propensity to succumb to suggestions. However, research in this field faces various problems. When the findings are subject to close scrutiny, it becomes clear that suggestibility research is riddled with what appear to be contradictory results. (Motzkau, 2005, p. 201)

Both this dominance as well as the contradictory research findings in the area of suggestibility are similarly reflected in the discourse in the forensic handbooks in my study. In this particular article, Motzkau (2005) analyzes juridical, psychological, and public discourses to conclude that "polarized and heated public debates about child witnesses' credibility and suggestibility" (p. 202) often distract from children's actual needs and wellbeing. In highlighting these reciprocal impacts among research, practice, and public discourse, she furthermore elucidates the ways that child and adult experience—and therefore memory—are inevitably intertwined, another pattern that emerged in the handbooks as well. Motzkau (2005) even mentions the possibility that children "can be as suggestive as they can be suggestible" (p. 204) with regard to ways children may influence evaluators during the interview process.

Defining the implications of this interrelatedness as being problematic, threatening, or invalidating for child memory is another pattern that Motzkau (2007) identifies when "examining the interaction of legal rationales and paradigms of

developmental psychology” (p. 1). In this exploration, however, she notes that children are usually the locus of blame for this phenomenon that proves such a challenge to a forensic system, and tend to be portrayed as passive and deficient. It becomes children’s “fault” that retrieving reliable accounts from them is such a delicate and fraught ordeal:

Firstly, children are positioned as bad and unreliable containers of facts.

Information is seen to degenerate quickly in their minds and thus has to be retrieved as quickly as possible. Secondly, children are seen be irritable dispensers of information/evidence, as they are prone to misunderstand questions and get confused and frightened by legal procedure. Hence they need to be treated delicately and with great care when questioned. Thirdly children appear as volatile interactants, that is, direct interaction with them bristles with reciprocal effects and hazards of suggestion. (Motzkau, 2007, p. 6-7)

Here Motzkau not only discusses the positioning of children as lacking and the anxiety about external influences distorting children’s memories, but also implies that in this discourse memory is a mentalistic process—memory lives in the brain and optimal circumstances must be upheld in order to retrieve an accurate recounting. Once again, this conclusion echoes what is espoused in the legal handbooks analyzed in the study at hand. In later work, Motzkau (2011) draws from a Deleuzian perspective to complicate this conceptualization and return to emphasizing the relationality of memory. In stating, “memory itself resides in the ongoing relationships between those involved” (p. 71) she positions memory as a relational process rather than a mental one. This move in turn serves to de-problematize the notion of suggestibility, shifting it from a hazardous threat to an inherent inevitability. As in the phenomenological construction of memory,

Motzkau (2011) reasons that because human experience is by nature interconnected with others, memory shares this fundamental relatedness. She explains, “In relation to the self/subject suggestibility could be said to express (constitute) the self/subject as the result of instants of knowing in the process of relating” (p. 71).

Though there is much overlap among Motzkau’s contributions in this area and the version of reality espoused in the forensic assessment manuals (and complementary phenomenological perspectives), there are also instances when Motzkau identifies different patterns or draws new conclusions not previously accounted for in my work. To start, with the historical rise of suggestibility in the discourse of child memory, Motzkau (2010) names a shift in focus from “potential deficits in memory encoding or storage to the instant of remembering as such, i.e. attention is directed to the expression of memory. Now the concrete conditions under which remembering is called for and occurs, and the circumstances under which memory is reported, become key to legal considerations of accuracy and credibility.” (p. 70). This shift is not especially evident, however, in the manuals in the current study, which appear to caution against the impact of external influence at any stage of the cognitive memory process, and discuss children’s potential deficits in memory encoding and storage as well as retrieval. Motzkau (2010, 2011) also concludes that this discourse’s emphasis on suggestibility implies that children are not in control of their own memories. This angle varies slightly from the manuals, which state instead that memory in general is difficult for anybody to control. Nevertheless, the amount of common ground among my work and these studies generally offers support for the validity of many of my findings.

There are some patterns, however, that I have identified as emerging in the

discourse in these forensic handbooks that do not seem to be reflected in any of the similar discursive research I have found. None of these studies discuss an emphasis on caution when engaging with these topics or practices, and relatedly there is much less emphasis on maintaining neutrality and balance in these discourses than I saw in the manuals. Finally, whereas I read the handbook discourse as often describing memory in terms of performance, this or similar framing did not appear in any of the other studies. One possibility for these divergences could be my focus on instances when the manuals offered instructions to evaluators. This distinguishing aspect of my study may have given rise to these themes, which simply may not apply in a significant way within the contexts of the other works references here. Alternatively, it is possible that these patterns are less robust or supported in this area than I believed them to be upon conducting my analysis, perhaps because of a methodological shortcoming, problems with procedural execution, misreading and/or interpretation, or some combination thereof. Of course, I bring my own frame of reference to any endeavor I undertake, and it is also possible that this perspective has caused me to drift too far from the data in some cases. I turn now to a more in-depth examination of this latter possibility as I attempt to address the ways my personal experience conducting this research may have hermeneutically impacted the process and product.

Personal Reflexivity

To help validate that my findings are grounded in the data rather than solely in my preconceived assumptions, I turn now to an exploration of my personal experience while engaging with this research. Though I acknowledge that it is impossible to entirely access and track these experiences, it is my hope that this exercise in reflexivity (however

inherently incomplete) will serve as a means of better understanding how my situated perspective may influence the findings I have presented. I embark on this process from the position that pure objectivity is illusory, but by elaborating on my personal process as transparently as possible I can again invite readers to think along with me about the ways that my perspective has inexorably impacted the product I am presenting. In order to track my own process of drawing conclusions as I engaged in this research, I recorded my experience in a journal, taking particular note of questions that arose for me, as well as moments of frustration, anger, excitement, and shifts in my thinking.

I have already touched on the issue that spurred the first moment of surprise and, quite frankly, panic, as I began my data collection: the text of the handbooks was not phrased as explicit instructions nearly to the degree I had been expecting. This discovery forced me to sincerely question whether my project would remain viable; I had designed this study carefully around the assumption that these training manuals would be structured as predominantly instructive, and an absence of directions would seriously jeopardize my proposed methodology. In considering how I might need to amend my procedures, however, I was able to approach the text in a new way, to think deeply about what makes language instructive and to table some assumptions I did not realize I had been making. As I elaborate in my analysis section, I realized that the handbooks were offering instructions, but not always in the ways that I had imagined, and in fact that a tendency to soften explicit directions could be an important observation to further unpack. Nevertheless, this experience helped me to recognize the extent to which I imagined the discourse in these manuals to be authoritarian, rigid, and certain, and alerted me to be aware of a potential pull to overstate these qualities during my analysis.

Instead of offering clear, step-by-step advisements to evaluators working on cases involving children, as I had imagined, I was also surprised to find that the authors of both handbooks instead structured their text largely around synthesizing empirical research studies. While this occurrence was interesting to me, it also caused frustration in a number of ways. In terms of pragmatics, aside from complicating my procedures by challenging my preconceived notions of how the text would appear, I also found that these references could make the manuals dry to read and tedious to transcribe. During one particularly long day of data collection, I grew angry that what I perceived to be the handbooks' overreliance on research was subsequently rooting these texts too firmly in intellectualized academia and inappropriately removing them from the realm of experience and practice. Once more, my irritation brought to light my preconceived expectations of what I believed these manuals should include and the standards by which I was habitually judging them. It also showed the possibility of a personal tendency to value the practical over the theoretical.

The further I delved into my analysis, however, the more my thinking shifted from this aggravation to an appreciation of the thoroughness and nuance this research instilled within the account. I began to see the ways the handbook authors were sensitive to the complexities of these cases and the issues they encompass, and would even start to feel excited when I noticed places of apparent hesitation to offer firm directives, especially regarding child experience. I most frequently noted feeling excited, however, when I saw an area of the discourse constructing child experience/memory that I believed could be enhanced by a suggestibility perspective. The altruistic motivation behind my pleasure is that I was—and am—enthusiastic about ways that child experience might be

better supported in the forensic system, and hopeful that phenomenology can offer one means of doing so. The self-serving aspect of my excitement, however, was a mix of relief that my study could continue in the direction I had generally proposed, and gratification that the data appears to affirm some of the hypotheses and hunches that have guided my interest in this topic and led me to this study in the first place.

Even as I am hopeful, however, my process journal also reveals a fair amount of discouragement and confusion. This project has been a resounding demonstration that there are not easy answers to the difficult and complicated questions that have spurred my work in this area and continue to persist. These are questions like: Is it possible for the United States legal system to better meet children's needs? Is it possible for adults to understand child experience? Will our society's view of child experience as immature adult experience ever shift, and what factors would facilitate change? How can any system effectively balance institutional needs (e.g. upholding legal precedent) with individual needs? It feels important to recognize that these sorts of questions and their corresponding air of despondency were present for me throughout my engagement in this work. They are indications that I was seldom unaware of the scope of the issues in my study, and of the socio-cultural history and implications discourse analyses comprise. Though I cannot control how my study will be taken up in the future, it is my hope that my work can be used to inform how child accounts are currently understood in forensic settings such that our legal system might support children more fully.

What This Study Does Not Do: Limitations and Areas for Future Research

My discourse analysis of forensic assessment manuals' instructions to people conducting evaluations involving children has yielded much to be considered, there are

also limitations to my work, areas that my study could not or did not cover. Many of these limitations were determined as I decided the text on which to focus my analysis. For example, I selected general, broad-scope forensic handbooks to address questions about the broader discourse of child experience in forensic manuals; studying handbooks whose sole topic was evaluating children could offer significant nuance and depth to this conversation, or possibly contrasting findings. In addition, my decision to analyze only sections of the handbooks pertaining to children largely excluded sections specifically devoted to adolescents and the juvenile court system. This limited the generalizability of my findings, which do not speak to this swath of the population or area of evaluator work. The same can be said regarding education assessments, a context in which evaluators frequently engage with children. While omitting these topics from my study allowed for a body of text that best aligned with my research questions, there is every reason to believe that discourses related to adolescent experience in the forensic system, juvenile court, and education evaluations could serve as rich and important areas of further inquiry.

Furthermore, analyzing written texts allowed for insight about a particular kind of formal discourse, but distanced my study from the experiential richness and nuances that interview transcripts and human participants can provide. These interviews can be appreciated not only on a content level but also viewed through a critical lens to help recognize the implicit assumptions, systemic power structures, and other factors at play in creating the current dynamic. This issue is particularly relevant in light of my conclusion that adopting more child-centric practices could have important consequences for changing our current societal tendency to consider children as lacking adults. Working

directly with children to learn more about their experiences of these evaluations could offer crucial insight. (Efforts to find ways of bringing children's voices to the forefront of traditionally adult-centric endeavors are already underway [e.g. Alldred, 1998; Dixit, 2018]). In terms of conducting research to inform best practices and hopefully be included in future manuals, however, interviewing any of the numerous parties involved in forensic cases with child evaluations could be quite useful. Speaking with evaluators themselves, as well as parents, judges, lawyers, police investigators, jury members, adults who served as child witnesses, and many other groups could lend invaluable perspective. This knowledge could continue to inform our broader understandings of how and why children are treated as they are in forensic settings, as well as practices that appear to be working and areas for improvement. One can hope that by the time the next handbook editions are being drafted, there will be a wider, more visible array of varied research from which the authors may draw.

Indeed, my study provides fertile ground for many areas of related further inquiry. That being said, when speaking about the limitations of my research, the things that my study did not do, I believe it is also important to recognize some limitations of research more generally. It is certainly valuable to continue asking questions about how children can be best supported in the forensic system, which will of course include queries about how children remember. I would argue that studies focusing on the children's *experience* and research that does not assume a suggestibility model of memory are especially underrepresented and as such have much to contribute to this conversation. However, perhaps another implication of adopting a phenomenological approach to child memory and experience is the uncomfortable reality that no quantity of research or perfect study

design will get evaluators to a point where they are able to determine the fact-truth of children's testimonies with total, unequivocal certainty. No matter how much research we do, that sort of objectivity simply does not appear meaningful within the structures of human memory and child experience, a difficult realization to sit with and accept. Still, it is only by acknowledging this challenge that we can begin to imagine and implement a forensic system—and society—that is more fully supportive of children.

Conclusion: Answers and Questions

In the preceding discourse analysis, I have presented a number of findings with regard to the ways two widely-used forensic assessment handbooks understand child memory and experience, as well as how they instruct evaluators to approach these topics. These manuals tend to present the ideal evaluator as humble, cautious, objective, balanced, and thoroughly knowledgeable about case documents as well as research literature. It appears that one major reason these qualities are afforded so much value is that the manuals describe children as fundamentally vulnerable to undue external influence because of their cognitive and linguistic “immaturity” when compared to adult standards. This narrative is in keeping with the dominant suggestibility model of memory, and therefore becomes especially pertinent to the context of child testimony. The handbooks and their conclusions are products of myriad socio-historical factors, even as they simultaneously contribute to current and future discourses, as well as current enacted practices. Still, even though the handbook authors draw on copious child memory research assuming a suggestibility framework, they are also quite transparent about gaps, contradictions, and limitations in this body of literature, and consequently often avoid stating firm conclusions.

A phenomenological approach comprises many of the same notions about the fluidity of child memory and experience, but in this context these qualities are not deemed problematic deficiencies, as they are in legal settings. This is in part because phenomenology conceptualizes children as existing more phenomenally than cognitively, and does not prioritize a cognitive, “adult” orientation. Understanding experience in this way challenges traditional, binary approaches to truth and ownership of a given memory. Given these considerations, it seems that adopting a phenomenological perspective probably will not make an evaluator’s job easier, or a case more clear—in fact in many cases the opposite may come to pass. But after engaging with this study, I would argue that doing so achieves a better alignment with child experience, thereby enabling steps towards not understanding children according to adult standards. Therefore, incorporating a phenomenological perspective into legal settings can offer one means of better supporting children in forensic discourses, practices, and beyond.

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Appendix: Forensic Assessment Handbook Text Compendium

The Handbook of Forensic Psychology (Weiner & Otto, 2013)

Custody and Parenting Evaluations p.137-164

Child Abuse and Neglect Evaluations p. 237-271

Evaluating Eyewitness Testimony in Children p. 561-597

Page	Section Heading	Excerpt	Additional Notes
Chapter 6: Conducting Child Custody and Parenting Evaluations			
137	[6: Conducting Child Custody and Parenting Evaluations Intro]	In the past 30 years, there has been a steady growth in the use of psychologists and other mental health professionals in child custody matters. Evaluations conducted by psychologists assist the court in determining custody, decision making, access, and parenting plans when parents separate or divorce. At the same time, there has been an increase in the number of books devoted to custody evaluations and broader forensic psychology practice.	By Philip M. Stahl ←cites Melton here
137	[6: Conducting Child Custody and Parenting Evaluations Intro]	In considering the necessary ingredients of child custody and parenting evaluation practice, there are many areas in which a psychologist (or other mental health professional) must gain proficiency. At a minimum, these include child development; qualities of parenting; divorce and the impact of the separation and divorce of families; psychological assessment; and “special issues,” such as alienation of children, domestic violence, child abuse, relocation law, family dynamics in cases of extreme conflict, and personality dynamics that contribute to that extreme and ongoing conflict. Finally, evaluators need to have a thorough understanding of the ethical issues that surface when undertaking these complex evaluations for families and the courts.	Need Must
137-138	[6: Conducting Child Custody and Parenting Evaluations Intro]	These evaluations are time and cost intensive and potentially intrusive to the family, and they risk putting the children in the middle of their parents’ conflicts. When ordered by the court to participate in an evaluation, parents are subjected to multiple interviews, perhaps psychological testing, and exposure of their conflicts to teachers, therapists, and other professionals. Children are interviewed and observed in offices and their homes. This lengthy process typically takes 3 to 4 months to complete and yields a report that is potentially insightful and potentially damaging to the family.	
138	[6: Conducting Child Custody and Parenting Evaluations Intro]	Child custody and parenting evaluations are among the most difficult and challenging of all psychological evaluations. Reasons for this include: <ul style="list-style-type: none"> • The number of people and relationships in the family to be evaluated. • The different ages of the children. • The range of possible psychopathology. • The presence of significant situational factors affecting psychological functioning. • The limitations of psychological tests or interview methods designed for the type of assessment. • The changing nature of a child’s developmental or psychological needs relative to future time-sharing plans. 	Need (not instruction) Must

		<ul style="list-style-type: none"> The expansive nature of individual questions a court may have about a particular family. <p>In addition to these complexities, child custody evaluators must have knowledge of relevant statutes and case law.</p>	
138	[6: Conducting Child Custody and Parenting Evaluations Intro]	[T]he Guidelines for Child Custody Evaluations in Family Law Proceedings of the American Psychological Association, designed to provide guidance to those who perform child custody evaluations, direct that psychologists should strive to gain and maintain specialized knowledge, augment their existing skills, acquire sufficient understanding of the specialized child custody literature, and remain familiar with applicable legal standards in the relevant state in which they practice.	should
139	[6: Conducting Child Custody and Parenting Evaluations Intro]	The evaluation process is associated with a dramatically increased risk of licensing complaints against the evaluator and is often stressful for the examiner. Thus, evaluators must have the temperament to conduct very comprehensive evaluations and recognize that they may be subjected to anger from parents and an adversarial trial experience. Distorted representations or accusations against the evaluator by one or both parents are not uncommon, both in complaints to the court and in complaints to licensing boards. Because serious allegations are common to the types of cases that fail at mediation and other attempts at settlement, the evaluator’s recommendations can have particularly significant ramifications for the child’s future.	Must Recommend (not instructions)
139	[6: Conducting Child Custody and Parenting Evaluations Intro]	Although this chapter cannot address all of the issues relevant to child custody and parenting evaluations, it focuses on these issues: <ul style="list-style-type: none"> The best interests of the child standard. The purpose of custody and parenting evaluations. Ethical considerations. Basic research the evaluator must know, especially about children and the impact of divorce on children. Critical research in special issues, such as conflict between parents, alienated children, domestic violence, sexual abuse, and relocation. The process of custody and parenting evaluation. Critical issues in report writing. 	Must Critical (x2, not instructions)
139	Best Interests of the Child	It is incumbent on the child custody evaluator to be familiar with the law that governs these issues as they pertain to child custody. In nearly all 50 states and in most Western countries, laws related to the best interests of the child guide decisions about child custody and parenting plans (American Law Institute, 2002; Lewis, 2010). Few states define the term <i>best interests of the child</i> , although many identify specific factors that judges are to consider when making decisions about a child’s best interests (e.g., Arizona Revised Statute 25-403; Colorado Revised Statutes 14-10-124), leading some commentators to argue that the best interests standard is not defined (Emery, Otto, & O’Donohue, 2005). Indeed, judges are afforded great latitude to order a parenting plan that they decide is in the child’s best interests. Lewis (2010) argued that “[t]he elegance of the [“best interest”] standard is the simultaneous focus on both the needs of the particular child and, with appropriate weight, the normative child development factors” (p.21). In jurisdictions where the legislature has identified several specific factors that the judge must consider, the weight assigned to each factor is left to the court.	Need (not instruction) Must (judge)
140	Best Interests of the Child	The evaluator’s task is to gather and present those psychological data related to the best interests factors and answer the questions post by	

		<p>the court. In Arizona, for example, several best interests factors call for psychological data to be gathered. They include:</p> <ul style="list-style-type: none"> • The wishes of the child as to custodian. • The interaction and interrelationship of the child with the child’s parent or parents, the child’s siblings, and any other person who may significantly affect the child’s best interests. • The child’s adjustment to home, school, and community. • Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. • Whether one parent, both parents, or neither parent has provided primary care of the child. <p>Although the evaluator gathers and analyzes data related to the best interests factors, the judge reaches the ultimate determination of the child’s best interests based on his or her discretion.</p>	
141	Best Interests of the Child	<p>Regardless of whether a state has specific factors delineated in its best interests statute or whether there is a presumption associated with a particular factor, the ultimate decision about weighting of these factors is unique to each family and is left to judicial discretion. When completing an evaluation of a given family, the evaluator’s task is to provide a rationale as to why different factors might be more or less relevant with that particular family. This rationale, of course, will be reflected in the analysis of the data gathered and in the recommendations provided to the court. This analysis can assist the judge in considering and weighting the issues.</p>	Recommend (not instructions)
141	Purpose of a Custody and Parenting Evaluation; For the Court	<p>The primary purpose of the evaluation is to assist the court in case a settlement is not reached. Judges order child custody evaluations for a variety of reasons. These can include those circumstances in which there are significant allegations regarding drug and alcohol abuse, family violence, or child abuse, or significant mental health problems. Often a judge is presented with two parents, both of whom appear good enough at parenting but who cannot agree on a parenting plan. At other times, one or both parents appear to have significant problems.</p> <p>Increasingly, judges look to mental health professionals to help them understand complex psychological questions of attachment between the child and his or her parents, sibling relationships, and the developmental needs of children.</p>	Need (not instruction)
141	Purpose of a Custody and Parenting Evaluation; For the Court	<p>Judges may order a child custody evaluation to address the relevant psychological factors associated with the relocation question. For example, in California, judges frequently request the assistance of an evaluator in a relocation case in order to provide information to the court about the relevant psychological issues described in the <i>LaMusga</i> decision (<i>In re Marriage of LaMusga</i>, 2004). Among the many issues identified in the case were various factors the court would likely consider in a relocation matter. This guidance from case law also helps custody evaluators in California focus on those relevant psychological issues. Similar case law decisions in other states would guide custody evaluators as well.</p>	
141-142	Purpose of a Custody and Parenting Evaluation; For the Court	<p>Although judges are guided by the law in making decisions regarding the best interests of children, they may look to the child custody evaluator to assist in understanding the family dynamics and the relevant psychological factors in order to reach a decision about what is in the child’s best interests. In many ways, the neutrally appointed child custody evaluator serves as a consultant to the judge, providing critical data about the family for a better understanding of the family dynamics and the needs of the children.</p>	<p>Need (not instruction)</p> <p>Critical (not instruction)</p>

142	For the Family	Obviously, these families do not need to undergo an evaluation, nor would the court order one. In fact, given the potentially intrusive nature of child custody evaluations, in such situations it is highly likely that an evaluation would be <i>harmful</i> to the family.	Need (not instruction)
142	For the Family	The primary value of an evaluation in these circumstances is that the evaluation provides an opportunity for parents to voice their concerns to a neutral expert. A neutrally appointed child custody evaluator will spend considerable time with both parents trying to understand their concerns and their perceptions of their child's needs. This can be comforting to parents and sometimes serves as a catalyst for them to move toward cooperation.	Need (not instruction)
142	For the Family	By listening to children, evaluators can also identify when they are caught in a loyalty conflict between their parents and describe the impact of this conflict to the parents and the court. It is common for children's voices to be absent in the courts in the United States, and participation in a child custody evaluation can help children voice their concerns, share their wishes, and explore their feelings. Although the child custody evaluator is not serving as a therapist, the evaluation process may be therapeutic to children who participate in the evaluation. If the evaluator concludes that the child is experiencing significant problems, he or she can refer the child for therapy and help the parents understand their child's developmental needs. In these ways, the evaluator serves to hear the child's voice and advocate for the child's psychological and developmental needs.	Need (not instruction)
143	For the Family	A third potential benefit comes from the fact that the same mental health professional is observing all family members. ... By having a neutrally appointed custody evaluator listen to and observe all family members, interview relevant collateral witnesses, and consider everyone's input before reaching conclusions about the children's best interests, fragmentation is reduced.	
143		At the end of the evaluation process, when an evaluator writes a comprehensive report, parents benefit by learning about their child's needs and how they can work together to meet those needs. The report can help parents focus on the child rather than on their conflicts with each other and can help them learn ways to resolve their conflicts and meet their child's needs. Furthermore, the evaluator can help parents understand relevant issues important to parents, such as when and how to incorporate overnight time with each parent for their young child, the impact of their conflict on their children, and the risks and benefits of shared parenting. This understanding will enable them to parent more effectively.	Important (not instructions) Need (not instruction)
143	For the Family	Ultimately, an evaluation is most helpful to the family when the report and conclusions reduce conflict, help parents reach an agreement without going to trial, and keep parents focused on their child's needs and best interests. Well-done evaluations often help parents recognize the need for solution and compromise, and, while mediation may not have been successful prior to the evaluation, settlement may be much more likely after an evaluation (R.K. Kelly & Ramsey, 2009).	Need (not instruction)
143-144	Ethical Considerations in Child Custody Evaluations	Along with any state or local rules or statutes, and in addition to the AFCC Model Standards (2006) and the APA Guidelines for Child Custody Evaluations (APA, 2009) described earlier, a number of other advisory documents guide the ethical practice of the child custody evaluator, including ... These documents provide considerable guidance for the evaluator. Child custody evaluators who are not highly familiar with all of these documents are working at a	

		considerable disadvantage and, therefore, are at increased risk for failing to maximally serve the court and family.	
144	Maintaining Specialized Competence	<p>Child custody evaluations are a unique type of evaluation, one that requires specialized competence. ... The Model Standards list 18 areas of expected training for all child custody evaluators and 5 areas of specialized training for those evaluators performing custody evaluations in those particular areas. These areas of expected training include, among other items:</p> <ul style="list-style-type: none"> • The psychological and developmental needs of children • The effects of separation, divorce, domestic violence, substance abuse, child alienation, child maltreatment, and interparental conflict on the psychological and developmental needs of children. • How to assess parenting capacity and coparenting capacity and construct effective parenting and coparenting plans. <p>Additionally, the Specialty Guidelines state, “Forensic practitioners make ongoing efforts to develop and maintain their competencies...[and] keep abreast of developments in the fields of psychology and law” (see APA, 2013, Standard 2.02). These several documents guide the evaluator in developing and maintaining ongoing continuing education in areas relevant to child custody evaluations.</p>	<p>Need (not instruction)</p> <p>Require</p>
144-145	Avoiding Conflicts of Interest	<p>The APA Guidelines for Child Custody Evaluations state, “Psychologists strive to avoid conflicts of interest and multiple relationships in conducting evaluations” (see APA, 2009, Guideline 7, p. 11), as certain prior roles may impair the objectivity of the child custody evaluator. Furthermore, the Guidelines for Child Custody Evaluations advise against performing a child custody evaluation if the psychologist has provided therapeutic services to any of the parties in the past or present. ... The appearance of conflict may be equally important to actual conflict in these cases. Although there may not be any actual conflict, and although no ethics will have been violated by taking on the evaluation role in these circumstances, evaluators should recognize the risk that a parent who feels wronged by the evaluator’s recommendations might allege that the evaluator was biased because of these prior relationships. If such a parent later finds out about these relationships, it may serve as further reinforcement of such bias in the mind of the parent. Advance disclosure of all prior relationships helps reduce the risk of such allegations.</p>	<p>Should</p> <p>Important (not instructions)</p> <p>Advise</p> <p>Recommend (not instructions)</p>
145	Obtaining Informed Consent	<p>Even though child custody evaluations typically are court-ordered, parents still need to understand the process. Technically, informed consent is not obtained when the court orders an evaluation; instead, custody evaluators are encouraged to obtain consent both in writing and orally at the start of the evaluation process (APA, 2009). The document needs to explain critical issues, such as the general procedures that will be used, each parent’s role in the evaluation process, fees, and the limits of confidentiality. The evaluator needs to inform parents that a child custody evaluation is not a health-related procedure and that the evaluator will not bill a parent’s health insurance. Additionally, because the EPPCC requires psychologists to avoid doing harm when it is foreseeable (APA, 2002), the evaluator should inform parents that one or both of them may be unhappy at the end of the evaluation process. It is recommended that the evaluator provide this document to the parents and their attorneys in <i>advance</i> of the start of the evaluation. Finally, it is also important for the evaluator</p>	<p>Should</p> <p>Important</p> <p>Need (x3, two instructions to evaluators)</p> <p>Critical (not instructions)</p> <p>Require (not instruction)</p>

		to inform potential collateral sources of the limits of confidentiality and the purpose for which the collateral information is being gathered (AFCC, 2006).	Recommend Encourage
145	Employing Balanced and Impartial Procedures	According to AFCC Model Standard 5.5, child custody evaluators strive to use a balanced process in order to achieve objectivity, fairness, and independence: “As one element of a balanced process, the evaluative criteria employed shall be the same for each parent-child combination. In the interests of fairness and sound methodology, evaluators shall ensure that any allegation concerning a matter that the evaluator is likely to consider in formulating his/her opinion shall be brought to the attention of the party against whom the allegation is registered so that s/he is afforded an opportunity to respond. (2006, p. 15). When the evaluator does not act in this way, it almost assuredly leads to a complaint of bias, sometimes made to the parent’s attorney, but potentially to the court or practitioner’s licensing board.	
145-146	Using Multiple Sources of Information	According to Guideline 10 of the APA Guidelines for Child Custody Evaluations, “Multiple methods of data gathering enhance the reliability and validity of psychologists’ eventual conclusions, opinions, and recommendations. Unique as well as overlapping aspects of various measures contribute to a fuller picture of each examinee’s abilities, challenges, and preferences” (2009, p. 14). These multiple methods (discussed in greater detail later) usually include, at a minimum: <ul style="list-style-type: none"> • Multiple interviews with the parents. • Interviews with children when appropriate. • Observations of children and parents interacting. • Administration of psychological testing and parenting questionnaires. • Review of collateral documents. • Interviews with relevant professionals, family members, and friends. 	Recommend (not instructions)
146	Staying Within the Scope of the Evaluation	Both of these require that the evaluator carefully consider the relevant issues in the case and make recommendations consistent with those issues. Identifying the scope in advance of performing the evaluation also ensures that the evaluator has the necessary specialized training to conduct the evaluation, as noted earlier.	Require Recommend (not instructions)
146-147	Differentiating Observations, Inferences, and Conclusions	In the Specialty Guidelines, psychologists are reminded: “In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand” (APA, 2013, Guideline 11.02, p. 16). Additionally, Specialty Guideline 11.03 states, “Forensic practitioners are encouraged to disclose all sources of information obtained in the course of their professional services, and to identify the source of each piece of information that was considered and relied upon in formulating a particular conclusion [or] opinion” (p. 17). Ultimately, this guideline is to help parents understand the rationale for recommendations but also to assist the court in understanding the evaluator’s reasoning. Within this context, it is equally important to provide a description of the risks and benefits of different options available to the court. This topic is discussed in greater detail in the report writing section further on.	Important Recommend (not instructions) Encourage (x2)

147	Record Keeping.	Because records are subject to subpoena and full disclosure is important in the interest of transparency and due process, the APA Guidelines for Child Custody Evaluations direct evaluators to keep complete, readable records with the expectation that others will review them in the event of ongoing litigation after the completion of the report.	Important (not instructions)
147-149	Basic Critical and Relevant Research, Especially About Children	Given the admonition about training, this next section addresses basic research with which all custody evaluators should be familiar. [subsection headings are: Divorce Research, Parenting Plans for Young Children, Shared, 50-50, or Sole Custody?, Conflict, Legal Custody, and Decision Making. Relevant quotes: “If conducting a child custody evaluation where young children are at issue, it is critical to know this research.” “Less research has focused on legal custody and decision making between parents than on residential schedules.”	Should Critical
149		Parenting coordinators (Sullivan, 2004), who work with a family to help resolve conflicts on an ongoing basis, usually after there are court orders in place, may prove of value when certain high-conflict dynamics exist. This process helps many families avoid frequent returns to court and enables decisions to be made for the benefit of children more efficiently (Sullivan, 2004).	
149	Critical Research in Special Issues	In addition to the basic research just described, many child custody evaluations involve special issues, including allegations of domestic violence, sexual abuse, children becoming alienated, and relocation. Even more specialized knowledge is critical when performing evaluations in these areas (see AFCC, 2006, Model Standard 1.2 (c)).	Critical
150	Sexual Abuse	Perhaps the most emotionally charged of cases are those in which there are allegations of child sexual abuse. The challenge in these cases is that the allegation usually sets in motion several events, including but not limited to: <ul style="list-style-type: none"> • Independent investigations by child protective services and law enforcement authorities. • Criminal charges. • A temporary order suspending or supervising contact between the child and the alleged offender. • Emotionally charged court hearings in which the alleged offender denies the allegations and claims the allegations are made for purposes of custody and the other parent simply claiming protection of the child. • A child custody evaluation designed to more fully evaluate the allegations and make recommendations for a parenting plan. Kuehnle and Connell (2009) focus on the range of hypotheses that must be considered in any case when such allegations are raised and the thoroughness of the evaluation process required. They also identify that the primary role of the evaluator is to perform a risk assessment in these cases.	Must (borderline instructions) Required Recommend (not instructions)
150-151	Relocation Evaluations	The one area where many judges and evaluators have the most trouble making decisions is in relocation cases, which pit the right of adults to live wherever they want and the right to parent. These cases come to the court when one parent wants to move with the child and the other parent opposes the move and wants the child to remain. Child custody evaluators are at risk of confounding the research when performing these evaluations by recommending against moves because of research that demonstrates the benefit to children when both parents maintain ongoing and regular access with their children (Austin, 2000). There is	Need (not instructions) Recommend (not instructions)

		<p>limited research on the effect of parental relocation on children. ... The primary focus in recent years has been on the consideration of risk and protective factors in determining the ultimate decision in these cases (Austin, 2008b; Parkinson, Cashmore, & Single, 2010; Stahl, 2010). ... Parkinson et al (2010) wrote that, while it is tempting to resolve these difficult cases with the assistance of wishful thinking, research is needed to test that wishful thinking against the realities of experience. They do not believe there is ample research support to conclude that children who relocate with one parent while the other parent is left behind will, by virtue of the relocation, automatically do well or will be harmed. Rather, the only way to understand the optimal relocation decision in a given case is by focusing on the risk and protective factors existing in that case.</p>	
151-152	Process of Conducting Custody and Parenting Evaluations	<p>Child custody and parenting evaluations are very different from other psychological or forensic evaluations. They are more complex, involve more people, and entail more procedures than most. These evaluations require a forensic mind-set versus a therapeutic mind-set and the exploration of multiple hypotheses. Typically, there will be allegations made by one parent against the other, and it is not unusual for the evaluator to be unable to reach conclusions about the he-said, she-said allegations in the case. Each step of the evaluation process is designed to help the evaluator gather information critical to understanding the family.</p>	<p>Critical (not instructions)</p> <p>Require</p>
152	Getting Started	<p>In most jurisdictions, a custody or parenting evaluation will be ordered by the court or stipulated to by the parties. It results in appointment of one neutral evaluator focused on assessing all relevant issues in dispute. From a risk management perspective, it is important to receive the court order before beginning the evaluation, as the authority to conduct the evaluation comes from the court. ... After receiving the court order, it is common for the evaluator to have a joint conference call with the attorneys to gather basic information about the family and the reasons for the evaluation. Although some attorneys like to argue their case for the evaluator, it is best to get some basic facts and reasons for the evaluation during this call and lay out the logistics and proposed time frame for the evaluation. During this call, it is helpful for the evaluator to explain procedures and request documents to be reviewed. ... As noted, the retainer agreement describes the evaluator's and the parents' obligations through the evaluation process, limitations regarding confidentiality, and other critical information about the evaluation process. It serves as a detailed informed consent document, which is recommended even if the parents have been ordered to participate in the evaluation.</p>	<p>Important</p> <p>Critical (not instructions)</p> <p>Recommend</p>
152-153	Interviews With Parents	<p>A good way to start the first evaluation interview with each parent is to ask the parent, "Why are we here?" This question allows the parent to explain his or her concerns, observations, beliefs, and allegations in a rather open-ended manner. With limited prompting, (e.g., "Tell me more"), the evaluator can spend much of the first appointment trying to understand the parent's issues, concerns, and proposed solutions. Parents often have a need to be heard, and focusing on the matters important to them during the first interview facilitates cooperation and participation. During the interviews, it is important for the evaluator to focus on each parent's:</p> <ul style="list-style-type: none"> • Concerns and allegations. • Responses to the allegations and concerns raised by the other parent. 	<p>Important (one instructions, one not instructions)</p> <p>Need (not instructions)</p> <p>Recommend (not instructions)</p>

		<ul style="list-style-type: none"> • Understanding of the child and his or her psychological, social, academic, and developmental functioning. • Description of the history of the relationship between the child and each parent. • Description of his or her own family history, especially focusing on relevant issues that may relate to the current evaluation. • Beliefs about the strengths and weaknesses of his or her own and the other parent's parenting. • Description of the coparenting relationship and the ability of each parent to communicate with the other and make day-to-day decisions on behalf of the children. • History of and ability to support the child's relationship with the other parent and if there are concerns about this moving forward. • Understanding of the special issues in the case (e.g., relocation) and how it may affect a parenting plan. • Recommendation for the specific parenting plan. 	
153	Interviews With Parents	In most evaluations, this information can be gathered in three to four interviews, each of which might last 2 hours. It is important to gather the information that each parent wants to relay, but the examiner must be more than a stenographer and seek enough depth and breadth associated with these issues while simultaneously having an opportunity to ask each parent about the concerns raised by the other parent.	Important Must
153	Interviews With Parents	In evaluations with more complex issues, the evaluator will want to explore those in depth. ... It is always important to explore for more than what the parent initially describes, since many domestic violence victims are reluctant to share details of the abuse.	important
153	Interviews With Parents	In cases with allegations of alienation, it is important to explore each parent's history of involvement with the child, each parent's perception of his or her own and the other parent's contribution to the child being alienated, and the extent to which the child is rigid in his or her rejection of one parent. The evaluator should explore whether the child has a realistic basis for being estranged from one parent or whether other dynamics are contributing to this alienation.	Should important
153-154	Interviews With Parents	Finally, in relocation cases, in addition to best interests statutes, it is important to understand specific statutory or case law pertaining to relocation. ... Evaluators need to understand these state-specific legal issues in relocation matters. When interviewing parents in relocation cases, evaluators must: <ul style="list-style-type: none"> • Ask questions to understand the motives for relocation and the motives for opposing it. • Understand how each parent perceives the child will be affected by the move, both positively and negatively. • Collect family information to understand the social capital in each community (Austin, 2008a). • Gather information from each parent about a proposed parenting plan should the court allow the move, or should the court not allow the move, or should both parents end up in the same location. 	Important Need Must
154	Interviews with Children	Interviews with the children are a crucial part of understanding both the family dynamics and the relationship between the child and his or her parents. Evaluators should: <ul style="list-style-type: none"> • Start by establishing rapport with the children. 	Judge as decisionmaker, ultimate authority

		<ul style="list-style-type: none"> • Begin by discussing the process of the evaluation, the limits of confidentiality, and the structure of the interview process. • Encourage children to talk openly about their feelings and help them understand that the evaluation is about their interests and not their parents' wishes. • Inform the children that a report will be submitted to the judge, which the parents will probably read. • Tell children that they do not have to answer questions they do not want to answer and that their parents or the judge will ultimately decide where and how they will spend time with their parents. 	Should Encourage (not instructions)
154	Interviews with Children	Evaluators must recognize that children's language skills are not the same as adults'. It is important to know that, although children often do not understand their questions, they may respond as if they do. It may be useful to ask children to repeat or to explain the questions to be sure that they understand them.	Language Important Must
154	Interviews with Children	How questions are asked affects the way answers are given. When interviewing children, particularly in a forensic context, it is vital to ask open-ended questions (Lamb, Hershkowitz, Orback, & Esplin, 2008). These questions are far more likely to yield useful, accurate, and honest responses. Asking leading or categorical questions limits the way that the child responds, and, therefore, limits the usefulness and validity of those responses.	
154-155	Interviews with Children	It is important for the evaluation process to be balanced. As such, it is also important for children to be seen with each parent bringing them to the office. Evaluators must keep in mind that one or both parents may influence their children. To reduce the risks associated with this influence, appointments should be scheduled equally with each parent bringing the children to appointments. Although children's suggestibility and the potential for being influenced by parents or siblings is a topic that is beyond the scope of this chapter, it is critical for those evaluating custody and parenting plans to understand this research.	3/6/8 should Important (x2) Must Critical
154	Interviews with Children	Specific data are important to gather during interviews with children. These include the child's: <ul style="list-style-type: none"> • Likes and dislikes, interests, friends, chosen activities, and other aspects of the child's day-to-day life. • Schooling, including information about how each parent participates in helping with homework and other school-related matters. • Perceptions of his or her relationships with each parent, including things that the child likes and does not like about each parent. • Perceptions of discipline. • Routines in each home and how the child deals with any differences in routines between homes. • Typical mood, and how the child typically expresses his or her feelings and if there is a difference for each parent. • Perceptions about the need to care for his or her parents emotionally. • Anything else the child wants the judge to know. <p>These data provide important information to the court about the child's life. Because the evaluator is the only unbiased person providing information to the judge about the child (it is assumed that both</p>	Important (one instruction, one not) Need (not instruction)

		parents will be biased), such information is vital to the court in helping it to make the ultimate decision about custody and parenting plans.	
154-155	Observing Parents and Children Together	A fundamental purpose for observing children is to understand the nature of the bond between a child and the parents. Although there is no reliable and valid way of measuring whether a child is more bonded to one parent or the other, the job of the evaluator is to describe the behavioral dynamics of the bond for the judge. In young children, the evaluator should observe the way children and parents relate with one another. Do they play together, smile and laugh with one another, exchange affection with one another, or stay relatively distant and isolated from one another? Does the child seem attentive to the parent when the parent enters the room, or does the child seem disinterested? When parents are in the room, it is important to listen to what they say. Parents may want to talk about things that are inappropriate to discuss in front of the child, because they have a need to provide more information to the examiner. The observation session is not a good time for this so it is always important for evaluators to understand each parent's ability to utilize adequate boundaries and keep the child free from anxiety. If the parent offers inappropriate comments in front of the child (e.g., something negative about the other parent or something about the litigation), the examiner should try to understand how the child feels about it, responds to it, and interacts with the parent about it. For example, some children get into arguments with their parents about things that parents say, and this provides valuable information about the interaction between parent and child.	Should (x2) Important (x2) Need (not instruction)
155	Observing Parents and Children Together	It is often helpful to provide tasks for the parent and child to complete. Encouraging a father and daughter to draw a picture, for example, will provide data about how they work together to complete a task. Are they cooperative, are they playful, do they use each other's assistance, or do they become quite competitive with one another? This can help the evaluator develop hypotheses about the child's relationship with the parent, which will need to be verified in other ways (e.g. with collateral sources or interviews). Unstructured play, in which the child initiates an activity of his or her choosing, provides an opportunity to see how responsive the parent is to the child in <i>his</i> or <i>her</i> space. Many parents can interact quite well with their children when they choose the activity, but they may feel awkward and insecure when their children choose the activity. At the same time, the examiner must observe the affect of the parents and children. Are they relaxed and having fun, or is there tension between the parent and child just as there is between the parents?	Need (borderline instructions) Must Encourage (borderline)
155	Observing Parents and Children Together	Finally, with older children and their parents, it is important to talk about the routines, day-to-day life in each parent's home, and how they and their parents deal with conflicts. Examiners should pay particular attention to disparities between what the child says during individual interviews compared with the observation sessions. It is particularly important to explore a range of feelings between the child and parents in those families where alienation or estrangement is alleged.	Should Important (x2)
155	Psychological Testing and Parenting Questionnaires	Use of psychological testing in custody evaluations, though common, is not mandatory. No psychological tests measure the quality of parenting or coparenting, which are critical issues in child custody and parenting evaluations. There are also no valid psychological tests designed for use with the specific child custody population. Although there have been efforts to develop some psychological instruments relevant to child custody (e.g., Ackerman & Schoendorf, 1992;	Critical (borderline instruction)

		Bricklin, 1989, 1990a, 1990b), these instruments are of limited validity (Otto, Edens, & Barcus, 2000). ... Thus, no specific instruments can directly assess the complex issues inherent in these evaluations.	
156-157	Psychological Testing and Parenting Questionnaires	The AFCC Model Standards direct child custody evaluators to “be prepared to articulate the bases for selecting the specific instruments used” (2006, p. 17) and to use assessment instruments “for the purpose for which they have been validated” (p. 18). The Model Standards add that “[c]aution should be exercised...when utilizing computer-generated interpretive reports and/or prescriptive texts” (Standard 6.6, p. 18). According to the APA Guidelines for Child Custody Evaluations, “Psychologists strive to interpret assessment data in a manner consistent with the context of the evaluation” (2009, p. 15). These Standards and Guidelines suggest that child custody and parenting evaluators must be careful in choosing assessment instruments, understand the research associated with custody litigants and their scores on various measures (Bathurst, Gottfried, & Gottfried, 1997; McCann et al., 2001), and be careful when using computer-generated interpretive reports (Flens, 200). If a psychologist quotes from a computer-generated interpretive report, he or she should identify it as a quote and provide the citation. ... Examiners should be aware of the controversies and arguments on both sides of the issues when choosing to use those particular instruments, as presented in balanced reviews by Craig (2006), Dyer (2008), Erard (2005), and Evans and Shutz (2008).	Should (x3) Must
157	Psychological Testing and Parenting Questionnaires	Finally, psychological test instruments should be used in a <i>forensically informed manner</i> . Unlike the use of psychological tests in therapeutic settings, where the goal is to aid in diagnosis and treatment, tests in child custody and parenting evaluations should be “informed” by the forensic questions that guide the evaluation. ... The test data should be used to develop hypotheses about the parents’ psychological and behavioral functioning specifically in terms of how it relates to parenting and abilities to implement a parenting plan.	Should (x3)
157-158	Psychological Testing and Parenting Questionnaires	It is also common to administer some type of parenting questionnaires or instruments to gauge a parent’s stress (Parenting Stress Index-4, Abidin, 2012), measure each parent’s self-report about his or her relationship with the child (Parent Child Relationship Inventory; Gerard, 1994), and gather structured information about the child (Achenbach Child Behavior Checklist; Achenback, 1991). It is important to recognize that these instruments are not definitive but also may provide useful hypotheses about the parents and their observations of their child.	Important
158	Review of Collateral Information	Collateral information falls within two major categories. First, the evaluator will review relevant pleadings, declarations, and other court documents that the attorneys submit. Although these documents are not intending to bring “truth” to the case (even though declarations are signed under penalty of perjury), they do provide a framework from which to understand each parent’s perspectives and concerns. Evaluators must review all materials submitted, though the evaluator can set a deadline as to when materials must be submitted so the evaluation can be completed on time as required by the court.	Must (x2) Require (not instructions)
158	Review of Collateral Information	The second type of collateral information comes from third parties who have relevant information about one or more family members. Collateral data can include information gathered from friends, relatives, babysitters, teachers, pediatricians, psychotherapists, and others. The child custody evaluator looks for convergent and divergent data between collateral and other data to help in understanding the	

		various allegations and assertions made by the parties. Collateral information can be gathered verbally (over the telephone or in person) as well as in writing, with the use of questionnaires and letters, or by a review of affidavits or other written statements of the parties.	
158	Review of Collateral Information	<p>The benefits of gathering collateral information are listed next:</p> <ul style="list-style-type: none"> • Evaluators need to have a mind-set of disconfirmation rather than confirmation. Reviewing collateral information and talking with collateral sources allows for that. • Parents in the midst of a custody dispute tend to present themselves in the most favorable light and the other parent more negatively. Collateral data can help balance this defensiveness and positive impression management by the parents. • Collateral data may include information about parents and/or children that cannot be obtained through clinical interview, testing, and observation. • Collateral data can help verify or refute claims made by the parents or others. 	Need
158-159	Review of Collateral Information	<p>The AFCC Model Standards (2006) provide specific direction for the gathering of collateral data: Evaluators shall be mindful of the importance of gathering information from multiple sources in order to thoroughly explore alternative hypotheses concerning issues pertinent to the evaluation. Evaluators shall recognize the importance of securing information from collateral sources who, in the judgment of the evaluators, are likely to have access to salient and critical data. (Standard 11.1, p. 22) When assessing the reports of participants in the evaluation, evaluators shall seek from other sources information that may serve either to confirm or disconfirm participant reports on any salient issue, unless doing so is not feasible. (Standard 11.2, p. 22) In utilizing collateral sources, evaluators shall seek information that will facilitate the confirmation or disconfirmation of hypothesis under consideration. (Standard 11.4, p. 23) All collateral sources contacted shall be disclosed by the child custody evaluator. (Standard 11.5, p. 23)</p>	Critical (not instruction)
159	Review of Collateral Information	<p>Typically, the court order appointing a child custody evaluator allows the evaluator to speak with any third-party collateral sources chosen, even without the expressed permission of either parent. Authorization from parents is required before speaking with professional collateral sources, such as teachers, therapists, and physicians. Evaluators must obtain the consent of the collateral witness to be part of the evaluation process and provide the same information about the limitations to confidentiality to all third-party collaterals, some of whom may not want to speak with an evaluator if they know that their comments are going to be included in a report to the court and read by the parents.</p>	Must Require
160	Critical Issues in Report Writing	<p>The various documents just cited all provide guidance on the critical issues involved in report writing. For example, California Rule of Court 5.220 states: In any presentation of findings, the evaluator must:</p> <ul style="list-style-type: none"> • Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached; 	<p>Must</p> <p>Critical (not instructions)</p> <p>Require (not instructions)</p>

		<ul style="list-style-type: none"> Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews; Only make the custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan. (p. 4) <p>Although this Rule is mandatory only for California child custody evaluators, these suggestions are useful for evaluators in any jurisdiction.</p>	Recommend (not instructions)
160	Critical Issues in Report Writing	<p>The Specialty Guidelines state: Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony, forensic practitioners strive to offer a complete statement of all relevant opinions that they formed within the scope of their work on the case, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support of the opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed (APA, 2013, p. 17)</p> <p>The Specialty Guidelines also instruct the forensic evaluator to disclose data and information that is not supportive of or contrary to the conclusions and recommendations offered by the evaluator.</p>	Recommend (not instructions)
160-161	Critical Issues in Report Writing	<p>Every report should have six complete sections, as discussed next:</p> <ol style="list-style-type: none"> Procedures Each parent Children Collateral information Analysis Recommendations 	Should Recommend (not instructions)
161	Procedures	This thorough description of procedures helps reduce the risk that someone might perceive the evaluation and report as biased.	
161	Each Parent	The evaluator must provide complete and relevant information about each parent. ... In addition, this section should include each parent's relevant details about any special issues.	Should Must
161-162	Children	<p>The report should provide thorough and relevant information about each child. The examiner must keep in mind that this is likely to be the only opportunity the court will have to gain a truly objective perspective of the children and their adjustment. Among other things, the data should include information about each child's:</p> <ul style="list-style-type: none"> Developmental, social, psychological, academic, and social functioning, including interests, friendships, temperament, and typical mood. Relationship history with each parent. Thoughts about each parent. Feelings about a range of things, including the parents' divorce and their behaviors as divorced parents. Exposure to parental conflicts, and/or the extent to which the child feels alienated or justifiably estranged from one parent. 	Should (x2) Must

		<ul style="list-style-type: none"> • Perspective of each parent’s caretaking and how each parent disciplines the child. • Opinion(s) about the parenting plan, if expressed. 	
162	Collateral Information	A common complaint of parents is that the evaluator misrepresented what collateral informants offered. For this reason, it may be useful to review with the collateral informant the information to be included in the report and/or include a statement from each collateral witness confirming the information in the report.	
162	Analysis	The analysis section is the most important component of the report. Rather than a review of information already described, the analysis section should focus on those data that lead to the expert opinions. In the analysis section, it is also important to show your work and explain the bases for all conclusions. It is important to detail the basis for any expert opinions reached. The analysis section should reflect that the evaluator considered each parent’s concerns and responses to the other parent’s concerns. It is important that those data are integrated with the psycholegal issues of concern to the court.	Should (x2) Important (3 instructions, 1 not)
162-163	Analysis	Given that, in most evaluations, there is a range of custodial options, it is important for the evaluator to provide a thorough risk-benefit analysis of each custodial option and those data that support his or her conclusions. ... Finally, in all cases, the evaluator should explain the risks and benefits of shared decision making as opposed to some other plan that may give one parent decisions in certain areas of the child’s life or perhaps even utilizing a parenting coordinator. In some cases, it might be best to provide the court with detailed parenting plan. In such a case, the evaluator should detail the risks and benefits of each potential parenting plan in the report. Finally, and most important, it is critical to present both the data that support the conclusions as well as the data that do not support the conclusions (as described in California Rule of Court 5.220 earlier in the chapter).	Should (x2) Important (x2) Critical
163	Recommendations	In recent years, there has been a renewed debate about whether examiners should make recommendations about the ultimate issue in child custody cases (<i>Family Court Review</i> , 2005; Stahl, 2005; Tippins & Wittmann, 2005). Judges typically prefer recommendations, and therefore it remains the custom of evaluators to provide them (M. J. Ackerman, Ackerman, Steffen, & Kelley-Poulos, 2004). Nevertheless, it is clearly the judge’s job to make orders based on all of the evidence at trial rather than simply rubber-stamping the recommendations of a child custody evaluator (Schepard, 2004). Family law judges use the evaluator’s recommendations as a starting place, not an end point, and they assess the usefulness of the evaluator’s recommendations based on the consistency with other evidence presented at trial as well as the forensic integrity and quality of the evaluator’s work product. Stahl (2005) suggested that, when one or more best interests or protective factors would suggest against the child’s relocation, the evaluator should not weigh the various factors; this is the judge’s job. Instead, in such situations, the evaluator should provide those conclusions to the court and provide multiple recommendations, with the ultimate decision based on the judge’s weighting of the various best interests, risk, and protective factors.	Should (x3) Recommend (none are instructions)
163	Recommendations	In addition to the ultimate issue of parenting time, it is common in child custody evaluations to make recommendations in these areas: <ul style="list-style-type: none"> • Legal custody and/or decision making. • Interventions, including counseling for either parent and/or the children, identifying suggested goals for that counseling. 	Recommend (borderline instructions)

		<ul style="list-style-type: none"> • Substance abuse or domestic violence related interventions, if relevant. • Alternative dispute resolution for ongoing issues (e.g., mediation or parenting coordinator). • Any other recommendations relevant to the family that was evaluated. 	
163-164	Conclusions	Child custody evaluations are complex and require integrating disparate information gathered from a variety of participants and information of various types with disparate characteristics. Like a jigsaw puzzle, child custody evaluations require a persistent attitude of gathering more information, not only to confirm but also to disconfirm various hypotheses, until things fall into place. Evaluators need to avoid acting like stenographers and maintain a style of curiosity, always gathering additional relevant information until complex issues are understood. To be an effective evaluator, one must develop a thick skin, because one or both parents are likely to be upset with the recommendations. In some jurisdictions, it is not uncommon for parents to file licensing complaints alleging biases or unprofessional behavior regardless of how thorough and professional the evaluation is. Indeed, the child custody evaluator carries more risk for licensing complaints than any other role played by the professional psychologist (Kirkland & Kirkland, 2001). Finally, if a case goes to trial, it is possible that one or both attorneys might hire a consultant or testifying expert who might criticize some of the work.	Need Must Require (x2) Recommend (not instructions)
164	Conclusions	In spite of the risks and difficulties, conducting child custody evaluations can be professionally rewarding and satisfying. A child custody evaluator provides a beneficial service for family law judges that can help them understand the complexities of the most conflicted families they serve. Child custody evaluations can provide guidance for families who can settle their dispute and move forward following a well-done evaluation. Because child custody evaluators work in an interdisciplinary field, opportunities for ongoing learning and professional development are ever present. Most important, child custody evaluators keep the focus on the best interests of the children and therefore help them and their parents to adjust to the change in their lives as they develop healthier and more adaptive ways of moving forward.	Important
Chapter 10: Conducting Child Abuse and Neglect Evaluations			
237	[10: Conducting Child Abuse and Neglect Evaluations Intro]	In order to conduct an evaluation of children and parents in cases of alleged maltreatment, one needs an in-depth understanding of the etiology and impact of child maltreatment.	Interesting that it doesn't say why, just dives into research/literature. Explicit assumption. Need
238	[10: Conducting Child Abuse and Neglect	Definitional issues remain a challenge, particularly because maltreatment types often are defined by legal codes or social service systems and because researchers have not reached consensus on some of the nuances of definitions (see Condie, 2003; Marshall, 2012, for	

	Evaluations Intro]	examples). There is, however, growing consensus over research definitions and subtypes (Cicchetti, 2004; Runyan et al., 2005).	
238	[10: Conducting Child Abuse and Neglect Evaluations Intro]	Researchers studying risk factors, protective factors, and intervention methods have concluded that it is difficult to isolate one form of maltreatment from another in order to adequately classify or study factors that might be specific to one form of child maltreatment (i.e., physical abuse, sexual abuse, emotional/psychological abuse, neglect). Because different forms of child maltreatment tend to co-occur, pure scientific analysis of contributing factors is difficult (Cicchetti, 2004; Marshall, 2012). As a result, researchers have instead focused on maltreatment typology overlap and comorbidity, the degree and nature of maltreatment, and child protection policy analysis (Brandon, 2001; Marshall, 2012). A second problem affecting the integrity of scientific research is the degree to which social or legal definitions of child abuse meaningfully correspond to real behavior. Classification entries in state records of child maltreatment typically are recorded after negotiation and consultation with families, representatives of the justice system, and representatives of child protective systems (Bae, Solomon, Gelles, & White, 2010; Putnam-Hornstein, Webster, Needed, & Magruder, 2011). With the exception of large-scale funded projects, research samples typically are drawn from small convenience samples. Thus, there are a variety of challenges to research on the etiology and impact of child maltreatment. They are briefly mentioned here to alert evaluators to the inherent limitations in the state of the science. Researchers studying child maltreatment acknowledge the methodological difficulties; unfortunately, the difficulties are not easily overcome (MacMillan, 2005).	
238-239	[10: Conducting Child Abuse and Neglect Evaluations Intro]	<p>Theories of child maltreatment (see Belsky, 1993; Condie, 2003) include these models:</p> <ul style="list-style-type: none"> • Psychological (e.g., personality variables, emotional variables, characteristics of perpetrators) • Sociological (societal and contextual conditions giving rise to child maltreatment) • Criminological (social class variables, rational choice theory, self-interest motives, communal relationships, strain theory) • Interactional (dyadic parent-child goodness of fit, communal relations) • Genetic (epigenetics, gene/environment interactions and correlations) <p>No model has emerged that fully explains child maltreatment or less severe forms of problematic parenting (Belsky, 1993; Runyan et al., 2005; Simon et al., 2012). Child maltreatment, in any of its forms, is multiply influenced by a variety of determinants that coalesce through transactional processes at various levels of analysis (life course, immediate-situational, stressors-support, potentiating-protective, historical-evolutionary) in the broad context of parent-child or other caregiver-child relationships (MacMillan, 2005).</p>	
239	[10: Conducting Child Abuse and Neglect Evaluations Intro]	Similarly, there is no single or uniform solution to the problem of child maltreatment. Interventions range from preventative to clinical, self-help to formal intervention, individual to macrosocial, and psychological to legal. Policies within child protective service systems range from emphasis on termination of parental rights to emphasis on family preservation strategies, and sometimes those goals take place concurrently. The targets of intervention might include a specific parent, a set of parents with common struggles, a specific child or set	

		of children from the same family, children from similar maltreatment environments, or the neighborhood and social conditions contributing to child maltreatment risk.	
239	Risk of Child Maltreatment	Risk factors are factors that increase the odds that child maltreatment will occur. Because child maltreatment has a major economic and social impact, early detection is of great importance. Researchers have developed taxometric structures for predicting child maltreatment. Risk variables and mediators of risk tend to fall under the categories of developmental and psychological factors, social and community variables, and contextual variables.	After this intro, lengthy discussion of literature around the topics laid out here. Importance
247	Summary	The foregoing analysis illustrates the main point that child maltreatment is multiply determined by factors operating at multiple levels of analysis that include evolutionary, developmental, situational/contextual, individual, microsocial, macrosocial, and demographic. Maltreatment is the final common outcome of multiple pathways. In any individual child protective service investigation of child maltreatment, it is possible to identify multiple etiological correlates. A different set of correlates, with or without overlapping variables, might not appear in the next investigation. Unique clusters may recur across cases but not in a reliably predictable manner. The multidetermined nature of child maltreatment must be considered by both researchers and clinicians in order for them to better understand and empirically substantiate the transactional process presumed to contribute to child maltreatment (Belsky, 1993; Condie, 2003). Researchers analyzing risk factors imperfectly distinguish between different forms of maltreatment and the lack of distinctiveness of any individual or cluster of predictors for any one form of maltreatment (Condie, 2003). A point of emphasis for future research will be to highlight features that distinguish levels of severity and chronicity of child maltreatment. Two physically abusive or neglectful parents might not be equally abusive or neglectful. Descriptive research is needed to better understand what factors contribute to severity and chronicity of child maltreatment and what factors contribute to lessened or diminishing severity and desistance of maltreatment.	Skip to summary in keeping with guidelines of recording instructions to evaluators. Need (borderline instruction for research) Must
247	Summary	Not all abusive or neglectful parents are the same kind of person, and researchers have begun examining the utility of classification schemes. Researchers are beginning to describe typologies of maltreating parents that include combinations of variables at different levels of analysis. The multidetermined nature of child maltreatment may make this undertaking difficult, at least from the perspective of intervention planning. It is a challenge to design interventions that address the needs of a diverse group of parents with diverse contributing influences related to child maltreatment, particularly in the setting of a relatively high rate of child poverty (Korbin et al., 1998). Not every young parent, impoverished parent, single parent, or parent with children having closely spaced births mistreats his or her children. Thus, interventions must address more than impoverishment, fertility, and social support. Program developers have begun to address parental developmental histories, negative emotionality, emotional reactivity, and insecure expectations, but with mixed results (Kohl et al., 2011). Interventions must target multiple factors simultaneously, creating incentives for adolescents to remain in school, reducing school truancy and academic underachievement, addressing neighborhood quality, and increasing school-based case management (Belsky, 1993).	Need (not instructions) Must (x2)

248	Evaluation Methodology	<p>Methodology for evaluations depends on the nature of the referral question. The use of consistent methodology and the use of multimodal assessment procedures enhance the reliability and validity of evaluation results. In child maltreatment cases, flexibility in methodology across referral questions is needed to accommodate the degrees of breadth and depth necessary to answer a given referral question or set of questions. Care and protection evaluation methodologies and reports range from brief consultations to comprehensive descriptions of multiple family members and their interrelationships (Condie, 2003). Although there is no single methodology for care and protective evaluations, the prototypical example includes:</p> <ul style="list-style-type: none"> • Obtaining informed consent • Interviewing one or more parents or caregivers • Observing the parents or caregivers with the child (when indicated) • Interviewing the children • Gathering collateral information and relevant records • Seeking releases for access to privileged and/or confidential records • Administration of psychological measures or tools when indicated 	3/7/18 Need
248-249	Evaluating Caregivers	<p>Using a systematic approach, the caregiver portion of the evaluation satisfies informed consent procedures, introduces the referral questions and evaluation content, and reviews the anticipated scope of the evaluation. The referral question(s) frame the evaluation methodology. Multimodal assessment is conducted to enhance the reliability and validity of the evaluation results. Good methodology allows for flexibility to accommodate different degrees of breadth or comprehensiveness of referral questions, caregiver variables, and caregiver-child interaction variables.</p>	
249	Informed Consent and Notification of the Limits of Confidentiality	<p>The first step of any evaluation is to obtain informed consent in keeping with prevailing regulations and practice standards. The individual being interviewed must be informed of the limits of confidentiality prior to being interviewed (American Psychological Association [APA], 2013; APA Committee on Professional Practice and Standards, 2011 [the Specialty Guidelines are reprinted as the appendix to this volume with permission of the APA]). If the individual does not comprehend the notification, steps should be taken to determine whether the evaluation ought to proceed. Examples include contacting the referring attorney or notifying the court in the case of a court-ordered evaluation. The explanation should include:</p> <ul style="list-style-type: none"> • A clear explanation of the referral question • The individuals who are a party to the evaluation • Who will view the report • The lack of confidentiality • Who “owns” the report • Provisions (or lack thereof due to judicial restrictions in some jurisdictions) for the release of the report to individuals who are not a party to the legal proceedings • The difference between medical records and forensic records as defined in state or federal statutes and regulations relevant to both psychological record keeping and care and protection proceedings (Condie, 2003) 	Talking about interviewing adults, not children. Should (x2)

257	Interview Content for Risk of Sexual Abuse	Social and cultural factors of victim blame and the reluctance of the legal system to prosecute and punish offenders are hypothesized to contribute to the disinhibition of offenders	Not part of compendium criteria, but interesting.
265-266	Evaluating Children	The main goals in the initial appointment with a child are to set the child at ease, develop an understanding of the child's linguistic abilities, and provide a notification of the limits of confidentiality suitable to the child's comprehension (Condie & Koocher, 2008). It is helpful to begin with innocuous questions, but the questions should not inadvertently confuse the child's understanding of the purpose of the evaluation. Similarly, the evaluator should not immediately launch into discourse or questions that will raise the child's anxiety about loyalty bonds with parents. The evaluator must be alert to the possibility that some children will have been notified in advance of the evaluator's role and evaluation goals, either with accurate information or misinformation. Thus, glean information from the child about his or her preconceived notions of the evaluation should take place at the outset. Some children may hold clear goals of what they wish to convey to the evaluator. An artful approach is required to determine if information provided by a child has been unduly influenced by other individuals due to recent contacts, gifts, promises, or other methods of persuasion (Stahl, 1996).	Should (x3) Must Require
266	Evaluating Children	A child-centered office environment helps set children at ease. Children should feel comfortable without becoming distracted. They should be allowed time to become accustomed to the evaluator and the context. Respect should be given to personal space, boundaries, and bodily integrity. Children should be encouraged to ask questions and seek clarification. It is important to avoid emotionally or morally laden phrases, such as "Bad things that happen to children." Developmentally, children are likely to blame themselves for "bad things," and they are unlikely to desire permanent separation from parents even when those parents have maltreated them (Condie, 2003). From their limited points of reference and experiences, "bad things" might be interpreted quite differently by children, or may pale in comparison to other events or qualities of individuals. There should be an assumption that their egocentric interpretation sometimes precludes comparisons and contrasts. Appropriate care should be used in designing questions that will allow children to voice their concerns without facing fear of moral or other approbations.	Should (x6) Important Encourage (should be)
266-267	Evaluating Children	Specific standards have been developed in some jurisdictions for audio- or video- recording interviews of children, particularly children whose families are involved in criminal or care and protection proceedings (Saywitz, 1994). Because of concern over the capacities of evaluators to record complete information in written form (Lamb, Orback, Sternberg, Hershkowitz, & Horowitz, 2000), it is good practice to record interviews in some fashion, taking care to gather special permission in the informed consent process. An explanation of the use of the devices should be given in language the child comprehends. A contingency plan should be available for children who are intimidated by recording devices if it would compromise their willingness to provide relevant information. Recording increases the completeness of information, preserves information that might be used as legal evidence of abuse, promotes the use of proper interview techniques, records nonverbal facets of communication, and precludes or minimizes the need for multiple interviews (Lamb et al., 2000; Saywitz, 1994). Disadvantages include intrusiveness and possible	Should (x2) Need (x2, one not instruction, one instruction)

		compromises to children’s willingness to divulge information, logistical and technological complications, loss of data through equipment malfunctions, focus on technique at the expense of issues of relevance, and release of recordings to inappropriate sources such as the media (Berliner, 1992). In the absence of electronic recording, detailed written documentation is needed.	
267	Interviewing Children	Whether children should be asked to provide demographic data depends on their age and level of linguistic development. The degree to which narrative accounts of maltreatment or other family interactions should be sought depends on their reporting capacities (Saywitz, 1994). When children cannot credibly report data, other sources of information must be relied on. When they can provide narrative accounts, their accounts should be compared to other reports and checked for consistency (Lamb et al., 2000). Inconsistency may reflect dissimulation, but it can occur for more innocuous reasons, such as a lack of appreciation by the child for salient details and insufficient developmental readiness to report a temporally organized narrative (Saywitz, 1994). Depending on the referral question, relevant content for child interviews may include a description of the child’s view of family structure and relationships, other relationships important to the child, historical information (Usually relevant only for preadolescents and adolescents), the child’s view of his or her treatment needs and treatment progress, and the child’s comprehension of the construct of trauma and its relevance or lack thereof to his or her life. Children are unskilled at providing details related to symptoms and behaviors of trauma reactions, chiefly because their lack of comparative experience base and vocabulary for the terms and behaviors of relevance. Even when provided with symptom checklists, they may shy away from endorsing relevant items because they do not wish to view themselves as impaired. Even the best-designed measures for children contain terms that do not fall neatly within the linguistic capabilities of children (Condie, 2003).	Should (x3) Important (Not instructions) Need (not instructions) Must
267-268	Interviewing Children	There is no entirely flawless method of determining a child’s capacity to provide accurate reports of maltreatment. Evaluators strive to minimize influences that might result in data that lack credibility, but it is important to remember that even the highest professional standards do not require an evaluator to be a good judge of a child’s truth-telling capacity (APA Committee on Professional Practice and Standards, 2011). That task is left to the fact finder, and it lies beyond the scope of current scientific research and practice. When estimates of a child’s capacity to report trauma are requested, they should be based on the best available empirical data. Examples include: <ul style="list-style-type: none"> • Examining the child’s account of maltreatment for the development of context • Use of idiosyncratic words or descriptive phrases • Inclusion of peripheral or unnecessary information • Explicit details • Details that exceed the child’s developmental level • A progression of “grooming” for maltreatment (seduction, isolation, escalation of threats and aggression) • Other engagement processes • Strategies designed to discourage the child from reporting maltreatment (secrecy, threats, coercion, pressure, bribes, rewards) 	Should (x2) Important Require (negative)

		<ul style="list-style-type: none"> • Affective responses or details congruent with the reported maltreatment • Consistency of salient details • A narrative clearly emanating from a child’s perspective rather than a rehearsed litany • Details of attempts to resist or avoid the maltreatment (Heiman, 1992) <p>There are no pathognomonic signs of maltreatment, nor is there evidence that a particular type of interview response or set of tools or measures will yield data establishing that a child has been maltreated. Referral questions that go directly to this point should be rephrased in a professional consultation and negotiation process before the evaluation proceeds (Condie, 2003). Neither maltreatment nor the identity of a perpetrator can be confirmed solely by the presence or absence of psychological symptoms or patterns of behavior.</p>	
268	Interviewing Children	When the child’s psychological functioning is part of the referral question, interview data should focus on symptoms and behaviors of relevance to diagnostic criteria for child behavior disorders and trauma reactions (George & Solomon, 1999; Heiman, 1992). Because of the difficulty children have self-reporting data of relevance, it is important to include other sources of observation and information (Condie, 2003; Heiman, 1992). Measuring the impact of child maltreatment does not involve merely rendering a diagnosis. Descriptive information is needed about the impact of trauma on a particular child, the link between maltreatment and the child’s reactions (if any), and the child’s existing vulnerabilities (Everson & Faller, 2012).	Should Important Need
268	Interviewing Children	When the child’s view of parents, other caregivers, adaptation to placement, and substitute caregivers is central to a referral question, examiners must avoid any attempts to elicit abstract descriptions of relationships. Even when children have the capacities to respond meaningfully to questions about their relationships, their responses might be influenced by loyalty bonds, recent visitation with particular caregivers, and developmental limitations in making comparisons or appreciating potential alternatives to their own experiences (George & Solomon, 1999; Stahl, 1994). Evaluators should be prepared for some inconsistencies because of children’s tendency to respond to recent events or points of contact, children’s concerns about threats to their stability, distress reactions, conflicted views and ambivalence, and limitations in appreciation of temporal events or the passage of time (“a long time” to a child might be 5 minutes). Sometimes eagerness to reunify with a parent is merely a reflection of a child’s indiscriminate attachment behavior (George & Solomon, 1999) or a desire to reunite with school friends (Stahl, 1994).	Should Must
268-269	Psychological Measures	As with adults, assessment measures to be used in the evaluation of children should center on (1) the referral question, (2) the relevance of global and specific indices to the question, (3) theoretically and empirically derived hypotheses, (4) the validity of the measures in the specific assessment context, and (5) whether the data would add meaningful utility to the evaluation process (Ayoub & Kinscherff, 2006; Barnum, 1997). The developmental readiness of a child for assessment participation is an added consideration. Even when measures are designed for specific age ranges, children sometimes may not be developmentally, cognitively, or linguistically prepared for the process (Condie, 2003). Assessment measures do sometimes yield useful data on the child’s capacity to report information of relevance,	Should(x2)

		<p>to benefit from relevant treatment, or to tolerate a foster placement (Everson & Faller, 2012). If adequate pretreatment data are available, it is sometimes possible to measure treatment progress using psychological assessment measures. Assessment measures can highlight these issues in a child:</p> <ul style="list-style-type: none"> • Strengths and weakness • Approach to relationships • Level of trust in individuals in roles of authority • Willingness to engage in treatment • Linguistic capacity to provide a narrative • Mental health functioning • Views of helping sources and friendships <p>Measures sometimes illustrate why a child has had a poor or failed response to a particular treatment approach, why a child might distort reports of relationships or events, or why a child might show a relative lack of resilience in the recovery process (Condie, 2003). As with the evaluation of parents, specific measures relevant to a child's view of parent-child interactions, attachments to parents, and other specific factors should be used and interpreted conservatively unless specific norms are available for the population of interest.</p>	
269-270	Conclusions	<p>During any phase of a child protection proceeding, a psychologist may be asked to evaluate different parties for different purposes. As evaluators, psychologists frequently are asked to address these and other issues:</p> <ul style="list-style-type: none"> • The impact of child maltreatment • The risk that it might recur • How seriously the child's well-being has been affected • What therapeutic or intervention strategies would be recommended to assist the child and/or family • Whether parents or other caregivers can be rehabilitated such that the risk of maltreatment is reduced • What the psychological effect on the child would be if the child were returned to parents or other caregivers • What the psychological effect on the child would be if parental rights were terminated 	Recommend (not instructions)
270	Conclusions	<p>To understand risk of maltreatment, it is important to understand research on a variety of factors contributing to risk and mediation of risk. Psychologists seek to gather information on:</p> <ul style="list-style-type: none"> • Family history • Personality functioning • Social and other contextual circumstances • Developmental needs of the child • Nature and quality of the parent-child relationship • Reactions to trauma • A variety of factors contributing to risk of child maltreatment 	Important Need (not instruction)
270	Conclusions	<p>They seek to understand risk in the context of sociocultural factors, physical disability, and other extenuating factors of relevance. Evaluation methodology, data interpretation, and procedures for reaching recommendations are derived from codes of ethics, standards of practice, and relevant research literature. Multimodal assessment is the primary buffer against data misinterpretation, overinterpretation, or underinterpretation. Interpreting interview and assessment data may occur in actuarial methods or the context of the examinee's history. Both approaches facilitate meaningful data interpretation. Risk</p>	Should(x2) Need (research) Recommend (not instructions)

		assessment matrices should include factors identified in empirical studies of risk assessment that are relevant to samples of parents involved in the care and protection system. Analysis of child maltreatment risk should acknowledge appropriate caveats. Further research is needed to better understand the degree of concordance or possible discordance in risk studies relevant to other samples of individuals and those involving risk of child maltreatment.	
270-271	Conclusions	Although many existing measures and methods are designed to assess the nature and quality of the parent-child relationships, parent-child attachment, and parent-child interactions, their applicability to care and protection cases depends on the availability of relevant supplementary norms. Data interpretation and recommendations made via multimethod approaches that incorporate specific parenting measures should include appropriate cautionary procedures and comments. Similarly, global measures of functioning should be used when judged to be appropriate based on the referral question and other relevant considerations related to reliability and validity of application to care and protection samples. Dissimulation is an issue that is potentially endemic to care and protection evaluations, but methods for detecting dissimulation that are specific to care and protection samples have not been developed. Evaluators should make reasonable efforts to detect dissimulation but without overreliance on measure-specific methods that have no demonstrated validity or reliability in care and protection samples. Methods for minimizing the influence of children's suggestibility and other impediments to reliability and validity should be used when indicated. Many care and protection cases involve children with cognitive limitations, mental health issues, and other special needs. Assessment methods and procedures should be developed on a case-by-case basis. Appropriate modifications should be made when needed. Novel procedures should not be used in forensic cases unless they reflect converging professional consensus, research, and scientifically based judgment. The breadth and depth of interview content and indications for the use of forensic assessment measures are drawn from the referral question.	Should (x7) Need (x2, one not instruction, one borderline instruction) Recommend (not instructions)
271	Conclusions	Key approaches to data integration and organization of presentation include (1) providing a specific answer to referral questions (when results are inconclusive, it is best to say so directly), (2) using theory as a template to guide data integration and interpretation, (3) interpreting data in light of the examinee's history, and (4) describing the strengths and limitations of the data. Relevant risk factors should be described in terms of their static and dynamic nature. Mediators and protective factors should be included in any risk analysis. Some risk factors relevant to child maltreatment may vary, depending on the type of child maltreatment. Most risk factors are nonspecific. In studies of risk factors, it is difficult to control for concurrent types of maltreatment and their influence on research results.	Should (x2)
271	Conclusions	Recommendations for service plan interventions and modifications sometimes must take statutory provisions about availability of services into account. The statutorily defined need to provide only those services that are available poses a challenge for evaluators asked to make recommendations for optimal intervention approaches. Specific recommendations tend to be more useful than general recommendations. For example, a recommendation for a specific form of intervention for a parent with a specific set of circumstances, symptoms, or problematic behaviors is more useful than a broad recommendation for mental health treatment. Recommendations	Need (not instruction) Must (x2) Recommend (none instructions)

		concerning parental or caregiver amenability to rehabilitation often must be given with statutory time frames for service provision in mind. Statutory time limits for successful rehabilitation pose a challenge for parents who learn at a slow pace, who have transportation or other financial limitations, or who face other challenges to rapid treatment progress. Interpretations and recommendations for children should be made in the context of their levels of developmental maturity, their capacities to benefit from recommended interventions, and any special needs they might have.	
Chapter 18: Evaluating Eyewitness Testimony of Children			
561	[Chapter 18: Evaluating Eyewitness Testimony of Children Intro]	...[I]n sexual abuse cases where the offense typically is committed in secrecy (Bala, Lee, & McNamara, 2001), and often there is no visible injury or physical evidence, so that the children’s eyewitness memory accounts take center stage (Keeney, Amacher, & Kastanakis, 1992; Myers, 1993a). However, children experience many other crimes as well, such as domestic violence, homicide, war atrocities, school shootings, and kidnappings.	
561-562	[Chapter 18: Evaluating Eyewitness Testimony of Children Intro]	When adults do not believe a child’s accurate testimony, and can have devastating consequences. If child victims are not believed, a perpetrator is free to commit other crimes, and the victims may be placed in further danger due to retaliation against them by the perpetrator. ... However, when children’s accounts are inaccurate, believing them can also lead to injustices that include conviction of the innocent.	
562	[Chapter 18: Evaluating Eyewitness Testimony of Children Intro]	Such real-world cases illustrate why children’s eyewitness abilities are of paramount interest for legal professionals and researchers. Children’s reports are the linchpins in many proceedings, especially when physical evidence is absent. Research on the abilities of child eyewitnesses may be particularly important in assisting investigators when children’s reports are the only piece of evidence, as is often the circumstance in child sexual abuse cases. In this chapter, we discuss factors that may influence the accuracy and perception of children’s reports. This review is not exhaustive, but we hope to draw attention to areas of consensus and foster dialogue about areas of controversy that will assist in building theoretical understanding and optimal legal application concerning children’s eyewitness reports.	Important (borderline instructions)
562-563	Memory Development	Before delving into research and theory on children’s eyewitness abilities, it is important to have a basic understanding of age trends in memory development. Children undergo marked changes in encoding, knowledge base, and retrieval with age (Howe, 2011). Although memory development continues into adolescence and adulthood, a qualitative jump occurs after the early preschool years. On eyewitness memory tasks, it is particularly challenging to obtain complete and accurate information from young preschoolers (e.g. Goodman & Reed, 1986). Compared to other children and adults, younger children recall less information in response to free recall questions and open-ended questions (e.g., “What happened?”), and they make more errors in response to direct questions, such as yes/no queries (e.g., “Was his shirt red?” “Did he shut the door?” “Did he kiss you?”), option-posing queries (“Did he have a knife or a gun?” “Was his hair straight, curly, or braided?”), and misleading questions (e.g., “He took your pants off first, didn’t he?” when in fact, he did not; Dent & Stephenson, 1979; Goodman, Bottoms, Schwartz-Kenney, & Rudy, 1991; but see Ceci, Papierno, & Kulkofsky, 2007). Postevent misinformation that is stated as a presumption (e.g., “How fast was the car going when it passed the barn on	Important

		the country road?” when in fact there was no barn) is also more likely to contaminate young children’s memory reports than those of older children and adults (Ceci, Ross, & Toglia, 1987; Schwartz-Kenney & Goodman, 1999), although adults can also be susceptible to such false information (Loftus, 1979). Although by about the age of 5 or 6 years, children often can identify a culprit as accurately as adults when presented with photo lineups that contain the perpetrator (Goodman, Hirschman, Hepps, & Rudy, 1991), younger children are also more likely than older children and adults to falsely identify an innocent person in photo lineups that do not include the offender (Pozzulo & Lindsay, 1998). There are, however, marked individual differences at any age; for example, some children as young as 2 or 3 years can be highly accurate and resistant to false suggestions (Harris, Goodman, Augusti, Chae & Alley, 2009).	
563	Memory Development	Children are likely to have weaker memory traces than adults and to have greater difficulty with source monitoring (Howe, 2011; Johnson & Foley, 1984). This then naturally leads to questions, such as whether children can maintain accuracy of their memory reports as time goes on and as memory traces become weaker or source monitoring becomes more difficult. Such questions have obvious legal relevance because some crimes are not readily reported; children may need to recall a forensically relevant event that occurred days, months, or even years earlier. Recently, Peterson (2011) suggested that children’s reports about personally salient, stressful events remained accurate even with the passage of years. Yet how researchers assess the accuracy of these reports affects whether one concludes that accuracy is maintained or declines over time.	Need (not instruction)
563	Memory Development	Overall, memory performance tends to improve across childhood and into adulthood, including on eyewitness memory tasks. However, the research base mainly concerns children’s memory for unfamiliar people and briefly witnessed events. Situations about which children testify often involve familiar people and events that are traumatic or stressful.	
563-564	Trauma, Stress, and Memory	Many criminal events are traumatic for children to witness or experience or, because of their potential for violence, cause child witnesses to experience considerable distress and anxiety. Thus, research investigating the impact of violence and stress on memory is of crucial importance to understanding children’s eyewitness testimony. The extent to which children can remember and accurately report personally traumatic and stressful events is a topic of active research. Many children can, under a variety of circumstances, provide forensically relevant, accurate information about highly traumatic events they have witnessed or experienced (e.g., D.P.H. Jones & Krugman, 1986; McWilliams, Narr, Goodman, Ruiz, & Mendoza, 2013). In both children and adults such events typically are recalled more accurately and for a longer period of time relative to benign or ordinary events (e.g. Peterson, 2012). Highly distressing events can also be recalled with error and are not immune to forgetting and distortion, including false memory, in adults and children (e.g. Hirst et al., 2009; Neisser & Nicole, 1992; Terr, 1983).	Importance Crucial
564	Trauma, Stress, and Memory	In particular, questions arise concerning the external validity of laboratory research (e.g., how well laboratory research sufficiently mimics the levels of distress induced by criminal events) and the internal validity of field research (e.g., how well field researchers can pin down cause-effect relations). Ideally, findings from laboratory and field research lead to the same conclusions, but this is not always so.	
564	Trauma, Stress, and Memory	In any case, it is clear that many factors play a role in children’s memory for traumatic and stressful events—too many to review in this chapter. Here we first consider some of the theoretical issues involved in memory for stressful and traumatic experiences. We then turn to a subset of the factors that affect	Need (borderline instruction)

		children's memory for stressful events, such as age when events occurred, language and parental factors, centrality of the to-be-remembered information, whether the individual is a participant or bystander witness, and whether events are repeated or single occurrences. Additionally, we review research on physiological stress responses—research that is furthering our knowledge about how stress affects children's memory of traumatic and stressful events. Clearly, a complex multivariate model of children's memory for stressful events is needed to integrate disparate findings.	
564	Theoretical Issues	There has been considerably theoretical debate as to whether memory is diminished or enhanced for highly stressful experiences (e.g. Christianson, 1992; Deffenbacher, Bornstein, Penrod, & McGorty, 2004).	
565	Theoretical Issues	In any case, it is clear that, despite relatively strong retention, memories of highly stressful and traumatic events still may be subject to distortion and forgetting in children and adults (Otgaar & Smeets, 2010). ... [A]lthough memory in general is often particularly accurate and enduring for central details of events relevant to survival (Christianson, 1992), defensive processes may inhibit encoding, storage, and/or retrieval of memories of such experiences, leading to memory deficits or distortions in some individuals (Deffenbacher et al., 2004).	
565-566	Theoretical Issues	Several studies uncovered links between parents' attachment-insecurities and children's memory for and suggestibility regarding stressful experiences. For example, children of parents who score relatively high on measures of attachment avoidance provide less accurate memory reports and display heightened suggestibility regarding highly stressful medical procedures (e.g., Goodman, Quas, Batterman-Faunce, Riddlesberger, & Kuhn, 1997). Moreover, parental attachment insecurities are among the few individual difference variables that consistently predict children's suggestibility.	
566	Theoretical Issues	While theoretical issues continue to be debated and researched, empirical evidence of children's memory for stressful events continues to mount and likely will constrain theory as the field moves forward. In the meantime, a number of factors have been found to affect children's memory for stressful events, some of which we turn to next.	
566	Children's Age	Age at time of a stressful or traumatic event can affect how well it is remembered later on. ... In any case, children's ability to remember and accurately report events continues to improve with age.	
567	Language and Parental Communication	Also related to children's memory are language and parent/child communication factors. Some research has shown that children who remember an event up to 14 months after it occurred do not use language in their descriptions that was not in their vocabularies when it occurred (Hayne & Simcock, 2009). Although such findings suggest that preverbal memories cannot be recalled verbally, more recent research indicates that some children can, at times, recall information for which they did not have those specific words earlier (Morris & Baker-Ward, 2007). These findings have fascinating legal implications, given the fact that children's competence to testify is assessed at the time of testimony rather than at the time of the alleged offence (Lyon, 2011).	
567	Language and Parental Communication	These findings suggest that discussions parents have with their children about traumatic events can assist with the encoding and storage processes necessary for memory retrieval (Chae, Ogle, & Goodman, 2009).	
567	Parenting Style	Another parental factor related to children's memory for traumatic and stressful events is parenting style.	

568	Central Versus Peripheral Details	An important factor that plays a role in memory for events in general is the centrality of the information (i.e., how central or peripheral the details are that need to be remembered). For traumatic events, however, a “tunnel effect” can occur in memory, with heightened memory for central details and diminished memory for peripheral details (Christianson, 1992). Typically (albeit not always), in criminal investigations, central details are of most importance. As a general rule, crime witnesses are most likely to encode and remember central aspects of the crime better than more peripheral details.	Important (not instructions) Need (not instructions)
568	Central Versus Peripheral Details	Of interest, the classification of a to-be-remembered detail as a central or peripheral event may differ depending on how relevant that detail is to an individual’s goals. For example, an individual whose goal is to suppress emotion may remember an emotional event less well than an individual not so motivated (Levine & Edelman, 2009). Contradictory findings about memory for central and peripheral details may result in part from a lack of consideration of individual goals as well as from differences in how centrality is defined across studies (Paz-Alonso, Goodman & Ibabe, in press).	
568	Central Versus Peripheral Details	Even if children remember fewer peripheral compared to central details or remember peripheral details incorrectly, memory for central details still can be quite accurate. However, heightened memory for central versus peripheral details is not consistently found as a function of age across studies. ... These contrasting findings may reflect not only differences in how researchers operationalize centrality distinctions but also differences in what children of various ages consider to be central versus peripheral to the main stressor.	
568-569	Participant Versus Bystander Child Witnesses	Many child eyewitness memory studies concern bystander witnesses—for example, children who view others performing actions. However, there is evidence to suggest that children who actively participate in events, more as a victim might, remember the event better than do bystander witnesses (e.g. Rudy & Goodman, 1991). ... Another important factor in the participant-over-bystander memory advantage may be activation of self-schema. That is, when self-schema are activated, a richly elaborated memory structure may help maintain storage of the memory. Although self-schema may also be activated when watching an event unfold, which could then support accurate memory (Baker-Ward, Hess & Flannagan, 1990; Howe & Otgaar, 2013), perhaps especially when the event has high personal relevance to a child’s life (McWilliams et al., 2013).	Important (not instructions)
569	Repeated Events	How frequently events are experienced is another factor likely to affect how well a stressful event is remembered. Unfortunately, little rigorous scientific research has examined children’s memory for single versus repeated stressful or nonstressful events that were highly stressful. ... Children may confuse details across events yet still may report the gist accurately (Pipe et al., 2004). More research is needed, however, on children’s memory for repeated stressful events.	Need (borderline to research)
569	Physiological Distress	Researchers are just beginning to evaluate children’s physiological distress in relation to children’s memory for stressful events.	
570	Conclusion	Because attention is limited, people cannot encode everything about real-life events, particularly those as complex as most crimes. We have reviewed some of the factors that are related to how well children remember traumatic and stressful events. A complex multivariate model may be needed to create a clearer picture of children’s memory for such experiences.	Need
570-571	Effects of Maltreatment	[Just noting that this section is here, but does not contain any instructions to evaluators, so not including excerpts in the compendium at this time.]	

	ent and Trauma-Related Psychopathology on Memory		
571-572	Children's Suggestibility, False Reports, and False Testimony	Children's suggestibility and false memory are crucial issues in the study of children's eyewitness testimony. The devastating consequences of children making false accusations were demonstrated during the 1980s in the McMartin child sexual abuse trial.	Goes on to discuss trial a little more. Crucial (borderline instructions)
572	Children's Suggestibility, False Reports, and False Testimony	Generally speaking, age is the strongest predictor of suggestibility and false memory reports; younger children are typically more suggestible and more prone to false memory reports than older children, adolescents, and adults (e.g. Goodman, Bottoms, Rudy, Davis, & Schwartz-Kenney, 2001; Malloy & Quas, 2009). That said, there are important individual differences in suggestibility and misinformation effects within any age-group. Although it is difficult to predict such individual differences, child forensic interviewers should be knowledgeable about the possibility that children may incorporate interviewer suggestions or misinformation and should have appropriate expectations for children relevant to the children's ages (Lamb, Malloy, & La Rooy, 2011; Malloy & Quas, 2009). It is important for investigators and interviewers to consider how children's suggestibility can influence their reports.	Should(x2) Important (one instructions, one not)
572	Children's Suggestibility, False Reports, and False Testimony	<i>Suggestibility</i> has been defined as "the degree to which encoding, storage, retrieval, and reporting of events can be influenced by a range of social and psychological factors" (Ceci & Bruck, 1993, p. 404). In the McMartin case, it is largely agreed within the scientific community that the police investigators and parents suggestively questioned the children, which ultimately may have implanted, through misinformation, abuse details in the children's memories or at least in the children's reports. This form of suggestibility—that of incorporating misinformation into one's own memory—not only has crucial legal consequences but it also has important theoretical implications for developmental and cognitive psychology (Ceci & Bruck, 2006; Johnson, Hashtroudi, & Lindsay, 1993; Loftus, 1975; Pezdek & Roe, 1995).	Important (borderline instructions) Crucial (not instructions)
572-573	Theoretical Issues	Several theories have been proposed to account for the mechanisms associated with the form of suggestibility that can lead to memory report errors. Memory factors have been emphasized in most of these theoretical accounts. ... Although memory factors undoubtedly play a vital role, social factors (e.g. demand characteristics) are also important in producing misinformation effects (Roediger, Meade, & Bergman, 2011). Cognitive and psychosocial mechanisms that develop throughout childhood bolster one's abilities to resist suggestion or misinformation. Cognitive and developmental theories assist in identifying the mechanisms that may be associated with suggestibility's influence on children's memory reports (Chae et al., 2011; McWilliams, Bederian-Gardner, Hobbs, Bakanosky, & Goodman, 2012).	Important (not instructions)
573	Theoretical Issues	From a memory trace theoretical perspective, memories are preserved as traces, a consolidation of current features or attributes related to the person and event. When activated, these traces assist in recalling the details associated with that memory. Pezdek and Roe (1995) asserted that when memory traces are strong (i.e., they contain elaborative details, such as of time, place, individuals involved in the event) and are preserved during	

		<p>memory storage, they will be most resistant to suggestion. Children who have strong memory traces or representations can dismiss externally generated suggestions because they can directly compare information being suggested back to the trace that was recovered and conclude that the two accounts do not match.</p> <p>However, when traces are weak, children may incorporate suggestions or misinformation because they can no longer counter with their own representations.</p>	
573-574	Theoretical Issues	<p>This idea of strong versus weak traces is also relevant to Brainerd and Reyna's fuzzy-trace theory (FTT, 2002), which stipulates a dual process model for memory encoding and retrieval processes. Memories are represented as either verbatim traces, which hold specific details about the memory, or gist traces, which hold the general meaning of the memory. ... As verbatim traces hold more details that cannot be maintained for every memory experienced, these traces decay more quickly, often leaving only the gist trace behind. Gist traces are more susceptible to suggestion and misinformation as the original record of the event (i.e., verbatim trace) cannot be recovered to counter the suggestion. This effect is strongest when the suggestion is more similar to the gist trace and cannot be temporally discriminated from the original trace (Brainerd & Reyna, 2004; Reyna & Brainerd, 2011). ... Therefore, older children, who have stronger verbatim traces, should be less suggestible than younger children, according to FTT, although adults may be more subject to certain false memories than children, if the false memories are supported by gist traces (Brainerd, Reyna, & Ceci, 2008).</p>	Should-NOT instruction
574	Theoretical Issues	<p>Source monitoring (SM) theory (Johnson et al., 1993) has also been used to account for children's suggestibility and misinformation effects. According to SM theory, details for memories are discriminated against one another via a decision process in which one attributes the source of these details using perceptual processes (i.e., perceiving a cue) and cognitive processes (e.g., retrieval strategies). During retrieval, individuals engaged in decision processes regarding source information (<i>where, when, what, and with whom</i> details of events). Cues that are retrieved are evaluated with reality monitoring (i.e., deciding if the detail actually occurred in reality or if it only were thought about), and external monitoring (i.e., deciding if details were from this event or another event) processes. The SM theoretical framework assumes that certain cognitive abilities are in place to assist retrieval during more difficult monitoring times (e.g., decision making, metamemory strategies). Such abilities change and improve in children as they develop (e.g., Bjorklund, Dukes, & Douglas-Brown, 2008; Ghetti, 2008; D.S. Lindsay, 2002).</p>	
575	Theoretical Issues	<p>[The Mr. Science study (Poole & Lindsay, 1995)] is often cited as an indication that children can be led into false reports through source monitoring errors. In this study and others, according to SM theory, younger children likely did not have the cognitive abilities to monitor the source of the information experienced in the event versus suggested by their parents (or the interviewer) well enough to answer the questions correctly. However, it is important to note that even young children, despite making more errors than older children, appropriately reject many of the false event details in most of these studies (e.g., Goodman et al., 2001).</p>	Important (borderline instructions)
575	Theoretical Issues	<p>False memories of entire events also can be formed based on suggestibility. False memory formation has been explained by theories previously mentioned. Like suggestibility, the ease with which false memories can be implanted tends to decline as children age and acquire more cognitive abilities that allow them to create lasting memories and monitor intrusions (e.g., Ghetti, 2008; Otgaar & Candel, 2011). However, older children and</p>	

		adults succumb to false memory paradigms that parallel eyewitness abilities (see Otgaar & Candel, 2011), false memories are more frequently observed in younger children compared to older children (but see articles on the Deese-Roediger-McDerott (DRM) false memory illusion; Brainerd, Reyna & Zember, 2011). It is likely that older children's experiences and improvements in cognitive abilities permit them to evaluate the plausibility of suggested events.	
575	Theoretical Issues	So far, we have mainly discussed suggestibility and false memory trends as they relate to theoretical issues. However, it is important to review empirical evidence concerning misleading questions and repeated interviews specifically, because these topics are of considerable legal concern. Our discussion is not exhaustive of all the factors that affect children's memory, suggestibility, and false memory formation (for review, see Blandon, Gitlin & Pezdek, 2009; Bruck & Melnyk, 2004; Malloy, Johnson, & Goodman, 2013; Malloy & Quas, 2009).	Important
576	Misleading Questions	Since the mid-19980s, children's suggestibility has been examined in relation to interviewer question type, specifically using interviews that include misleading questions about the event the child is recalling. In these paradigms, researchers have children (often preschool age) participate in controlled events and, after a specific period of delay, interview them suggestively. That is, questions asked by the interviewers presuppose or introduce false information about the event to examine whether children acquiesce to these suggestions or appropriately deny them (e.g., the question, "Did you see the man knock over and break the lamp?" presumes that the man <i>did</i> knock over and break a lamp). Children's suggestibility is then scored or characterized by the likelihood or frequency of acquiescence to interviewer suggestions. Typical age trends emerge under this experimental paradigm; older children are less suggestible than younger children, as older children acquiesce less frequently, regardless of whether the event is distressing (e.g., Goodman et al., 1997; Peterson, 2011) or commonplace (e.g., Quas et al., 2007). However, it should be noted that children are often less suggestible about personally significant negative events (e.g., being hit, being naked, having their private parts touched) than about more mundane or positive experiences (Rudy & Goodman, 1991; Schaaf, Alexander, & Goodman, 2008). In some studies, even 4-year-old children's rates of false affirmation to abuse-related questions were extremely low (Rudy & Goodman, 1991).	Should— NOT instructions
577	Misleading Questions	Although these data indicate that children succumb to suggestion when misleading questions are asked, it is difficult to know whether <i>the memory</i> of the event has changed or whether <i>the report</i> of the memory has changed. That is, when children incorporate suggestions in their reports, does this occur because they are experiencing pressure from the interviewer or because their memory of the event has been distorted? This can be a crucial legal issue.	Crucial (not instructions)
577	Misleading Questions	In a similar vein, do these studies accurately portray interviewer-interviewee conversational nuances that characterize forensic interviews with children? Gilstrap and Ceci (2005) addressed this concern by highlighting that most of the laboratory studies assessing children's suggestibility do so by way of structured interviews in which all the questions are predetermined by the researchers; these interviews are imposed to ensure the scientific merit (i.e., internal validity) of the research. Results from studies that use structured interviews may not apply to forensic interviews wherein interviewers typically are not supplied with a standardized set of questions. Rather these interviews are driven not only by the interviewer's agenda but also by the child's report.	

577	Misleading Questions	In contrast to children succumbing or agreeing with a forensic interviewer suggestion as found in several studies (e.g., Leichtman & Ceci, 1995; Poole & Lindsay, 1995), children in the Gilstrap and Ceci (2005) study were more likely to respond to misleading questions with denial. Instead of interviewer bias predicting children's acquiescence, the children's own behavior preceding the misleading question was more strongly predictive of whether they succumbed to suggestion. These findings were obtained by a novel approach of analyzing children's reports, as they occurred in a transactional exchange throughout the interview, rather than considering only the immediate antecedent (i.e., interviewer's misleading question) of a child's error. Such statistical designs appear to be particularly ecologically valid as applied to forensic interviews, although more research is needed to validate these findings and tease apart additional effects that children's reports may have on the type of questions interviewers ask.	Need (call for research)
577-578	Misleading Questions	It would be an error to assume that empirical studies using structured interviews are flawed. Researchers should embrace multiple approaches to fully understand conditions that minimize or exacerbate children's suggestibility. And there may be multiple suggestive influences on children. Garven and colleagues contended that it is not only misleading questions that influence adults' and children's suggestibility but the additive factors of reinforcement, social pressure, and imagery (Garven, Wood, & Malpass, 2000).	Should (researchers)
578	Misleading Questions	As researchers attempt to replicate real-world circumstances, some have acknowledged that the person to whom children most often disclose certain crimes (e.g., child sexual abuse) is a nonoffending parent, typically mothers. Few parents have training in interviewing child eyewitnesses, yet their collection of their children's statements holds forensic significance for whether children's reports will be seen as believable. Therefore, researchers should study the veracity of eyewitnesses statements when children disclose to a familiar person, such as a parent.	Should(researchers)
579	Misleading Questions	These findings suggest that children, when comfortable and familiar with the interviewer, correct errors and resist suggestion more easily than with a stranger. These findings offer further support for the importance of rapport building between the interviewer and child eyewitness as well as researchers examining the full range of ecologically valid factors that may influence children's suggestibility: Research on the effects of misleading questions should address not only <i>what</i> is asked but also <i>how</i> and <i>by whom</i> .	Should(research) Importance
579	Repeated Interviews	In the forensic context, children are often interviewed repeatedly. For example, first responders, police detectives, social workers, prosecuting and defense attorneys, clinicians, and judges may all need to question child eyewitnesses. It is therefore important to determine whether repetition has deleterious, harmless, or positive effects on the accuracy of children's reports. ... There are several reasons to suspect that repeated interviews may increase errors in children's reports, especially if misinformation is included in the interviews. ... In contrast, however, others argue that repeated interviews (even those with misleading questions) do not necessarily have negative effects on children's reports and, under certain conditions, that they actually may assist children in denying new false information by solidifying accurate memories reported previously (e.g., Goodman & Quas, 2008).	Important Need (not instructions)
580	Repeated Interviews	This finding suggests that suggestibility effects are more problematic when children's initial memories are weak. Researchers should therefore avoid overgeneralized assumptions that repeated interviews compromise children's memory accuracy; instead, these findings should enlighten debates on the complexity of factors influencing children's reports and their interactive or culminating effects (delay since the event, number of previous interviews, exposure to misinformation, etc.).	Should(researchers, not instruction)

580	Individual Differences in Children's Memory and Suggestibility	Considerable attention has been paid to individual difference predictors, aside from age, of children's memory and suggestibility. In legal cases, the question is typically whether the child witness before the court is likely to be accurate, not whether children of a certain age in general tend to be accurate. Thus, being able to determine whether a particular child is accurate is of considerable legal interest. Unfortunately, in research studies, even when significant correlations are uncovered, the predictors account for relatively little variability in performance and thus are not particularly informative for the courts in evaluating a specific child's accuracy.	
580-581	Intelligence	As a possible individual difference that might be related to the accuracy of children's eyewitness memory, intelligence has captured empirical attention, although the findings are somewhat mixed. ... Thus, intelligence appears to be somewhat predictive of the accuracy of children's reports, but primarily when studies include developmentally delayed individuals compared to individuals scoring in the normal ranges of intelligence. ... Individuals with particularly lower intelligence may be more suggestible; however, intelligence is unrelated to suggestibility in persons of average to above-average intelligence.	
581	Verbal Ability	Although age is linked with verbal abilities, there are wide variations in verbal abilities even when controlling for age statistically or comparing children who are the same age. One might expect that because reporting of past events and responding to interviewer questions in the forensic context are, in effect, verbal conversations, children who have a better understanding of communicative nuances, receptive and expressive language skills, and bigger vocabularies may be better able to articulate their experiences than children who have more limited verbal abilities.	
581	Verbal Ability	Generally, research reveals that children's proficiencies in communication assist them in being more accurate in recalling past experiences and more resistant to suggestions from others. ... These results imply that children with greater verbal skills were more accurate and less suggestible than their peers. However, in other studies, no significant associations emerged between verbal skill and suggestibility (e.g., Bright-Paul & Jarrold, 2009; Quas & Lench, 2007), and the opposite effect has even been reported, with verbal skills being positively associated with children's increased suggestibility (e.g., Kulkofsky & Klemfuss, 2008). This inconsistency could in part be due to methodological differences in how the <i>type</i> of verbal ability (e.g., vocabulary, receptive language, narrative quality) was assessed.	
583	Disclosure of Abuse	In the following section, we discuss various factors associated with disclosure. These include reasons children may delay or avoid disclosing abuse, types of emotions children typically express during disclosure, and possible determinants of lying during disclosure.	
583	Factors Affecting Disclosure	Children often delay disclosing sexual abuse (London, Bruck, Ceci, & Shuman, 2005). In fact, in an analysis of 10 retrospective studies on the topic, London et al. (2005) reported that an average of only 39% of adults who reported being sexually abused indicated they had disclosed during childhood.	
584	Emotional Expression During Disclosure	There are apparently numerous misunderstandings among laypeople about how children disclose sexual abuse. For example, demeanor during disclosure often is used to assess the credibility of child victims (Myers, Redlich, Goodman, Prizmich, & Imwinkelreid, 1999; Regan & Baker, 1998). Yet research indicates that, during forensic interviews, children appear less upset than might be expected. ... The overall picture indicates that, during abuse interviews, children show less emotion than possibly expected. However, they do, on average, show some negative emotions, and	

		their displays of emotion vary over the course of the interviews and as a function of abuse severity.	
584	Lying	When a child discloses information to authorities, concerns may be raised about the child's honesty. There are many legal situations in which children may be motivated to lie (e.g., if coached not to reveal a parental transgression). An antisocial lie is specifically meant to protect oneself from harm or to provide oneself with personal gain (Talwar & Lee, 2008a). Although children's antisocial lies can certainly play a role in legal cases (e.g., when the child is accused of delinquent acts), when the child is a witness or a victim, concerns usually center on the child being coached to knowingly make a false allegation (e.g., in a custody case, to accuse the father of sexual abuse so that the child can stay with the mother) or protect a culprit who has asked the child to lie or keep a secret.	
585	Lying	Lying appears to develop through three main stages: (1) beginning to make untrue statements at around 2 to 3 years of age, (2) lying to conceal one's own transgressions at 3 to 4 years of age, and (3) being able to maintain lies at 7 to 8 years of age (Talwar & Lee, 2008a). The development of children's lie-telling is related to Theory of Mind ability (Talwar, Gordon, & Lee, 2007) and executive functioning (Talwar & Lee, 2008b). Of interest, most research has not shown a relation between understanding of lying and actual lying to conceal a transgression (London & Nuñez, 2002; Talwar, Lee, Bala & Lindsay, 2002).	
585	Lying	A forensically relevant question with respect to children's lying is whether the lie is to conceal a transgression committed by someone emotionally close to the children. Children may be unlikely to lie to conceal the transgression of a relative stranger, although younger children are more likely to do so than older children (Pipe & Wilson, 1994). ... Although such findings provide important insight about children's lying behavior, it should be noted that the transgressions in these studies were quite mild (e.g., breaking a toy). The dynamics could well change for lies about more serious acts, such as child maltreatment and other types of violent crime.	Should (not instruction) Important (not instructions)
585	Lying	Children can and do lie to protect themselves and protect others. When children are lying in such a manner, can these lies be detected? Most studies indicate that adults are not accurate at detecting children's lies (Crossman & Lewis, 2006; Goodman et al., 2006) and that they are no better at detecting children's lies than adults' lies (Goodman et al., 2006). Coached lies by older children may be particularly difficult to detect (K.L. Warren, Dodd, Raynor & Peterson, 2012). However, Nysse-Carris, Bottoms, and Salerno (2011) found that adults could detect 3-to-6-year-old children's lies about their parents' transgressions at above chance levels. A goal for future research is to better explain the difficulty in detecting children's lying.	
585-586	Face Recognition and Children's Eyewitness Identifications	Eyewitness identifications are crucial in the forensic context. Legal authorities need to know who committed the crime in question. Often when children are victims of or bystanders to crime, they may be presented with a photo lineup or a live lineup and asked to identify the culprit. Considerable research has examined factors that affect children's eyewitness identification accuracy.	Need (borderline instructions) Crucial (borderline)
586	Face Processing and Recognition	Before discussing how research can inform police lineup procedures for child witnesses, we first briefly explain the theoretical underpinnings and mechanisms for face processing and face recognition in children and adults, which can affect crucial cognitive processes involved in picking out a suspect from a lineup. As is true for memory generally, facial recognition improves as children age (Lawrence et al., 2008). ... This age effect remained even after controlling for intelligence, which was also related to face identification accuracy. ...	Crucial (not instructions)

		With age, cross-racial face identification becomes less accurate than same-race facial identification.	
587	Face Processing and Recognition	For the child eyewitness, these results suggest that, for older children and perhaps younger ones as well, race effects may influence eyewitness testimony if the victim and perpetrator are of different races and the victim has not been meaningfully and sufficiently exposed to members of the perpetrator's race. Similar influences are also at play for identification of faces representing different genders and ages from the eyewitnesses (Scherf & Scott, 2012).	
587-588	Eyewitness Identification and Lineup Fairness	In face identification studies, where theoretical issues are tested, children and adults typically are briefly exposed to photographs of faces both at study and at test. However, in reality, eyewitnesses observe actual people live and over extended periods of time, which likely affects encoding and memory. It has therefore been important to examine eyewitness identification in more realistic studies. Such research reveals that, by the age of about 5 or 6, children are often as accurate as adults in identifying people with whom they have interacted when presented with target-present lineups (i.e. lineups that include the target person—the “culprit”). However, when the actual culprit is not in the lineup (i.e., “target-absent” lineups), even older children (e.g. 10-year-olds) are more likely than adults to falsely identify an individual and less likely to report that the target person is not included in the lineup (Pozzulo & Lindsay, 1999). ... Some individuals may have a tendency to guess. This is a serious concern for criminal investigators, as children and adults may assume that the task is to identify one of the choices rather than to judge whether the perpetrator is present at all (Beresford & Blades, 2006; Humphries, Holliday, & Flowe, 2012).	Important (borderline instructions)
588	Eyewitness Identification and Lineup Fairness	Eyewitness identification procedures have received heavy criticism for improper or suggestive methods that could taint an eyewitness's memory (e.g., Wells & Loftus, 2003; Wells & Quinlivan, 2009). Research has identified several factors that promote the fairness of lineups, such as foils appearing similar to the suspect, clear pre-lineup instructions (e.g., “The perpetrator may or may not appear here”), and avoiding use of authority approval or confirmation (Wells & Loftus, 2003). Given children's greater suggestibility compared to adults, such factors may be particularly important when children are subjected to lineup procedures.	Important (not instructions)
588	Eyewitness Identification and Lineup Fairness	This research has also revealed that simultaneous lineups, wherein the suspect is viewed simultaneously among other foils, have the potential to be suggestive. ... Instead of simultaneous lineups, it is suggested that investigators show eyewitnesses a sequential lineup, with the eyewitness making a yes/no judgment for each person.	
589	Eyewitness Identification and Lineup Fairness	Researchers should address such discrepancies to identify the most effective means of administering lineups to children. Moreover, instructions to improve lineup performance in young preschoolers (e.g., 3-year-olds) still are sorely needed.	Should (researchers) Need (researchers)
589	Juror's Reactions to Child Eyewitnesses	When children testify in court at jury trials, judges and jurors have the difficult task of assessing the accuracy of the children's testimony. Characteristics of children and of the jurors themselves may affect whether children are believed or not. IN some types of cases, such as in child sexual abuse trials, jurors claim they consider child-victim characteristics to be the most important evidence (Myers et al., 1999). It is thus important to understand legal decision makers' reactions to child witnesses. Much of the research in this area has focused on child victim-witnesses in sexual abuse trials. This is in part because, at least in the United States, children are most	Important2x (one not instructions, one instruction)

		likely to testify in criminal proceedings when they are victims of sexual abuse (Goodman, Quas, Bulkley, & Shapiro, 1999). ... In mock jury research, two of the most widely studied victim characteristics have been age and gender of the victim. The effects of victim age on jury decisions differ depending on whether witness competence or witness honesty is emphasized (Bottoms, Golding, Stevenson, Wiley, & Yozwiak, 2007).	
589-590	Juror's Reactions to Child Eyewitnesses	In real trials, child victim gender has not been consistently found to be as influential on jury decision making as child age (Myers, 1999). ... [R]egarding juror gender, numerous studies reveal that female mock jurors are more empathetic to child victims overall and more likely to believe them in child sexual abuse cases (Bottoms et al., 2007).	
590	Juror's Reactions to Child Eyewitnesses	A common stereotype of minorities is of increased sexual promiscuity and experience (Alley, 2012). As a result, jurors may view sexual abuse of minority children as less heinous and might hold the victim more responsible. There have been few studies examining these questions directly, but evidence so far has shown that mock jurors hold Caucasian victims compared to African American or Hispanic American victims as less responsible for their abuse (Bottoms, Davis, & Epstein, 2004).	
590	Juror's Reactions to Child Eyewitnesses	Victim demeanor is especially important in jurors' impressions of witnesses, including children. It is considered so relevant by the courts that jury instructions frequently direct jurors to consider facial expressions when judging the credibility of a witness (A.J. Williams, 2008). Adults who had just served jury duty in child abuse trials rated facial expressions and demeanor as being important in forming impressions regarding the child victims' believability when providing testimony (Myers et al., 1999).	Important 2x (not instructions)
591	Juror's Reactions to Child Eyewitnesses	Overall research on emotions in legal contexts indicates that adult expectations of children's emotional displays influence how children are judged. ... Most studies of jury decision making involve mock jurors, and, as such, methodological issues limit the generalizability of the findings. ... The methodological limitations of jury decision-making research should temper the interpretations of the results and their extrapolations to the real world. However, this line of research has been invaluable in both identifying the factors that are most likely to influence actual jurors and the areas in which juror expectations contrast with actual child behaviors.	Should (borderline instruction)
591-592	Jurors' Reactions to Expert Witnesses in Child Abuse Cases	Under certain conditions, psychologists and other professionals may be asked to provide testimony in child witness cases (Myers, 1993b). There is growing consensus that expert witnesses can help jurors evaluate the accuracy of children's testimony (e.g., Bottoms et al., 2007; Quas, Thompson, & Clarke-Stewart, 2005). Nonetheless, it is still a matter of controversy as to the conditions under which expert witnesses significantly affect jurors' decision making and verdicts (e.g., Lyon, 2002).	
592	Jurors' Reactions to Expert Witnesses in Child Abuse Cases	Most of the studies on expert testimony that we discuss here concern child sexual abuse cases or "repressed memory" cases involving allegations of past child sexual abuse. These studies typically present undergraduate students with vignettes of trials. However, in a few cases, the researcher analyzed actual legal cases (e.g., Read, Connolly, & Welsh, 2006).	
592	Jurors' Reactions to Expert Witnesses in Child Abuse Cases	There are numerous additional ways that expert witnesses might influence jurors' decision making. ... Thus jurors may need more than one reason to alter their verdict behavior.	Need (not instructions)

592-593	Jurors' Reactions to Expert Witnesses in Child Abuse Cases	Expert testimony could also counteract jurors' misunderstanding of children's memory and suggestibility. Quas, Thompson, et al. (2005) examined whether expert witnesses are needed to educate jury-eligible adults or if such adults already have adequate knowledge about children's memory and suggestibility. Participants did not recognize the powerful influence of stereotypic inductions on children's accuracy as eyewitnesses. It may be that, even if individuals are knowledgeable and skeptical about some aspects of children's suggestibility, they are less aware of adverse effects of subtle but still-influential interview manipulations. There was considerable variability in individuals' knowledge about children's eyewitness abilities; individuals had both inaccurate and accurate beliefs, which could indicate that expert testimony is potentially important (Quas, Thompson, et al., 2005).	Important (not instructions) Need (not instructions)
593	Jurors' Reactions to Expert Witnesses in Child Abuse Cases	These findings suggest that expert testimony on interview methods may help laypeople make more informed decisions about the reliability of children's reports. ... Finally, although expert testimony might influence the outcomes of trials involving child witnesses, the effects seem to fluctuate depending on the party that uses the testimony and the facts of the case at hand: defense alone, prosecutor alone, or concurrent opposing experts.	
593	Accommodations for Child Witnesses	Concern about child witnesses experiencing secondary trauma while testifying has resulted in the development of court modifications and system interventions to reduce such trauma (Hall & Sales, 2008). Protective services and legal interventions to ameliorate child witness trauma alleviate children's emotional distress, promote the well-being of child victims, and support children in providing reliable testimony (Malloy, Mitchell, Block, Quas, & Goodman, 2006; Troxel et al., 2009).	
593-594	Out-of-Court Testimony	Like adults, children experience both pre- and posttestimony anxiety, especially if they have to give testimony in front of defendants in open court in criminal actions (e.g., Goodman et al., 1992). To help alleviate potential trauma for child witnesses, statements made outside of the courtroom (e.g., through interviews with third parties such as forensic interviews, video recordings, or CCTV) are sometimes permitted. Hearsay testimony allows children's out-of-court statements (e.g., to their mothers or other family members) to be considered evidence in court proceedings on behalf of child victims, at least under certain conditions. In some cases, forensic interviews with child witnesses may be video recorded and presented as hearsay evidence to the court. CCTV allows a child to give evidence outside the courtroom in front of a camera, with the image and sound immediately relayed to the courtroom for viewing while the child undergoes direct and cross-examination.	
594	Hearsay	Related concerns center on several assumptions about the value and significance of defendants' abilities to confront witnesses, including (a) the stress of testifying on the stand and facing the accused improves the accuracy of witness testimony; (b) the jury's ability to detect deception is impeded unless the witness testifies live in court; and (c) the introduction of out-of-court statements may negatively bias the jury's perception of the defendant and adversely affect case outcome. Using mock trial and juror interview studies, researchers continue to examine these issues in attempts to find a reasonable balance between the rights of child witnesses and the accused (e.g., Landstrom, Granhang, & Hartwig, 2007; McAuliff & Kovera, 2012).	
594	Hearsay	The assumption that jurors can best detect the truthfulness or deceptiveness of a witness when a witness is testifying live in front of them is not supported by the prevailing research literature.	

595	Hearsay	The format or mode of testimony may be an important determinant of perceived child witness credibility and truthfulness as children who testify live are generally seen more positively or truthful than children who testify outside of court (Landstrom et al., 2007). ... These findings support previous research where children testifying live, or more proximal to adult observers, were seen more positively and given greater credibility than children testifying out of court in more distal locations (Goodman et al., 2006; Landstrom et al., 2007).	Important (not instructions)
595	Hearsay	For hearsay testimony, Warren, Nunez, Keeney, Buck, and Smith (2002) found that adults who appear in court to repeat children's statements were viewed as more accurate than children giving firsthand, live testimony. In that regard, the hearsay testimony effectiveness may depend on the status of perceived credibility of the adult (e.g., doctor, law enforcement officer) who testifies about the child's out-of-court statements (Ross, Lindsay, & Marsil, 1999). Further research is warranted to determine the impact of hearsay evidence on judicial processes as well as on the well-being of child witnesses.	
595	CCTV	The use of out-of court testimony for child witnesses is widely accepted and established in a number of countries. In Australia, New Zealand, and the United Kingdom, a two-way closed circuit television (CCTV) approach is employed, allowing interactive testimony between attorneys and the judge while a child witness is outside of court in a separate room. In the United Kingdom, the videotaped forensic interview serves as direct examination in court, and CCTV is used for cross-examination purposes. In other countries, such as Finland, Norway, and Sweden, child witnesses are video-recorded during preliminary police interviews, and those recording serve as direct and cross-examination. One-way CCTV is employed at times in the United States although it remains controversial as some argue that it violates the 6 th and 14 th Amendments of the U.S. Constitution, which provide defendants the right to confront their accusers during criminal trials and to due process, respectively (Hall & Sales, 2008). Following a landmark case in which the U.S. Supreme Court decided in favor of the use of one-way CCTV in child sexual abuse cases under certain conditions (<i>Maryland v. Craig</i> , 1990), courts in the United States are being asked to rule on the use of one-way CCTV. Although the ability to confront a witness is believed to produce more accurate testimony, research has not supported this belief.	
596	CCTV	One concern about child witnesses testifying through CCTV is the perception of less emotional impact compared to live court testimony (McAuliff & Kovera, 2012). The emotional impact appears to be even less with video-recorded child testimony (Landstrom, 2008). Orcutt et al. (2001) reported that children testifying via CCTV were seen as less accurate, less believable, less consistent, less confident, less attractive, and less intelligent than children who testified in open court.	
596	Child Advocacy Centers	The child advocacy center (CAC) multidisciplinary approach to child forensic interviews is designed to reduce secondary victimization in children by (a) facilitating collaboration between relevant agencies (e.g., child protective services, law enforcement, prosecution, mental health, and medicine), (b) providing child-sensitive interview settings, and (c) limiting the number of interviews a child victim experiences. By providing supportive services to child witnesses, CACs aim to reduce trauma associated with the investigative and legal processes.	
597	Child Advocacy Centers	Evaluations of CACs are promising and suggest they decrease delays between law enforcement reports and indictment dates (Walsh, Lippert, Cross, Maurice, & Davison, 2008), increase access to medical examinations, improve the experience of nonoffending parents during the investigation	

		process, and decrease the level of fear experienced by children during interviews (L.M. Jones, Cross, Walsh, & Simone, 2007). ... Data are still emerging relevant to the efficacy of CACs, but the accumulating research suggests CACs are likely to be helpful to child witnesses and families involved in criminal proceedings.	
597	Conclusions	Children pose many dilemmas for the legal system. Yet to protect children and others from harm and ensure justice, society has little choice but to include child witnesses in legal cases, especially when other evidence is lacking or when the children's testimony plays a key role in a prosecution. ... It is clear that many countries in the world are—or soon will be—struggling with how and when to listen to child witnesses in the legal context. Fortunately, psychological science is in an excellent position to make a meaningful and important contribution to this effort.	Important (not instructions)

Psychological Evaluations for the Courts (Melton, Petrila, Poythress, & Slobogan, 2007)

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Chapter 16: Child Custody in Divorce p. 539-563

Chapter 7, section 7.07: Competency to Testify p. 179-191

Page	Section Heading	Excerpt	Additional Notes
Chapter 15: Child Abuse and Neglect			
494	The Nature of Abuse and Neglect Proceedings; Philosophical Dilemmas	State action in cases of child maltreatment represents a direct conflict with family privacy and parental liberty; as such, it is an area of the law in which the complex and sometimes confusing mixture of interests among child, family, and state is starkly presented. For example, the state has an interest in the socialization of the child to be a productive citizen, but it also has an interest in the preservation of the family as a basic social institution and a buffer between the state and the individual. Similarly, parents are usually assumed to act on behalf of the child, but their interests may be demonstrably in conflict with, or at least different from, the child's. The child has an interest in preserving his or her care and relationships (and therefore in parental autonomy), but he or she may also have independent interests in liberty and privacy. ... The attempt to balance the state's interest in protecting children with the parents' interest in family privacy is especially troublesome because of questions about the state's ability to fulfill its interest. The documented lack of stability in foster care in most jurisdictions frames the balancing of interest in terms of a dreadful dilemma: Are children worse off in the care of abusing and neglecting parents or in that of the state? Although there are no clear answers from that question yet, the fact that it is seriously posed indicates both the depth of controversy about policies concerning child maltreatment and the widespread skepticism about the ability of social service and mental health professionals to evaluate possible maltreatment validity and to treat parents and children successfully.	Surprised at the nuance here, talking about the complexities. Describing skepticism about evaluation efficacy
494-495	Stages of the Legal Process	[abuse-reporting statutes that now exist in every state] usually require certain categories of professionals, most prominently mental health professionals, to report any case in which they have reasonable cause to suspect that child abuse or neglect has occurred. Therefore, initial state intervention, in the form of investigation and any emergency	Require

		action, often takes place on the basis of an assessment by a professional. This process has been subject to numerous criticisms.	
495	Stages of the Legal Process	There is an adjudication of whether the allegation is valid—that is, whether there is a legally sufficient basis for the state to assume jurisdiction over the child and family. It is at this phase that definitional problems and questions of the proper balance between state and parental authority are most directly presented.	
495	Stages of the Legal Process	Both kinds of questions demand difficult predictions of future parental behavior and the efficacy of treatment, and both again present issues concerning the proper reach of the state and the proper deference to parents.	
495	General Policy Perspectives; Perspectives on State Intervention	The general problem of balancing state and parental interests, and the corollary problem of the proper level of involvement of mental health professionals, arise at several points in the process. There is no consensus on these questions, and different answers may be given for different stages of the proceedings.	
496	General Policy Perspectives; Perspectives on State Intervention	The fact that the Standards Relating to Abuse and Neglect have never been adopted as policy by the American Bar Association (unlike almost every other volume of the Juvenile Justice Standards) is illustrative of the deep and long-standing divisions about child protection policy. Nonetheless, the Standards remain important authority for the advocates of limited state intervention in cases of child maltreatment.	Figure out which branches of legal system see which cases Important (not instruction)
496	General Policy Perspectives; Perspectives on State Intervention	Child protection policy thus rest on a complex set of normative and empirical assumptions, many of which remain unsettled. Development of a coherent policy is further complicated by often competing policy goals. For example, policy and practice in regard to spouse abuse—a context that is in many ways analogous to child maltreatment—have been guided in recent years by the belief that these cases involve a clear perpetrator and an obvious victim, and that the perpetrator must be controlled through, for example, protective orders prohibiting the perpetrator from access to the family. Although this model is sometimes applicable in cases of child maltreatment (notably when a family member is sexually exploitative), the more common situation is that there is not a clear “bad guy.” Others may view particular parents as inept, unmotivated, or cruel (indeed so cruel that retribution may be justifiable), but the child’s welfare may still demand that attention be given to strengthening the parent-child relationship.	Complexities Must (not instructions)
496	“Neighbors Helping Neighbors”: The New Paradigm in Child Protection	The historic perspectives on child protection policy have focused for the most part on the coercive application of state power to prevent harm to individual children. Accordingly, policy debate has rested largely on questions about the circumstances justifying such intrusion, the scope of mandated reporting, and the adequacy of the investigations triggered by such reports. All too often, public attention has been directed to exposes of tragedies purportedly resulting from the incompetence or sloth of workers in Child Protective Services (CPS)...	This is the beginning of the historical exploration of this context, can refer back if necessary!
498	Legal Definitions of Child Maltreatment	Although it is clear that the <i>Zeitgeist</i> has been shifting in the field of child protection, it is also clear that there still is no consensus among authorities about even the overall framework that should guide legal policies on child maltreatment. There is basic disagreement—in	Should (borderline instructions)

		combination with conceptual unclarity among mental health professionals about the nature and etiology of child maltreatment—has led to often vague and disparate standards for the types of “abuse” and “neglect” that can lead to state intervention.	
498	Legal Definitions of Child Maltreatment	In view of the ubiquity of corporal punishment as a disciplinary technique in American families, and the perception that it is relatively more common in particular sociocultural groups, there is the possibility of arbitrariness and the probability of unreliability in the application of broad standards.	
498	Legal Definitions of Child Maltreatment	It reflects the judgment that even in cases of physical injury, unless the actual or potential injury is serious, the detriment from coercive intervention is likely to be greater than the benefit.	
499	Legal Definitions of Child Maltreatment	Most problematic, however, are those statutes that expressly call for a value judgment about the limits of acceptable physical punishment independent of its actual or probable harm. Some states include “excessive corporal punishment” in the definition of abuse. Courts are divided as to whether such standards are so vague as to be violative of due process.	
499	Sexual abuse	Although some states do define the term in their criminal statutes, others do not, and some of the states that specifically include sexual abuse in their civil child abuse statutes do not define it there or in any other law.	
499-500	Emotional abuse and neglect	Emotional abuse—also known as “psychological maltreatment”—is the most controversial aspect of child protection jurisdiction, probably because it is so difficult to define. ... Another problem is that establishing the basis for emotional harm presents difficult problems of proof. How does one really know whether a child’s maladjustment is the result of parental practices? It is clear in this regard that many children develop appropriately in spite of growing up with parents who are relatively unresponsive or who have what may be mistaken ideas about children’s needs. Moreover, given the myriad parental behaviors that may adversely affect child development, do we really want to expand jurisdiction to the range of situations that may be psychologically unhealthy? If not, what is to be the decision rule for determining whether an unwise practice is also an abusive practice that warrants state interventions to protect the child?	Need (not instructions)
500	Conclusions	Clearly there is great diversity in statutory definitions of abuse and neglect. Also, there is often sufficient vagueness in state statutes to raise constitutional questions. Vague or value-laden definitions unfortunately do often result in arbitrary application. There is solid empirical evidence of gross unreliability with the groups most likely to be involved in the initial investigations (i.e. social workers and the police) being those that tend to have the most expansive concepts of child abuse and neglect. Even within the social work profession, though, there is substantial variation in understanding of the definition of child maltreatment, as a result of differences in the setting in which social workers are employed and in their theoretical orientation.	
500-501	Child Maltreatment as a Clinical Phenomenon; The	Although the risk to their health and welfare is substantial, they typically live in families with multiple complex and serious problems. Solving those problems is a substantially more difficult matter than “just” ensuring that they are safe from a brutal parent. Meanwhile, as already noted, a “backlash” has arisen in which many	Important

	“Discovery of Child Abuse”	critics argue that the child protection system is prone to overreaching, sometimes with life-shattering results. ... The identification of child maltreatment as a clinical entity, however, <i>is</i> relatively new. We do not wish to minimize the realities of the abuse of children, but it is important to recognize that child abuse and neglect are social constructs that have entered the behavioral sciences only in the past half-century.	
501	Social Science Definitions	Historically, definitions of child maltreatment used by social scientists have tended to be substantially broader than those in law, at least in the more carefully drafted statutes, and even more diverse. ... The broad and inconsistent definitions used by social scientists are problematic not only because of the difficulty in applying vague definitions. They are troublesome also because of their potential influence on helping professionals, who may apply even broader standards than the law permits. Inconsistent definitions also make comparisons across studies difficult, and overly broad definitions render research questionably applicable to legal policy.	
502	Social Science Perspectives	Practitioners and policymakers are still likely to view child maltreatment from one of these perspectives. The evidence is now clear, however, that child maltreatment is multiply determined. There is a need to understand the social factors <i>in interaction with</i> individual differences in psychological traits. Ecological theories offer such a complex perspective.	need
502	Social Science Perspectives	To say that unemployment—or poor impulse control—is the cause of child maltreatment is to oversimplify a complex social phenomenon. Assessment of only one level or aspect of the situation will be short-sighted, and intervention directed at only one level or aspect is unlikely to have substantial effects.	
503	Factors in the Etiology of Child Maltreatment; Psychological factors	Abusive and neglecting parents have often been shown to be low in empathy and in understanding and acceptance of the nuances of behavior. Even this conclusion, however, must be qualified. The evidence that maltreating parents have inappropriate expectations—at least in terms of expectations for their children—is equivocal.	Must (borderline instructions)
506-507	Prognosis and Treatment	At least in part, this dismal record is the product of insufficient attention to the complexity and severity of needs of families in which child maltreatment occurs. Traditional parent-focused casework, including psychodynamic treatment, is largely ineffective. In contrast, better success has been obtained in programs that have incorporated material supports (e.g. emergency cash) and featured intensive multifaceted interventions.	Need (not instructions)
507	Prognosis and Treatment	Lacking a substantial body of knowledge about treatment of older abused and neglected children, therapists are left to develop treatment plans and methods that are theoretically grounded.	
508	Clinicians’ Involvement in the Legal Process; Investigation	Child protection bears some resemblance to a civil commitment in that a forensic clinician may assume the role of decision maker and even initiator (i.e. mandated reporter) of the process in its early phases, but then may return to the role of neutral expert at the adjudication and disposition. The potential role confusion is even more likely to be present, however, because of the nature of the questions posed in child protection cases. After a report is made, state authorities—most often CPS workers—have two kinds of questions that they are legally obligated to answer. First, did child maltreatment occur This question actually is in two forms: Did child abuse or neglect, as defined in the	Need (x2, not instructions)

		<p>criminal <i>and</i> the family codes, occur? Second, if child maltreatment did occur, what disposition would alleviate the danger? The latter question potentially involves immediate (emergency), short-term, and long-term predications and decisions. Note that a positive answer to the first question necessarily triggers an inquiry in regard to the second—in effect, an exploration of the coercive steps that the state might take to ensure the child’s safety. Even when CPS fails to substantiate that legally cognizable abuse or neglect has occurred, however, the state may pose the second question (or an even broader question about a plan to meet the needs of the child and family) in regard to <i>voluntary</i> services.</p> <p>Unfortunately, the former question (What happened?) so dominates the inquiry in most states that the latter question (What can we do about it?) often is addressed minimally if at all. Even when maltreatment is substantiated, often no services at all are delivered; as noted in the preceding section, children’s own needs for services are especially unlikely to be addressed.</p>	
508-509	Clinicians’ Involvement in the Legal Process; Investigation	<p>Such differentiation is likely to reduce the role confusion—and related ethical problems—of mental health professionals. The determination of whether abuse or neglect occurred is a judgment requiring common sense and legal acumen, but it is outside the specialized knowledge of mental health professionals. On the other hand, dispositional planning is well within the province of clinicians. Even on the latter issue, however, clinicians should avoid giving ultimate-issue opinions about dispositions (e.g. whether the risk to a child’s safety is so egregious that it warrants placement of the child in foster care).</p> <p>These attempts to increase the clarity of various professionals’ roles in child protection cases are laudable. But clarity in concept does not necessarily translate into clarity in practice. Three points are noteworthy here. First, clinicians must remain mindful that although dispositional issues are <i>conceptually</i> within their province, their expertise on such issues may still be limited. In particular, the scientific foundation for risk assessment and treatment planning in cases of child maltreatment is quite weak.</p> <p>Second, as this last point implies, determination of the circumstances in which maltreatment has occurred may be highly relevant in assessing the risk to the child and developing a plan to mitigate it. Therefore, drawing a bright line between “investigation” and “assessment” may be quite difficult.</p> <p>Third, states increasingly are establishing multi-disciplinary teams for investigation, assessment, and intervention. Thus responsibility for decisionmaking about civil child protection petitions, corollary dispositional matters, and even the filing of criminal charges may be diffused across the justice, health, mental health, and social service systems, including mental health professionals practicing in any of these settings. Although the clinicians’ roles may primarily be to plan and implement treatment, they are also likely to be involved as team members in at least an advisory capacity in decisionmaking about the pursuit of legal matters. In that connection, the clinicians’ role may be especially ambiguous, because they may be regarded as the team’s experts in interviewing children. In such capacity, they may substitute not only for CPS workers, but also for police officers in conducting part of the investigation. In such a circumstance, the clinicians could in theory remain information gatherers without becoming decisionmakers. Nonetheless, when</p>	<p>Should</p> <p>Must (clinicians)</p> <p>Require</p> <p>Advise (not instructions)</p>

		clinicians have an explicit role of eliciting information that maybe used in a prosecution, the possibilities for confusion—not only of the clinicians themselves but also of the individuals whom they are interviewing—are obvious.	
509	Emergency Decisions	In most states, the authority for taking a child into emergency custody rests with CPS, the local law enforcement agency, or both. Under such a statutory structure, a mental health professional may become involved in decisionmaking as a consultant assisting the CPS worker in analyzing the level of imminent risk to the child and considering steps that might be taken to mitigate that risk. Alternatively, in the course of an evaluation or treatment, the mental health professional may become alarmed at the apparent level of risk and may recommend—and thereby precipitate—emergency action to protect the child. In some states, clinicians may also act directly to initiate emergency protective action.	Recommend (not instructions)
510	Adjudication; procedural issues	In the 1980s, as reporting and criminal prosecution of sexual abuse cases began to increase dramatically, legislators and courts began to be more concerned about removing barriers to children’s testimony (given the common lack of eyewitnesses and corroborative physical evidence in sexual abuse cases) and diminishing the emotional trauma that many believed the legal process inflicted on child witnesses. Accordingly, most states adopted statutes and court rules that changed the procedural and evidentiary rules governing children’s testimony, at least in abuse cases. Typically, these legal rules limit the defendant’s confrontation of the child (e.g. through closed-circuit TV) minimize public access to the child’s testimony (e.g., through courtroom closure), and change the way in which the jury hears the child’s evidence. Although the specific issues vary, the post-1980 rules typically raise questions about attenuation of the defendant’s rights to confrontation and a fair, public jury trial, and as well as of the public’s right (through the press) to access to the trial process. Apparently because of prosecutors’ preference for live testimony by the witnesses they call, their reluctance to open doors to appeal of convictions, and concern over costs, the special procedures are applied in relatively few cases in most jurisdictions. Nonetheless, the number of sexual abuse cases reaching the courts is now so vast and the issues regarding special procedures so controversial that appellate courts decide questions of law in thousands of sexual abuse cases each year.	
510	Adjudication; procedural issues	Though a state-by-state, law-by-law review of the status of special procedures in child abuse cases is beyond the scope of this book, the overarching principle of federal constitutional law governing testimony by child witnesses in abuse cases can be described. ... Specifically, the Court held that although access to evidence and protection of children’s welfare are compelling state interests sometimes justifying intrusions on the rights of defendants and to the public, states cannot establish blanket rules to infringe on such rights in cases involving child victims. Relying heavily on amicus briefs filed by the American Psychological Association, the Court emphasized the need for case-by-case determination of the need for special procedures.	Individual vs. universal rights Need (x2)
511	Adjudication; procedural issues	The Supreme Court also held, however, that such findings could be made without the trial judge’s direct observation of how the child behaves in the presence of the defendant: “The trial court in this case, for example, could well have found, on the basis of expert testimony	

		before it, that testimony by the child witnesses in the courtroom in the defendant's presence "will result in [each] child suffering serious emotional distress such that the child cannot reasonably communicate."	
511	Adjudication; procedural issues	<i>Craig</i> opened the door to testimony by mental health professionals in hearings to determine whether there is a necessity for special procedures to protect particular child witnesses. The Maryland statute and others like it appear on their face to require a type of evaluation that will be familiar to forensic mental health professionals specialized in work with children. As one commentator stated, "the Maryland procedures seem to require a focus on expectable cognitive-linguistic-social performance when faced with a particular stressor. This focus is not unlike that of an evaluation of competency to testify, one element of which is a child's ability to relate a story accurately."	Require (x2)
511	Adjudication; procedural issues	In contrast, in states that base their use of special procedures on their desire to protect children from psychological harm, "the focus is on the potential injury to the child of testimony in front of the defendant, regardless of whether the child can communicate sufficiently to offer useful testimony." Thus the type of evaluation demanded in these jurisdictions, whether involving use of special procedures in a criminal court or a family court, may overlap with a dispositional evaluation in child protection proceedings in the family court. It is narrower than that type of evaluation, however, in the sense that it requires consideration of the emotional consequences of the child's interaction with a <i>particular</i> adult in a specific context.	Requires
511	Adjudication; procedural issues	Although the nature of the inquiry may be familiar under either type of statute, the information needed to make the necessary predictions is sparse, and it is unlikely that the necessary scientific foundation will be available soon. A working group of the American Psychological Association concluded: "Although there are reasons to believe that some children need special procedures in order to avoid trauma and provide full and accurate testimony, identification of these children is complicated by the infrequent use of such procedures. The sample sizes for testimony under different conditions are so small that it is unlikely that an actuarial risk-benefit assessment soon will be available for determination of the particular cases requiring procedural modification."	Need (x2, borderline instructions) Require (not instructions)
511-512	Adjudication; procedural issues	The knowledge that is now available provides additional foundation for the need for caution in such evaluations. Although research on the emotional sequelae of child victims' testimony in criminal proceedings "lends credence to the case-by-case approach, it also suggests the difficulty of implementing it": "Interestingly, the children who most want to have their day in court are those who are in some of the most negative circumstances (e.g. who have a history of previous abuse; whose caretaker is poorly adjusted) and thus are at high risk for negative effects of testimony. This finding has important policy implications. First, it suggests the need for special procedures in some cases so that children who, in a sense, have the most to tell are able to do so without undue risk. Second, when combined with other findings, it indicates the complexity of determining who is most at risk. Bright-line rules (e.g., age) will not validly discriminate children at high risk of negative effects of testimony. Assessments of overall clinical risk will be overboard because some children who may be in especially difficult circumstances will benefit from the opportunity to testify. In either instance, assessment of probable	Important (not instructions) Need (x2)

		effects of testimony may not be informative about probable effects of testimony under special procedures [the question posed by Craig and the preceding cases].	
512	Adjudication; procedural issues	Thus, although research and theory on the dynamics of child abuse and the nature of children’s experience in the legal process may be helpful in suggesting the possible effects of alternative procedures, there is little research direction on the point, and that which is available gives more reason for caution in predictions. Amid such uncertainty, there is special significance in our usual injunctions to avoid the ultimate issue (in this instance, in regard to whether there is a necessity for use of a particular procedure) and to illuminate the level of uncertainty in the foundation for one’s opinions.	
512	Reliability of Hearsay	In their zeal to minimize child victims direct confrontation of defendants and to preserve evidence that inculpates defendants, prosecutors frequently desire to admit statements that children made out of court. Moreover, many state legislatures have adopted special hearsay exceptions for use in cases involving child abuse. While the various grounds for admission of children’s hearsay statements are diverse, the important point for present purposes is that because such statements by their nature affect a defendant’s right to confront the witness, the proffer of such hearsay statements in a criminal child abuse case implicates the Sixth Amendment’s confrontation clause.	Important (not instructions)
512	Reliability of Hearsay	By declining to define the term “testimonial,” the <i>Crawford</i> decision generated a good deal of speculation as to the admissibility of various out-of-court statements, particularly in the context of child abuse cases.	
513	Reliability of Hearsay	Prior to <i>Crawford</i> , such courts applying the <i>Roberts</i> test allowed mental health professionals to testify both to the overall reliability and the truthfulness of children’s out-of-court statements. After <i>Crawford</i> , such testimony will undoubtedly be limited, given that children’s “testimonial” statements—whatever that term involves—are no longer admissible based solely on reliability. Clinicians may still be asked, however, to determine the trustworthiness of children’s nontestimonial hearsay statements.	
513	Reliability of Hearsay	In responding to requests for such determinations, clinicians should consider two points. First, it is not self-evident that the historic assumptions about the circumstances of trustworthiness apply to children, and research on such points is essentially nonexistent. For example, do children being subjected to medical exams as part of a sexual abuse evaluation uniformly regard physicians as beneficent individuals solely concerned with guarding children’s health and planning their treatment? If so, is such a belief by a child sufficient to prevent the child from lying about whether abuse has occurred, and if it occurred, about the circumstances of the offense? Second, the factors that courts frequently consider in determining the trustworthiness of a child’s statement are largely matters of common sense. Given these facts, there is good reason to doubt whether mental health professionals bear specialized knowledge justifying admission of their opinions about the reliability of a child’s hearsay statements, although there may be some specific factors about which psychological knowledge is relevant (e.g. the sophistication of vocabulary and grammar that is common among children of a given age and the specific child whose statement is in question; the range of emotion that children may display when they initially disclose abuse). Even in these	should

		instances, however, there clearly is no foundation in psychological research for the ultimate conclusion about whether a child's statement is trustworthy.	
513	Competency to Testify	Children are competent to testify when they have the capacity to observe and remember events and to communicate about them, when they can distinguish reality from fantasy, and when they understand the obligation to tell the truth. The majority of states now presume children to be competent witnesses, whether in general or in child abuse cases specifically. Although the presumption is typically rebuttable, there are questions about whether the inquiry in regard to competency to testify should remain at all, given that time will be consumed in any event by a competency hearing and that juries are probably capable of assessing the reliability of most testimony.	Should (not instructions)
513-514	Competency to Testify	The clinician who is invited to evaluate a child's competency to testify should be aware of the large body of research on children's skills as witnesses [see 7.07(b)]. Much of this research may actually speak more to the child's credibility than to his or her competency as a witness. <i>Credibility</i> is a continuum; <i>competency</i> is a dichotomy. As long as the competency threshold is passed, developmental differences in children's cognitive, linguistic, or social skills or their moral judgment are irrelevant to the latter determination. As indicated in the preceding paragraph, that threshold can be quite low; in any event, it is based at least as much on juror's competency in weighing children's testimony as it is on children's skill in presenting it.	Instructions Should
514	Competency to Testify	One last point has to do with the distinction between competency to testify and the confrontation issue addressed in the preceding section. As Myers has pointed out, the reliability determination involved in hearsay confrontation analysis is different from the ability-to-communicate determination involved in competency-to-testify analysis. Interviewers conducting investigations or dispositional assessments should be mindful of the need to document children's ability to relate facts in different contexts (e.g. to social workers vs. jurors).	Instructions Should Need
514	The Case in Chief: Proving Injury and Abuse	The most controversial uses of clinicians; testimony in child maltreatment cases relate to the questions "What happened?" and "Who did it?" There may be no other context in which evidentiary and professional issues of the sort discussed in Chapter 1 are as frequently and acutely raised. When, if at all, may group data be used as evidence about whether a particular individual perpetrated or experienced abuse or neglect? What level of inference should mental health professionals be permitted to reach in their opinion testimony? Use of mental health professionals' testimony to prove elements of the prosecution's case in chief—whether in a family court adjudication or a criminal trial—is a relatively new and highly debated phenomenon. It is possible to identify several different kinds of questions that clinicians might be asked and that are directly germane to proof of elements of the offense.	Should (not instructions)
514	The Case in Chief: Proving Injury and Abuse	<i>Admission of a Child's Statements through a Mental Health Professional.</i> In one scenario, the clinician's <i>opinions</i> are not at issue; rather, the clinician is asked to testify as a voice for the child—a reporter of statements made by the child about the maltreatment that he or she experienced. As noted earlier, because of a child's unavailability, a desire to avoid the necessity of his or her testimony, or simply a wish to corroborate testimony that is given, attorneys often wish to admit statements made by the child outside of the	

		courtroom. One potential source of such hearsay evidence is a health professional (possibly a mental health clinician) to whom the child confided about maltreatment. Attempts to follow this avenue have met with mixed results.	
514-515	The Case in Chief: Proving Injury and Abuse	In a somewhat similar case, a federal court of appeals refused to allow the admission of a videotaped interview conducted by a social worker with a child victim, on the ground that there was insufficient evidence of the trustworthiness of the statements. The tape was not prepared as part of the medical exam of the child and so was not admissible under that exception. In addition, the court found that the spontaneity of the child’s statements had been compromised by repeated prior questioning.	
514-515	The Case in Chief: Proving Injury and Abuse	In short, mental health professionals’ descriptions of out-of-court statements by children are not admissible under the medical-diagnosis exception unless made for the purpose of treatment planning. As discussed earlier, under <i>Crawford</i> nontestimonial statements may still be admissible if sufficiently trustworthy, but this outcome requires overcoming judicial skepticism about the circumstances under which such statements often are made, doubts about their spontaneity, and concerns about the possible suggestive effects of prior and leading questions. Furthermore, many statements made to clinicians during the investigative phase are likely to be seen as testimonial and therefore inadmissible under <i>Crawford</i> .	Require
515	The Case in Chief: Proving Injury and Abuse	<i>Expert Testimony about Whether an Injury Has Occurred.</i> The most common use of a mental health professional’s testimony is not simply to repeat statements made by a child, but to testify as an expert—an approach that may also permit admission of the child’s statements, but as foundation for the expert’s opinions rather than for their factual value. This type of testimony is much more controversial.	Require (not instructions)
515	The Case in Chief: Proving Injury and Abuse	Perhaps least controversial, testimony by a mental health professional may be sought when the child protection statute requires proof of harm as an element of abuse or neglect [see 15.02]. In such a case, the clinician will usually be asked to determine whether a “mental injury” has resulted from maltreatment of the child. Thus the evaluation and testimony will be focused on the child’s mental status, and if significant disturbance is present, on whether it may have been caused by abuse or neglect. The nature of the inquiry in this context is similar to that in tort cases in which mental injury is alleged [see 12.05(c) and (d)]. The problem for mental health professionals is most likely to be the question of causation.	
515	The Case in Chief: Proving Injury and Abuse	In that regard, it is important to remember that child maltreatment commonly occurs in a context in which children face many psychosocial challenges [see 15.03], each of which might cause disturbance. Moreover, at the time that a clinician is asked to evaluate a child believed to have been maltreated, the child is likely to be experiencing stress as a result of the child protection proceedings themselves. If the child has been placed in foster care as a protective measure prior to adjudication, the child also may be experiencing trauma as a result of separation from the family of origin, placement with strangers, a change of schools, and disruption of other daily routines	Instructions to contextualize Important
515	<i>Expert Testimony about Whether Abuse or</i>	Another instance in which clinicians may be asked to testify about the particular alleged victim is when they are asked to address whether a child has been abused (as opposed to harmed by acknowledged abuse). When this question is framed in terms of the child’s truthfulness (“I believed her, because...”) or of the	Should (x2, borderline)

	<i>Neglect Has Occurred.</i>	truthfulness of abused children in general (“Children don’t lie about sexual abuse”), courts and commentators are virtually unanimous in their view that such opinions usurp the role of the trier of fact and should not be admitted. Some appellate courts have been vociferous in their rejection of such testimony. For example, the Oregon Supreme Court wrote: “We have said before, and we will say it again, but this time with emphasis—we really mean it— <i>no psychotherapist may render an opinion on whether a witness is credible in any trial conducted in this state.</i> The assessment of credibility is for the trier of fact and not for psychotherapists.” Also bemoaning the intrusion on the factfinder’s role, a Texas appellate court observed that “experts on child abuse are not human lie detectors. Nor are they clairvoyant. Nothing in this literature suggests that experts can or should replace the jury as the ultimate arbiters of credibility.”	
515-516	<i>Expert Testimony about Whether Abuse or Neglect Has Occurred.</i>	Some commentators distinguish the admissibility of an opinion about whether a purportedly abused child is believable from that of a “diagnosis” of a child as abused. In our view (and that of most appellate courts), this is a distinction without a difference. Many clinicians are convinced that assessment of whether abuse has occurred is a matter in which they are skilled and about which they should be permitted to testify. Such a belief is understandable when the law not only permits but requires a clinician’s report of his or her mere suspicion that a child has been abused or neglected, although the point should not be lost that this duty extends in most jurisdictions to many more people than those who have professional training in the mental health disciplines. There is no reason to believe that clinicians’ skill in determining whether a child has been abused is the product of specialized knowledge. The conclusions to be drawn from a child’s graphic description of a sexual encounter, for example, are a matter of common sense, not scientific knowledge or even clinical acumen.	Should (one instruction, one not) Require Wait, really?? Is this really true?
516	<i>Expert Testimony about Whether Abuse or Neglect Has Occurred.</i>	Because testimony as an expert involves an implicit representation that the opinions presented are grounded in specialized knowledge, a mental health professional should decline on ethical grounds to offer an opinion about whether a child told the truth or has been “abused.” By the same token, under the rules of evidence, such as opinion should never be admitted.	Instructions Should (x2)
516	<i>Expert Testimony about Characteristics of Maltreated Children.</i>	The question is harder, and the case law is divided, about the admissibility of a mental health professional’s opinion concerning the typical characteristics of abused or neglected children (as opposed to whether a particular child is abused). If such an opinion is grounded in hard data, its careful presentation does not violate professional ethics. We are leery of such testimony, however, as substantive evidence. In the current state of knowledge, such testimony is likely to be so misleading and prejudicial that it will not assist the trier of fact. Too often, clinical impressions about child abuse “syndromes” are presented without regard to the lack of a systematic empirical foundation for such opinions. Although clinical intuition may be useful in guiding treatment planning, it is insufficient as a basis for determining whether maltreatment may have occurred. Furthermore, when statistical data are available, they provide acute evidence of a serious base-rate problem. One consensus conference concluded: “No specific behavioral syndromes characterize victims of sexual abuse. Sexual abuse involves a wide range of possible behaviors which appear to have widely varying effects on its victims. Many sexually	

		<p>abused children show no symptoms at all, and most of the symptoms that are disproportionately common among sexually abused children are quite common among children in general. The probability is that children showing behavior said to be indicative of sexual abuse—even those that most strikingly differentiate sexually abused children—have <i>not</i> been abused.</p> <p>Of course, these issues apply in both directions. One cannot assume, for example, that a purported victim without obvious emotional distress lacks credibility. Presentation of scientific <i>rebuttal</i> evidence thus may assist the trier of fact to weigh the evidence without prejudicing the factfinder toward conviction. Accordingly, courts that have been skeptical about admission of syndrome evidence in the case in chief still often have permitted use of such evidence for rebuttal purposes.</p>	
517	<i>Expert Testimony about Characteristics of Child-Abusing Adults.</i>	<p>... We have no quarrel with the result in <i>Loebach</i>—a result unanimously reached by the courts that considered the same issue subsequently. The review in the literature in 15.03(d)(1) shows that the scientific basis for the battering-parent syndrome is very weak. When used in combination with medical evidence as to the cause of physical injuries, it is likely to be highly prejudicial and misleading. ... However, the <i>Loebach</i> court’s ultimate reliance on scientific invalidity may have been a ruse. The court apparently did not review the scientific evidence on the battering-parent syndrome, and it avoided the more basic and harder question of when group data should be used in individual cases.</p>	Should (not instructions)
517	<i>Expert Testimony about Characteristics of Child-Abusing Adults.</i>	<p>The critical point, however, is that a description of the general characteristics of many abusive adults is only tangentially relevant to the question of whether a <i>particular</i> defendant abused a child. It is fundamentally unfair to require the defendant, in effect, to disprove that he or she is a battering parent in the absence of the parent’s having abused the child. Defendants should be convicted and respondents’ parental rights should be infringed on the basis of what they did, not who they are.</p> <p>In the unlikely event that behavioral scientists are called to testify about the characteristics of abusive parents, they would certainly be ethically obligated to indicate the limitations of the literature and the overlap among populations. To prevent misuse of the evidence, they also should make clear to the factfinder the difficulties in drawing inferences about individual events on the basis of group data.</p>	Should (x3) Critical Instructions
518	Disposition and Postdispositional Review	<p>For the clinician, the second point made above is probably the most important. Regardless of the specific point in the process, mental health professionals are apt to be most helpful to the court and other decisionmakers (e.g. CPS workers and foster care review boards) by conducting and reporting clinical assessments focused on prevention of further maltreatment and alleviation of the psychological harm that may already have occurred. Drawing from research and theory about the nature, causes, and sequelae of child abuse and neglect [see 15.03], clinicians may be able to ask the “right” questions to identify the precipitants of abuse and neglect, the particular needs of the family as a whole and as individuals, and the nature of relationships within the family.</p>	Important (not instructions) Need (not instructions)
518	Disposition and Postdispositional Review	<p>The sentencing analogy is also an apt reminder of the problems with such assessments. Although the existence of mandatory reporting and central registries potentially provides the foundation for actuarial determination of risk, the data analyses that would enable empirically</p>	should

		based predictions have not been performed. Moreover, the research on the effectiveness of various dispositional alternatives is woefully thin [see 15.03(e)]. ... Therefore, even when experts are involved in the relatively uncontroversial context of dispositional decisionmaking, they should have great humility in making predictions and offering other opinions.	
518-519	Disposition and Postdispositional Review	Moreover, because many of the determinations that courts make in the dispositional phases of child maltreatment cases are similar to the judgments that mental health professionals make in treatment planning, we repeat that clinicians need to exercise special care in avoiding ultimate-issue opinions [see 1.04]. The level of risk to children that society should and will tolerate, the question of whether children should be removed from their home against their parents' will, and the circumstances justifying involuntary family treatment are not "clinical" or "scientific" matters. Although clinicians may guide courts in identifying dispositional options, mental health professionals do not have specialized knowledge about the embedded legal and moral issues.	Should (x2, not instructions) Need
519	Termination of Parental Rights	Termination of parental rights may be one of the most difficult decisions a court is required to make. On the one hand, permanent severance of family ties is recognized as an especially grave step, perhaps even more severe than imprisonment. On the other hand, authorities are increasingly mindful of the history of "legal abuse" of children by bouncing them among foster homes because the children are unavailable for adoption. Amid this profound conflict, there is concern about the high risk of error, in view of both vagueness of standards and unreliability of assessment. This risk is compounded by the fact that mental health and social service evaluations are usually crucial evidence in termination proceedings. The deck is usually stacked against the parents in that regard, in that they typically have substantially less access to these professionals than the state has.	Crucial (not instructions) Require (not instructions)
519	Termination of Parental Rights	In 15.02, we noted the common problems of vagueness of standards for abuse and neglect and reliance in the standards on individual value judgments as to proper childrearing practices. These problems are often compounded at the termination phase.	
520	Termination of Parental Rights	Under the Juvenile Court Judges' model statute and the statutes prevailing in most jurisdictions, the nature of questions posed to mental health professionals in a termination proceeding is also likely to be similar to that in any dispositional review. The focus of the inquiry is likely to be slightly different, however, in that the prognosis for successful treatment of the parent is the key question. The mental health professional might also be asked to evaluate the adequacy of efforts to treat the parent and the nature of the child's relationship with the foster parents.	
521	Mediation and Other Alternative Processes	In light of these developments, three points are noteworthy. First, the audience for information generated in dispositional evaluations is increasingly likely to be a nonjudicial decisionmaker. Second, as the emphasis on voluntary dispositions (including dispositions involving private parties outside the family) increases, the range of possibilities to consider expands. Third, clinicians must guard against inadvertently being drawn into a decisionmaker or advocate role when they have represented themselves as investigators or evaluators.	Must
522	15.05 Special Populations	In the meantime, the problem of support for parents with serious mental illness and their families deserves greater attention	

	a) Parents with Mental Illness		
522	15.05 Special Populations a) Parents with Mental Illness	Clearly, however, there is a need for research on parenting by individuals with mental illness in families living in the community and containing children of various ages. Similarly, as psychopharmacological advances permit greater independence of adults with serious mental illness, there is a need for parallel development of supports for them as parents and for their children.	Need (x2, researchers)
522	15.05 Special Populations a) Parents with Mental Illness	Absent an extensive literature on such programs, clinicians conducting dispositional evaluations are left to their general knowledge of social support and mental health services in suggesting alternatives that might enable families of parents with serious mental illness to live together with safety for the children. In the meantime, neither clinicians nor legal authorities should infer from a diagnosis that a parent is unfit. To guard against such inferences, clinicians should make clear in their reports and testimony that conclusions as to parental difficulties based on the presence of a mental illness per se are at present scientifically unsupported.	Should (x2)
522	b) Parents with Mental Retardation	This fact also means that a heightened review of the competence of parents with mental retardation is in effect a heightened review of parental competence of lower-income persons. The risk of capriciousness in application of the policy is obvious. That being said, mental retardation is often one of the many challenges faced by the neglectful families that now predominate in the child protection system, and that fact needs to be considered in the design of dispositional plans.	Need
523	c) Parents Who Abuse Alcohol	There is limited research from which to draw conclusions about the risks incurred by children of alcoholic parents...Most of the studies on the effects of mothers with alcoholism on their children have looked at toxic effects on drinking during pregnancy, not the adequacy of childrearing. The childrearing outcome literature that does exist gives reason for caution in assuming that alcoholism in a parent is often related to poor socialization of a child. ... There is, however, no family pattern that is unique to families with alcoholic parents; similar problems are experienced in families facing other challenges.	
523	c) Parents Who Abuse Alcohol	Although parental alcoholism is undoubtedly a factor that should be considered when one is designing dispositional plans, there again is good reason not to jump from a diagnosis of alcoholism to a conclusion about parental unfitness. One specific dynamic that ought to be considered in dispositional planning, however, is the sense of isolation commonly experienced by families of alcoholic parents, especially when the parents are "wet" (in an episode of active drinking). In view of the relation of this variable to child maltreatment [see 15.03(d)(2)], there is special reason to make enhancement of social support an element of dispositional plans when parental alcoholism is an issue. Research also suggests a particular need to consider mechanisms to monitor child supervision, especially when both parents have alcohol problems.	Should Need
	(d) Parents Who Use Illegal Drugs	Although the ongoing debate on this issue has focused in large part on prenatal exposure and related policy responses, research thus far suggests that the bigger issue concerns parental behavior per se.	
524	(d) Parents Who Use Illegal Drugs	Thus the primary focus should be on the care that children receive from drug-abusing parents.	Should

524	(d) Parents Who Use Illegal Drugs	Drug abuse commonly occurs in a context in which there are other impulsive and antisocial behaviors, as well as a panoply of social and economic problems. Similarly, child maltreatment, especially neglect, typically occurs in a complex situation in which there are many serious problems. Accordingly, in cases of parental drug use, like other instances of child maltreatment, an integrated multifaceted dispositional plan is usually needed.	need
524	(d) Parents Who Use Illegal Drugs	A final note is that although the challenge should not be minimized, it should not be assumed that the fact of parental drug use necessarily means that the situation cannot be made safe for the child or that the parent cannot recover.	Should (x2)
525	(e) Parents Who Experience Intimate Partner Violence	In short, the desire to respond to the societal problem of intimate partner violence can clash with the need to plan a disposition gauged to an individual family's concerns, and thus can impede efforts to find a practical solution to the needs of children in a volatile situation.	Need (x2, not instructions)
526	(e) Parents Who Experience Intimate Partner Violence	It is easy to see that pitfalls may await experts called to help to illuminate such a complex, possibly dangerous, emotionally and even politically charged set of circumstances.	
526-527	(e) Parents Who Experience Intimate Partner Violence	The problems that children and their families face in instances of intimate partner violence are serious and frequent enough that they merit careful attention by policymakers and child protection authorities. The interests at stake and the clinical phenomenon itself are sufficiently complex, however, that then assumption that well-intentioned action will be benign at worst in its effects on children is not one that should be made lightly. Caution is especially warranted about relying on assumptions for which the evidence is little more than "Everybody knows..." The information that <i>is</i> available from small, single-site studies gives ample additional reason for modesty in making ideologically grounded assumptions, at least until large-scale, more representative studies are available.	should
527	(e) Parents Who Experience Intimate Partner Violence	In short, clinicians would be wrong (at least in part) if they started from the assumption (1) that men who are abusive toward women generally pose threats to their young children; (2) that relationships with fathers are nearly always important to children; or (3) that women in abusive relationships are often too preoccupied with their own situations to provide adequate care for their children. Nonetheless, all of these ideas have been at the root of some policy responses to children exposed to intimate partner violence. These errors should serve as warnings to clinicians who would confidently make predictions about the likely effects of various visitation arrangements for children in such situations.	Should Important (not instructions)
527	(f) Parents who are Incarcerated	Clinicians and lawyers should nonetheless be aware that states may avoid the ASFA time limit and thus refrain from filing a petition to termination if there are "compelling reasons" to do so.	Should
527-528	(f) Parents who are Incarcerated	In light of these facts, a clinician who is asked to evaluate whether compelling reasons exist to extend the ASFA guidelines should examine the parent's efforts to maintain a relationship with the child despite the limited opportunities available, as well as the extent to which the parent has taken advantage of existing programs. The	Should (x2)

		clinicians also should interview the parent and child and gather any other indicators of the strength of their emotional bond.	
528	(g) Biologically Related Foster Parents	Evaluators may be asked to address not only what might be done to increase safety for a child, but also who might do it. A particularly common question concerns the optimal involvement of relatives, particularly whether they might provide appropriate supplementary or substitute care	
528	(g) Biologically Related Foster Parents	Specifically, Congress required states to “consider” giving preference to an adult relative over nonrelative caregivers when a child is placed outside the home, provided that the relative meets relevant state standards. ... These concerns are heightened by the fact that licensing and supervision for relative caregivers are typically less stringent than for nonrelative foster parents.	Require (not instructions)
528-529	(g) Biologically Related Foster Parents	Though research on kinship care is in its infancy, a number of clear facts have emerged from the work thus far. First, <i>clearly there is more stability in kinship care than in other foster care.</i> ... Second, <i>children in kinship care tend to have needs at least as great as those of children in nonrelative foster care.</i> ... Third, <i>kinship care providers typically do not have the same level of resources available to them that nonrelative foster parents do.</i> ... Fourth, although kinship care providers often have grave doubts about the parental ability or motivation of the biological parents, <i>they are more likely than nonrelative caregivers to facilitate a continuing relationship between the children and the parents,</i> as well as other family members. ... Fifth, perhaps reflecting cultural norms of care by extended families, <i>kinship care is much more often the disposition in cases arising in African American families than in other ethnic groups.</i>	Need (not instructions)
529	(g) Biologically Related Foster Parents	In short, kinship care shows promise as a way of meeting foster children’s right to a family environment, but questions remain about its implementation. ... Thus evaluators need to be aware of presumptions in many states in favor of kinship care, and they should consider the support that may be available to the family (with or without a change of residence for the children) from within the kin network. At the same time, as with other living arrangements, clinicians conducting dispositional evaluations should consider the nature of the supports that will best facilitate healing, safety, and healthy development for the child.	Should (x2) Need
530	15.06 The Technique of Abuse/Neglect Evaluations (a) Content of the Evaluation	Two points should be given special attention in planning dispositional evaluations in child protection cases. First, such an evaluation should be functional. It should focus on the parent’s competence <i>as a parent</i> , as well as the ways in which the child’s safety can be enhanced. Conclusions about adequacy as a parent should not be based on general mental status evaluations; diagnosis tells little about an individual’s parental abilities, motivation, and practices. Indeed, ultimately the questions should shift from parental competence as a personal characteristic, because the critical problem is one of <i>relationships</i> .	Should (x5) Critical (borderline instructions)
530	15.06 The Technique of Abuse/Neglect Evaluations (a) Content of the Evaluation	Second, given what is known about the multiplicity of factors involved in child maltreatment [see 15.03], the evaluation should be wide-ranging. Of course, both the parent(s) and the child(ren) should be interviewed. Whenever possible, the child and the parent should be observed together [see 19.11 (a) for an illustrative report], preferably in natural settings. But the evaluation should go beyond this dyad and beyond psychology. There should be assessment of	Should (x7) Need (not instructions)

		relationships outside the immediate family that might be used, perhaps with some enhancement by professionals, to ensure social support (sometimes including monitoring) for the family. In considering such alternatives, thought should be given to ways that the potency of social support could be maximized by making it reciprocal (e.g. between families). Similarly, attention should be given to the family's need for material support and steps that might be taken to resolve the family's practical problems.	
530	15.06 The Technique of Abuse/Neglect Evaluations (a) Content of the Evaluation	Collection of records of the family's involvement with helping agencies is especially important in dispositional evaluations. At a dispositional review, the degree of improvement in the situation, the adjustment of the child, and the adequacy of services are typically all at issue, and agency records (often followed by interviews of service providers) will usually be necessary to address these issues fully. Of course, knowledge of past treatment and its outcome is helpful in developing recommendations about possible interventions and reaching conclusions about prognosis. Social service and police reports, in combination with interviews of the parent, may also be useful in identifying possible precipitants of maltreatment—information that is often helpful for both designing interventions and determining prognosis.	Important (borderline instructions) Recommend (not instructions)
530	15.06 The Technique of Abuse/Neglect Evaluations (a) Content of the Evaluation	Although clinicians should take a broad approach to dispositional assessment in child protection cases, they should do so humbly. As the review in 15.03 indicated, the scientific foundation is weak for predictions about threats to the child's safety as well as the likely efficacy of various interventions, alone and in combination. Although enough is known about the factors that cause and maintain child maltreatment to provide the foundation for thoughtful dispositional planning (at least in regard to issues that should be addressed), it must be acknowledged that the selection of interventions is more art than science. There is little basis for confidence. Predictions, whether implicitly or explicitly made, should be framed accordingly.	Should (x4, one not instructions) Must
530	(b) Interviewing the Child	With some ambivalence, we are including a section on interviewing the child. As discussed in 15.04(a) and 15.06(a), we believe that the increasing reliance on mental health professionals as investigative interviewers (in effect, as law enforcement agents) in child protection cases is unfortunate. We are including a brief discussion of the subject, however, both because of the interest in it (clinicians may reasonably act as consultants to investigative interviewers even if the clinicians do not assume such a role themselves) and because of the need for child interviews as part of dispositional assessments. Even if the clinician does not assume the job of determining whether a violation of law occurred, finding out the child's perception of events may be quite useful in determining precipitants for incidents of abuse and assessing the nature and strength of the child's relationships. Of course, the interview of the child is also important for assessment of the child's individual needs for treatment and social support.	Important (not instruction) Need (x2, not instructions)
530-531	(b) Interviewing the Child	In that regard, it is important not simply to <i>assume</i> what the child must feel and what he or she has experienced. As we observed earlier, the field of child protection has been rampant over the years with unstudied assumptions about what "everybody knows" that ultimately have proven to be distorted or simply incorrect. Notably, the "trauma" approach to sexual abuse and related legal involvement simply cannot be taken for granted. For example, the fact that the average severity of demonstrable harm resulting from sexual abuse is less than that resulting from some other forms of maltreatment that	Important Must (not instructions)

		rarely elicit criminal prosecution negates neither the wrongfulness of such violations of personal integrity nor the severe harm experienced by some sexually abused children. Similarly, there is evidence that conventional clinical wisdom about the way that disclosure of sexual abuse typically unfolds is incorrect.	
531	(b) Interviewing the Child	We turn then to some general comments about interviewing children in child protection cases. Since the mid-1980s, there has been extraordinary attention by researchers to issues related to children's ability as witnesses, especially their suggestibility [see 7.07(b)(2)]. In our view, this concern has been overblown. Research shows that most children are resistant to suggestion for salient events, although the risk of inaccurate reports in response to direct questions is highest among very young children (e.g., three-year-olds).	Child witnesses/ testimony
531	(b) Interviewing the Child	Furthermore, much of what is known about ways to minimize distortions in children's memory (as in that of adults) and to maximize the quantity and accuracy of information reported borders on common sense. ...	Contradicts with passage 2 above?
531	(b) Interviewing the Child	Although adults who know better still often use difficult vocabulary and complex grammar in questions to children, such linguistic lapses may be the most common inhibitors of effective communication between interviewers and children. Linguistic complexity lowers the accuracy of statements and testimony by witnesses of all ages, but it especially does so in communication with children. Good practical guides are available, however, to prompt adults to avoid such miscommunication. A particularly useful brief manual, including a model <i>voir dire</i> for determination of a child's competency to testify, has been prepared by Anne Graffam Walker, a forensic linguist.	
531	(b) Interviewing the Child	Specific techniques to enhance communication also are becoming available. The most extensively studied may be the "cognitive interview," which relies on mnemonic principles to increase the amount of information provided. A summary of the procedures follows: First, have the child reconstruct the circumstances of the crime by encouraging her to put herself in the place and time that the abuse occurred—e.g. "picture it as if you were there right now." To ensure the child focuses on actual events, do not use the words "imagine," "pretend" or "story." Second, report everything the child says. Ask her to tell you as much information as possible, even seemingly unimportant details. After the child finishes her narrative description, follow with questions to clarify what was said. Third, go through the incident from beginning to end, then reverse the order and go through it again. Finally, encourage the child to recount events from different perspectives—e.g., "if you were sitting in the corner of the room, what would you have seen?"	Important (not instructions) Encourage
532	(b) Interviewing the Child	Designed originally for use in interviews of adult witnesses, the cognitive interview increases elementary-school-age children's recall of facts without a decrease in accuracy, especially when the children have an opportunity to practice the technique. Again, however, children's level of performance depends on adults' skill in communication. In the above-described study, for instance, problems were observed with interviewers' (in that instance, sheriff's deputies') adherence to the protocol.	
532	(b) Interviewing the Child	Other techniques that have been shown to improve elementary-school-age children's recall include training in comprehension monitoring and narrative elaboration (i.e., thinking about the elements of a story—the participants, the setting, the action, and the	

		conversation by and feelings of the participants). Encouraging elementary-school-age children to indicate when they don't know the answer to an adult's questions also increases resistance to leading questions, but sometimes at the cost of overcaution in reporting information that the children do know.	
532	(c) Psychometric Instruments	On occasion, specialized instruments for assessment of parental competence, parental attitudes, and family relations may help suggest dispositional issues in child protection cases. Detailed attention to the merits of such instruments has been given in reviews by Otto and Edens and by Budd and Holdsworth. There are a number of structured instruments for assessment of parental competence, parental attitudes, and family relationships. These instruments may be helpful in clinical evaluation, but the fact that most have not been validated for use in child protection dispositions should make clinicians cautious in interpreting observations drawn from them.	Should
532	(c) Psychometric Instruments	There are also several instruments for assessment of an adult's "abuse potential," of which the best validated is the Child Abuse Potential (CAP) Inventory. ... Nonetheless, we do not recommend the CAP for clinical use in screening CPS cases; rather, it shows most promise as a research instrument. ... the success of the CAP in identifying individuals with <i>past</i> abuse came largely in validation samples in which half of the participants were known to have physically abused their children—a base rate that is obviously far higher than in the general population. CAP scores also tend to be elevated among parents of children with disabilities, especially when other stressors or possible support deficits (e.g., single parenthood) are present. Therefore, incorrect inferences can be drawn from CAP scores when parents are in situations in which they have especially difficult problem of child care. Perhaps most seriously, the false-positive rate rises to unacceptably high levels when the CAP is used predictively. Also, we remain concerned that judges and CPS workers will misinterpret CAP validation data to indicate the odds that a parent actually abused his or her child.	Recommend
532	(d) Anatomically Detailed Dolls	Undoubtedly, the most controversial evaluation technique is the use of anatomically detailed dolls. ... Apart from our general recommendation, professional authorities are united in their view that play with anatomically detailed dolls cannot be used as a test to determine whether child maltreatment has occurred. The question remains whether the dolls are so suggestive that they should not be used even as demonstration aids to clarify a child's statements.	"General recommendation" meaning boundaries of expert testimony should (borderline instructions) recommend
533	(d) Anatomically Detailed Dolls	In a similar fashion, a working group on doll use established by the American Psychological Association urged caution in "interpreting the results of children ages 4 years and under, at least so far as when affirmations to leading questions about 'being touched' are concerned and when repeated misleading questioning has been used." The working group also noted, however, that "using AD [anatomically detailed] dolls in evaluations does not inherently distress or overstimulate children," that "using the dolls can clearly assist in identifying children's preferred or idiosyncratic names for body parts,	Repeated misleading questioning? Contradicting

		and that “using AD dolls often results in increased verbal productions during standardized research interviews.”	
533	(e) Avoiding Ethical Problems	Because of the desire to “save” maltreated children and to preserve the family relationships of clients, there may be special pulls, both psychologically and socially, on mental health professionals to reach beyond their specialized knowledge in child protection proceedings and to act as advocates rather than neutral experts. Moreover, the mixed civil-criminal system heightens the possibilities of mental health professionals’ becoming <i>de facto</i> law enforcement agents, sometimes without realizing that they are assuming such a role. Statements made in a civil child protection proceeding and a corollary treatment program might ultimately be used in a criminal proceeding or, of course, a civil hearing to infringe parental rights.	Assumes possibility of neutrality
533	(e) Avoiding Ethical Problems	Perhaps most acutely, the child protection system as presently structured invites conflicts between “doing justice” and “doing good.” As we discussed in 15.04(a), mental health professionals are increasingly being used as investigators charged with gathering evidence about whether maltreatment has occurred. We are troubled by this development for three reasons. First, it encourages clinicians to reach conclusions outside of their expertise. Second, it promotes confusion about the mental health professional’s purpose in the minds of both the clinician and the interviewee, and thus raises ethical problems in regard to fidelity to role—a variant of the “white coat” phenomenon in forensic mental health [see 3.02(a)]. Indeed, it is increasingly common to link treatment services for abused children directly to the prosecutor’s office. Third, it may exacerbate the already pronounced tendency to sacrifice prevention and treatment of child maltreatment in the name of investigation.	There is power in calling these texts “handbooks” even if not giving explicit step-by-step instructions. Encourage (not instructions)
533-534	(e) Avoiding Ethical Problems	There is good reason to believe that clinicians’ involvement as investigators will directly and indirectly impede the provision of treatment. The framing of child protection services as adjunctive to investigation and prosecution inevitably leads to conflicts between the mental health professions’ emphasis (on behalf of their clients) on confidentiality and the prosecution’s need for inculpatory evidence—conflicts that may prevent the treatment programs’ further development. Apart from role conflicts the need for mental health professionals to deal with legal issues; to prepare reports for attorneys, courts and to probation officers; and to interrupt clinical practices for court dates may distract clinicians from providing the scarce treatment services now available and may deter or distract them from serving maltreated children and their families. Moreover, although there is little direct evidence about public perceptions of mental health professionals’ involvement in child maltreatment cases, it is possible that increasing involvement in contested cases (or at least the perception of increasing involvement) will diminish public confidence in the mental health professions. Certainly high-publicity forensic work has had such an effect before. Indeed, the phenomenon has already occurred in sexual abuse cases as clinicians appear on nationally televised talk shows to debate false-memory syndrome (an issue discussed below).	Need (x2, not instructions)
534	(e) Avoiding Ethical Problems	Note that although more traditional forensic child protection work (i.e., conducting postinvestigation assessment as a step toward development of a treatment plan) does not completely obviate such issues, it presents them much less acutely. In dispositional assessment (especially when the court is not necessarily looming in the background), the inquiry is oriented toward development of help for	

		the child and the family, and the clinician’s mind is in fact likely to be focused on service provision.	
535	(b) Adult Survivors of Child Abuse and Neglect	The other set of “adult” issues in abuse and neglect is actually a problem of child maltreatment: legal and clinical issues that arise when a history of child maltreatment is identified in adulthood. There has been a pointed and sometimes heated controversy about the recollection of child abuse in adulthood, complete with establishment of a foundation for studying cases of false-memory syndrome.	Technically talking about evaluating adults, but still dealing with child memories...
535	(b) Adult Survivors of Child Abuse and Neglect	Building on the belief that children are sometimes so traumatized and/or dependent that child abuse is not remembered and disclosed until many years later, many state legislatures have explicitly made the delayed discovery rule applicable in such instances. “Delayed discovery” is a common-law principle in tort law that enables a victim of tortious conduct to be compensated past expiration of the statute of limitations (the maximum time in law between a violation of law and the initiation of legal action) when the victimization was not promptly discovered. ... By establishing a special exception to the statute of limitations for child abuse cases, legislatures have established an assumption in law that victims of child abuse sometimes are unable to disclose the abuse before they reach adulthood.	
536	(b) Adult Survivors of Child Abuse and Neglect	As in Briere and Conte’s research, the women in Williams’s study who were least likely to recall their childhood victimization were those whom clinical theory would suggest were most traumatized and those who were most likely to have been pressured into silence. ... Skeptics about the validity of repression or other forgetting among a high proportion of victims of child sexual abuse have made three primary counterarguments. First, they have argued that the purported frequency is an artifact of study designs. For example, Loftus criticized Briere and Conte’s question asking research participants about any “time when you could not remember the forced sexual experience,” because it could be interpreted to mean a time when one consciously (rather than unconsciously) suppressed the terrible memory. Second, critics have pointed to experiments and anecdotes about circumstances in which demonstrably false memories for childhood traumatic events have been induced. Third, they have argued that adult reports of child sexual abuse are often the products (at least in part) of therapist’s suggestive interviewing.	
536-537	(b) Adult Survivors of Child Abuse and Neglect	Such evidence does not negate the possibility—indeed, probability—that studies such as those by Briere and Conte and by Williams and related clinical observations reflect instances in which valid memories of child abuse are first revealed in adulthood because of the combination of repression or other forgetting and of real or perceived pressure not to tell. To a large extent, the academic debate about repressed memory for sexual abuse is about its frequency and mechanism, not its reality.	Interesting
537	(b) Adult Survivors of Child Abuse and Neglect	Indeed, given the vociferousness of the debate, the level of agreement between the skeptical memory researchers and the not-so-skeptical clinical psychologists in the American Psychological Association Working Group on Investigation of Memories of Childhood Abuse was remarkable. The Working Group itself noted five “key points” of consensus: <ol style="list-style-type: none"> 1. Controversies regarding adult recollections should not be allowed to obscure the fact that child sexual abuse is a 	Should (x5 instructions but not about evaluating children) Critical

		<p>complex and pervasive problem in America that has historically gone unacknowledged.</p> <ol style="list-style-type: none"> 2. Most people who were sexually abused as children remember all or part of what happened to them. 3. It is possible for memories of abuse that have been forgotten for a long time to be remembered. 4. It is also possible to construct convincing pseudomemories for events that never occurred. 5. There are gaps in our knowledge about the processes that lead to accurate and inaccurate recollections of childhood abuse. <p>Several other critical points of agreement can be found in the text of the Working Group report:</p> <ul style="list-style-type: none"> • Many possible errors in working with adult survivors or with clients who present as recovering memories of childhood abuse could be avoided if the therapist were well grounded in developmental psychology..., cognitive psychology..., and research on trauma.... • Clients who seek hypnosis as a means of retrieving or confirming their recollections should be advised that it is not an appropriate procedure for this goal because of the serious risk that pseudomemories may be created in trance states and of the related risk due to increased confidence in those memories. • ... [D]enials by alleged perpetrators also should not be taken as evidence that the client is experiencing other than an accurate recollection. • ...[A]lthough there are no statistics available on its prevalence, it is know that, on occasion, adults who report recovering memories will lie, particularly when the constellation of motives (e.g., fear, embarrassment, desire to protect loved ones, desire for revenge) outweighs the incentives to tell the truth. • Therapists need to eschew the roles of advocate, detective, or ultimate arbiter of reality. ... Forensic psychologists ... should avoid attempting to speak to the ultimate issue (i.e., guilt or innocence) in a case, because they are not usually in a position to know the truth. • ...[W]henver possible, therapists should avoid serving as expert forensic witnesses in the cases involving clients whom they are treating. 	<p>Need</p> <p>Advise (not instruction)</p>
537	(b) Adult Survivors of Child Abuse and Neglect	<p>In any event, the repressed-memory debate need not be resolved in a book on forensic assessment, because the assessment of truthfulness and validity of memory is not a matter for clinical opinion in the courtroom. Regardless of whether one accepts Loftus's assertions that many adult memories of child abuse may be distorted, it is difficult to argue with her conclusions about the stance that mental health professionals should take: "What should therapists do...? As a first step, it is worth recognizing that we do not yet have the tools for reliably distinguishing the signal of true repressed memories from the noise of false ones. ... Zealous conviction is a dangerous substitute for an open mind. Psychotherapists, counselors, social service agencies, and law enforcement personnel would be wise to be careful how they probe for horrors on the other side of some presumed amnesic barrier. They need to be circumspect regarding</p>	<p>Need (one not instruction, one instruction)</p> <p>Must (not instructions)</p>

		uncorroborated repressed memories that return. Techniques that are less potentially dangerous would involve clarification, compassion, and gentle confrontation along with a demonstration of empathy for the painful struggles these patients must endure as they come to terms with their personal truths.	
537-538	(b) Adult Survivors of Child Abuse and Neglect	It is further noteworthy that even this advice really is aimed at therapists, not at forensic evaluators. In that regard, in adult as well as child cases, mental health professionals should resist attempts to induce them to assume the role of human lie detector. Nothing in the professional preparation of clinicians uniquely qualifies them to discern the validity of memories and the truthfulness of allegations that result.	
Chapter 16: Child Custody in Divorce			
539	16.01 The Scope of Clinicians' Involvement in Custody Disputes (a) Current Involvement	...[O]ne might assume that clinicians not only are, but should be, frequently involved in resolution of custody disputes. However, it is our contention that both of these assumptions are mistaken. First, at present, <i>mental health professionals are directly involved in only a small fraction of custody cases in most jurisdictions</i>This lack of mental health involvement is perhaps less surprising when one recognizes that in most jurisdictions divorce cases are heard in general jurisdiction courts, unlike cases of delinquency and child maltreatment, which are heard in separate juvenile or family courts where there is a strong tradition of mental health or social services involvement.	Missing the historical context that introduces other chapters? Should (not instructions)
539-540	16.01 The Scope of Clinicians' Involvement in Custody Disputes (a) Current Involvement	Second, <i>mental health professionals may have little expertise that is directly relevant to custody disputes</i> . Thus there are probably substantive as well as structural impediments to mental health involvement. Some of the considerations most relevant to a determination of the child's best interests in law (e.g., parental "responsibility" and moral guidance) are ones that are arguably well within the province of the factfinder and about which clinicians have no special expertise. Moreover, there is a limited scientific basis for opinions about the kinds of questions that the courts must decide in divorce cases when children are involved. Although much is known about the effects of <i>divorce</i> on children [see 16.03(a)], there has been remarkably little research meeting minimal standards of methodological rigor about the effects of various <i>custody arrangements</i> on children and families of different characteristics. Furthermore, it may be impossible to generate such data at a level that would be very helpful in determination of best interests in individual cases.	Must (not instructions)
540	16.01 The Scope of Clinicians' Involvement in Custody Disputes (a) Current Involvement	The superficial relevance of everyday clinical practice to custody disputes; the shifting boundaries and allegiances within families (and the resulting pulls on clinicians); and even the related gender politics [see 16.05] may sometimes seduce mental health professionals into reaching unwarranted opinions. It is noteworthy that legal practitioners generally are quite skeptical about the usefulness of mental health involvement in child custody cases.	
540-541	(b) Some Possible Roles (1) Evaluator and Investigator	Although we began this chapter by emphasizing the serious reservations that we—and apparently most attorneys and judges—have about mental health professionals' present and potential involvement in custody disputes, we do not wish to imply that clinicians have no proper role at all. There are probably times when	Not instructing about evaluating children, but

		conventional clinical speculation about family dynamics will provide judges with some (albeit limited) assistance in making decisions about child custody. ... Certainly, it is conceivable that research will develop that will provide a basis beyond mere speculation for links between pre- and postdivorce behavior.	custody in general
541	(b) Some Possible Roles (1) Evaluator and Investigator	[M]ental health professionals are primarily helpful as <i>investigators</i> in custody disputes, particularly if they are sure to perform a thorough, wide-ranging evaluation of the type we recommend. ... clinicians (at least those specialized in child or family practice) are trained in, and used to, talking with children and families under stress and gathering information from diverse sources about the life of the family. Therefore, child and family clinicians are likely to be efficient and effective gatherers of facts for the court, even when they are not able to add opinions based on specialized knowledge about the implications of those facts.	recommend
541	(b) Some Possible Roles (1) Evaluator and Investigator	Because only the parents have standing, evidence about the <i>child's</i> best interests may not be presented unless it is clearly helpful to the case of one of the divorcing spouses. Even appointment of a guardian <i>ad litem</i> to represent the child's interests may not ensure development of this type of evidence, in part because of the ambiguities of the role. ... Mental health professionals (and other behavioral scientists) may also assist the court by pointing out what is <i>not</i> known about the psychological effects of various custody arrangements. This honesty about the limits of knowledge serves dual purposes. It assists the factfinder in determining the degree of confidence to attach to any speculations about the import of psychological factors, and it deters the court from "psychologizing" and thus obscuring value preferences in the law.	
541-542	(2) Mediator and Intervenor	Mental health professionals often may be useful as adjuncts to the negotiation process in clarifying points of agreement and disagreement. ... Divorce lawyers often perceive their role to be one of moderating their clients' wishes; thus referrals for "evaluation" may actually be thinly disguised requests for information that might illuminate the foundation for a settlement or even for mediation, involving direct assistance by the clinician in bringing the parties to agreement.	
542	(2) Mediator and Intervenor	Two important caveats about mediation should be remembered. First, when a clinician is employed as an <i>evaluator</i> , he or she should be careful not to slip into the role of <i>intervenor</i> unless the parties or the court so requests. Although the report might help clarify topics for potential negotiation (and, indeed, as already noted, one or both attorneys might request a report for just such a purpose), it would be presumptuous of a clinician as an evaluator to attempt to force a settlement. There are also potential ethical pitfalls associated with competence issues when clinicians begin skirting—or crossing—the bounds of legal practice. Although mental health professionals may be sensitive to the emotional fallout of separation and divorce, they are more often than not ignorant of property issues and related matters. Analogous concerns are obviously present when attorneys begin acting like therapists. Even for those mental health professionals who are also trained as lawyers, there are serious problems of dual practice and dual representation.	Should (x2) Important (not instructions)
542	(2) Mediator and Intervenor	But even some proponents of mediation, noting the diversity in auspices, length, voluntariness, and scope of mediation programs, have indicated a lack of surprise at research showing that mediation does not consistently produce results superior to litigation. Although	

		the majority of studies on particular hypothesized benefits of mediation have confirmed hypotheses, research to the contrary is also available on virtually every point.	
542	(2) Mediator and Intervenor	Consequently, whether the service is framed as an intervention (e.g., mediation) or an evaluation, clinicians working in the public system and dealing with the vast number of divorces involving children will find themselves increasingly in a position in which they must educate parents about what is to come not only in their family life per se, but also in the pending dispute resolution proceeding. The problems presented often are thorny ones that are both clinically and ethically challenging.	Must
542-543	(c) The American Psychological Association's <i>Guidelines</i>	Starting from the premise that the child's needs must be paramount, the American Psychological Association's <i>Guidelines</i> advise clinicians (as do we) to undertake a functional assessment of the skills and values of the parents and their match to the needs of the child: In custody evaluation, "[p]sychopathology [of the parents] may be relevant ... insofar as it has impact on the child or the ability to parent, but it is not the primary focus." This functional inquiry, the <i>Guidelines</i> state, necessarily requires a wide-ranging assessment using multiple sources of information and methods of data gathering (i.e., the investigator role we advocate). Recognizing that the multiple lenses through which family members embroiled in a high-conflict divorce are apt to be clouded by emotion, and that the scientific foundation for prediction of postdivorce behavior is thin, the American Psychological Association also admonishes clinicians to interpret clinical information "cautiously and conservatively, seeking convergent validity." The American Psychological Association's <i>Guidelines</i> further recognize that child custody evaluators are often pulled in conflicting direction by their concerns for the various individuals involved [see 16.04(a), 16.05]. They note that the psychologist's role is "that of a professional expert who strives to maintain an objective, impartial stance.	Instructions, but not about children specifically Need (x2, not instructions) Must Require Advise
554	16.03 What Do We Know (f) Children's Participation in Decisionmaking (1) Law and Empirical Research	As noted in the discussion of the best-interests standard, the Uniform Marriage and Divorce Act considers the child's wishes as a determinant in best-interests analysis, but it does not indicate the weight to be given to the child's preference. Some states have provided statutory guidelines based on age, reasoning ability, or both.	
554	16.03 What Do We Know (f) Children's Participation in Decisionmaking (1) Law and Empirical Research	Nonetheless, there is little research to guide evaluators or judges in determining a child's competence to participate in decisionmaking about divorce. The one quantitative study directly on this point found that even elementary-school-age children gave adult-like reasons, in response to hypothetical situations, for preferring a particular custody arrangement.	
554	16.03 What Do We Know (f) Children's Participation in	There is also little research directly testing whether querying children about their preferences is psychologically harmful because of the bind in which it places them. On the other hand there is a general literature in social psychology, including developmental social psychology, indicating the positive effects of being permitted to have	Should (not instructions)

	Decisionmaking (1) Law and Empirical Research	some control over one's fate and of reducing ambiguity about a strange situation through direct discussion of it. Finally, there is no research on the effects of the <i>procedure</i> for involving a child (e.g. whether interviewing should take place in chambers or be carried out by a social worker). In sum, the psychological impact of involving children in custody proceedings has not yet been explored in any detail.	
554	(2) Professional Standards and Practices	Although in some quarters the direct involvement of children in matters pertaining to their family remains controversial, the conventional legal wisdom now seems to be that children's voices ought to be heard, at least when the child is beyond the infant stage. For instance, in one jurisdiction which there was no legal obligation to elicit children's opinions, most judges indicated that they nonetheless did so in cases not involving preschoolers...	
555	(2) Professional Standards and Practices	Whatever the judges' motivation, however, and notwithstanding the dearth of research on the effects of children's direct involvement in divorce proceedings, there is clearly ample opportunity for mental health professionals to assist lawyers and judges in structuring interviews of children who are the subjects of custody and visitation disputes. ... A separate question is whether a child ought to be given a more formal voice, through a lawyer.	
555	(2) Professional Standards and Practices	Indeed, the relative infrequency with which guardians <i>ad litem</i> are appointed in divorce cases may mean that some of the educative role normally assigned children's attorneys will fall on clinical evaluators, who are ethically obligated to inform their interviewees about the context for the evaluation. In such a situation, the clinician may even be tempted to act as advocate for the child—a difficult role discussed in the next section. When children do have their own attorneys, however, the clinician's role is more likely to consist of generating and communicating information that will assist the attorney in “developmentally appropriate” representation. Thus, in this context as in many others, forensic clinicians are likely to find themselves used as <i>consultants</i> as much as <i>evaluators</i> , in the narrow sense of the latter term.	
557	16.04 The Technique of Custody Evaluations (a) Auspices: Who Is the Client?	In other contexts (e.g. criminal evaluations), we have defended the practice of having the parties employ their own experts [see 4.03(b)(1)]. In an adversary system, justice normally is served by giving each side the chance to put its best case forward. However, we do not recommend this procedure in custody evaluations. First, it is the <i>child's</i> interests, not the parties' (i.e., the parents') interests, that are theoretically paramount; accordingly, some of the usual reasons for protecting the interests of the parties do not so readily apply. That is, there may be substantial reason for the court to seek its own evidence as to the interests of a third party (i.e., the child). Second, as a practical matter, it is difficult to do a credible custody evaluations without access to both parents. Yet, under a pure adversarial approach, the clinician is asked to address only the effects that might occur if custody is granted to the employing party, he or she is hampered by not hearing the other parent's side of things, because the family history and family process are likely to be perceived differently by each party. Accordingly, as a general rule, we suggest that clinicians seek to enter custody disputes as an expert for the court or the guardian <i>ad litem</i> , although there may be some rare circumstances in which it is sufficient to have access to only one parent.	Recommend

557	16.04 The Technique of Custody Evaluations (a) Auspices: Who Is the Client?	A clinician who already has an ongoing therapeutic relationship with one or both of the spouses should be especially careful to avoid giving opinions without adequate foundation. Opinions as to parental competence or parent-child relationships should never be offered unless there has been specific focus on these topics. As indicated earlier, an interview with the child, with the parent and child together, or both kinds of interviews will generally be necessary if there is to be any substantial basis for an opinion on custody issues. Thus reliance on therapeutic encounters as the sole basis for evaluation and testimony is appropriate.	Should (x2)
557	16.04 The Technique of Custody Evaluations (a) Auspices: Who Is the Client?	Indeed, it may be that <i>any</i> opinion about custody given by the therapist of one or both parents is inappropriate [see generally 4.05(c)(2)] We have already noted [see 16.01(c)] the American Psychological Association’s recommendation that a therapist refrain from offering custody opinions as an expert (as opposed to acting as a “fact” witness who recounts observations). The reasons for this position are numerous. There is often a temptation when an adult client is involved in a custody dispute to act to protect the client. After all, if the client is heavily invested in being a parent, an adverse ruling will be likely to take a substantial psychological toll. Even when a clinician is treating both parents, as in marriage counseling, there may be pulls to take sides. One parent may feed information damaging to the other. And even if the clinician could maintain perfect objectivity, evaluation and testimony are likely to create an acute sense of betrayal on the part of one or both parents. There are similar issues when a clinician hired as a mediator begins to act like an evaluator [see 16.01(b)(2)].	Recommend
557	(b) Application of the Psychotherapist-Patient Privilege	The applicability of psychotherapist privilege in custody cases is unclear and is highly variable across jurisdictions. ... Clinicians involved in marital or family therapy should seek legal advice as to the limits of privilege in their jurisdiction [see generally 4.04(c)]. In the meantime, the therapist should be aware that material from family, child, or marital treatment is often not protected by privilege in a custody case, even in jurisdictions recognizing a general psychotherapist privilege and even when a person involved in the treatment objects to the admission of evidence based on it.	Should (x2)
557-558	(c) Scope of the Evaluation	In the past two decades, a number of books describing clinical assessment procedures in child custody cases have been published. As they indicate, potential approaches to assessment in custody evaluations include (1) comprehensive observation and interviewing of the parents and children, and gathering of interview and archival information from third-party sources; (2) the administration of traditional psychological tests; and (3) the administration of specialized tests. Our position is strongly in favor of the first of these approaches. For reasons discussed below, we recommend only a limited role for the use of traditional tests, and we caution against the use of the commercially available specialized tests for child custody assessments.	recommend
558	(c) Scope of the Evaluation	Investigative interviewing is the predominant model in custody assessments. In view of both the breadth of the best-interest concept and the multiplicity of factors potentially affecting the outcome of various custody and visitation arrangements, a child custody evaluation can be best summarized as <i>comprehensive</i> [see, e.g., the Gonz-Jones report, 19.12(a), and Table 16.1]. Parents, stepparents, and children should all be interviewed as to their perceptions of relationships in the family (past, present, and future), their	Should (x2) Need (not instructions) advise

		preferences about custody, and any special needs of the children. Because of the significance of interparental conflict in the literature on effects of divorce, special attention should be given to the parents' capacity for cooperation, the nature and intensity of disagreements about the children, and points of possible compromise. As a means of observing parent-child relationships in a realistic environment, home visits may be advisable as well.	
558	(c) Scope of the Evaluation	Nor should the evaluation stop with interviews of the immediate family. Contact with extended family, teachers, social service agencies, and even babysitters can illuminate potential sources of support (or lack thereof) under various custody arrangements (e.g., switching between parental homes). Sources outside the nuclear family may also give important, relatively objective glimpses of children's responses to arrangements developed during separations and under temporary custody orders. In that regard, the existing and previous custody arrangements can be conceptualized as natural experiments of a sort. The clinic should be sure to elicit information as to the parties' attitudes and behavioral responses to those arrangements.	Should (x2) Important (not instructions)
558	(c) Scope of the Evaluation	However, even these directly relevant data may have limited usefulness in predicting children's long-term responses to custody dispositions. The California and Virginia studies have made it clear that these responses shift substantially over time. We remind readers of the point that we have made throughout this chapter: Careful attention must be paid to the limits of expertise in custody evaluations.	Must
558	(d) Traditional Psychological Testing	Research on the practices of mental health professionals in custody assessments is both sparse and almost exclusively based on self-reported practices. The few data that do exist suggest that the use of conventional tests is routine.	
559	(d) Traditional Psychological Testing	It is our contention that psychological tests assessing clinical constructs (e.g., intelligence, depression, personality, academic achievement) are frequently unnecessary and often used inappropriately. Tests of intellectual capacity, achievement, personality style, and psychopathology assess constructs that are linked only indirectly, at best, to the key issues concerning custody and visitation.	
560	(d) Traditional Psychological Testing	Thus, apparent practices notwithstanding, we recommend the use of traditional psychological tests only when specific problems or issues that these tests were designed to measure appear salient in the case. Unfortunately, as detailed in the next section, tests that purport to assess constructs directly relevant to custody have their own theoretical and psychometric limitations.	Recommend
560	(e) Specialized Tests	In our view, however, these measures suffer from serious conceptual flaws and inadequate psychometric construction. Pending the development of an adequate empirical research base for their use, we advise against including them in custody evaluations.	Advise
561	(e) Specialized Tests	In summary, we join with other reviewers who recommend caution in the use of these commercially available "child custody" measures. Although some of these measures may facilitate gathering useful responses regarding parents' attitudes, knowledge, or values with respect to raising their children, the lack of adequate reliability and validity studies counsels against use of the formal indices they yield. Certainly these indices do not identify "scientifically" the parent of	Recommend

		choice or indicate other dispositional conclusions—matters that are properly reserved for the court.	
561	16.05 The Politics of Divorce	We conclude this chapter as we began it—with caveats. Throughout this chapter, we have noted that the relevant empirical knowledge is especially limited and that the prevailing legal standards are especially problematic. Making this combination of legal and clinical conundrums even more problematic is the fact that forensic clinicians involved in divorce cases work against a politically charged backdrop.	
562	16.05 The Politics of Divorce	The politics of divorce is not simply a matter of gender. Generational conflicts also are in the backdrop. ... [C]hild advocates are disturbed that children’s lack of standing in cases involving their own custody often means that their interests receive the least attention in divorce. Following similar logic, concern about the effects of divorce on children has led some commentators to argue that divorce has become too easy, even if more stringent standards and onerous procedures would have troubling effects on the parents themselves.	
562	16.05 The Politics of Divorce	Although the issues typically are subtle, mental health professionals conducting custody evaluations should take special care to examine ways in which their own experiences and attitudes color their views about childrearing and “proper” roles—especially gender roles—of family members. They also need to be especially sensitive to ways that clinicians can be unwittingly drawn into taking sides with a family member.	Should Need
Chapter 7, section 7.07: Competency to Testify			
179	7.07 Competency to Testify	Based on the principle that only evidence that has some probative value is admissible, courts have long held that people who are incapable of remembering or reporting what they have observed, or have no ability to grasp the importance of accurately doing so, may not testify as witnesses. Thus testimonial competency is still another competency issue that a forensic clinician might be asked to address. ... [T]estimonial capacity arises in civil as well as criminal trials. It is discussed here because it most often arises in criminal trials, particularly in abuse cases involving children.	
179	7.07 Competency to Testify	Also discussed here is the closely related issue of expert evaluation of and testimony about a witness’s <i>credibility</i> . Increasingly, mental health professionals have been involved in assessing and commenting upon the truth of testimony offered by witnesses who are competent to testify, but whose mental condition raises questions about their veracity. The fourth subsection below examines this complex area.	
179	(a) Legal Requirements for Testimonial Competency	Until the 1970s, the law of most states presumed that children under a certain age (e.g., 10 or 14) were incompetent to testify, meaning that the party tendering the witness had to prove competency. Although there was typically no similar presumption about those with mental disability, courts routinely barred persons with significant impairments from testifying. Today, in contrast, the law in most states presumes that everyone is competent to testify. In 1975, the Federal Rules of Evidence added Rule 601, which simply states that “[e]very person is competent to be a witness: unless their testimony is irrelevant or likely to mislead the factfinder, or the person is unable or unwilling to promise to testify truthfully. ... Although a few states still set a presumptive age for incompetency, most states have since followed the federal lead or at most set out guidelines for determining whether a witness is competent.	

179-180	(a) Legal Requirements for Testimonial Competency	In many jurisdictions, moreover, a witness who claims to be a victim of abuse and is testifying against the alleged abuser is <i>irrebuttably</i> presumed to be competent—a rule that has withstood constitutional challenge. These “automatic competency” statutes are principally the result of the same campaign that gave rise to child abuse reporting laws [see 15.01(c)]. But they are also justifiable on grounds elucidated by the noted evidence authority Dean Wigmore many years ago: “A rational view of the peculiarities of child-nature, and of the daily course of justice in our courts, must lead to the conclusion that the effort to measure <i>a priori</i> the degrees of trustworthiness in children’s statements, and to distinguish the point at which they cease to be totally incredible and acquire some degree of credibility, is futile and unprofitable.... Recognizing on the one hand the childish disposition to weave romances and to treat imagination for veracity, and on the other the rotted ingeniousness of children and their tendency to speak straightforwardly what is in their minds, it must be concluded that the sensible way is to put the child upon the stand and let the story come out for what it may be worth.”	Must (not instructions)
180	(a) Legal Requirements for Testimonial Competency	It is important to note, however, that except in those jurisdictions requiring the admission of testimony from alleged child abuse victims, modern law merely makes testimony by children and those with mental disability more likely than under the common law; it does not prevent a judge from barring testimony on competency grounds. Just as the common-law presumption of incompetency for children was rebuttable, the modern presumption that everyone is competent may be overcome with sufficient evidence showing that a person’s mental incapacity will render his or her testimony irrelevant, misleading, or incredible.	Important Require (not instructions)
180	(a) Legal Requirements for Testimonial Competency	The precise criteria the judge applies at such a hearing vary from state to state, but, as summarized by Myers, they focus on five capacities: (1) the ability to observe the event, (2) the ability to remember it, (3) the ability to communicate that memory, (4) the ability to tell the difference between truth and falsity, and (5) the ability to understand the obligation to tell the truth in court. Given the language of Rule 601 and its state counterparts, presumably only minimal capacity in each of these areas is necessary. Nonetheless, courts and parties have occasionally sought assistance from the behavioral sciences in making competency determinations.	
180	(b) Psychological Research	As the previous discussion suggests, the four categories of individuals most likely to trigger testimonial capacity concerns are children, people with mental retardation, people with mental illness, and those who have abused substances. Because the literature is most robust in connection with children, this review focuses on what is known about their testimonial capacities. However a few references to the research on the capacities of those with mental retardation are noted as well.	
180	(1) Observation	Unless a child or a person with a mental disability has some visual or aural defect, his or her capacity to sense events will usually be sufficient to meet the first prong of testimonial capacity. It is possible, however, that some very young children or people with mental retardation may not have the ability to process all types of events. ... Children may also have difficulty grasping the meaning of sophisticated conversations. At the same time, children still seem to be able to register an event even if they do not understand it. Moreover, children who are called on to testify will typically be asked to describe relatively concrete actions by people they know; if	Should (borderline instructions)

		so, little question about their capacity to observe events should exist. A separate issue is their ability to conceptualize and describe what has been observed—a topic discussed in connection with ability to communicate.	
180-	(2) Memory and Suggestibility	Because legal proceedings often occur months or even years after the legally relevant event, the capacity to remember what was observed is as important as the capacity to observe. Furthermore, the capacity to remember events accurately is virtually inseparable from one’s capacity to resist suggestion from other sources. Thus research on both memory and suggestibility is important in evaluating this competency criterion.	Important (x2 borderline instructions)
181	(2) Memory and Suggestibility	Most of the research in this area has been conducted in connection with children. The bottom line appears to be that children are somewhat less likely than adults to retain memory of what they hear or observe, but that all but the youngest children probably have good enough memories to pass the minimal requirements for testimonial capacity. On the closely related issue of the extent to which memory may be affected by outside influences, most studies indicate that young children are more suggestible than adults. Again, however, this finding alone probably should not render a child incompetent to testify; the better approach will normally be to make known the opportunities for suggestion to the factfinder, which can then assess the credibility of the witness.	Should (borderline instructions) Require (not instruction)
181	(2) Memory and Suggestibility	In assessing memory retention capacity, two different types of memory should be noted: “recognition memory,” where a person is asked whether he or she recognizes a person or a place, and “recall memory,” where a person is asked to describe an event, person, or place. Even children as young as three and four appear to perform as well as adults on some recognition memory tasks. For instance, a child who is asked to identify previously seen pictures or faces should be able to do almost as well as an adult, as long as no intervening suggestions have taken hold. Research also indicates that even when a previously <i>unfamiliar</i> perpetrator is present in a lineup, five- an six-year-olds’ identifications are as accurate as adults’. However, when the child has had only brief exposure to the perpetrator or is very young, accuracy decreases. Furthermore, when the suspect is not present in the lineup, children as old as nine tend to make more errors than adults, and there is some evidence that young children may sometimes place familiar people at an event who were not actually there.	Should (x2, one instruction, one not)
181	(2) Memory and Suggestibility	Recall memory requires more sophisticated cognitive processes than recognition memory. Accordingly, a child who is asked to describe a past event, such as an assault, will find the task relatively more difficult than an adult. The difference between the recall memory of children and adults depends primarily on the two variables: time and the extent to which other versions of the event have been suggested by third parties (the “suggestibility” issue).	Require (not instruction)
181	(2) Memory and Suggestibility	When the time interval between the event and the attempt at memory recall is short, children apparently do not do appreciably worse than adults. ... As the time interval between event and recall lengthens, however, children do not do as well as adults in recalling events. ... Finally, infantile amnesia can obscure memories of very early childhood if enough time elapses. More research needs to be done, however, on whether children’s memory fades more quickly than adults’ when a particularly negative event is involved.	Need (researchers)

181-182	(2) Memory and Suggestibility	Presumably, one way of alleviating the effects of memory decay would be to obtain an early account of the legally relevant event. Indeed, several students have found that “events that are personally significant, emotion-laden, <i>and</i> rehearsed are less likely to be lost from memory” (emphasis added). As Poole and White suggest, a postevent interview may act as a “memory consolidator” for children. However, they also conclude that it will have this effect only if it occurs less than a week after the event, and only if it avoids specific (i.e., yes-no) questions. Unfortunately, neither of these conditions is easily met in legal contexts such as abuse cases. Allegations of abuse may not arise until some time after the alleged event. More important, use of open-ended questions, which is generally a good idea in <i>any</i> forensic interview, may not be as productive where children are involved. As suggested by the Marin et al. study described earlier, and as Poole and White themselves note, “it is exceptionally difficult to get children to volunteer information with general questions.” In short, young children require direct cues, such as specific, direct questions, to stimulate recall.	Important Require
182	(2) Memory and Suggestibility	These various observations bring to the fore the suggestibility issue, which many courts have recognized as an important component of competency analysis. Although specific questions may be the best method for obtaining information from children, they are also most likely to contain cues as to how to answer. Hence the “memory” recounted by a child may be suggested inadvertently (or advertently) as an adult helps the child to make sense of the experience.	Important (not instructions)
182	(2) Memory and Suggestibility	Here again the research is relatively clear. Although adults as well as children are prone to fill in perceptual and memory gaps with stereotypical information and postevent suggestion, most studies find that young children are more likely to accede to such suggestions, especially when they are made by authority figures who act in an intimidating fashion. According to Ceci, children over 10 or 11 years of age tend to show adult levels of resistance to leading questions. But children under 6 may acquiesce fairly frequently, especially when questions are “highly leading, detailed, incriminating, and repeated over multiple interviews,” with children in between showing varying levels of vulnerability. Vulnerability to suggestions may be particularly high when, as is often the case with child witnesses in criminal and civil cases, the adult proffering the suggestions is someone who saw the event.	
182	(2) Memory and Suggestibility	This correlation between age and suggestibility can be explained in a number of ways, none of them mutually exclusive. It is likely due in part to children’s weaker memory over time, discussed previously. It is also likely due to young children’s greater respect for authority—a hypothesis bolstered by simple learning theory, which suggests that children’s behavior will be shaped by their perceptions of adults’ expectations. Finally, it may have something to do with children’s moral development. As Fodor discovered, children who yield to the suggestions of an adult interviewer tend to score lower on assessments of level of moral judgment (according to Kohlberg’s criteria) than children who resist such suggestions.	
182	(2) Memory and Suggestibility	Although the research is not as extensive, studies examining the capacities of persons with mental retardation yield results similar to those obtained with children. As with children, the method that is most likely to garner information from those with mental retardation is also the method most likely to taint it. Because of their cognitive deficiencies, individuals with mental retardation are more likely to	

		<p>reveal what they know in response to a yes-no question format; free recall is likely to produce less, if not inaccurate, information. Yet, because of their desire to please, these people are also more likely than others to acquiesce in suggestions by authority figures.</p>	
182-183	(2) Memory and Suggestibility	<p>In light of the fact that by the time of the typical trial, a witness has been interviewed several times by government officials and lawyers, and perhaps been confronted by the alleged perpetrator as well, what are the legal implications of these findings about suggestibility? Myers states that people “are not rendered incompetent to serve as witnesses simply because they are sometimes misled by suggestion,” and implies that generally heightened suggestibility should not be a bar to testimony. Christiansen is less sanguine, stating that, “when pretrial procedures have falsified a child’s memory, the child is not competent to testify to the contents of that memory.” He goes on to suggest how the law should respond when suggestive procedures have been used: “When a child has been the subject of potentially suggestive pretrial procedures the child’s competence as a witness cannot be determined unless these procedures have been taken into account and any effects they may have had on the child’s memory have been weighed. Competency hearing <i>voir dire</i> of the child alone does not satisfy this requirement. The child may not be able to separate out the various interviews she has been through or to respond meaningfully to questions about them. The child may not have been at all aware of more subtle forms of suggestion, such as the phrasing and repetition of questions. ... Accordingly, competency determinations in such cases must rely upon extrinsic evidence of the pretrial procedures as well, including, but not limited to, the testimony and records of those who conducted the pretrial interviews and other procedures. ... In some cases, it might also be appropriate to present expert testimony independent of the testimony of interviewers, to show why the procedures might or might not have affected the child’s memory.”</p> <p>At the least, the research recounted earlier suggests that interviewing and evaluation of young children and those with mental retardation must proceed cautiously.</p>	<p>Should (x2)</p> <p>Must (x2)</p> <p>Require (not instruction)</p>
183	(3) Ability to Communicate	<p>If an event cannot be communicated in a coherent, meaningful way, a witness’s observation and memory of it are useless to the factfinder. Consequently, a person’s ability to conceptualize complex events and to order them in space and time are of major importance. Furthermore, particular kinds of testimony may require further specific competencies. Most notably, testimony about child sexual abuse may require verification of the child’s comprehension of the meaning of sexual terms and behavior.</p>	Require (x2)
183	(3) Ability to Communicate	<p>Shaffer has stated that “by age 5, children not only understand most of the grammatical rules of their native tongue but are also constructing remarkably complex, adultlike sentences. But children below that age, and indeed some children above it, may not be able to communicate their observations effectively. For example, to Piaget, the well-known theorist of child development, it was a truism that “preoperational” children, often up to age seven, are unable to “decenter” from the most obvious attribute of a stimulus and make use of all relevant information. To cite a classic example, young children who observe a clay string rolled into a ball and then rolled back into a string believe that there is more clay present when it is in a ball, which looks more massive. Children may also have difficulty in understanding time independent of distance and speed (e.g., many</p>	

		believe that the object that travels the furthest has traveled for the longest period of time), and thus may have difficulty in describing the chronology of events. Furthermore, Piaget asserted, the basic egocentrism of young children may make it difficult for them to interpret the actions of others outside a limited frame of reference. All this may affect a child's ability to recite facts accurately.	
183-184	(3) Ability to Communicate	Some critics of Piagetian theory have suggested that on many tasks, preschoolers are less illogical and egocentric in their thinking than Piaget believed. Siegel has argued that the classical finding of young children's inability to pass "conservation" tasks (e.g., the ball of clay) is often a manifestation of linguistic deficits. That is, young children may not understand the words "more," "bigger," and the like, but they may be able to demonstrate understanding of the concepts nonverbally. Furthermore, Brainerd, Trabasso, and others have demonstrated that preschoolers can be trained in conversation skills, contrary to the Piagetian hypothesis that the necessary cognitive structures would not be expected to have developed adequately. With respect to the egocentrism claim, Borke has found that children three to four years old have the capacity to take the perspective of another, provided that the specific task is a simple one and involves little use of language.	
184	(3) Ability to Communicate	These studies do not moot the point, however, that young children are likely to have difficulty in conceptualizing complex events. Borke, for example, has admitted that some of Piaget's tasks are "cognitively too difficult" for children below the age of five. And although the work of Brainerd and others indicates that children's capacities can be enhanced with training, such training is not always available or feasible. Given the realities of the courtroom situation, cognitive-developmental factors are an important consideration in evaluating the testimony of children who are younger than seven. They should also be taken into account when interviewing such children; several age-sensitive techniques have been suggested.	Should Important
184	(3) Ability to Communicate	Nonetheless, young children's immaturity of conceptualization may ultimately have little impact on their competency to testify, for at least two reasons. First, modern courts do not seem overly concerned with these problems. According to most courts, the fact that children use language differently, are occasionally inconsistent, make factual mistakes, have difficulty conceptualizing time, or resort to nonverbal methods are not bars per se to a competency finding. The ultimate question is whether children's testimony is so unreliable that jurors would be "unduly" influenced by it. Thus, as long as the court thinks a jury (or in a bench trial, the judge) can accurately perceive the objective reality of a child, the child's cognitive immaturity is of little significance.	
184	(3) Ability to Communicate	Second steps can be taken to increase the likelihood that the child's testimony will be understandable. In the typical abuse case, children <i>will</i> appear incompetent if the examiner uses technical vocabulary rather than slang or dolls or drawings. Monge et al. found that even ninth graders are often unfamiliar with "proper" terms for sexual anatomy and physiology. On the other hand, there is evidence that by age four most children are aware of sex differences and willing to speak freely about them, provided that questions are direct and in language familiar to a child. Furthermore, several courts have permitted a child witness to have an "interpreter" (e.g., a parent or child psychologist) when it appears that a child cannot express him- or herself in a nonidiosyncratic manner.	

184	(4) Moral Development: Distinguishing Truth and Falsity	If a witness can relate his or her experiences adequately, the principal concern is whether he or she will do so truthfully. Indeed, under the common law, a witness's ability to abide by the "oath" was the focal point of the competency assessment; courts would routinely ask child witnesses, for instance, if they believed in God and knew the consequences of telling a lie in court, and would base their competency decision on the answers. Even today, the courts tend to gloss over observation, memory, and communication capacities and place primary emphasis on the witness's ability to differentiate truth from falsehood, to comprehend the duty to tell the truth, and to understand the consequences of not fulfilling this duty. However, in contrast to the common-law test, the modern witnesses need not confirm a belief in God. Most jurisdictions now give the witness the choice of the oath (e.g., swearing to tell the truth "so help me God") or an affirmation that the witness will tell the truth. Several states even allow a child to testify without taking an oath if, in the court's discretion, the child does not understand it but is still likely to give probative testimony.	need (not instructions)
184	(4) Moral Development: Distinguishing Truth and Falsity	When it comes to children, the courts' obsession with truth-telling seems overblown. There is in fact little correlation between age and truth-telling; in other words, children are not more prone to lie than adults or to misunderstand the concept of truth. ... However, consistent with the research on suggestibility, these researchers did caution that "there may be a small percentage of children whose definition of the truth may be influenced by parental direction or its helpfulness to a friend." Similar general findings have been made with respect to those with mental retardation.	
184-185	(4) Moral Development: Distinguishing Truth and Falsity	A more likely developmental differentiation is in the reasons people give to justify behavior. For instance, as children grow older, they become more sociocentric and oriented toward respect for persons individually or collectively; in contrast, younger children are likely to say that the oath is important on more "primitive" grounds involving reification of rules and avoidance of punishment. This difference is unlikely to be relevant in this context, however. Justice will be served if witnesses tell the truth, regardless of the reasons for doing so, and most courts today recognize that fact. If there <i>is</i> some reason to ascertain a child's conceptualization of the duty to tell the truth, however, the yes-no and definition questions traditionally used in common law <i>voir dire</i> of witnesses are inadequate measures. One of the philosophical underpinnings of current cognitive-developmental theories of moral development is that a given behavior may be motivated by vastly different levels of moral reasoning. Thus asking a child to explain the meaning of "truth," "oath," or "God" probably tells us more about the child's intellectual development than about his or her propensity to tell the truth.	Important (not instructions)
185	(5) Conclusions	Although there are some gaps in the relevant literature, the available research suggests that preteen children as young as five have the capacity to observe events, remember them accurately for moderately long periods (as long as authority figures do not suggest alternative facts to them), and communicate about them with the understanding that a truthful report is important. Children under the age of five are likely to have more difficulty with long-term memory, resisting suggestions, and effectively communicating their observations, but with assistance even some three-year-olds may have the capacity to report their observations accurately and understand the difference between a lie and the truth. The analogues with people who have	Important (not instructions)

		mental retardation are not precise, but the correlations between testimonial capacity and IQ is probably similar to that between testimonial capacity and age.	
185	(5) Conclusions	A possible caveat to these conclusions is that very little of the research on children’s testimonial accuracy has replicated the stress likely to be associated with the courtroom setting. Research on this issue is mixed, although the evidence points to the conclusion that conventional legal procedures are somewhat more likely to be stress-inducing than informal environments, and that testimony is somewhat more likely to be incomplete in traditional courtrooms. Concern over these effects has led some states to construct elaborate procedures for taking juvenile testimony in abuse cases, including use of screens and television monitors to distance the witness from the defendant and the trappings of the courtroom. Yet these procedures are seldom used, apparently because prosecutors perceive live testimony to be more influential, fear creating appealable issues, and lack the necessary financial resources. In those (predominantly foreign) settings in which the procedures are more commonly used, their efficacy is unclear, although it does appear that having the <i>option</i> of such a procedure (whether or not it is chosen) alleviates stress.	
185	(5) Conclusions	In any event, stress impairment at trial will normally not reach a level requiring a declaration of incompetency. In view of the small percentage of cases that reach the courtroom, much more important from the standpoint of obtaining the “facts” is avoiding stress, suggestiveness, and other accuracy-reducing aspects <i>of the investigation process</i> —a subject covered in more detail below.	Important Require (not instruction)
185	(c) Guidelines for Evaluation	Although litigants can be said to have placed their mental state at issue by raising or defending a particular claim, witnesses are often “innocent bystanders” in the quarrel. Thus courts have exhibited some reluctance about ordering psychological evaluations of witnesses, primarily on privacy grounds [see 7.07(d)(2) for elaboration of this point].	
185-186	(c) Guidelines for Evaluation	Another preliminary issue clinicians must address is whether they have anything to add to what a trial judge will be able to discern with respect to observational, memory, communication, and moral capacities. At least one commentator has stated that “the trial judge is nearly always capable of reaching a reasoned decision on competence without [a psychiatric] evaluation.” Furthermore, as indicated earlier, the clinician should remember that multiple interviews with witnesses like children may tend to distort the ultimate testimony. On the other hand, mental health professionals may well have something useful to say about testimonial competency in selected cases, particularly involving very young children and individuals with mental retardation or severe mental illness.	Should Must
186	(c) Guidelines for Evaluation	If an evaluation is undertaken, it should focus on the four factors described above. The witness’s observational skills can be directly assessed, although if the event in question took place some time previously when the witness was very young, information about such skills at the time of the event may have to be obtained from parents or other significant others. Memory for events other than the one in question can be tested by asking simple questions about both recent and long-ago events. Communication skills can also be ascertained by having the witness recount an event known to have happened and ascertaining his or her capacity to describe correctly spatial, temporal, and other aspects of the event. Finally, the witness’s understanding and commitment to truth-telling can be assessed by	Should (x2) Need (not instructions)

		asking in the abstract what it means to tell the truth and then asking for examples. IF more concrete information is needed, the witness can be asked whether a statement such as :I am wearing glasses: is true or false, and then asked why it is one or the other. In general, the techniques developed for children, noted earlier, should be transferable to evaluations of other individuals of suspect testimonial capacity.	
186	(c) Guidelines for Evaluation	Although such an assessment would cover the basic criteria of testimonial competency, to be useful an evaluation probably should not stop at the point. A court would generally also benefit from insight into whether the witness’s memory of <i>the legally relevant event</i> is “genuine” and is being accurately recounted, or instead is the product of suggestion or fantasy. As already indicated, the difficulty is that by the time the question of competency is raised, the potential witness is likely to have been asked about the alleged offense numerous times. If it was perceived as a traumatic event or if a family member is the defendant, the witness may also have been bombarded with diverging interpretations of the event. Moreover, especially with a child, when the event in question was one previously outside the witness’s experience or one that he or she had not previously identified as deviant, the witness may be dependent upon others to provide meaning to the experience.	Should
186	(c) Guidelines for Evaluation	Determining with certainty the origins of a witness’s memories in such situations may not be possible. But it will obviously be useful in this regard to determine as precisely as one can when and with whom the child has talked and the content and process of these discussions. If depositions have already been taken, they should be reviewed and compared with the interview notes. As Christiansen stated in the expert above, a “child’s competence as a witness cannot be determined unless these procedures have been taken into account and any effects they may have had on the child’s memory have been weighed.”	Should
186	(c) Guidelines for Evaluation	The clinician must also try to avoid “creating” memories. One should avoid asking about the event entirely, instead simply carrying out the third-party investigation described above. The problem with this approach is that there may be no current version of the story with which to compare earlier versions; furthermore, useful information about communication skills may be obtainable only by having the witness recount the event once again. If such an account is viewed as necessary, Yuille et al. have described the following several-stage process as a way of maximizing information while minimizing suggestion: building rapport; asking for a free narrative account; and, only if the latter appears ineffective, proceeding to open-ended questions, specific yet nonleading questions, and finally leading questions.	Should Must
186-187	(c) Guidelines for Evaluation	Although the fact-gathering and evaluation process just described can probably be accomplished by a competent nonprofessional (and indeed is often carried out by judges and lawyers without clinical assistance), there are other ways in which a clinician might be particularly helpful to the legal system in this context. First, when it is necessary to correct any misconceptions about typical behavior of children at a given age, the clinician might present research of the type described in the previous discussion. In this guise, the clinician or research psychologist is providing assistance similar to that provided by a psychologist who describes general problems with	

		eyewitness observation—what Monahan and Walker refer to as “social framework evidence,” or context for determining past facts.	
187	(c) Guidelines for Evaluation	Second, the clinician can consult with the attorneys seeking—or challenging—the prospective witness’s testimony. In the former instance, the clinician may be helpful in preparing the witness for testimony, both by desensitizing him or her to the court process and by providing the attorney with advice on ways of interviewing the witness (or, as may be allowed in some courts, conducting the questioning him- or herself). As a consultant to the challenging attorney, the clinician may point out factors likely to affect the reliability of the witness’s testimony and ways of highlighting these factors on <i>voir dire</i> .	
187	(c) Guidelines for Evaluation	Third, and most controversial, the clinician might, at the behest of the lawyers or the court, attempt to solidify a vulnerable witness’s memory. Saywitz tentatively suggests three methods designed to improve “memory performance”: (1) “narrative elaboration,” in which the witnesses “learn to organize the elements of an event into five forensically relevant, theoretically driven categories (participants, setting, actions, conversations/affect, and consequences);” (2) “strategy training to resist misleading questions, including practice, feedback, [and] self-monitoring”; and (3) the “cognitive interview,” which, as described by other researchers, relies on mnemonics and other cognitive interventions to enhance the accuracy of recall and testimony. These methods would presumably be used prior to trial, and in preparation for it. Further discussion of the methods for evaluating children in abuse cases is found in 15.06(b).	
187	(d) Assessment of Witness Credibility	Expert testimony on credibility, on the other hand, addresses the likelihood that statements made by a person who has been found competent to testify are <i>truthful</i> . As a conceptual matter, the distinction between a competency evaluation and a credibility assessment seems reasonably clear. As a practical matter, however, the line between the two evaluations is likely to be blurred.	
188	(1) The Law on Expert Testimony about Witness Credibility	It is a basic premise of the Anglo-American legal system that the jury (or judge, in bench trials) is responsible for assessing the credibility of witnesses. In an effort to avoid “usurping” this function of the jury, ethical rules forbid both the judge and the lawyers from expressing an opinion in front of the jury about the truthfulness of a witness. For some time, the law also significantly restricted the ability of a party to present <i>testimony</i> about a witness’s credibility. Only statements about the witness’s “reputation” for truthfulness in the community were permitted; the person describing the witness’s reputation was prohibited from expressing his or her <i>own</i> opinion as to credibility, and furthermore was not permitted to describe specific acts of untruthfulness or truthfulness unless queried about them during cross-examination. As Lilly noted, these limitations were designed “to minimize ¹⁸⁸ the burdens of delay and distraction caused by the introduction of secondary issues.” Furthermore, information about reputation was seen as more reliable than a personal opinion about truthfulness and more relevant and less prejudicial than descriptions of specific acts of fabrication.	
188	(1) The Law on Expert Testimony about Witness Credibility	Given the “reputation evidence” restriction on credibility testimony in this traditional regime, mental health professionals should have had no role to play in assessing witness credibility (as distinct from witness competency). Nonetheless, some courts did allow them to testify on the issue. One of the first such cases involved the	Should (mental health professionals)

		prosecution of Alger Hiss on espionage charges in the early 1950s—a case worth investigating in some detail, because it illustrates many of the pitfalls of expert credibility testimony.	
189	(1) The Law on Expert Testimony about Witness Credibility	[T]he general rule was that a witness’s character for truth-telling could only be impeached with testimony about the witness’s reputation as an untruthful person. In 1975, however, almost 25 years after the <i>Hiss</i> trial, the federal courts adopted Rule 608, which liberalized the approach to credibility testimony. ... Rule 608 allows opinion testimony as well as reputation testimony.	
189-190	(1) The Law on Expert Testimony about Witness Credibility	Whatever the correct reading of Rule 608, psychiatric testimony on credibility has been admitted with increasing frequency since its promulgation. ... At the same time, such testimony is not routinely admitted. Indeed, many courts still insist that experts should normally <i>not</i> be allowed to testify about credibility. There appear to be two reasons for this stance. First, of course, a court might feel that such testimony is not based on specialized knowledge, which is required of all expert testimony. ... Second, even if the mental health professional’s credibility testimony is thought to pass this initial test, the court may believe that its potential for confusing the jury or usurping the jury’s traditional role as an assessor of credibility outweighs its probative value. In many cases, this possibility might be curable with an instruction of the type given by the trial judge in <i>Hiss</i> , combined with effective cross-examination (along the lines of the cross-examination in <i>Hiss</i>). In other cases, however, the courts have concluded that these procedural devices do not sufficiently protect against misleading the jury.	Should (borderline instructions) Require
190	(1) The Law on Expert Testimony about Witness Credibility	Nonetheless, expert testimony on witness credibility has been permitted in enough cases to discern at least four areas in which courts in some jurisdictions may permit it. The first is when the witness is allegedly suffering from significant mental disorder, such as hallucinations. ... Second, courts have traditionally been willing to allow credibility testimony focused on the complainant in rape cases—the situation raised in Case Study 7.3. This stance follows the view of many commentators, who have argued that accusations of rape are particularly likely to be fabricated. ... Because this reasoning appears to be based on outdated attitudes amounting to sexism, testimony about the credibility of alleged rape victims is becoming less common.	
190	(1) The Law on Expert Testimony about Witness Credibility	Similar comments can be made about a third common area for expert credibility testimony, having to do with the truthfulness of child witnesses in child abuse cases. Some courts have allowed the prosecution to rebut attacks on a child witness’s credibility with expert testimony to the effect that children never or seldom lie about abuse. Like testimony attacking the credibility of rape complaints, testimony unequivocally supporting the credibility of child abuse complainants is based on outmoded assumptions—in this case, the assumption that today’s children are not able to fabricate stories about sexual abuse. Courts may be more reticent about permitting such testimony as they come to recognize that children <i>do</i> lie, or at least, as suggested in 7.07(b)(2), can be prompted to “remember” events that did not occur. This topic is discussed further in 15.04(c)(4).	
190	(1) The Law on Expert Testimony	A final common type of credibility testimony has to do with the reliability of eyewitnesses. ... It is sufficient for present purposes to note that the research suggests a number of conclusions about eyewitness testimony that, if not counterintuitive, at least may be	Must (not instructions)

	about Witness Credibility	helpful to a jury considering the credibility of an eyewitness. These include the findings that (1) people tend to be less accurate observers in stressful situations; (2) people have difficulty making cross-racial identifications; (3) people focus on weapons rather than faces; (4) the memory of a perception begins decaying immediately; (5) gaps in memory are easily and often unconsciously replaced by preconceptions about what must have happened, or by suggestions implanted by subsequent accounts, the police, or other external forces; and as a result of all this, (6) there is no necessary correlation between the level of certainty evinced by the eyewitness and accuracy.	
190-191	(1) The Law on Expert Testimony about Witness Credibility	Despite the helpfulness of such observations, several courts have clung to the view that juries are competent to evaluate eyewitness testimony without expert assistance, or, somewhat contradictorily, that the jury will be overly influenced by expert testimony on the topic. Many other courts have permitted such testimony, although some have reasonably prohibited the expert from stating his or her own opinion on the “ultimate issue” of the eyewitness’s accuracy.	
191	(2) Legal Strictures on Evaluations of Credibility	Whether mental health professionals have any ability to evaluate credibility per se is a matter of some controversy. ... As just discussed, in some areas (e.g. eyewitness testimony), behavioral science may be able to assist the courts in detecting “unconscious” false testimony. Again, however, detection of intentional deception is not the aim of the experts who testify on this issue. We believe that when the <i>only</i> reason an expert is on the stand is to attack a witness’s motivations or honesty, there will typically be very little “science” involved. In short, as a general matter, this type of credibility testimony about a witness is highly suspect.	
192	(2) Legal Strictures on Evaluations of Credibility	In sum, courts should consider motions to compel an evaluation for purposes of assessing credibility with caution. Indeed, the weak scientific basis for most such assessments, combined with the insult to privacy interests, might lead to the conclusion that such evaluations should never be permitted, even when the witness to be evaluated is a party to the litigation.	Should (x2, borderline instruction)