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E. Morgan Kendrick

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## COMMENT

### DIAGRAM DEBATE: THE USE OF ANATOMICAL DIAGRAMS IN CHILD SEXUAL ABUSE CASES

*E. Morgan Kendrick*<sup>†</sup>

#### I. INTRODUCTION

A three-year-old child is brought into a room at the local child advocacy center. A forensic interviewer is already waiting for her there, prepared to start phase one of the center's nationally recognized protocol. With allegations of child sexual abuse the focus of the interview, the forensic interviewer is fully prepared for this moment. Well-versed in standard procedure, the interviewer proceeds flawlessly through the initial stages. During the substantive stage—when the child is questioned regarding the potential abuse scenario—the child begins to struggle. Experience reveals that it is likely the child feels either embarrassment or simply lacks an ability to adequately verbalize her story. Despite what appears to be a roadblock, the forensic interviewer knows exactly what to do. Now is the time to bring out the anatomical diagrams. As soon as the diagrams are properly introduced before her, the child is able to point to the relevant areas that she could not describe on her own and, ultimately, clarify her story.

In spite of the profound value of anatomical diagrams in the forensic interview setting, diagrams, like their predecessors anatomical dolls, have been the subjects of criticism. This Comment addresses the current controversy surrounding the use of anatomical diagrams in the forensic interview and offers a solution to prevent the potential elimination of this beneficial tool. Part II of this Comment introduces the importance of the forensic interview in regard to child testimony. It also provides the background of the use of anatomical dolls—including the problems and controversy, case law division, and the eventual acceptance of dolls—and explains the beginning use of anatomical diagrams and the courts' general

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<sup>†</sup> *Managing Editor*, LIBERTY UNIVERSITY LAW REVIEW, Volume 8. J.D. Candidate, Liberty University School of Law (2014); M.A., Theological Studies, Liberty Baptist Theological Seminary and Graduate School (2010); B.S., Integrative Studies, Clayton State University (2008). I would like to thank my husband, Clayton, for all his support throughout this past year. I also would like to extend my gratitude to Professor Tchividjian and Victor Vieth, Esq. for their encouragement and guidance in developing this Comment. Thank you for your heroic efforts to defend and protect young victims of sexual abuse.

acceptance of them. Part III of this Comment highlights the research finding fault with the use of anatomical diagrams, with a focus on Dr. Poole and Dickinson's latest study, and ends with discussion of research supporting the use of diagrams. Part IV prompts prosecutors to take action by advocating for uniform certification of forensic interviewers who use anatomical diagrams.

## II. BACKGROUND

### A. *History of Child Testimony and the Consequential Importance of the Forensic Interview*

The history of child testimony is remarkably brief. Due to the false allegations and testimony that plagued Salem in 1692,<sup>1</sup> "legal scholars have repeatedly cautioned against the use of child testimony."<sup>2</sup> It was rare for children to testify as witnesses until the 1970's—a phenomenon brought about by the increase in child sexual abuse allegations.<sup>3</sup> During this period of overwhelming acceptance of child testimony, children were received as highly credible witnesses.<sup>4</sup> In fact, all fifty states made valiant efforts to modify their standards in order to accommodate this newfound acceptance of child testimony—even permitting experts to offer testimony as to a child's behavior and allowing "child 'friendly' courtroom procedures."<sup>5</sup>

Once researchers began to study the implications of child testimony, however, concern resurfaced once again as to the possible occurrence of false statements made by children.<sup>6</sup> Researchers feared that many children were actually concocting fictitious stories about abuse.<sup>7</sup> Not only were child

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1. The Salem witch trials cast serious doubt on the reliability of child testimony and has continued to affect the reputation of child witnesses. See, e.g., Stephen J. Ceci & Richard D. Friedman, *The Suggestibility of Children: Scientific Research and Legal Implications*, 86 CORNELL L. REV. 33, 38 n.12 (2000).

2. Dana D. Anderson, *Assessing the Reliability of Child Testimony in Sexual Abuse Cases*, 69 S. CAL. L. REV. 2117, 2121 (1996).

3. *Brief History of Research on Child Witnesses*, INSTITUTE FOR PSYCHOLOGICAL THERAPIES (April 18, 2012), <http://www.ipt-forensics.com/library/images1.htm>.

4. *Id.*

5. Anderson, *supra* note 2, at 2122.

6. *Brief History of Research on Child Witnesses*, *supra* note 3.

7. *Id.*

witnesses considered unreliable, but also their testimony was considered prone to suggestibility.<sup>8</sup>

Focus has since shifted to the manner in which children are questioned, because researchers are afraid that children, when questioned suggestively, can create a memory that has no factual basis.<sup>9</sup> As a result of such developments, the forensic interview, which is one of the most common procedures for questioning children who potentially have been exposed to violence or abuse,<sup>10</sup> has become an essential procedure in the process of identifying sexual abuse victims. In fact, many times it is the information acquired from the forensic interview that leads to a sound conviction against an offender.<sup>11</sup>

There are a variety of forensic interviewing protocols, including RATAAC<sup>12</sup> and NICHD.<sup>13</sup> No matter the type, most protocols divide the interview into several phases.<sup>14</sup> While not every protocol has the same

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8. *Id.*

9. *Id.*

10. Amy Russell, *Out of the Woods: A Case for Using Anatomical Diagrams in Forensic Interviews*, 21 UPDATE (2008), available at [http://www.ndaa.org/pdf/update\\_vol\\_21\\_no\\_1\\_2008.pdf](http://www.ndaa.org/pdf/update_vol_21_no_1_2008.pdf).

11. See, e.g., *Mendoza v. State*, No. 11-08-00245-CR, 2010 WL 1615824 \*2 (Tex. App. Apr. 22, 2010).

12. RATAAC was developed by CornerHouse, a Child Advocacy Center located in Minnesota. Currently, seventeen states implement this protocol. These states include: Minnesota, South Carolina, Indiana, Mississippi, New Jersey, Georgia, Missouri, West Virginia, Maryland, Illinois, Kansas, Ohio, Arkansas, Delaware, Virginia, Connecticut, and Oklahoma. "The RATAAC protocol is semi-structured, allowing for the development and spontaneity of each child. The interview is specifically geared toward each child's age and cognitive, social, and emotional development. Interviewers may incorporate the use of drawings, diagrams, and anatomical dolls." Jennifer Anderson et al., *The Cornerhouse Forensic Interview Protocol: RATAAC*, 12 T.M. COOLEY J. PRACT. & CLINICAL L. 193, 195 (2010). Additionally, "RATAAC involves five possible stages: Rapport, Anatomy Identification, Touch Inquiry, Abuse Scenario, and Closure." *Id.* at 202.

13. NICHD stands for the National Institute of Child Health and Human Development. This protocol interprets "research-based recommendations into a structured, but not inflexible, interview format. The protocol provides strategies for preparing children to be information providers, creating a supportive interview environment, adapting interview practices to children's developmental levels and capabilities, and maximizing interviewer reliance on questioning approaches that tap children's free recall memory." Nancy E. Walker, *Forensic Interviews of Children: The Components of Scientific Validity and Legal Admissibility*, 65 LAW & CONTEMP. PROBS. 149, 170 (2002) (citations omitted).

14. Victor I. Vieth, *The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Expert Witness Testimony Concerning an Investigative Interview in a Case of Child*

number of phases, the interviews generally follow the same pattern.<sup>15</sup> During the beginning of the interview, the child is oriented to the process, which provides the interviewer an opportunity to discover details about the child's development and cognitive function.<sup>16</sup> Toward the middle of the interview, the interviewer inquires into the alleged abuse.<sup>17</sup> Finally, the interview wraps up with a period of closure.<sup>18</sup>

Forensic interviews are conducted by experts, such as social workers, victim witness coordinators, and psychologists,<sup>19</sup> whose "primary and sole role . . . is to collect the facts of the case."<sup>20</sup> Specifically, the purpose of the interview is to obtain information from the child, which means the forensic interviewer must set aside all previous assumptions about that child's situation.<sup>21</sup> When following protocol, the forensic interviewer should be allowed to introduce proper tools when necessary,<sup>22</sup> provided these tools are used appropriately.<sup>23</sup> Such tools may include anatomical dolls and anatomical diagrams.<sup>24</sup>

Despite the availability of accommodating tools for child witnesses, several new studies have created a cloud of controversy in the forensic interview setting, with the potential of leading to serious repercussions for child testimony. A critical examination of these findings is necessary to address any changes that must be implemented to secure valid convictions and prevent the elimination of diagrams. This Comment presents the current status of case law concerning anatomical diagrams, which is then

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*Abuse*, 36 WM. MITCHELL L. REV. 186, 197 (2009) (citing Kathleen C. Faller, *Interview Structure, Protocol, and Guidelines*, in INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE: CONTROVERSIES AND BEST PRACTICE 66, 66–67 (Kathleen C. Faller ed., 2007)).

15. *Id.* (citing Faller, *supra* note 14, at 88).

16. *Id.*

17. *Id.*

18. *Id.* (citing Faller, *supra* note 14, at 67).

19. *Id.* at 190 (citing *State v. Boston*, 545 N.E.2d 1220, 1231–32 (Ohio 1989)).

20. Walker, *supra* note 13, at 151 (quoting STEPHEN J. CECI & MAGGIE BRUCK, *JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY* 290 (American Psychological Association 1995)).

21. Anderson et al., *supra* note 12, at 314 (citing Kathleen C. Faller, *Questioning Children Who May Have Been Sexually Abused: An Integration of Research into Practice*, 2 J. OF AGGRESSION, MALTREATMENT, & TRAUMA 37, 39 (1999)).

22. *Id.* at 195. RATAC permits drawings, diagrams, and dolls. *Id.*

23. *See infra* Part IV.

24. Russell, *supra* note 10. "Several interview protocols and child abuse advocates endorse the use of anatomical diagrams." *Id.*

analyzed amid the backdrop of the latest research from experts who are opposed to the use of anatomical diagrams in the forensic interview setting, incorporating the latest findings from Dr. Poole,<sup>25</sup> and experts who strongly advocate for the utilization of such tools, including studies from professionals like Dr. Everson.<sup>26</sup> By identifying the solution to this controversy, prosecutors will be able to harness the tremendous benefits of anatomical diagrams to effectively tackle child sexual abuse.

### B. *Use of Anatomical Dolls*

Anatomical dolls are a type of illustrative prop often employed in child sexual abuse cases.<sup>27</sup> While the specific design of anatomical dolls varies with each doll, anatomical dolls are small models of people—both male and female—that incorporate the general structures of the human body. Anatomical dolls do not have to be designed with complete accuracy because courts have frequently permitted the use of dolls that are not necessarily anatomically correct.<sup>28</sup>

Anatomical dolls first gained significant prominence in the 1980s and have been consistently used ever since<sup>29</sup>—although not without their critics or controversy.

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25. Dr. Debra Poole has a Ph.D. in Developmental and Experimental Child Psychology from the University of Iowa. She is currently a professor at Central Michigan University and continues to research children's eyewitness testimony. *College of Humanities & Social & Behavioral Sciences*, CENTRAL MICHIGAN UNIVERSITY (Jan. 13, 2014), [www.cmich.edu/colleges/chsbs/Psychology/Faculty/Pages/Debra-Poole,-Ph.D.aspx](http://www.cmich.edu/colleges/chsbs/Psychology/Faculty/Pages/Debra-Poole,-Ph.D.aspx).

26. Dr. Mark D. Everson received his Ph.D. in Child Development from Stanford University. He is the current director of the Program on Childhood Trauma and Maltreatment, which is a part of the University of North Carolina's Department of Psychiatry. *Department of Psychiatry*, UNC SCHOOL OF MEDICINE (Jan. 13, 2014), [www.med.unc.edu/psych/directories/faculty/everson](http://www.med.unc.edu/psych/directories/faculty/everson).

27. Although anatomical dolls are most often used in child sexual abuse cases, dolls have made appearances in other types of cases as well. See *People v. Herring*, 515 N.Y.S.2d 954, 955–56 (N.Y. Crim. Ct. 1987) (finding that a sodomy victim over 70 years old who had a limited ability to communicate was not precluded from using anatomical dolls); see also *State v. Durst*, 879 P.2d 603, 605 (Idaho Ct. App. 1994) (finding that a twenty-one-year-old mentally impaired rape victim was able to use anatomical dolls to assist her testimony).

28. See, e.g., *Cleveland v. State*, 490 N.E.2d 1140, 1141 (Ind. Ct. App. 1986).

29. See *infra* Part II.B.4.

### 1. The Problems and Controversy with Dolls

Notwithstanding their steady use in the forensic interview, researchers found that anatomical “doll interviews [were] controversial.”<sup>30</sup> Even the American Psychological Association, which had “supported the use of [anatomical] dolls by ‘experienced and competent’ investigators, . . . echoed the concerns of many professionals by mandating . . . the development of further standard interview procedures.”<sup>31</sup> Accordingly, one of its concerns with dolls stemmed from “the lack of standard procedures for both the training of investigators and the administration of the assessment interview.”<sup>32</sup> Specifically, the APA worried that “professionals who do not use standardized protocols may be more likely to use leading questions, inadvertently, in a sincere attempt to determine what happened to the child. This is a particular problem when working with young children, as they have more difficulty answering open-ended, abstract questions.”<sup>33</sup>

Featuring similar sentiments as the APA, many critical articles were written about the use of anatomical dolls in the forensic interview, typically emphasizing that “the benefits [interviewers] expect from using dolls can easily be outweighed by questions regarding the reliability of the children’s reports.”<sup>34</sup> *Back to the Future: A Comment on the Use of Anatomical Dolls in Forensic Interviews*<sup>35</sup> outlined five basic criticisms that have plagued anatomical dolls since their inception: (1) young children may not have the cognitive skills necessary to use dolls;<sup>36</sup> (2) dolls may elicit behavior that is

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30. Lane Geddie et al., *Anatomical Doll Interviews as a Tool in the Investigation of Child Sexual Abuse*, 14 L. & POL’Y, 209, 210 (1992).

31. *Id.*

32. *Id.* at 211. See also Barbara W. Boat & Mark D. Everson, *Use of Anatomical Dolls among Professionals in Sexual Abuse Evaluations*, 12 CHILD ABUSE & NEGLECT 171, 177 (1988). “Many doll users have no training, and the perceived need for guidelines is well documented.” *Id.* The authors highlighted the necessity for evaluations that are “conducted in an enlightened and consistent fashion.” *Id.* at 178.

33. Geddie et al., *supra* note 30, at 211.

34. Jason J. Dickinson et al., *Back to the Future: A Comment on the Use of Anatomical Dolls in Forensic Interviews*, 5 J. OF FORENSIC PSYCHOL. PRAC. 63, 64 (2005) (quoting DEBRA A. POOLE & MICHAEL E. LAMB, INVESTIGATIVE INTERVIEWS OF CHILDREN: A GUIDE FOR HELPING PROFESSIONALS 195 (1998)).

35. *Id.*

36. The authors contested the idea that children have “representational insight” to understand the symbolic nature of the dolls, that children are capable of using the dolls to “map events,” and that children can maintain an understanding of the dolls “symbolic purpose” during the interview. *Id.* at 66. As a result, it was questioned whether a young child

not relevant;<sup>37</sup> (3) dolls may not enhance the forensic interviews;<sup>38</sup> (4) dolls offer interviewers additional suggestive strategies;<sup>39</sup> and (5) interviewer bias and memory distortion shape the evaluation of children's correspondence with dolls.<sup>40</sup> Of these concerns, the fourth and fifth led to the greatest difficulties for prosecutors.

In fact, the fourth criticism was quite damaging for prosecutors.

Transcript analyses have demonstrated that [anatomical] dolls are rarely used as independent and neutral supplements to initial open-ended questions. Rather, dolls are frequently used in conjunction with other suggestive interviewing techniques, such as specific questions . . . , leading questions . . . , or urging the child to play or pretend . . . . Each of these techniques by themselves is known to taint children's reports . . . , but the risk

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could even understand that an anatomical doll was supposed to represent an actual person. 1 JOHN E.B. MYERS, MYERS ON EVIDENCE IN CHILD, DOMESTIC, AND ELDER ABUSE CASES 33 (successor ed. 2005). Some researchers feared there were too many underlying cognitive and representational capacity problems. *Id.* (citing Judy S. DeLoache, *The Use of Dolls in Interviewing Young Children*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS 160–78 (1995)).

37. While the authors recognized that “nonabused children rarely engage in explicit sexualized doll play,” they concluded dolls may provide children the opportunity to engage in exploratory “behavior that could be misconstrued.” Dickinson et al., *supra* note 34, at 67. The authors argued that “[y]oung children sometimes inaccurately demonstrate sexual penetration when they are merely playing with the dolls.” *Id.* Even defense attorneys that caught wind of this criticism claimed “that the anatomical dolls are highly suggestive and evoke sexual fantasies in children.” Boat & Everson, *supra* note 32, at 177. Other studies also shared in this concern, with some researchers believing that young children are subject to serious distraction by the use of dolls in an interview. MYERS, *supra* note 36, at 33. One popular argument was that “it is often difficult to tell whether a child so young is playing with a doll or is using the doll to describe an actual event.” *Id.*

38. The authors argued that the use of dolls in interviews actually made children less talkative, providing fewer details than in interviews without dolls. Dickinson et al., *supra* note 34, at 68. Another study reached similar findings in regard to this criticism when it discovered that “the average number of relevant details provided by the children was not greater when anatomical dolls were used than when they were not used.” Michael E. Lamb et al., *Investigative Interviews of Alleged Sexual Abuse Victims with and without Anatomical Dolls*, 20 CHILD ABUSE & NEGLECT 1251, 1257 (1996). In fact, “[t]he average responses provided by the children were significantly briefer and less detailed when dolls were employed, furthermore, suggesting that the use of dolls tended to inhibit rather than facilitate informativeness.” *Id.*

39. Dickinson et al., *supra* note 34, at 69.

40. *Id.* at 70.



of taint probably increases in conjunction with props such as [anatomical] dolls. This is because the dolls may provoke the natural use of these suggestive techniques and override less suggestive questioning . . . .<sup>41</sup>

Additionally, the authors feared the possibility of an interviewer's overreliance on the dolls,<sup>42</sup> as defense attorneys and others were concerned that the dolls could be easily misused in the interview process.<sup>43</sup> Acknowledging that not all research on anatomical dolls resulted in findings of increased false reports of abuse, the authors suggested that those findings may be attributed to "the use of fewer suggestive interviewing techniques."<sup>44</sup>

As to the fifth criticism, "because there [were] no objectively validated standards for how to use dolls in interviews or how to assess children's interactions with dolls," the interviewer's interpretation was key.<sup>45</sup> This was problematic, because the authors worried that "statements from interviewers about whether a child did or did not reenact abuse may be suspect because of the intertwined factors of bias and memory."<sup>46</sup>

In addition to the concerns posed by researchers, attacks in court were common. Despite the use of dolls "to prepare children to testify,"<sup>47</sup> defense attorneys often challenged the use of anatomical dolls in this manner as prejudicial, and thus fervently objected to the practice. In *Newton v. State*,<sup>48</sup> the defendant contended that the victim had an unfair advantage during the trial.<sup>49</sup> Since the victim was able to use anatomical dolls before trial, the defendant believed his right to counsel and right to cross-examination had

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41. *Id.* at 69.

42. *Id.*

43. MYERS, *supra* note 36, at 33. (citing Maggie Bruck, Stephen J. Ceci, & Emmet E. Francoeur, *A Comparison of Three- and Four-Year-Old Children's Use of Anatomically Detailed Dolls to Report Genital Touching in a Medical Examination*, 6 J. OF EXPERIMENTAL PSYCHOL.: APPLIED 74, 74–83 (2000)).

44. Dickinson et al., *supra* note 34, at 70. See also Debra A. Poole et al., *Forensic Interviewing Aids: Do Props Help Children Answer Questions about Touching?*, 20 CURRENT DIRECTIONS IN PSYCHOL. SCI. 11, 12 (2011).

45. Dickinson et al., *supra* note 34, at 70.

46. *Id.*

47. MYERS, *supra* note 36, at 153.

48. *Newton v. State*, 456 N.E.2d 736 (Ind. Ct. App. 1983).

49. MYERS, *supra* note 36, at 153 (citing *Newton*, 456 N.E.2d at 741).

been violated.<sup>50</sup> The defendant claimed the victim's testimony had been "enhanced" as a result of the preparation; he argued that her practice with the dolls made her remember specific details at trial that she previously could not recall at the deposition.<sup>51</sup>

## 2. The Attempts to Dispel the Doll Controversy

Because anatomical diagrams have faced similar controversy to that of anatomical dolls, a myriad of analogous research is available that can be construed to support anatomical diagrams as well. In particular, Dr. Everson and Dr. Boat have conducted research and reached favorable conclusions regarding anatomical dolls. In *Putting the Anatomical Doll Controversy in Perspective: An Examination of the Major Uses and Criticisms of the Dolls in Child Sexual Abuse Evaluations*,<sup>52</sup> Everson and Boat first pointed out that the use of anatomical dolls has essentially become standard protocol in analyzing the potential sexual abuse of young children.<sup>53</sup> According to Everson and Boat, anatomical dolls were beneficial for several reasons.

Anatomical dolls assist children in communication.<sup>54</sup> "It makes sense that sexually abused children might find it easier to show rather than tell about experiences that are out of the ordinary, for which they might not have words and that are embarrassing or shameful."<sup>55</sup> When used appropriately, anatomical dolls are extremely effective in assisting young children in explaining sexual experiences.<sup>56</sup> Although anatomical dolls are helpful tools in detecting child sexual abuse, Everson and Boat admit that

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50. *Id.* (citing *Newton*, 456 N.E.2d at 741).

51. *Id.* (citing *Newton*, 456 N.E.2d at 741).

52. Mark D. Everson & Barbara W. Boat, *Putting the Anatomical Doll Controversy in Perspective: an Examination of the Major Uses and Criticisms of the Dolls in Child Sexual Abuse Evaluations*, 18 CHILD ABUSE & NEGLECT 2, 113-29 (1994).

53. *Id.* at 113. The authors cited several studies to back this assertion, including a report that acknowledged dolls were the most common device used to evaluate child sexual abuse, with 92% of the respondents in that study using anatomical dolls. *Id.*

54. *Id.* at 113-14.

55. *Id.* at 114 (quoting L. Berliner, *Anatomical Dolls Commentary*, 3 J. OF INTERPERSONAL VIOLENCE 468, 469 (1988)).

56. *Id.* The authors cite a study from Leventhal, Hamilton, Rekedal, Tebano-Micci, and Eyster that found, "In interviews utilizing the dolls, the children were three times more likely to provide a detailed description of sexual abuse and twice as likely to name a suspected perpetrator than they were in interviews without the dolls." *Id.* (citing J. M. Leventhal et al., *Anatomically Correct Dolls Used in Interviews of Young Children Suspected of Having Been Sexually Abused*, 84 PEDIATRICS 900, 900-906 (1989)).

some concerns about the use of anatomical dolls are legitimate; however, the authors do not believe the “extreme reactions” by some critics are appropriate.<sup>57</sup>

In their article, Everson and Boat explored the following four potential, legitimate concerns about the use of anatomical dolls to detect child sexual abuse: (1) there is no widespread accepted standard procedure for the use of anatomical dolls; (2) there are no adequate norms on how abused and nonabused children react with anatomical dolls, which makes it difficult to interpret a child’s response to the dolls; (3) anatomical dolls are much too suggestive and may overstimulate children, leading nonabused children to interact in a way that is misinterpreted as a sign of sexual abuse; and (4) anatomical dolls encourage interviewer error and misapplication, allowing interviewers to use leading and suggestive questions.<sup>58</sup>

Before delving into the essence of their article, Everson and Boat acknowledged one important facet: “Just as anatomical dolls come in a variety of colors, shapes, and sizes, their uses in sexual abuse evaluations also differ widely. Any critique of the use of anatomical dolls must, therefore, consider the specific function the dolls serve in the evaluation.”<sup>59</sup> Everson and Boat broke down the uses of anatomical dolls into seven categories, including “Comforter, Icebreaker, Anatomical Model, Demonstration Aid, Memory Stimulus, Diagnostic Screen, and Diagnostic Test.”<sup>60</sup>

Addressing the first criticism, Everson and Boat found that this criticism is primarily applicable for the diagnostic test use of anatomical dolls.<sup>61</sup>

Although they may have some utility, especially for less experienced evaluations and for research purposes, standard protocols fail to take into account the differing personalities, styles, and skill levels of evaluators as well as the enormous range in developmental levels, language skills, and emotional needs of the children being interviewed. As a result, such protocols could substantially increase the rate of false negatives in evaluations (i.e., truly abused children who are determined to be nonabused) with an undermined impact on the level of false positives.

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57. *Id.*

58. *Id.*

59. *Id.* at 114–15.

60. *Id.* at 115.

61. *Id.* at 118–19.

Furthermore, although standard psychiatric interviews for adults and children enjoy some limited usage . . . , with the exception of formal standardized testing . . . , we know of no other area in the field of mental health or social work in which the practitioner is required to rigidly adhere to a single, standard set of procedures.<sup>62</sup>

As to the second concern, the diagnostic test use was the only category that would benefit from established norms.<sup>63</sup> Everson and Boat examined the results from several studies and found that it was common for nonabused children to touch and explore the anatomical dolls' genitals but that it was more likely for abused children to play with the anatomical dolls in a sexual manner.<sup>64</sup> In fact, it was quite rare that nonabused children mimicked sexual intercourse during play with the dolls.<sup>65</sup>

The third criticism was the most frequently expressed concern regarding anatomical dolls.<sup>66</sup> Everson and Boat pointed out that often the distinction between sexually naïve and sexually knowledgeable children is ignored.<sup>67</sup> Instead, the focus was on the effect of anatomical dolls on sexually naïve children who have not actually experienced abuse.<sup>68</sup> Critics were afraid that anatomical dolls may induce nonabused children to interact with the dolls in such a way that is "indistinguishable from the doll interactions of truly sexually abused children."<sup>69</sup> If anatomical dolls have that kind of impact on sexually naïve children, the diagnostic test would be seriously undermined.<sup>70</sup>

Although there has yet to be an exhaustive study on the overall suggestibility of anatomical dolls, the available research did not provide support for this criticism.<sup>71</sup> One study revealed that no matter the age, "the

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62. *Id.* at 119. The authors recognize the potential benefits of a more common, standard protocol, including increased uniformity in the interview process, greater comprehensiveness of interviews, and better use of interview time. *Id.*

63. *Id.* at 120.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 120–21.

70. *Id.* at 121.

71. *Id.* The authors examined several studies and found no validation for the assumption that anatomical dolls are so suggestive as to cause an increase in distortions of a

children interviewed with anatomical dolls did not make any more errors on the specific or misleading abuse questions than the children interviewed either with regular dolls or with no dolls.<sup>72</sup> Most errors were made by the three-year-old children and can be attributed to their lack of understanding of the term “private parts.”<sup>73</sup> Another study concluded that the errors produced in interviews with anatomical dolls were not specifically of a sexual manner.<sup>74</sup> Everson and Boat attributed the errors in the study to “the direct, yes/no format of the questions rather than to the genitalia of the dolls used as interview props.”<sup>75</sup> In Everson and Boat’s own comprehensive study, only 6% of the children interacted with the dolls in a sexually explicit way.<sup>76</sup> While the studies showed that anatomical dolls do not encourage sexually naïve children to act in a sexual manner, the dolls may allow sexually knowledgeable children the opportunity to reveal that knowledge.<sup>77</sup>

As to the final criticism, Everson and Boat admitted that this is the most valid of all the major concerns.<sup>78</sup> The particular errors that raised the most skepticism include the following: (1) leading or suggestive questions incorporating anatomical dolls in sexual positions; (2) misinterpretation of the child’s interaction with the dolls rather than receiving a thorough verbal response from the child; (3) shortcuts in the evaluation of a potential victim; and (4) overreliance on the anatomical dolls at the expense of other techniques.<sup>79</sup> Despite these four potentials for error, Everson and Boat concluded, “the use of anatomical dolls may prevent almost as many errors

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child’s memory when dolls are used during the interview process. *Id.* at 121-22 (citing Mark D. Everson & Barbara W. Boat, *Sexualized Doll Play Among Young Children: Implications for the Use of Anatomical Dolls in Sexual Abuse Evaluations*, 29 J. OF THE AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 736, 736-42 (1990); G.S. Goodman & C. Aman, *Children’s Use of Anatomically Detailed Dolls to Recount an Event*, 61 CHILD DEVELOPMENT 1859, 1859-71 (1990); K.F. Saywitz et al., *Children’s Memories of Physical Examinations Involving Genital Touch: Implications for Reports of Child Sexual Abuse*, 59 J. OF CONSULTING & CLINICAL PSYCHOL. 5, 682-91 (1991)).

72. *Id.* at 121.

73. *Id.*

74. *Id.* at 122.

75. *Id.*

76. *Id.* Only 12 out of 209 children used the dolls to mimic various forms of sexual intercourse. *Id.*

77. *Id.* at 123.

78. *Id.* at 125.

79. *Id.*

as their use may promote.”<sup>80</sup> Since all protocols could be subject to misuse, interviewers who were properly trained could avoid error.<sup>81</sup>

### 3. Anatomical Doll Case Law

While anatomical dolls eventually found broad acceptance in most states, past case law demonstrated the dividing effect of the doll controversy on the implementation of doll evidence.

#### a. Case law against the use of dolls

Although the 1980s brought about numerous child abuse cases addressing the incorporation of demonstrative aids, California produced the most perplexing rulings, with the year 1987 bringing about a significant new standard—much to the detriment of many young child sexual abuse victims.<sup>82</sup> In *In re Amber B.*,<sup>83</sup> the court completely discounted the usefulness of anatomical dolls. The court expressed the need for scientific relevance and disregarded the testimony of the prosecution’s expert witness. The court held,

The psychological technique of detecting child sexual abuse by observing the child’s behavior with anatomically correct dolls and analyzing the child’s reports of abuse constitutes a new

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80. *Id.* at 126.

81. *Id.*

82. To better understand California’s shift from acceptance to restriction, see *In re Cheryl H.*, 200 Cal. Rptr. 789 (1984) and *People v. Bledsoe*, 681 P.2d 291 (1984). In *Cheryl H.*, just three years prior to the pivotal case of *In re Amber B.*, a California Superior Court found that Cheryl H. had been sexually abused by her father and subsequently terminated his ability to make further contact his daughter. *Cheryl H.*, 200 Cal. Rptr. at 794. The court held that Cheryl H.’s interaction with anatomical dolls was admissible, since such conduct was neither assertive nor hearsay. *Id.* at 801. Relying on the expert opinion testimony of an experienced psychiatrist, the court found that the data employed by Dr. Powell, which ultimately served as a basis for her opinion that Cheryl H. had been a victim of sexual abuse, was proper and sufficient. *Id.* at 800–01. Specifically, Dr. Powell noted that Cheryl H.’s behavior with the anatomical dolls was characteristic of child sexual abuse victims. *Id.* In *Bledsoe*, the defendant contended that evidence of rape trauma syndrome does not pass the *Frye* test. *Bledsoe*, 681 P.2d at 298. The Supreme Court of California concluded that there was “a close connection between the relevance of testimony on rape trauma syndrome and the reliability of that testimony under the *Frye* test.” *Id.* Even though the court acknowledged a distinction between rape trauma syndrome and other scientific methods that have typically been subjected to the *Frye* test, this case opened the door for the holding in *Amber B.* *Id.* at 300.

83. *In re Amber B.*, 236 Cal. Rptr. 623 (1987).

scientific method of proof, and therefore is admissible in court only upon a showing that the technique has been generally accepted as reliable in the scientific community in which it was developed.<sup>84</sup>

In this case, a father was accused of molesting his three-year-old daughter, Amber.<sup>85</sup> Dr. Raming, a psychologist, offered testimony that he believed Amber had in fact suffered sexual abuse from her father.<sup>86</sup> As a basis for this opinion, Dr. Raming considered two factors.<sup>87</sup> First, the validity of abuse was supported by Amber's consistent and detailed descriptions.<sup>88</sup> Second, Amber's interaction with Dr. Raming's anatomical doll proved quite instructive.<sup>89</sup> Due to the nature of Amber's behavior with the doll, Dr. Raming concluded that Amber showed signs of a child who had experienced sexual abuse; it was unlikely that Amber had acquired such sexual knowledge from other children.<sup>90</sup>

After the trial court originally ruled that Amber had been a victim of molestation, her father challenged Dr. Raming's testimony.<sup>91</sup> His basis for the challenge was the *Kelly-Frye* test.<sup>92</sup> The *Kelly-Frye* test requires that in order for it to be admissible, any "evidence based on a new scientific method of proof" must be a generally accepted and reliable procedure within the scientific community that developed the method.<sup>93</sup> The court defended the *Kelly-Frye* test on the grounds that its principle objective is to keep the jury from being deceived "by the 'aura of infallibility' that may surround unproven scientific methods."<sup>94</sup> The court acknowledged that the *Kelly-Frye* test does not apply to expert testimony in itself; however, the court attempted to differentiate the expert testimony in this case, labeling it as scientific evidence.<sup>95</sup> The court thought that the jurors would not be

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84. *Id.* at 625.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 626 (quoting *People v. McDonald*, 37 Cal. 3d 351, 372-73 (1984)).

95. *Id.*

skeptical enough when evaluating this type of evidence.<sup>96</sup> The court assumed that the jury would mistakenly “ascribe an inordinately high degree of certainty” to evidence that has not passed the *Kelly-Frye* test.<sup>97</sup>

The court, after fully disregarding Dr. Raming’s expert testimony, concluded its opinion by noting that “[t]he trial judge, the parties, and society in general would greatly benefit from *reliable* expert testimony addressing the question whether the child was abused.”<sup>98</sup>

Resistance to anatomical dolls in California continued to spread. In 1987, the California Court of Appeals preserved for review the use of anatomical dolls even though the defendant had not raised the issue.<sup>99</sup> The following year, the same court expressly clarified that the *Kelly-Frye* test applies to non-experts.<sup>100</sup> The Ninth Circuit then excluded expert testimony regarding the child’s use of anatomical dolls.<sup>101</sup>

b. Case law in favor of the use of dolls

Not all courts allowed the anatomical doll controversy to deter them from acceptance. Unlike the rulings in the Ninth Circuit and in the State of California, other circuits and states refused to follow the same line of reasoning and did not adhere to the *Frye* standard—a point validated by cases like *Perez v. State*.<sup>102</sup>

In this case, Joaquin Perez was found guilty of aggravated sexual assault of a minor, and he challenged the decision based on the use of anatomical dolls.<sup>103</sup> Perez’s wife found him in her eight-year-old daughter’s room “lying in the child’s bed while the two were only partially clothed.”<sup>104</sup> After an altercation with his wife, Perez was later arrested.<sup>105</sup> The child explained what had happened to a social worker, who allowed the child to

96. *Id.*

97. *Id.* (quoting *McDonald*, 37 Cal. 3d at 372).

98. *Id.* at 630.

99. *In re Christine C.*, 236 Cal. Rptr. 630, 631 n.1 (1987).

100. *In re Christie D.*, 253 Cal. Rptr. 619, 625 (1988).

101. *United States v. Gillespie*, 852 F.2d 475, 481 (9th Cir. 1988).

102. *Perez v. State*, 925 S.W.2d 324 (Tex. App. 1996). Another example of a court failing to recognize the *Frye* standard in this context is *In re Rinesmith*, 376 N.W.2d 139 (Mich. Ct. App. 1985). The court explicitly denied that the use of anatomical dolls fell into such a scientific category that would expose it to *Frye* scrutiny. *Id.* at 141.

103. *Perez*, 925 S.W.2d at 325.

104. *Id.*

105. *Id.* at 325–26.



demonstrate the incident with anatomical dolls.<sup>106</sup> In response to Perez's objections to the admissibility of the anatomical doll evidence, the social worker testified that the dolls were helpful for young children unable to properly communicate details of the abuse with words.<sup>107</sup>

Not only did the court find that the dolls were appropriate in the context of the interview with the social worker, but the court also permitted the dolls' use during the trial itself.<sup>108</sup> Although Perez argued that anatomical dolls should not be permitted because they lack scientific reliability, the court disagreed.<sup>109</sup> The court recognized that anatomical dolls were not novel, since "testimony regarding the use of dolls while interviewing young victims or the actual use of dolls during the child's testimony appears in published opinions dating back at least fifteen years."<sup>110</sup> The court decided that the social worker's testimony regarding the dolls was not scientific evidence.<sup>111</sup>

Besides declining to accept the *Frye* standard, the court made additional points to justify its holding. The court acknowledged that, while anatomical dolls may arouse the curiosity of an ordinary child, it is quite a different scenario altogether when a young child illustrates advanced sexual knowledge.<sup>112</sup> The court recognized too that the forensic interview was not suggestive, because the social worker did not tell the child how to use the anatomical dolls.<sup>113</sup> Anatomical dolls provided one avenue for children to communicate; by using anatomical dolls, any social worker would be able to ensure "she was not reading more into the child's words than was intended."<sup>114</sup> The court even equated the use of anatomical dolls with any other demonstrative aid, such as a map, diagram, or drawing.<sup>115</sup>

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106. *Id.* at 326.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 327.

113. *Id.*

114. *Id.*

115. *Id.*

#### 4. Continued Acceptance of Anatomical Dolls

Anatomical dolls were not limited to just cases involving a child who was unable to testify.<sup>116</sup> There were countless other circumstances where the use of anatomical dolls as a testimonial aid were essential, especially when the anatomical doll helped the child “describe events.”<sup>117</sup> For instance, the victim in *State v. Eggert*<sup>118</sup> was able to use anatomical dolls as an aid to her testimony, despite the fact that she was able to fully share details of the abuse verbally.<sup>119</sup> The Minnesota Court of Appeals did not agree with the defendant’s position that the anatomical dolls were not important.<sup>120</sup> The court made an interesting comparison between child victims and expert witnesses:

[A] doctor or engineer may be allowed to use artificial mockups of the human anatomy, cutaways, maps and diagrams, etc., even if the witness acknowledges that he does not have to have those things to testify. The test is whether or not the testimonial aid will likely assist the jury in understanding the witness’s testimony.<sup>121</sup>

Even as early as 1986, certain courts were allowing the use of dolls by victims, even if the dolls were not anatomically correct.<sup>122</sup> In *Cleaveland v. State*,<sup>123</sup> the victim used anatomical dolls to demonstrate how the defendant abused her.<sup>124</sup> The defendant contested the use of the anatomical dolls, since the area meant to connote the vagina was pink.<sup>125</sup> The court of appeals

116. MYERS, *supra* note 36, at 152. Some courts expressed the desire for such tools to assist a child while testifying on the stand. In fact, the Supreme Court of Indiana in *Stewart v. State* found that an anatomical doll would have been a helpful aid in clarifying the child’s communication, stating, “It is true that the deputy prosecutor in this case would have been better advised to have used anatomically correct dolls in the presentation of the State’s case in chief.” *Stewart v. State*, 768 N.E.2d 433, 437 (Ind. 2002). In *Stewart*, a ten-year-old boy testified about his abuse. *Id.* at 435. He described how the defendant “touched him in the ‘wrong spots,’ which he described as his ‘private spot’ or ‘private part.’” *Id.*

117. MYERS, *supra* note 36, at 152.

118. *State v. Eggert*, 358 N.W.2d 156 (Minn. Ct. App. 1984).

119. *Id.* at 161.

120. MYERS, *supra* note 36, at 152.

121. *Id.* (quoting *Eggert*, 358 N.W.2d at 161).

122. *Id.*

123. *Cleaveland v. State*, 490 N.E.2d 1140 (Ind. Ct. App. 1986).

124. MYERS, *supra* note 36, at 152–53 (citing *Cleaveland*, 490 N.E.2d at 1141).

125. *Id.* at 153 (citing *Cleaveland*, 490 N.E.2d at 1141).

found that as long as the evidence was “sufficiently explanatory or illustrative of relevant testimony in explaining what occurred,” the anatomical dolls could be permitted.<sup>126</sup> The court further concluded that the anatomical doll had been quite beneficial in allowing the jury to understand the victim’s abuse experience.<sup>127</sup> Even though the doll did not have correct detail, the court did not believe that the doll misrepresented the victim’s testimony, misled the jury, or prejudiced the defendant.<sup>128</sup>

### C. *Beginning Use of Diagrams*

While anatomical dolls garnered greater acceptance eventually,<sup>129</sup> measures must be taken to prevent diagrams from suffering the same controversial history.<sup>130</sup> Moreover, this scenario should be avoided altogether with anatomical diagrams. Many of the same variables that caused controversy regarding the use of anatomical dolls are present with anatomical diagrams. Because diagrams are valuable tools for prosecutors, it is not beneficial for this inconsistency and uncertainty to prompt diagram elimination.

#### 1. Status of Diagrams

Like anatomical dolls, anatomical diagrams—also referred to as anatomical drawings—are a kind of demonstrative tool used in child sexual abuse cases.<sup>131</sup> Most commonly used during the forensic interview, anatomical diagrams are depictions of nude human figures—both male and female—at multiple stages of development.<sup>132</sup> Like other testimonial aids, anatomical diagrams are pivotal in facilitating dialogue between the forensic interviewer and the child.<sup>133</sup>

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126. *Id.* (quoting *Cleaveland*, 490 N.E.2d at 1141).

127. *Id.* (citing *Cleaveland*, 490 N.E.2d at 1141).

128. *Id.* (citing *Cleaveland*, 490 N.E.2d at 1141).

129. “Based upon a review of the literature, the research does not support the fear that anatomical dolls will elicit false allegations of sexual abuse and documents the efficacy of body maps in interviewing children about private parts touch.” Kathleen C. Faller, *Anatomical Dolls: Their Use in Assessment of Children Who May Have Been Sexually Abused*, 14(3) J. OF CHILD SEXUAL ABUSE 1, 14 (2005).

130. *See infra* Part IV.

131. MYERS, *supra* note 36, at 154.

132. Lori S. Holmes & Martha J. Finnegan, *The Use of Anatomical Diagrams in Child Sexual Abuse Forensic Interviews*, 15 UPDATE, no. 5 (2002) (on file with the author).

133. Russell, *supra* note 10.

Unlike anatomical dolls, anatomical diagrams have only recently begun to garner a lot of attention in the field.<sup>134</sup> Despite the fact that anatomical diagrams have been implemented for years in the forensic interview arena,<sup>135</sup> far less research is available regarding the implications of these diagrams than other interview tools.<sup>136</sup> The limited number of studies that have been conducted, however, presents similar concerns that already have been addressed by skeptics of other aids, such as anatomical dolls.<sup>137</sup> Concerns like unnecessary suggestibility, increased traumatization, and lack of supportive research have sparked the debate surrounding anatomical diagrams.<sup>138</sup>

## 2. Courts' Acceptance of Diagrams

Anatomical diagrams are not uncommon in the courtroom, as judges have permitted their use in past cases—a pattern of acceptance that should *not* falter due to controversy. Because defendants often argue against the use of anatomical diagrams, prosecutors must be prepared for objections. *Wellington v. Blaisdell*<sup>139</sup> demonstrates the need for a standardized procedure in the forensic interview, as evidence derived from diagrams is far too valuable to the prosecution's case to leave to chance.

In *Wellington*, the defendant contended the forensic interview techniques were improper “because leading questions and anatomical drawings were used.”<sup>140</sup> Claiming this undermined the child's credibility,<sup>141</sup> the defendant had the burden to prove the interview techniques had an

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134. See *infra* Part III.A.

135. Holmes & Finnegan, *supra* note 132; see also Anderson et al., *supra* note 12, at 278. Anatomical diagrams are the second most popular tools used in the forensic interview. *Id.*

136. Holmes & Finnegan, *supra* note 132; Anderson et al., *supra* note 12, at 278.

137. Russell, *supra* note 10; see generally AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, PRACTICE GUIDELINES: USE OF ANATOMICAL DOLLS IN CHILD SEXUAL ABUSE ASSESSMENTS 1–8 (1995). These analogous concerns were attended to by emphasizing the importance of proper use and adherence to guidelines. *Id.*

138. Russell, *supra* note 10.

139. *Wellington v. Blaisdell*, No. 04-CV-478-SM, 2005 WL 2365328 (D.N.H. Sept. 27, 2005). Prior to his appeal in this case, the defendant submitted a similar argument in 2004. Despite his claims, the Supreme Court of New Hampshire originally concluded, “he failed to present to the court how that use [of anatomical drawings] may have affected his case.” See *State v. Wellington*, 846 A.2d 1171, 1174–75 (N.H. 2004).

140. *Blaisdell*, 2005 WL 2365328, at \*2.

141. *Id.*

adverse effect on his trial.<sup>142</sup> The court ultimately rejected the defendant's claim, finding "improper, clumsy, insufficient or deficient interviewing techniques do not necessarily result in false testimony or unreliable witnesses."<sup>143</sup>

Another popular way defendants try to discredit anatomical diagrams is to argue a lack of sufficient evidence, but courts have found that diagram evidence often corroborates a child's testimony, as in *State v. Bowie*.<sup>144</sup> To ensure this effective evidence is permitted, prosecutors must be ready to overcome the diagram controversy.

In *Bowie*, the defendant questioned the sufficiency of the evidence used to support his conviction.<sup>145</sup> During trial, the social worker testified that the child used anatomical drawings to circle areas she was touched and to identify body parts.<sup>146</sup> Considering the testimony of the social worker and the child as well as the evidence of the anatomical drawings, the court of appeals concluded the jury had enough corroborating details to support the conviction.<sup>147</sup>

No matter the forensic interview protocol implemented, defendants are quick to attack the diagrams as suggestive. When forensic interviewers are trained adequately, prosecutors are able to introduce evidence from the forensic interview at trial with less reason to fear it will be excluded.

In *State v. Michael H.*,<sup>148</sup> the defendant alleged the forensic interviewer "corrupted the reliability of the children's testimony because two aspects of the method that she used—namely, advisements at the beginning of the interview about good touches versus bad touches, and the use of anatomical drawings—lead to false positive accusations of child abuse."<sup>149</sup> The forensic interviewer used the CornerHouse RATAC protocol, which the court even identified as a common method for interviewing abuse victims.<sup>150</sup> Recognizing its role as gatekeeper, the Supreme Court of Connecticut emphasized, "the defendant . . . failed to make any showing that [the]

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142. *Id.* at \*4 (citing *Wellington*, 846 A.2d at 1171).

143. *Id.* at \*6.

144. *State v. Bowie*, 101 So. 3d 46 (La. Ct. App. 2011).

145. *Id.* at 50.

146. *Id.*

147. *Id.* at 52.

148. *State v. Michael H.*, 970 A.2d 113 (Conn. 2009).

149. *Id.* at 116.

150. *Id.* at 116, 122 n.2.

testimony [of the victim] was the product of unduly coercive or suggestive questioning.”<sup>151</sup>

Because forensic interviewers are necessary witnesses and frequently take the stand, forensic interviewers often testify as to anatomical drawings—if implemented in the interview—in some manner,<sup>152</sup> which is why prosecutors need to take proactive measures to prevent diagram elimination. In *State v. Johnson*,<sup>153</sup> the interviewer testified that the children indicated abuse with the assistance of an anatomical drawing.<sup>154</sup> Besides illustrating areas where the touch occurred, anatomical diagrams have been referenced on the stand by forensic interviewers to clear up relevant terminology for the jury.<sup>155</sup>

### III. PROBLEM

#### A. Research Seeking Restriction of Anatomical Diagrams

Although critics have released research contesting the use of anatomical dolls in child sexual abuse cases for many years—causing “many professionals [to] have abandoned anatomical dolls” for fear of an attack in court,<sup>156</sup> it is only recently that research has emerged against the use of anatomical diagrams. Those opposed to the utility of anatomical diagrams tend to express clear disfavor for their implementation in the interview process. For example, researchers from the NICHD, after studying the introduction of drawings following the substantive phase of the mock forensic interview, have concluded “they do not support the use of media during the interview.”<sup>157</sup> Many critics share in the concern of the early

151. *Id.* at 122.

152. *See, e.g., State v. Terry*, 108 So. 3d 126 (La. Ct. App. 2012) “In her testimony, the interviewer . . . described the anatomical drawings labeled by her and [the child] for the jury.” *Id.* at 137.

153. *State v. Johnson*, 57 So. 3d 412 (La. Ct. App. 2011).

154. *Id.* at 415.

155. *See, e.g., State v. Ferguson*, No. 07AP-999, 2008 WL 5265893, at \*2 (Ohio Ct. App. Dec. 18, 2008).

156. Faller, *supra* note 129, at 14. In fact, “[m]andated investigators and mental health professionals have allowed legal professionals, the defense bar, and their experts to define best practice.” *Id.*

157. Linda C. Steele, *The Forensic Interview: A Challenging Conversation*, in HANDBOOK OF CHILD SEXUAL ABUSE 99, 103 (Paris Goodyear-Brown ed., 2012) (citing Jan Aldridge et al., *Using a Human Figure Drawing to Elicit Information from Alleged Victims of Child Sexual Abuse*, 72 J. OF CONSULTING & CLINICAL PSYCHOL. 304, 304–15 (2004); Deirdre A. Brown et

introduction of anatomical diagrams, because they find the timing too abrupt or the suggestibility too apparent.<sup>158</sup> Regardless of whether the diagrams are introduced in the early phases or the substantive phases of the interview, some researchers fear these tools “may encourage fantasy or prove distracting to the child,” may lead an interviewer to become “overly dependent” on the diagrams, and may focus less on “encourag[ing] narrative description” from the child.<sup>159</sup>

One particular study from 2011 has attracted much attention. *Evidence Supporting Restrictions on Uses of Body Diagrams in Forensic Interviews*<sup>160</sup> has promoted conclusions that threaten the acceptance of diagrams.<sup>161</sup> The article begins with recommendations for the forensic interview process. Interviewers must “avoid suggesting specific themes or conclusions early in interviews, . . . build rapport, explain ground rules, encourage children to talk by asking open-ended questions about neutral topics, and transition to the topic of abuse using the least suggestive prompts possible.”<sup>162</sup> Once the interviewer enters the substantive phase of the questioning, open-ended prompts are encouraged.<sup>163</sup> These recommendations should be welcomed and are indeed necessary in guaranteeing the best results in a forensic interview.

The article then continues by categorizing the recommendations as part of “standard forensic interviewing,” which is based on internationally established protocol from Canada and the UK.<sup>164</sup> According to Poole and Dickinson, such “standard forensic interviewing” emphasizes verbal

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al., *Supportive or Suggestive: Do Human Figure Drawings Help 5–7 Year Old Children to Report Touch?*, 75 J. OF CONSULTING & CLINICAL PSYCHOL. 1, 33–42 (2007); Yee-San Teoh et al., *Do Human Figure Diagrams Help Alleged Victims of Sexual Abuse Provide Elaborate and Clear Accounts of Physical Contact with Alleged Perpetrators*, 24 APPLIED COGNITIVE PSYCHOL. 287, 287–300 (2010)).

158. Anderson et al., *supra* note 12, at 284.

159. Steele, *supra* note 157, at 111.

160. Debra A. Poole & Jason J. Dickinson, *Evidence Supporting Restrictions on Uses of Body Diagrams in Forensic Interviews*, 35 CHILD ABUSE & NEGLECT, 659 (2011).

161. The authors reach the startling conclusion that “[t]he bottom line is that specific questions are more likely to elicit reports of information that was only suggested to children, body diagrams add an additional risk of spontaneous intrusions due to the ease of pointing, and there is no evidence from the existing literature that these risks are counteracted by benefits compared to well-established procedures.” *Id.* at 668 (emphasis added).

162. *Id.* at 659.

163. *Id.*

164. *Id.* at 660.

prompts and uses little or no aids or props.<sup>165</sup> The authors also assert that the very essence of this internationally recognized protocol has been “widely adopted in the US.”<sup>166</sup> Despite this wide acceptance of “standard forensic interviewing,” the article admits, “the conviction that props help children report sexual abuse has garnered support for an alternative style in which interviewers use body diagrams to elicit disclosures.”<sup>167</sup> Although there are well-recognized protocols that implement anatomical diagrams, there is no standard or consistency in the techniques forensic interviewers use.<sup>168</sup>

### 1. Scope

After setting the foundation for discrediting anatomical diagrams, the authors introduce the crux of their study. In order to ultimately prove the value or lack of value of anatomical diagrams, Poole and Dickinson grouped 261 children into the following four categories: (1) an anatomical diagram interview with children who were touched; (2) an anatomical diagram interview with children who were not touched; (3) a standard forensic interview with children who were touched; and (4) a standard forensic interview with children who were not touched.<sup>169</sup> The standard forensic interviews were completed in the same manner as the interviews with anatomical diagrams, except without the use of any props.<sup>170</sup>

Having been recruited to participate in the study by advertisements in newspapers and at schools and day cares, the children ranged in age from four to nine years old.<sup>171</sup> Just over half of the subjects were male, and the number of four- to six-year-olds was almost the same as the seven- to nine-year-olds.<sup>172</sup> To investigate claims by anatomical diagram advocates that diagrams are especially beneficial for younger children, the children, though already grouped by category, were also divided by age—resulting in younger and older groups.<sup>173</sup>

Regardless of the category, all the children engaged in a fifteen-minute target event session, where “Mr. Science secured ties on the back of the

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165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* at 661.

170. *Id.* at 662.

171. *Id.* at 661.

172. *Id.*

173. *Id.*



child's lab coat, set a timer, and explained four science demonstrations."<sup>174</sup> After that, each child was given an opportunity to recreate the demonstration while informally talking to Mr. Science.<sup>175</sup> Children that were part of a touch category also were subjected to two target touches.<sup>176</sup> Once the target event(s) had concluded, an interviewer conducted a baseline interview, where she eventually "delivered [three] open-ended prompts to encourage the child to talk about everything that had happened in the science room."<sup>177</sup>

Months after the target event(s) occurred, each child's parents received a book entitled *A Visit to Mr. Science*.<sup>178</sup> Parents were instructed to read this book to their child prior to the child's next interview.<sup>179</sup> The book contained variations of the science demonstrations—some of which the child had experienced and some which the child had not experienced.<sup>180</sup> To create "suggested touch events," even children that were not part of a touch category were provided descriptions of the two target touch events.<sup>181</sup>

Once the parents fulfilled their obligation for the study, the children were interviewed a final time—either with an anatomical diagram interview or a standard forensic interview.<sup>182</sup> While the pre-substantive phases and the source-monitoring phases of the anatomical diagram interview and the standard forensic interview were very similar, the substantive phases were quite different.<sup>183</sup> In the substantive phase of the standard forensic interview, "[e]ach interviewer established the topic of the science experience (topic introduction) and delivered [four] open-ended questions about this

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174. *Id.* at 662.

175. *Id.*

176. *Id.* The two target touches included the following:

Mr. Science tried to wrap a small wrist band around the child's wrist, marveled at how big the child's wrist was, wrapped his fingers around the wrist to measure it, and retrieved a larger band that he taped onto the child. After the demonstrations, Mr. Science removed the wrist band and then tried unsuccessfully to stick a worn-out reward sticker on the child's shoulder.

*Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 662.

183. *Id.* at 662–64.

experience.”<sup>184</sup> In contrast, the substantive phase of the anatomical diagram interview began with “[e]ach interviewer explain[ing] that children have different names for things and put[ting] a body diagram on the flip board that was an outline of an unclothed child with gender-neutral hair.”<sup>185</sup> It is important to note that the diagram implemented in this study only had “facial features, a belly button, and knee creases inside the outline but no nipples or genitalia.”<sup>186</sup> The interviewer asked the same open-ended questions as in the standard interview but only after making a touch inquiry in conjunction with the diagram regarding the child’s science experience.<sup>187</sup>

## 2. Results

As a result of their research, Poole and Dickinson made several conclusions, which can be further grouped into three problems: (1) ineffective; (2) inaccurate; and (3) suggestive.

### a. Ineffective

First, the authors concluded, “[t]here was no evidence that interviewing props put children at greater ease compared to verbal questions alone.”<sup>188</sup>

184. *Id.* at 663.

185. *Id.*

186. *Id.* Dr. Thomas D. Lyon, criticized Poole and Dickinson’s technique in this study. According to Lyon,

the stud[y] [is] not terribly useful in helping us assess the potential utility of diagrams in questioning children about genital touch. Because there was no condition in which children *were* touched on their genitalia, one cannot calculate the percentage of children who were touched who revealed with or without the diagrams. Children often showed very low rates of touch disclosure, but there is no reason to assume that children were reluctant to disclose any of the touches that occurred. It is more likely that they simply forgot the touching or found it unremarkable.

With respect to the false reports of genital touch, the problem is that the diagrams omitted the genitalia. Poole and Dickinson . . . assert that this explains why they *didn’t* obtain any false reports of genital touch, but they provide no support for their apparent belief that explicit depiction would increase the likelihood of error. Rather, the opposite problem might be at work: When the genitalia are not depicted, this increases the risk of misunderstanding.

Thomas D. Lyon, *Twenty-five Years of Interviewing Research and Practice: Dolls, Diagrams, and the Dynamics of Abuse Disclosure*, INTERVIEWING RES. & PRAC. (2012), available at <http://works.bepress.com/thomaslyon/82> (citation omitted).

187. Poole & Dickinson, *supra* note 160, at 664.

188. *Id.* at 665.

Despite this bold conclusion, it was reported that younger children were not as verbal as the older children, answering only 65.5% of ground rules questions verbally.<sup>189</sup> According to the study, anatomical diagrams did not produce much improvement in the quantity of informative words children provided to the interviewers.<sup>190</sup> Comparing verbal prompts and anatomical diagrams, the authors indicate that not only do anatomical diagrams produce more errors, but they also do not increase results.<sup>191</sup> Despite their recognition that anatomical diagrams do serve a purpose in medical examinations, the authors imply that the risk is not worth the potential benefits.<sup>192</sup>

Next, Poole and Dickinson concluded that anatomical diagram interviews did not encourage or discourage children from detailing contextual information.<sup>193</sup> The authors believe that “[a]llegations of abuse are more credible when children can describe activities that occurred before and after touching experiences.”<sup>194</sup> Interestingly, “[o]nly [six] children . . . described experiences that were unrelated to the Mr. Science protocol,” and this occurred in both the standard forensic interview and the anatomical diagram interview.<sup>195</sup>

b. Inaccurate

Also, while anatomical diagrams encouraged disclosures of touching, they also had detrimental effects that skewed the overall accuracy of the reports.<sup>196</sup> For example, a few children pointed to parts on the anatomical diagram that had not been touched during the experiment.<sup>197</sup> Because the

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189. *Id.*

190. *Id.*

191. *Id.* at 660.

192. *Id.* Although the use of anatomical dolls during a medical examination increased the accurate reports of sexual abuse from 18% to 69%, the rate of false reports increased from 0% to 5% as well. *Id.* False reports of anal touching also increased by 22%. *Id.*

193. *Id.* at 666.

194. *Id.*

195. *Id.* at 667.

196. *Id.* at 665. Compared to the standard forensic interview that availed no reports of touching after the open-ended questions phase, 9.0% of children participating in an anatomical doll interview reported touching. Despite this benefit, the use of anatomical dolls also increased false reports of touching. *Id.*

197. *Id.* at 666. While no false reports of this kind occurred in the standard forensic interview, it only occurred in 14.5% of the children in the anatomical doll interview. *Id.*

authors concluded that the marginal difference between the amount of all true disclosures in interviews using anatomical diagrams and standard forensic interviews proves that standard forensic interviews are superior, they thus argued the difference between the two “favors standard interviewing.”<sup>198</sup> Besides false reports of touching, some children reported touching from other people not involved in the experiment.<sup>199</sup>

c. Suggestive

Overall, Poole and Dickinson found the use of anatomical diagrams suggestive.<sup>200</sup> According to Poole and Dickinson, anatomical diagrams introduce sexual issues much too early in the forensic interview, thereby deviating from the “standard forensic interview” with suggestive sexual themes.<sup>201</sup> Due to the suggestive nature of the diagrams, the likelihood of false reports is problematic.<sup>202</sup> Advocating for change, the authors suggest “policy makers should place a moratorium on the practice of introducing body diagrams early in interviews.”<sup>203</sup> In order to protect the reliability of child testimony, Poole and Dickinson propose a solution: interviewers must not use anatomical diagrams unless all open-ended questioning has been completed and only when a diagram is necessary for clarification of something the child has already said or when there is a reason that warrants “using a more suggestive memory cue.”<sup>204</sup>

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However, the children who reported falsely usually pointed to parts that the interviewer had already pointed to during the initial body part labeling. *Id.*

198. *Id.*

199. *Id.* Only six children (4.6% of the total children interviewed) were confused by some of the questions and falsely mentioned other people, such as family members. *Id.*

200. *Id.* at 667.

201. *Id.* at 660.

202. *Id.*

In one study, 5- and 6-year-olds who were interviewed with body diagrams immediately after being touched reported less than half of the touches they had experienced, and 36% of their touch reports were inaccurate. Across the 3 interview delays included in this study (an immediate interview, a 1-day delay, and a 1-month delay), 7% of children falsely reported genital touching and 24% falsely reported touching to their breasts. In another study, body diagrams produced more errors and failed to increase the number of details regarding experienced touches.

*Id.* (citations omitted).

203. *Id.* at 668.

204. *Id.*

### B. Other Anti-Diagram Research

While perhaps not as forthcoming with their conclusions, other researchers have also partly shared in the notions of Poole and Dickinson's analysis.<sup>205</sup> In 2007, five researchers conducted a study to determine whether human figure drawings were supportive or suggestive.<sup>206</sup> While admitting the popularity of drawings in clinical contexts, the report recognized that "few researchers have examined whether the amount and accuracy of information provided is affected when children are asked to indicate on human figure drawings what happened, where they have been touched, and by whom."<sup>207</sup> Moreover, what little research has been done concerning the effect of drawings on children produced varying results, with some studies rearing positive determinations<sup>208</sup> and others finding negative outcomes.<sup>209</sup>

Before discussing the details of their study, the authors pointed out the similarities between the use of anatomical dolls and human figure drawings.<sup>210</sup> While the authors maintain that both are controversial, they

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205. See, e.g., Brown et al., *supra* note 157, at 33–41.

206. Deirdre A. Brown, Margaret-Ellen Pipe, Charlie Lewis, Michael E. Lamb, and Yael Orbach contributed to this study.

207. Brown et al., *supra* note 157, at 33.

208. *Id.* See, e.g., Sarnia Butler et al., *The Effect of Drawing on Memory Performance in Young Children*, 31 DEVELOPMENTAL PSYCHOL. 597, 597–608 (1995); Julien Gross & Harlene Hayne, *Drawing Facilitates Children's Verbal Reports of Emotionally Laden Events*, 14 J. OF EXPERIMENTAL PSYCHOL.: APPLIED 163, 163–79 (1998); Julien Gross & Harlene Hayne, *Drawing Facilitates Children's Verbal Reports After Long Delays*, 5 J. OF EXPERIMENTAL PSYCHOL.: APPLIED 265, 265–83 (1999); Karen Salmon et al., *Children's Reports of Emotionally Laden Events: Adapting the Interview to the Child*, 17 APPLIED COGNITIVE PSYCHOL. 65, 65–80 (2003); Michaela Wesson & Karen Salmon, *Drawing and Showing: Helping Children to Report Emotionally Laden Events*, 15 APPLIED COGNITIVE PSYCHOL. 301, 301–19 (2001) (showing that drawing increases the verbal responses of children in nonsuggestive contexts).

209. Brown et al., *supra* note 157, at 33. See, e.g., Maggie Bruck et al., *Draw It Again Sam: The Effect of Drawing on Children's Suggestibility and Source Monitoring Ability*, 77 J. OF EXPERIMENTAL CHILD PSYCHOL. 169, 169–96 (2000); Julien Gross et al., *The Use of Drawing in Interviews with Children: A Potential Pitfall*, in FOCUS ON CHILD PSYCHOLOGY RESEARCH 119, 119–44 (J.R. Marrow ed., 2006); Deryn Strange et al., *Drawing Out Children's False Memories*, 17 APPLIED COGNITIVE PSYCHOL. 607, 607–19 (2003) (finding that drawing can prompt children to falsify information and events).

210. "Clinical and forensic psychologists interviewing allegedly abused children may thus use human figure drawings to identify body parts, aid the recall of specific information, or clarify verbal reports, in much the same way that anatomically detailed (AD) dolls have been used." Brown et al., *supra* note 157, at 34.

found “[t]he symbolic nature of pictures is more easily appreciated by young children than that of dolls.”<sup>211</sup> Despite this assertion, the authors vocalized their doubt about a child’s ability to use such drawings appropriately in a forensic interview setting.<sup>212</sup>

Using children ages five to seven years old, the study involved a staged event where one researcher who was dressed as a photographer made several innocuous touches during each trial.<sup>213</sup> The children were subsequently divided into three groups: (1) a group using human figure drawings; (2) a group using human figure drawings with instructions; and (3) a group using verbal questions only.<sup>214</sup> The participating children were then interviewed approximately four to six weeks after the staged event.<sup>215</sup> For every interview, the researchers implemented the National Institute of Child Health and Human Development protocol.<sup>216</sup>

## 1. Results

### a. Ineffective

According to their report, “the majority of children reported new information when the drawings were presented, even though this followed exhaustive verbal interviews.”<sup>217</sup> Notwithstanding those findings, children who were never introduced to drawings reported new information as well.<sup>218</sup> Moreover, more than half of the children in the drawing-only group were unable to report any touches at all.<sup>219</sup> “[C]hildren in the drawing-with-instruction group reported more incorrect information than children in the verbal questions group. Children in the drawing-only group reported as many incorrect touches as those who had instruction, but . . . they did not differ significantly from those in the verbal recall group.”<sup>220</sup> Additionally, they stressed, “when introduced at the end of an interview to elicit new information, drawings and questions about touch at best do not

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211. *Id.*

212. *Id.*

213. *Id.* at 35.

214. *Id.* at 35–36.

215. *Id.* at 35.

216. *Id.*

217. *Id.* at 37.

218. *Id.*

219. *Id.* Despite being touched seven times during the staged event, 58% of the children in this group did not report any touches. *Id.*

220. *Id.*

substantially improve recall and at worst may elicit inaccurate information.”<sup>221</sup>

b. Inaccurate

Interestingly, children from the drawing-only group reported more forensically relevant touches than children from the verbal recall group.<sup>222</sup> No matter the group, however, “more than half of the information reported in response to open questions about touch was inaccurate.”<sup>223</sup> Although the researchers recognized that part of this inaccuracy stems from the fact that such touches were unmemorable, they still concluded that “drawings with or without instructions in their use both led to substantial increases in reports of touches that had not occurred.”<sup>224</sup> While the researchers suggest it may be beneficial to include instructions when using drawings, they reiterated that the instructions were not as helpful as they originally anticipated.<sup>225</sup>

Because children from the drawing-only group were the least likely to provide further detail after reporting a touch than the other groups, the researchers stressed the importance of asking open-ended questions for elaboration.<sup>226</sup> “Without verbal elaboration, reports of touches using a body map may be inaccurate at least in part because children locate them imprecisely.”<sup>227</sup>

c. Not suggestive

To conclude, the researchers found “the drawings themselves did not appear to be inherently suggestive, even though the figures were unclothed; they elicited few forensically relevant details, no more than when children were asked about touch without the drawings.”<sup>228</sup>

C. *Research Supporting Use of Anatomical Diagrams*

Despite the recent conclusions of Poole and Dickinson’s 2011 study, the advocates in support of anatomical diagrams have been able to validate the

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221. *Id.* at 41.

222. *Id.* at 39.

223. *Id.*

224. *Id.* at 40.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* at 41.

usefulness of the diagrams. Overall, “[r]esearch does appear to support the use, when developmentally appropriate, of diagrams as a symbol, both in regard to the ability of children to use diagrams in this manner as well as the potential benefit of diagrams in eliciting details of children’s experiences.”<sup>229</sup>

Regarding the suggestibility controversy, some researchers have found that “anatomical diagrams, due to their two-dimensional nature, may be less suggestive than anatomical dolls because diagrams do not invite exploration of orifices from curious children.”<sup>230</sup> Moreover, “there is a . . . lack of research indicating that anatomical diagrams facilitate disclosure of private-part touching in children who have not had such experiences.”<sup>231</sup> In fact, research has shown that children that have never been exposed to sexual contact “will not reenact sexualized behaviors . . . without some external or preexisting sexual knowledge.”<sup>232</sup> Additionally, research indicates that children are not prone to falsify past *traumatic* events.<sup>233</sup> This is why anatomical diagrams have been excellent indicators of sexual abuse, because children who have suffered abuse often display advanced sexual knowledge with the diagrams.<sup>234</sup> Furthermore, although anatomical diagrams are unclothed, researchers have concluded that the diagrams are not “inherently suggestive.”<sup>235</sup>

229. Anderson et al., *supra* note 12, at 289.

230. *Id.* at 284–85 (citing MARGARET S. STEWARD ET AL., INTERVIEWING YOUNG CHILDREN ABOUT BODY TOUCH AND HANDLING, Serial No. 248, MONOGRAPHS OF THE SOC’Y FOR RES. IN CHILD DEV. 61 (1996)).

231. *Id.* at 286.

232. Russell, *supra* note 10 (citing Everson & Boat, *supra* note 71, at 741).

233. MYERS, *supra* note 36, at 22–23 n.89 (quoting Kathy Pezdek & Jennifer Taylor, *Memory for Traumatic Events in Children and Adults*, in MEMORY AND SUGGESTIBILITY IN THE FORENSIC INTERVIEW 165 (Michael L. Eisen et al. eds., 2002) (“Most of the research . . . characterizes memory for traumatic events as generally correct, although by no means perfect, and in many ways similar to memory for more normally nontraumatic events.”)).

234. *See, e.g., In re WB*, No. 238613, 238614, 2002 WL 31058343 (Mich. Ct. App. Sept. 13, 2002). The therapist, who used an anatomical drawing during the interview, found that the child’s descriptive accounts of sexual abuse “reflected [the child’s] actual experience” and was “not a fabrication.” *Id.* at \*7.

235. Anderson et al., *supra* note 12, at 286–87 (quoting Brown et al., *supra* note 157, at 41).



#### D. *Diagrams' Utility Within the Forensic Interview*

Information obtained through the forensic interview setting is crucial in the administration of justice. Because anatomical diagrams help children communicate exactly where they were touched and how the alleged abuse occurred,<sup>236</sup> anatomical diagrams routinely play an important role in the state's case. Anatomical diagrams have granted clarification respecting the child's language for both forensic interviewers and juries over the years.<sup>237</sup>

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236. See, e.g., *Carter v. Director, TDCJ-CID*, No. 4:09CV600, 2013 WL 1278963, at \*2 (E.D. Tex. Mar. 8, 2013); *Schwartz v. Cain*, Nos. 12-1897, 12-2142, 2012 WL 5956308, at \*6 (E.D. La. Nov. 13, 2012); *Eason v. King*, No. 2:09cv116-KS-MTP, 2010 WL 3122789, at \*12 (S.D. Miss. Mar. 25, 2010); *U.S. v. Cook*, ARMY20060261, 2008 WL 8105411, \*1 (A. Ct. Crim. App. Feb. 26, 2008); *J.B.B. v. Ala. Dep't of Human Res.*, 2110550, 2110568, 2013 WL 135569, at \*5 (Ala. Civ. App. Jan. 11, 2013); *Steele v. State*, 911 So. 2d 21, \*24 (Ala. Crim. App. 2004); *State v. Morales*, 694 A.2d 1356, 1360 (Conn. App. Ct. 1997); *In re Jahzline F.*, Nos. W10CP09015781A, W10CP09015782A, 2011 WL 2177105, at \*5 (Conn. Super. Ct. May 11, 2011); *State v. Lloyd*, 1996 WL 33347482, at \*6-7 (Del. Super. Ct. June 11, 1996); *Hargrave v. State*, 717 S.E.2d 485, 489 (Ga. Ct. App. 2011); *Cortez v. State*, 648 S.E.2d 488, 491 (Ga. Ct. App. 2007); *Cheek v. State*, 593 S.E.2d 55, 56 (Ga. Ct. App. 2003); *Green v. State*, 426 S.E.2d 65, 66 (Ga. Ct. App. 1992); *Rosales-Martinez v. State*, 810 N.W.2d 26, \*1 (Iowa Ct. App. 2011); *State v. Shaw*, 987 So.2d 398, 400 (La. Ct. App. 2008); *State v. Dykes*, 867 So. 2d 908, \*3 (La. Ct. App. 2004); *Anderson v. State*, 62 So. 3d 927, 932 (Miss. 2011); *Collins v. State*, 70 So. 3d 1144, 1146 (Miss. Ct. App. 2011); *T.K. v. H.K.*, 24 So. 3d 1055, 1063 (Miss. Ct. App. 2010); *State v. Mayes*, 825 P.2d 1196, 1200 (Mont. 1992); *Matter of T.C.*, 784 P.2d 392, 393 (Mont. 1989); *Matter of Linda S.*, 560 N.Y.S.2d 181, 182 (N.Y. Fam. Ct. 1990); *State v. Dobbs*, 710 S.E.2d 709, \*2 (N.C. Ct. App. 2011); *State v. Hines*, 639 S.E.2d 143, at \*1 (Ga. Ct. App. 2006); *State v. Hedges*, No. 11-CA-39, 2013 WL 1777224, at \*1 (Ohio Ct. App. Apr. 22, 2013); *State v. Johnson*, No. 90961, 2008 WL 5259722, at \*1 (Ohio Ct. App. Dec. 18, 2008); *State v. Winterich*, No. 89581, 2008 WL 1747433, at \*2 (Ohio Ct. App. Apr. 17, 2008); *State v. Edinger*, No. 05AP-31 2006, WL 827412, at \*16 (Ohio Ct. App. Mar. 30, 2006); *State v. Bailey*, No. M2012-0054-CCA-R3-CD, 2013 WL 781937, at \*3 (Tenn. Crim. App. Mar. 4, 2013); *Chavez v. State*, 324 S.W.3d 785, 787 (Tex. App. 2010); *Johnston v. State*, 230 S.W.3d 450, 452 (Tex. App. 2007); *State v. Weeks*, 628 A.2d 1262, 1263 (Vt. 1993).

237. See, e.g., *Henington v. State*, 378 S.W.3d 196, 198 (Ark. Ct. App. 2010); *State v. Claudio C.*, 11 A.3d 1086, 1093 n.4 (Conn. App. Ct. 2010); *Wilkinson v. State*, 979 A.2d 1111, \*1 n.2 (Del. 2009); *Hamrick v. State*, 696 S.E.2d 403, 404 n.4 (Ga. Ct. App. 2010); *State v. Montgomery*, 82 P.3d 818, 822 (Haw. Ct. App. 2003); *People v. Jackson*, 2012 IL App 3d 100312-U, at \*1 (Ill. 2012); *People v. Learn*, 919 N.E.2d 1042, 1046 (Ill. App. Ct. 2009); *People v. March*, 250 Ill. App. 3d 1062, 1078 (Ill. App. Ct. 1993); *State v. Randolph*, 301 P.3d 300, 303 (Kan. 2013); *State v. Miller*, 264 P.3d 461, 475-76 (Kan. 2011); *State v. Lilly*, 111 So. 3d 45, 61 (La. Ct. App. 2012); *State v. Hawkins*, 78 So. 3d 293, 297 (La. Ct. App. 2011); *State v. Schwartz*, No. A12-0465, 2013 WL 776754, at \*5 (Minn. Ct. App. Mar. 4, 2013); *State v. Edwards*, 365 S.W.3d 240, 250 (Mo. Ct. App. 2012); *State v. Benn*, 341 S.W.3d 203, 205 (Mo. Ct. App. 2011); *In re L.F.*, C.A. No. 10CA09880, 2012 WL 256557, at \*7 (Ohio Ct. App. Jan. 30, 2012); *State v. Gutierrez*, No. 5-10-14, 2011 WL 2534623, at \*18 (Ohio Ct. App. June 27,

In this regard, anatomical diagrams essentially provide a way for others to understand how a child identifies body parts and ultimately establish a common language throughout the life of the case.<sup>238</sup> In essence, affording a child a method of communication during the forensic interview is the first step in holding offenders accountable.<sup>239</sup> All these benefits are in danger if opponents of diagrams prevail.

Even if a child is not found competent to testify at trial, evidence from a forensic interview still can fall under exceptions to hearsay, such as the exception for purposes of medical diagnosis or treatment. In *State v. D.H.*,<sup>240</sup> the alleged victim was three years old at the time of the interview.<sup>241</sup> Avoiding leading questions and using anatomical drawings for body part identification, the interviewer found the child's responses were reflective of the child's developmental abilities.<sup>242</sup> After her forensic interview, the

2011); *Com. v. Barnett*, 50 A.3d 176, 185 n.3 (Pa. Super. Ct. 2012); *State v. Biggs*, 218 S.W.3d 643, 651 (Tenn. Crim. App. 2006); *Duran v. State*, No. 05-09-00264-CR, 2010 WL 4611769, at \*2 (Tex. App. Nov. 16, 2010); *Gaona v. State*, No. 13-08-342-CR, 2010 WL 2543909, at \*4 (Tex. App. June 24, 2010); *In re Q.D.M.T.*, No. 14-07-00470-CV, 2008 WL 4911889, at \*2 (Tex. App. Nov. 13, 2008); *State v. Denis L.R.*, 699 N.W.2d 154, 157 (Wis. 2005).

238. See, e.g., *State v. Lachowicz*, No. CR94145357, 2004 WL 1194063, at \*1 (Conn. Super. Ct. May 10, 2004); *King v. State*, 603 S.E.2d 54, 55 (Ga. Ct. App. 2004); *People v. Christoff*, 2013 Il App (5th) 110482-U, at \*2 (Ill. 2013); *People v. Sewell*, No. 2-10-0253, 2011 WL 10109456, at \*3 (Ill. App. Ct. Apr. 12, 2011); *People v. Sandefur*, 378 Ill. App. 3d 133, 144 (Ill. App. Ct. 2007); *People v. Embry*, 619 N.E.2d 246, 250 (Ill. App. Ct. 1993); *State v. Morris*, 196 P.3d 422, 427 (Kan. Ct. App. 2008); *State v. Wadlow*, 370 S.W.3d 315, 319 (Mo. Ct. App. 2012); *State v. Oliver*, 354 S.E.2d 527, 536 (N.C. Ct. App. 1987); *State v. Brown*, No. 2007 CA 15, 2008 WL 2587050, at \*1 (Ohio Ct. App. June 23, 2008); *In re Dustin*, No. 98-L-034 199, WL 956880, at \*2 (Ohio Ct. App. Sept. 30, 1999); *In re Corry M.*, 730 N.E.2d 1047, 1049 (Ohio Ct. App. Sept. 7, 1999).

239. See, e.g., *Thompson v. McKune*, No. 12-3016-SAC, 2013 WL 211069, at \*1 (D. Kan. Jan. 18, 2013); *Maurer v. State*, 740 S.E.2d 318, 321 (Ga. Ct. App. 2013); *In re R.C.H.*, 706 S.E.2d 686, 689 (Ga. Ct. App. 2011); *McCullough v. State*, 973 N.E.2d 62, 67 (Ind. Ct. App. 2012); *State v. Gaona*, 270 P.3d 1165, 1171 (Kan. 2012); *State v. Carper*, 107 So. 3d 118, 132 (La. Ct. App. 2012); *Lambert v. State*, 101 So. 3d 1172, 1173 (Miss. Ct. App. 2012); *Allred v. State*, 908 So. 2d 889, 890 (Miss. Ct. App. 2005); *State v. Mason*, 834 A.2d 339, 342 (N.H. 2003); *State v. Frye*, 629 S.E.2d 621, \*2 (N.C. Ct. App. 2006); *In re K.A.*, 631 S.E.2d 893, \*1 (N.C. Ct. App. 2006); *State v. Lewis*, 616 S.E.2d 1, 4 (N.C. Ct. App. 2005); *State v. King*, No. L-08-1126, 2010 WL 334910, at \*2 (Ohio Ct. App. Jan. 29, 2010); *In re Lennon*, No. 2002CA00373, 2003 WL 21185947, at \*2 (Ohio Ct. App. May 19, 2003); *Graham v. State*, No. 03-05-00396-CR, 2006 WL 2589231, at \*6 (Tex. App. Sept. 8, 2006); *Smith v. State*, 88 S.W.3d 652, 655 (Tex. App. 2002).

240. *State v. D.H.*, No. 07AP-73, 2007 WL 3293361 (Ohio Ct. App. Nov. 8, 2007).

241. *Id.* at \*3.

242. *Id.* at \*3-\*4.

interviewer shared the information with the medical examiner.<sup>243</sup> Despite the child's testimonial incompetency, the statements made during the interview were presumptively reliable.<sup>244</sup>

Statements made for purposes of medical diagnosis or treatment are not the only exceptions to hearsay. In *State v. Church*,<sup>245</sup> the court recognized an excited utterance exception within the forensic interview context.<sup>246</sup> During the interview, the investigator introduced an anatomical drawing, which prompted an abuse disclosure from the child.<sup>247</sup> The court of appeals concluded, "based on the circumstances of this case, that because the statement was spontaneous, because the victim was of such a young age, and because her statements did not indicate a reflective process, the statement constituted an excited utterance."<sup>248</sup>

Although witnesses are not permitted to vouch for another witness's credibility, forensic interviewers are allowed some leeway depending on the circumstances. In *State v. Mueller*,<sup>249</sup> the forensic interviewer incorporated anatomical drawings in the interview<sup>250</sup> and later testified as to each child's ability to utilize the drawings based on her own developmental ability.<sup>251</sup> The court of appeals denied that this testimony amounted to improper vouching, because the interviewer never commented on the children's credibility.<sup>252</sup> In effect, "the testimony of the social worker regarding both consistencies and inconsistencies in the forensic interviews of children was not error."<sup>253</sup>

While courts have been willing to accept anatomical diagrams, courts do not permit such tools unconditionally. In *In re Abraham P.*,<sup>254</sup> an investigator faced serious consequences for not following protocol.<sup>255</sup> Accordingly, there were specific guidelines and even limitations for using

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243. *Id.* at \*3.

244. *Id.* at \*10 (quoting *State v. Muttart*, 875 N.E.2d 944, 954 (Ohio 2007)).

245. *State v. Church*, No. 09-CA-68, 2010 WL 1045466 (Ohio Ct. App. Mar. 12, 2010).

246. *Id.* at \*5.

247. *Id.* at \*1.

248. *Id.* at \*5.

249. *State v. Mueller*, No. A12-1353, 2013 WL 3155412 (Minn. Ct. App. June 24, 2013).

250. *Id.* at \*1.

251. *Id.* at \*2.

252. *Id.* at \*3-\*4.

253. *Id.* at \*4.

254. *In re Abraham P.*, 875 N.Y.S.2d 818 (Fam. Ct. 2008).

255. *Id.* at \*9.

anatomical drawings.<sup>256</sup> Not only did the investigator not clarify the meaning of the child's terminology, but also she introduced a new term that the child subsequently adopted.<sup>257</sup> To make matters worse, the investigator even failed to clarify the adopted term.<sup>258</sup> As a result of this sloppy forensic interview, the family court found no credibility in the investigator's testimony at trial.<sup>259</sup> If this occurs too often, diagrams could be banned. Adoption of training and certification procedures is therefore prudent.<sup>260</sup>

#### E. *Controversy Threatens Benefits from Diagrams*

Amid all the controversy anatomical diagrams have sparked recently—particularly in regard to Poole and Dickinson's research, there are many reasons not to discount the practicality of these interview tools. Anatomical diagrams serve a myriad of purposes and their benefits often extend beyond the scope of the forensic interview.<sup>261</sup> Prosecutors should fight to keep diagrams, because they help in anatomy identification,<sup>262</sup> gender differentiation,<sup>263</sup> developing a common language,<sup>264</sup> naming body parts,<sup>265</sup>

256. *Id.* at \*7.

257. *Id.*

258. *Id.*

259. *Id.* at \*9.

260. See *infra* Part IV (recommending training and certification procedures).

261. See *supra* Part III.D.

262. After the interviewer has established rapport with the child, anatomical diagrams are useful to secure a foundation to the substantive portion of the interview. See Anderson et al., *supra* note 12, at 273. When introduced this early in the interview, anatomical diagrams have a twofold purpose. First, a forensic interviewer may use anatomical diagrams to determine if a young child has the ability to distinguish between male and female genders. *Id.* Second, anatomical diagrams are effective to bridge the gap between the child's language and the adult's understanding of that language. *Id.* Establishing a common language is absolutely critical in the forensic interview, because children oftentimes may reference body parts with unique terminology. Without the use of anatomical diagrams for anatomy identification, prosecutors are left with interview testimony that is more vulnerable to attack by defense attorneys, as the child's competency is questionable.

263. Testing the child's ability to differentiate between genders is necessary to eliminate the interviewer's potential assumptions—which would otherwise be an obstacle to achieving credible testimony—and thus to avoid any suspicion of suggestibility, especially when dealing with a child five years old or younger. *Id.* at 274–75. By displaying two anatomical diagrams—one male and one female—and requesting the child to point to the diagram that is similar to him, the interviewer can become aware of the child's understanding. *Id.* at 275. Employing anatomical diagrams for gender differentiation is informative of “the child's developmental ability to use diagrams as a tool for naming body parts” and further assists the

serving as a symbolic aid or model,<sup>266</sup> memory cue, assisting as a touch inquiry tool, clarification and corroboration, and providing a demonstrative aid.

Like anatomical dolls, anatomical diagrams may trigger a child's memory about a certain sexual experience.<sup>267</sup> "Supporting this use is research suggesting that props and concrete cues may be more effective in

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interviewer in managing the remainder of the interview in a way that is developmentally appropriate for the child's specific needs. *Id.*

264. In order for an interviewer to adequately discuss the different parts of the body with the child, a common language must be found. *Id.* at 276. "Using the diagrams to establish a common language allows children the opportunity to name body parts using their own words and circumvents the risk of interviewers making assumptions about a child's understanding, use, and intended meaning of the words the child uses to reference body parts." *Id.* Not only does the use of anatomical diagrams in this manner decrease the risk of miscommunication, but also it provides additional benefits for the child's testimony by removing barriers of suggestibility and maintaining credibility. First, permitting the child to label body parts gives him the chance to use words of his choosing, rather than those of the interviewer. *Id.* Second, the process of naming body parts and finding a common language with anatomical diagrams is another way to develop rapport or assess the child's developmental abilities. *Id.* (citing WENDY BOURG ET AL., A CHILD INTERVIEWER'S GUIDEBOOK 124 (1999)). Third, diagrams, like other testimonial aids, are important icebreakers. *Id.* As an icebreaker, anatomical diagrams facilitate communication, because they make the child more comfortable about discussing body parts before the actual substantive portion of the interview ensues. *Id.*

265. Diagrams are incredibly useful to secure names for various body parts. Holmes & Finnegan, *supra* note 132. Allowing the child to name body parts is most effective with children nine years old and younger. Anderson et al., *supra* note 12, at 276. When an interviewer requests a child to name different parts of the body on a gender specific anatomical diagram, he is actually preventing underlying suggestibility that could result in impeachable testimony. A child cannot give a wrong answer to a particular body part, as not every child will use the same terminology. *Id.* at 277. "When children are allowed to show or tell what they mean in their own words, rather than the interviewer's words, the likely result is enhanced consistency between the interviewer's understanding of a child's words (i.e., names for body parts) and the child's intended meaning of his or her words." *Id.*

266. Depending on the child's developmental abilities, anatomical diagrams can be used as a symbol for both genders or can even be implemented as a representation of the child. Anderson et al., *supra* note 12, at 280. Accordingly, "the power of symbols derives from the fact that they are virtually never identical to their referents, thereby making it possible to use one to draw inferences about the other without risk of confusing them." *Id.* (quoting Judy S. Deloache & Tanya Sharon, *Symbols and Similarity: You Can Get Too Much of a Good Thing*, 6 J. OF COGNITION & DEV. 33, 33 (2005)). Moreover, because anatomical diagrams are two-dimensional and do not provide much potential for play, they are typically preferred over anatomical dolls to serve as models. *Id.* at 281.

267. AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, *supra* note 137, at 5.

prompting memories in young children than are verbal cues or questions.<sup>268</sup> Along those lines, diagrams can initiate spontaneous<sup>269</sup> statements that uncover the child's advanced sexual knowledge or experiences.<sup>270</sup> It can also spark memories regarding other occurrences involving the offender.<sup>271</sup>

Because "the use of graphics facilitates communication and enhances memory, inviting children's knowledge and thus credibility,"<sup>272</sup> anatomical diagrams are beneficial when dealing with young children.<sup>273</sup> As such, prosecutors must advocate for standardization and consistency to maintain this valuable tool.

There is now clear evidence that cues and props can help children provide more complete event reports than they would normally provide in a free-recall account . . . Interviewers must, of course, always be aware of the risk that these retrieval techniques might reduce the accuracy of reports. The effect on accuracy appears to depend on the nature of the cues and props, the way they are presented, and how children are instructed to use them.<sup>274</sup>

Anatomical diagrams that are accessible when the interviewer questions the child about touch are beneficial to the production of key evidence.<sup>275</sup> The child has the option to expressly answer the inquiries or, in the alternative, use the diagram to identify relevant body parts.<sup>276</sup> Because the

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268. *Id.* (citing Nelson & Ross, *The Generalities and Specifics of Long-Term Memory in Infants and Young Children*, in 10 NEW DIRECTIONS FOR CHILD DEVELOPMENT, CHILDREN'S MEMORY 87-101 (M. Perlmutter ed., 1980)).

269. *See, e.g., In re Walter B.*, 592 N.E.2d 274 (Ill. App. Ct. 1992). Child volunteered details of abuse after being shown an anatomical drawing. *Id.* at 276.

270. *See* AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, *supra* note 137, at 5.

271. Holmes & Finnegan, *supra* note 132 (citing BOURG ET AL., *supra* note 264).

272. Anderson et al., *supra* note 12, at 281 (quoting ANN AHLQUIST, CHILD MALTREATMENT, DOMESTIC VIOLENCE AND COGNITIVE GRAPHIC INTERVIEW 63 (1997)).

273. *Id.* at 282 (quoting Aldridge et al., *supra* note 157, at 310).

274. MYERS, *supra* note 36, at 32 (quoting Margaret-Ellen Pipe et al., *Cues, Props, and Context: Do They Facilitate Children's Event Reports?*, in CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY 25, 26 (1993)).

275. Anderson et al., *supra* note 12, at 297; Holmes & Finnegan, *supra* note 132 (citing AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, PRACTICE GUIDELINES: INVESTIGATIVE INTERVIEWING IN CASES OF ALLEGED CHILD ABUSE (2002)).

276. Anderson et al., *supra* note 12, at 297.

touch inquiry is a critical stage in the interview, prosecutors should advocate for the use of diagrams as a means to help child victims provide details—information that strengthens their case-in-chief—about the abuse.

Consequently, if a touch inquiry subsequently leads the interviewer to pursue the next stage of the interview, anatomical diagrams are practical for clarifying a young child's account of abuse.<sup>277</sup> In this way, diagrams are often used in tandem with verbal responses and are not meant to replace verbal responses.<sup>278</sup> For instance, once a child has reported abuse, a child may then point to the specific body parts affected on the anatomical diagram.<sup>279</sup> "This is particularly useful if the child and interviewer have yet to establish a common language for body parts prior to the child's disclosure, if the child uses multiple words to reference a single body part,<sup>280</sup> or if the child uses one word to describe multiple parts of the body."<sup>281</sup>

Similarly, anatomical diagrams are important corroborative tools because they provide a second opportunity for the child to show consistency in sharing his experience.<sup>282</sup> In this regard, interview aids are essential for confirming a potential disclosure of abuse and avoiding miscommunication.<sup>283</sup> Importantly, interviewers who cannot get a child to corroborate his story using anatomical diagrams should consider that the child's story might have been negatively influenced.<sup>284</sup> In effect, even defendants have raised concerns when anatomical diagrams have not been used to validate a child's report.<sup>285</sup>

"[I]nterviewers can ask children to indicate on the diagrams where sexual touching occurred."<sup>286</sup> This is an effective way to get information from

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277. *Id.* at 309.

278. Holmes & Finnegan, *supra* note 132.

279. Anderson et al., *supra* note 12, at 309.

280. See, e.g., *State v. Denis L.R.*, 699 N.W.2d 154, 157 (Wis. 2005); *Gerhardt v. State*, No. 08-10-00007-CR 2011 WL 4062493, \*5 (Tex. App. Sept. 14, 2011).

281. Anderson et al., *supra* note 12, at 309.

282. *Id.*

283. See, e.g., AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, *supra* note 137, at 5.

284. See, e.g., *L.S. v. C.T.*, 760 N.W.2d 145 (S.D. 2009). Because the child could not identify "the stick" body part on the anatomical drawing, the forensic interviewer "express[ed] concerns that [the child's] beliefs may have been subjected to suggestion." *Id.* at 149–50, 154.

285. See, e.g., *Mallet v. State*, 9 S.W.3d 856, 864 (Tex. App. 2000).

286. Holmes & Finnegan, *supra* note 132 (citing AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, *supra* note 275).

children about any prior abuse,<sup>287</sup> as it is well recognized that children, especially young children, are unable to fully communicate verbally.<sup>288</sup> “Many children can show what they cannot tell, and children may use dolls or other props to help them testify.”<sup>289</sup> While children are often competent witnesses, they do not think or disclose information the same way as adults, which may attribute to their verbal limitations.<sup>290</sup> Thus, prosecutors often rely on the information derived from anatomical diagrams used as a demonstrative aid.

The continued use of anatomical diagrams as a critical procedure in the forensic interview requires prosecutors to take action. Anatomical diagrams are useful tools that can be protected from restriction and can dispel the criticisms of inconsistent and questionable results if *guidelines* are implemented. To counteract the criticisms, prosecutors must advocate for a standard procedure that incorporates necessary guidelines to maintain the integrity of anatomical diagrams within the forensic interview.

#### IV. PROPOSAL

Anatomical diagrams—like their predecessors, anatomical dolls—have helped young children tell their stories. But the use of that valuable tool is threatened by suggestions in Dr. Poole and Dickinson’s article that diagrams are prejudicial and ultimately must be restricted. Because prosecutors have a special duty to assure justice rather than simply win cases, they should take a proactive stand on anatomical diagrams by establishing a standard procedure for diagram use.

Rallying for the implementation of a standard procedure will protect anatomical diagrams from any potential restriction stemming from the critical undertones of Dr. Poole and Dickinson’s research. Uniform certification—through the American Bar Association—will safeguard any anatomical diagram evidence derived from the forensic interview. Uniform certification will allow different forensic interview protocols to be used, though the preference would be to complete a protocol training that offers flexible boundaries for the use of anatomical diagrams—like RATAC. No matter the forensic interview protocol chosen, uniform certification will

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287. *Id.* (citing to BOURG ET AL., *supra* note 264).

288. Everson & Boat, *supra* note 52, at 114 (citing Berliner, *supra* note 55, at 469).

289. MYERS, *supra* note 36, at 151.

290. Anderson et al., *supra* note 12, at 202.



guarantee that interviewers have been trained thoroughly in using questions that are legally permissible.

Uniform certification will require interviewers to adhere to several guidelines when incorporating anatomical diagrams into their interviews to maintain the integrity of the process. Importantly, the certification will require interviewers to know *when* leading and suggestive questions are appropriate, as these questions can be problematic without requisite limitations.<sup>291</sup> Additionally, certification will require interviewers to know how to question a child based on his developmental capacity. As the courts in past cases have heavily critiqued the issue of suggestibility,<sup>292</sup> interviewers must use the right questioning techniques—which may be slightly different from child to child—so that the child’s testimony is admissible in court.<sup>293</sup> In fact, it has been found that interviewers who employ *developmentally appropriate* questioning have greater success against the dangers of suggestibility—thus keeping the child’s testimony reliable.<sup>294</sup> While age may contribute somewhat to overall suggestibility, children are just as capable as adults to recall numerous details that are completely accurate provided that the interviewer does not continuously prompt the child with impermissibly suggestive questioning.<sup>295</sup> Being sensitive to the child’s language and cognitive abilities “establishes comfort for the child, reduces issues of suggestibility in the interview and prevents interviewer confusion or misperception of the child’s report.”<sup>296</sup> By allowing children to use their own words and then demonstrate the corresponding meaning on an

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291. *Id.* at 287 (citing Michael E. Lamb, *The Investigation of Child Sexual Abuse: An Interdisciplinary Consensus Statement*, 3 J. OF CHILD SEXUAL ABUSE 93 (1994)). Like dolls, anatomical diagrams “are unlikely to pose any serious investigative difficulties, provided the interviewers avoid overly suggestive questions.” *Id.* (quoting Lamb, *supra*).

292. *See* State v. Michaels, 642 A.2d 1372, 1378–79 (N.J. 1994) (finding the use of suggestive questioning essentially can distort a child’s memory and undermine his testimony).

293. MYERS, *supra* note 36, at 43.

294. Anderson et al., *supra* note 12, at 212 (citing Molly C. Imhoff & Lynne Baker-Ward, *Preschoolers’ Suggestibility: Effects of Developmentally Appropriate Language and Interviewer Supportiveness*, 20 J. OF APPLIED DEVELOPMENTAL PSYCHOL. 407, 407 (1999)).

295. Stephen J. Ceci et al., *Repeatedly Thinking About a Non-Event: Source Misattributions Among Preschoolers*, 3 CONSCIOUSNESS & COGNITION 388, 389 (1994). “[Y]oung children perform quite well—until and unless an interviewer persists in making repeated erroneous suggestions or subtly rewards the child for inaccurate answers.” *Id.*

296. Russell, *supra* note 10 (citing Holmes & Finnegan, *supra* note 132).

anatomical diagram, the interviewer aids the prosecution in gaining credible testimony.

Certification will prevent the child's truthfulness from being subjected to a cloud of serious doubt and speculation when suggestive questions are used in conjunction with anatomical diagrams. If an interviewer finds it necessary to ask a suggestive question, certification will require that it should be followed by an open-ended question.<sup>297</sup> Not only does this compel the child to recount more details and may clear up any misconceptions that attached to the child's original answer,<sup>298</sup> but also it helps guarantee the testimony will not be *tainted* for subsequent prosecutorial use—especially when this testimony was attained at the same time diagrams were used during the interview.

Certification will provide interviewers with the skills to know when and how to use open-ended questions effectively. When an interviewer first presents anatomical diagrams to the child, the interviewer primarily must implement open-ended questions.<sup>299</sup> This will virtually eliminate the potential for suggestibility that is typically associated with the use of anatomical diagrams and more leading questions.<sup>300</sup> Although it is impossible for interviewers to use exclusively open-ended questions during the entire duration of the interview, open-ended questions should be employed to prompt discussions of abuse.<sup>301</sup>

To avoid influencing the child's testimony, certification will train interviewers to exercise caution when asking yes-no questions and, as with suggestive questions, will require that all answers be followed-up with open-ended questions.<sup>302</sup> The interviewer must be cognizant of yes-no questions, as the improper use of such questions could severely compromise the child's testimony. While not prohibited within the forensic interview

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297. MYERS, *supra* note 36, at 50.

298. Anderson et al., *supra* note 12, at 288.

299. *Id.* (citing Aldridge et al., *supra* note 157, at 310; Mark D. Everson & Barbara W. Boat, *The Utility of Anatomical Dolls and Drawings in Child Forensic Interviews*, in MEMORY AND SUGGESTIBILITY IN THE FORENSIC INTERVIEW 383, 384 (Mitchell L. Eisen et al. eds., 2002); Michael E. Lamb et al., *Conducting Investigative Interviews of Alleged Sexual Abuse Victims*, 22 CHILD ABUSE & NEGLECT 813 (1998)).

300. *Id.*

301. See MYERS, *supra* note 36, at 46 (quoting James M. Wood et al., *Suggestions for Improving Interviews in Child Protection Agencies*, 1 CHILD MALTREATMENT 223, 224–25 (1996)).

302. Anderson et al., *supra* note 12, at 234.

context,<sup>303</sup> yes-no questions are not as optimal as open-ended questions for a few reasons. Yes-no questions do not give the child much opportunity to converse with the interviewer. As a result, yes-no questions can be leading, and use of these questions may cause the child's testimony to be deemed unreliable, as the threat of suggestibility with these questions is extensive.<sup>304</sup>

Certification will reinforce certain techniques to better protect against the dangers of bias. To successfully sustain an accurate abuse conviction, interviewers must keep an open mind throughout the interview and not rely on assumptions.<sup>305</sup> "Research indicates that interviews conducted in a biased manner can influence the accuracy of the children's reports."<sup>306</sup> This is especially true in scenarios where the child may have experienced some form of ambiguous touch.<sup>307</sup> An interviewer who does not guard his assumptions can indirectly manifest that feeling to a child, which can be confusing to a child who has experienced an ambiguous touch and may coincidentally lead the child to go along with the interviewer's viewpoint.<sup>308</sup> When this occurs, the child's testimony becomes prone to impeachment. Additionally, anatomical diagrams must display both front and back features so as to prevent unwarranted notions of bias.<sup>309</sup> No matter the child's alleged situation, interviewers need to show anatomical diagrams of both genders—again to dispel the potential for bias.<sup>310</sup> Although it is necessary to present a diagram of the child's gender initially, both genders must be incorporated for neutrality purposes.<sup>311</sup> Interviewers should take all

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303. *Id.* at 233–34.

304. Sometimes there is a potential for a response bias when the interviewer is using yes-no questions with young children. *Id.* at 234.

305. MYERS, *supra* note 36, at 47.

306. Anderson et al., *supra* note 12, at 315 (citing CECI & BRUCK, *supra* note 20, at 92).

307. MYERS, *supra* note 36, at 29 (citing William C. Thompson et al., *What Did the Janitor Do? Suggestive Interviewing and the Accuracy of Children's Accounts*, 21 LAW & HUM. BEHAV. 405, 405–26 (1997)).

308. *Id.* (citing Karen J. Saywitz, *Developmental Underpinnings of Children's Testimony*, in CHILDREN'S TESTIMONY: A HANDBOOK OF PSYCHOL. RESEARCH AND FORENSIC PRACTICE 3, 9–10 (Helen L. Westcott et al. eds., 2002)).

309. Anderson et al., *supra* note 12, at 274 (citing CORNERHOUSE INTERAGENCY CHILD ABUSE EVALUATION AND TRAINING CENTER, ANATOMICAL DIAGRAMS (2001); A. NICHOLAS GROTH & THOMAS M. STEVENSON, JR., ANATOMICAL DRAWINGS: FOR USE IN THE INVESTIGATION AND INTERVENTION OF CHILD SEXUAL ABUSE (Forensic Mental Health Association, 1984)).

310. *Id.*

311. Holmes & Finnegan, *supra* note 132.

measures to avoid the appearance of bias and must refrain from only showing the child a diagram representative of the alleged offender's gender.<sup>312</sup>

To achieve uniform certification, interviewers also must be trained on certain preliminary matters specifically relating to diagrams. The anatomical diagrams should be an accurate representation of the particular child's age, ethnicity, and physical development, as this will prevent confusion that could discredit the child's testimony.<sup>313</sup> "[E]ffective utilization of anatomical diagrams in a forensic interview necessitates the diagrams employed by interviewers be similar enough to a child's body, and the body parts represented therein, to allow the child to see the diagrams as symbolic of the child himself."<sup>314</sup> This dispenses perceptions that the child was subject to suggestibility. Because children think concretely, interviewers must avoid using diagrams of clothed children.<sup>315</sup> It is best to use diagrams of nude children, especially when identifying and naming various parts of the body.<sup>316</sup> This will allow children to give more accurate descriptions to the jury, which is beneficial for the prosecution's case-in-chief.

Tainting the use of diagrams paints this valuable tool in a bad light. The more opportunity a defense attorney has to object to the use of diagrams, the more likely courts will throw them out. Certification will not only prevent the elimination of diagrams, but also it will guarantee the interviewer has been properly trained. Rather than focusing on restricting diagrams, the focus should be on eliminating the controversy—an achievable goal with uniform certification.

## V. CONCLUSION

No matter on which side of the diagram debate one falls, the focus should remain on ensuring justice is served by convicting child abusers properly, which is precisely why the use of anatomical diagrams in forensic interviews should not be restricted. Providing widespread acceptance—rather than restriction—of anatomical diagrams does not mean that this valuable tool should be used without certain boundaries in place, as this would lead to potential roadblocks for the prosecution regarding the child's

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312. *Id.*

313. *Id.*; Anderson et al., *supra* note 12, at 274.

314. Russell, *supra* note 10.

315. *Id.*

316. *Id.*

testimony. As a result, prosecutors must actively champion for the implementation of a standard procedure for the use of anatomical diagrams. Uniform certification will set aside the potential for harm and will effectuate the primary purpose of the anatomical diagrams, which is to aid victims of child abuse by securing a conviction against their offenders.

By placing guidelines on the use of anatomical diagrams, all parties win—the interests of justice and the interests of the child are equally attained. Children who cannot fully communicate will have an avenue to reveal incidents of abuse in the forensic interview; interviewers will be able to preserve the reliability of the diagrams both during the interview process and at trial; juries will have a greater understanding of each case through the use of the demonstrative aid; and fewer adults will be falsely accused of sexual abuse. And ultimately, anatomical diagrams will continue to play an increasing role in the identification of child sexual abuse victims.