

⁶² USCS Fed. Rules Evid. R. 612.

⁶³ See *State v. Ste. Marie*, 801 So.2d 424, 432 (La. Ct. App. 2001).

⁶⁴ *In re Lisa "Z,"* 699 N.Y.S.2d 810, 813; (N.Y. App. Div. 1999).

⁶⁵ *In re Linda S.*, 148 Misc. 2d 169, 171 (N.Y. Misc. 1990).

⁶⁶ See *In re Breeden*, 1994 Ohio App. LEXIS 5960, *3 and *10 (Ohio Ct. App. 1994).

⁶⁷ See *In re Nicole V.*, 71 N.Y.2d 112 (N.Y. 1987).

⁶⁸ See *Edwards v. State*, 253 Ga. App 479, 559 (2002).

⁶⁹ *Banks v. State*, 279 Ga. App 57 (Ct. App Ga., 2006) (*rev'd* on other grounds).

⁷⁰ *United States v. Archdale*, 229 F.3d 861, 864 (9th Cir. 2000) (The U.S. Court of Appeals deferred to the district judge's decision overruling the objections to the child's use of anatomical diagrams, finding them to be a demonstrative device that would assist a child to testify. The Court of Appeals cited 18 U.S.C. § 359(f) (1994) in this decision.)

⁷¹ *State v. Tjepkes*, 2001 Minn. App. LEXIS 1001 (Minn. Ct. App. 2001).

⁷² *Id.*

⁷³ See *State v. Hollander*, 590 N.W.2d 341 (Minn. Ct. App. 1999).

⁷⁴ *McCormick on Evidence*, §213 (3rd ed., 1984) (finding anatomical diagrams as demonstrative evidence to illustrate oral testimony).

⁷⁵ *State v. Ste. Marie*, *supra* note 61, at 432.

⁷⁶ See *United States v. Paaluh*, 50 M.J. 782, 794 (A.F. Ct. Crim. App. 1999) (*rev'd* on other grounds by *United States v. Paaluh*, 54 M.J. 181 (C.A.A.F. 2000)).

⁷⁷ See *Trusty v. State*, 237 Ga. App. 839, 840 (Ga. Ct. App. 1999) (In court, the child victim circled the penis on the anatomical diagram to indicate what part of the defendant's body the defendant was attempting to insert in her.); *In re Bethel*, 1996 Ohio App. LEXIS 2055, at *3 (Ohio Ct. App. 1996) (The child victim pointed to

the penis on an anatomical diagram to report what part of the appellant's body had touched her butt.).

⁷⁸ *In re Beverly WW*, 159 A.D.2d 802, 803 (N.Y. App. Div. 1990).

⁷⁹ *Mallet v. State*, *supra* note 5, at 864. (The court upheld the conviction.).

⁸⁰ See e.g., Ala. Code § 15-25-5 (2007); Conn. Gen. State. Ann. § 54-86g (2007); Mich. Stat. Ann. § 27A.2163(1) (2007); Mich. Ct. Rule § 3.923(A); N.H. Sup. Ct. Rule 93-A (2007); N.H. Mun. Ct. Rule 1.24 (2007); N.J. Stat. Ann. § 2A:84A-16.1 (2007); N.Y. Crim. Proc. Law § 60.44 (2007); NY Exec. Law § 642-a (2007); 42 Pa. Cons. Stat. Ann. § 5987 (2007); W.Va. Code § 61-8-13(b) (2007); W.Va. Code § 61-8B-11(d) (2007); W.Va. § 61-8C-5 (2007); Wyo. Stat. Ann. § 7-11-408(f) (2007); See also *Frye v. United States*, 54 App. D.C. 46 (1923).

⁸¹ American Prosecutors Research Institute. INVESTIGATION AND PROSECUTION OF CHILD ABUSE, 3rd ed, 2004, at 336.

⁸² CornerHouse is a children's advocacy center located in Minneapolis, Minnesota.

⁸³ The National Child Protection Training Center is a program of Winona State University and the National Association to Prevent the Sexual Abuse of Children (NAPSAC). For more information, visit the NAPSAC web site at: www.napsac.us

⁸⁴ CornerHouseMN.org, Other Training,

<http://www.cornerhousemn.org/othertraining.html> (last visited September 30, 2007). (States in the Half a Nation project include Arkansas, Connecticut, Delaware, Georgia, Illinois, Kansas, Indiana, Maryland, Minnesota, Mississippi, Missouri, New Jersey, Ohio, Oklahoma, South Carolina, Virginia and West Virginia.

⁸⁵ Stephen King, *THE BODY* (1982).

Bizarre & Fantastic Elements: A Forensic Interviewer's Response, Part I

by Anne Lukas Miller¹

(Author's Note: This is the first article in a three-part series. In Part I, Empowerment Statements are identified as one type of strange, ill-fitting or improbable claims made by children during sexual abuse disclosures. Parts II and III will identify and categorize several other possible explanations for the appearance of bizarre or fantastic elements. These categories are based on clinical experience² and draw on the theorized mechanisms identified in Everson's 1997 publication, "Understanding Bizarre, Improbable and Fantastic Elements in Children's Accounts of Abuse."³ Strategies and techniques are also offered to assist interviewers in determining how to best respond to the appearance of bizarre or fantastic information.)

"Bizarre and fantastic elements"⁴ can be defined as any strange, ill-fitting, or improbable claims made by children during sexual abuse disclosures. There is not a large body of empirical data regarding the occurrence of fantastic elements; however, in 1996, Dalenberg examined over 600 interviews of three to 17-year-old children reporting sexual abuse and found an overall occurrence rate of about two percent.⁵ In this study, cases were divided into groups, based upon certainty that abuse occurred and severity of the abuse reported. Dalenberg found that fantastic elements were present at the highest rate within the group of cases that had been identified as those where abuse was both most certain and most severe. In 2002, when the data set from the 1996 study was revisited and expanded, it was found that reports of fantastic elements occurred most often in interviews involving four- to nine-year-old children.⁶

In apparent contrast, Bruck, Ceci, and Hembrooke (2002) reported that their study yielded a greater frequency of improbable information in false, rather than true, narratives by children.⁷ It should be noted that this study involved only 16 children, and that it employed the intentional and repeated use of highly suggestive and leading interview techniques. It should also be noted that the study found implausible information in reports that were otherwise accurate, although the occurrence rate was lower than

what was found by Dalenberg.⁸ In a 1995 FrontLine interview regarding child sexual abuse, co-author and researcher Stephen Ceci acknowledged that, "in true disclosures... where a child was really abused, you often get a combination of bizarre unbelievable details with plausible details."⁹

While fantastic elements may not be typical in child sexual abuse reports, they occur often enough to be recognized as an issue—and frequently, the issue is one of credibility. Historically, the appearance of improbable information has had a significantly negative impact on a child's overall report. In 1989, Everson and Boat reported that improbable elements in a child's disclosure were second only to recantation as the most common reason that child protection workers judged a child's report of sexual abuse to be false.¹⁰ Dalenberg (1996) noted that when children offered implausible information, interviewers were less likely to be neutral and more likely to be skeptical or challenging in their responses.¹¹ Yet it is important that interviewers keep an open mind when fantastic elements present in an interview. There are numerous feasible explanations that could account for such reports; accordingly, an immediate disbelieving response from an interviewer could be indicative of interviewer bias.¹²

In 1997, Everson published an article that included an exhaustive list of mechanisms that might explain the occurrence of bizarre and fantastic elements in children's reports of sexual abuse.¹³ The following discussion draws on Everson's theorized mechanisms, as well as the author's clinical experience, to identify some of the most common types of improbable elements seen in forensic interviews.¹⁴ Strategies and techniques are also offered to assist interviewers in determining how to best respond to the appearance of improbable information. The discussion will be presented in three segments, beginning with a widely familiar grouping of bizarre or fantastic—statements of Empowerment. Subsequent publications will address Developmental Issues, Reality Distortion, Exaggeration,

Empowerment Statements

Also referred to as “Mastery Fantasy,”¹⁵ this information generally focuses on assertive, aggressive or protective actions reportedly taken by the child against the alleged perpetrator. Children who have been sexually abused often experience a sense of helplessness¹⁶ or culpability.¹⁷ Clinical experience indicates that the latter can be exaggerated if a child has received personal safety messages that place unreasonable expectations on children to prevent abuse (e.g., implying that child should always be able to “Say no and get away”). In an attempt to regain power and reduce anxiety, vulnerability or shame, children may report things that they think they should have done to protect themselves or someone else. During his Frontline interview, Ceci noted that in therapy, children may participate in “self empowerment training” to resolve psychological trauma through purposeful imagining of assertive acts. Allowing for the therapeutic value of this methodology, Ceci theorized that children may incorporate these fantasized actions into their reports as actual events.¹⁸ Empowerment statements can range from simple claims of getting away before anything happened (“She tried to touch me, but I ran”), to superhuman acts that injure or even kill the alleged perpetrator (“I pushed the car and it ran over him and he died”).

It is often difficult for interviewers to determine what approach to take when children introduce seemingly improbable information. The clarification of fantastic elements generally requires further questioning; yet, questions about fantasy often result in further fantasy. Children who are asked for further detail may feel it is necessary to continue with their story. And because the objects involved in improbable information are often familiar, it is conceivable that children will provide additional information that elaborates on the fantastic element (e.g., what kind of car it was).

Therefore, the suggested approach with empowerment statements is to offer the child a possible “out.” If the child describes an assertive or protective action against the alleged perpetrator and the interviewer suspects it is an attempt to master anxiety or helplessness, the interviewer can ask, “Is that something that happened, something you wish you could have done, or something else?”

Endnotes

¹ Forensic Interviewer and Trainer at CornerHouse Child Abuse Evaluation and Training Center in Minneapolis, MN. Ms. Lukas Miller has worked in the field of child maltreatment for over 20 years, and has conducted over 2500 forensic interviews with children, adolescents and vulnerable adults.

² The examples used in this article are based on the author’s own clinical experi-

ence.

³ Everson, M. *Understanding Bizarre, Improbable and Fantastic Elements in Children’s Accounts of Abuse*, CHILD MALTREATMENT, Vol.2, No. 2. (May 1997) at 134-149.

⁴ *Id.*

⁴ Dalenberg, C. *Fantastic Elements in Child Disclosure of Abuse*. APSAC ADVISOR, Vol.9 No.2 (1996) at 7.

⁶ Dalenberg, C., Hyland, K., & Cuevas, C. SOURCES OF FANTASTIC ELEMENTS IN ALLEGATIONS OF ABUSE BY ADULTS AND CHILDREN IN MEMORY AND SUGGESTIBILITY IN THE FORENSIC INTERVIEW, Mahwah, NJ: Erlbaum, (2002) at 185.

⁷ Bruck, M., Ceci, S. J., & Hembrooke, H., *The Nature of Children’s True and False Narratives*, DEVELOPMENTAL REVIEW, Vol. 22, (2002) at 520.

⁸ Dalenberg, *supra* note 3.

⁹ FRONTLINE: The Child Terror. (PBS television broadcast, October 27, 1998) (Interview of Dr. Stephen Ceci) available at <http://www.pbs.org/wgbh/pages/frontline/shows/terror/interviews/ceci.html>.

¹⁰ Everson, M.D. and Boat, B.W. *False Allegations of Sexual Abuse by Children and Adolescents*, JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY, Vol. 28, (1989) at 230-235.

¹¹ Dalenberg, *supra* note 3.

¹² Ceci, S. J., & Bruck, M. *The suggestibility of the child witness: A historical review and synthesis*. PSYCHOLOGICAL BULLETIN Vol.113, (1993) at 403-439; *see also*, Ceci, S. J., & Bruck, M. Jeopardy in the courtroom: *A scientific analysis of children’s testimony*. Washington, DC: American Psychological Association (1995); *See also* Lyon, T. D., *Speaking with Children: Advice From Investigative Interviewers*, in P. F. Talley (Ed), *Handbook for the treatment of abused and neglected children* (2005) at 65-82. (Interviewers with preconceived ideas may consciously or unconsciously focus on information that validates their assumptions instead of seeking the child’s information. Research indicates that the accuracy of children’s reports can be influenced by a biased interviewer):

¹³ Everson, *supra* note 2.

¹⁴ The examples used in this article are based on the author’s own clinical experience.

¹⁵ Everson, *supra* note 2 at 139.

¹⁶ Summit, R. C. *The Child Sexual Abuse Accommodation Syndrome*, CHILD ABUSE & NEGLECT Vol. 7, (1983) at 177-193, and Lyon, T. D. *Scientific Support for Expert Testimony on Child Sexual Abuse Accommodation*. In J. R. Conte (Ed.), *CRITICAL ISSUES IN CHILD SEXUAL ABUSE* (2002) at 107-138.

¹⁷ Finkelhor, D., & Browne, A. *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*. AMERICAN JOURNAL OF ORTHOPSYCHIATRY, Vol. 55, (1985) at 530-541.

¹⁸ FRONTLINE, *supra* note 7.

Bizarre & Fantastic Elements: A Forensic Interviewer’s Response, Part II

by Anne Lukas Miller¹

(Author’s Note: These categories are based on clinical experience² and draw on the theorized mechanisms identified in Everson’s 1997 publication, “Understanding Bizarre, Improbable and Fantastic Elements in Children’s Accounts of Abuse.”³ Strategies and techniques are also offered to assist interviewers in determining how to best respond to the appearance of bizarre or fantastic information.)

Developmental Issues

Because children process interpret and communicate differently than adults,⁴ any number of misunderstandings may occur. Some children do not possess the vocabulary to describe an experience. Other children may

not have the cognitive skills or life experience to comprehend an abusive act, so they construct explanations that make sense to them.⁵ These explanations may sound unreasonable to adults, particularly when children resort to “magical thinking.” Magical thinking occurs because developmentally immature children lack the ability to discern between logical and illogical causal explanations. For example, a child who did not see someone enter a room might explain that the person “flew in through the window,” simply because the child does not know enough to recognize the implausibility of such information.⁶ Even older children with more developmental maturity may engage in similar attempts to comprehend