



The Champion

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Saving Tonya Craft: An Integration of Science and Law

By Demosthenes Lorandos

Why would three little girls from three different families all say Miss Tonya sexually abused them if nothing happened? How could three little girls from entirely different backgrounds lie about something as serious as digital penetration? When the children's stories were corroborated by physical evidence and a year of careful therapy, who could doubt that these

terrible things actually happened? This was the prosecution's mantra. The prosecution leaked these "facts" to the press at every opportunity. This was the prosecution's justification for a 22-count indictment. These heinous acts, the prosecution team cried, demanded a sentence of 480 years.

Arrested in 2008, Tonya Craft was set to be tried in Catoosa County, Ga. If one were to put a pin in a map of Georgia in the Catoosa County courthouse square, and draw a circle with a 50-mile radius, one would discover more fundamentalist Christian churches per capita encompassed by that circle than anywhere else on Earth. The site of bitter battles in the War Between the States, the north Georgia community where the Tonya Craft trial would be held was composed of some of the poorest and most undereducated folks in the country.¹ Widely reputed to be a corrupt prosecution machine,² Catoosa County District Attorney Herbert "Buzz" Franklin bragged that his team had never lost a sex case. Franklin bragged that he had his best team on the Craft case and they would ask for every one of the 480 years. At the time of her arrest, news outlet opinion polls and blogs were trending 80 percent for conviction on all counts.

At the time of her arrest, Tonya Craft was a pretty 37-year-old single mother. She earned a Bachelor of Science degree in elementary education, and in 2005 took a job as a kindergarten teacher at the Chickamauga Elementary School. The year before the arrest, Craft taught school by day and attended graduate school at night to complete her Master's in education. After years of struggle with her children's father, she vowed that she would never let someone walk all over her again. So, when she was arrested, she dug in her heels and fought back.

Because she had just been to court with her ex-husband, Craft began her fight with her family law attorney, Clancy Covert.³ She and Covert began to interview criminal defense attorneys and settled on a father-son team; Cary and Scott King of Jacobs, King & Wallack in Atlanta brought

many decades of criminal defense experience to the defense effort. Together, Covert and the Kings began to harangue the prosecution for the discovery to which they knew they were entitled.

Tonya Craft went into “research mode.” She began by studying the famous sex abuse cases of the 1980s and 1990s — McMartin, Kern County, Kelly Michaels, and Wenatchee. When she watched Sean Penn’s documentary *Witch Hunt*,⁴ Craft determined that the manipulation of the children in the Kern County, Calif., case, as well as the arduous process of seeking exoneration for those convicted, was where she needed to start. She placed her kids with her mom and took off on a 20,000-mile journey across the country to speak to survivors and experts. After speaking with many of the folks who had been caught up in the Kern County hysteria, Craft learned that California Attorney General John Van de Kamp had investigated the Kern County convictions. In an 80-page report for the Kern County grand jury, Van de Kamp concluded that county officials obtained convictions based solely on the unsubstantiated allegations of manipulated children.⁵ After serving as the president of the California Bar, Van de Kamp retired from politics and went into private practice. With her blond hair, flashing blue eyes and southern accent, Tonya wheedled her way into see the 72-year-old former attorney general and he graciously gave her hours of his time. Craft left that meeting knowing that if she did not do something very different, it did not matter how much experience her attorneys had — she was going to be convicted.

In April 2009 after tens of thousands of miles, countless scientific articles, and dozens of interviews, Tonya showed up unannounced in my Ann Arbor office. She introduced herself to staff and explained that she was not leaving until she could tell her story.⁶ After a frank and fairly brutal conversation, we struck an agreement to take the defense effort in a whole new direction.

Fact Analysis and Pretrial Planning

Meeting in the Atlanta offices of Cary and Scott King, the defense team immediately decided to answer every one of the prosecution’s media-leaked accusations with facts and science. In order to organize and prepare three years’ worth of convoluted facts for more than 100 named witnesses, we decided to employ the Clancy Method.⁷ First, the method called for the creation of a master document file. This meant electronically scanning into a large Adobe Acrobat (.pdf) file every document, picture, witness statement, or transcript. Second, the method required creating a master chronology of three columns in a program such as Excel. Column one contained the date of each event of any significance to the case. In column two we inserted the “who,” “what,” “how,” and “why do we care” information about each significant event. Column three contained the “how do we prove” information about the event. Notably, column three held the exact Adobe page and paragraph and line of the proof needed for trial. This is the reason everything needed to be scanned. There would be no more fumbling with boxes and no more fumbling with yellow pads containing notes written the night before.

The third step in the process involved creating a master witness list for prosecution and defense witnesses with contact information, citations to relevant places in the master document and chronology files, as well as a designation as to which attorney on the team was responsible for

that witness. That meant all of the potential witnesses were divided up according to the case plan with each attorney on the team taking responsibility for everything concerning that witness. After completing the master chronology, support staff created individual subchronologies for each witness from the master document file.

As we catalogued and interrelated all of the relevant facts and the witnesses involved, the assigned attorney produced an outline for direct or cross-examination that answered the following question: What do we need from this witness? Each attorney presented these outlines⁸ to the other team members in routine meetings, and support staff developed additional facts and legal arguments.⁹ We began the legal research with Mark J. Mahoney's excellent *Right to Present a Defense*¹⁰ and then "Georgia-fied" more than 30 of the motions described in my *Cross-Examining Experts in the Behavioral Sciences*.¹¹ It was clear to the defense team from the outset that "the fix was in" with the assigned judge and the prosecutors. We anticipated that the cogent guidance of the Georgia appellate and Supreme Court would be ignored and that the defense would lose every motion request and evidentiary point.¹² We set our sights on diligently making a record for review and concentrated on the science.

The Science

Psychologist researcher Hollida Wakefield teaches that the "natural history" (origin, timing, and nature) of a child sexual abuse allegation must be examined.¹³ For this reason, we carefully analyzed every statement made by each accuser and every statement attributed to each accuser by another. Members of the defense team analyzed videotaped "forensic" interviews, second by second, for indications of parental influences; interviewer bias; leading, suggestive, or repetitive questions; interviewer modifications of what was said; questions that suggested new content; questions that sexualized the interview process; questions that denigrated our client; and so forth. Someone then coded each utterance as to when it was made, what specifically was said, and to whom the statement was made.¹⁴ The next step involved laying out this analysis in an Excel spreadsheet. Finally, we cross-referenced these coded lists and formed the basis for cross-examination of the three little accusers over their inconsistencies, contradictions, and outright fabrications.

Six science-related content areas could be used to explain to the jury why the children would say these things when nothing happened. Review of the natural history of the allegations showed that several mothers in the community began talking with each other when they discovered their daughters engaged in mutual sexual exploration. Hence, our first science content area concerned research about normal child sexuality. When the parents started talking, two prominent women in the community began an informal telephone network that thrived on stories about Tonya Craft. Our second science content area concerned research about rumor formation. As several mothers began to repeatedly question and harangue their daughters, our third science content area focused on research into parental influences on children's memory. When the three little accusers were sent for SANE exams,¹⁵ the prosecution began to crow about "the physical evidence." Because the State's nurse and physician experts proposed to testify about "crescentic hymens" with "rolled edges," which they offered were indicative of abuse, our fourth science content area involved research into hymen morphology in abused and nonabused girls. Following the natural history of the allegations, it turned out that the 22 felony counts all dealt

with alleged events from months to years before the 2008 indictments. Consequently, the State argued that delayed disclosure was the norm in these cases. As a result, science research into delayed disclosure became our fifth science content area. Finally, the “forensic” interviews of the children and their “year of careful therapy” led us to our last science content area — suggestibility.

Use of Essential Treatises in Six Science Content Areas

In the cross-examination of the State’s experts, a defense attorney can find a great deal to argue about in closing by exploring what the experts do not know. If they survive voir dire, what they think they know is for direct examination. Cross-examination is all about contrasting the seriousness of the charges with what they should know — but do not.¹⁶ In order to make good on this gambit, a trial team needs experts who know and can explain the essential peer-reviewed, scientific treatises in each content area. The team must pick experts who not only know their stuff, but who “fit” the dynamics and dramatics of the trial plan.

Considering the ages of our accusers, their backgrounds and the natural history of the allegations, we were most concerned that one of the alleged accusers was said to be Tonya Craft’s own daughter. In point of fact she was not an accuser. She was the victim of repeated attempts at manipulation, ridiculous “therapy” from a “therapist” we discovered was mentally ill, and dramatic attempts at parental alienation by her father. Because this child could potentially be the most dangerous for the defense, we chose William Bernet, M.D., from Vanderbilt¹⁷ as our expert with respect to all of our content areas and with special emphasis on parental influences research.

With so many science content areas and a trial team composed entirely of men, we desperately needed women scientists who could break down complicated studies and make examples from a wealth of professional experience. We found three. A social worker with a Ph.D. in research methodology and social work, Dr. Nancy Aldridge¹⁸ from Atlanta digested hundreds of scientific treatises and called upon her decade of experience testifying for the prosecution in child abuse cases to give the jury a deep understanding of what went wrong in this case. Craft’s family court judge in Chattanooga had ordered Craft, her ex-husband, and their children to undergo psychological evaluations with Dr. Ann Hazzard of Emory University.¹⁹ When Professor Hazzard examined the touted “physical indicators of sexual abuse,” she referred the medical records, colposcopic photos, and videotapes to Dr. Nancy Fajman at the medical school.²⁰ Both Dr. Hazzard and Dr. Fajman agreed to come to trial and tell the jury just what they prepared for the family court judge in Chattanooga. With Hollida Wakefield working diligently behind the scenes, this was the defense team’s cadre of experts. What follows are the materials they described to the jury.

Normal Child Sexuality

One of the accusers was a child whom Tonya Craft’s daughter played with from time to time. Craft’s daughter and this little girl had older brothers who were friends and members of the same baseball team. This child is said to have been involved in genital touching with cousins in the past, and in May 2006 the child’s mother discovered her daughter and Craft’s daughter engaged in genital touching. Upon discovering the girls playing this way, this mother beat her child with a

belt. Craft gathered up her daughter, quickly left the home, and immediately took her child to her pediatrician. The little girl was normal in every respect. At trial, the mother of the little accuser loudly exclaimed that the sexual touching was not normal.

To counter this sense of things, we pored over hundreds of research studies surveying preschool educators to find conclusions such as: “Sixty-five percent said that this kind of playing occurred ‘often’ or ‘very often.’ ... This play contained direct sexual behavior, such as body exploration, genital manipulation, and coitus training.”²¹ As we looked at scientific research concerning normative child sexual play, we came across another research paper reporting that 85 percent of respondents “described a childhood sexual game experience ... [and] ... at least a third indicated that they engaged in genital fondling.”²² An additional peer-reviewed child sex behavior survey research stated, “Sexual experiences together with another child in mutual agreement were reported by 82.5 percent of the respondents (81 percent of the boys and 83.8 percent of the girls).”²³ When looking at the histories of normal girls of our accusers’ age, we also found that “37 percent of the girls reported sexual activity with other children involving exposure to or manual or oral stimulation of the genitals.”²⁴ Finally, we needed to counteract this mother’s loudly vocalized outrage, so we presented research verifying that “77 percent of mothers reported that their child had engaged in sex play prior to age six.”²⁵

Rumor Formation

When attorney Clancy Covert subpoenaed the phone records of Craft’s ex-husband in the custody and child support dispute, thousands of minutes of calls among the parents of the accusers were discovered. These calls began two months prior to the allegations, and Craft’s ex-husband was thoroughly “on the bandwagon” with respect to a campaign of manipulation of the little girls. In fact, women in the community came forward and testified that the parents of the accusers threatened them with dire consequences if they did not get their daughters involved in the allegations. The parent of one of the accusers seemed to be the instigator, and she worked in concert with another parent. The rumor mill was off and running.

Both of these women had reason to loathe Tonya Craft. They were rich and had been “friends” with Craft when their children were in her kindergarten class. In cross-examination and collateral witness statements, it became evident that these women were quite jealous of Craft’s physical attractiveness and actively turned against her when she determined that one woman’s daughter was not ready for first grade, and upbraided the other woman’s daughter at a birthday party for being a nasty little prima donna.

We worried that denigrating these women might backfire, but we also needed to explain the serious effects of rumor. The work of forensic psychologist Terence Campbell was the best place to start:

Once a parent suspects that his or her child has been sexually abused, the parent struggles with a very difficult situation. As long as the child denies any abuse, a worried parent must contend with a gnawing, unrelenting sense of anxious uncertainty. ... The intense need of people to obtain information under these circumstances motivates them to exchange imaginative speculations with each other. In turn, these speculative exchanges

create fertile ground for a bountiful harvest of rumors. ... [In these circumstances parents often think] ... we agree, therefore we must be right! ... When children finally respond to questions regarding alleged sexual abuse by indicating, 'Yes he did it'... the parent experiences a paradoxical sense of relief. ... The parent no longer contends with the agonizing paralysis of doubting uncertainty.²⁶

When we covered this aspect of our science explication, jurors began to nod their heads. We continued our explanation of the effects of rumor with research that demonstrated the further down the rumor chain one followed a story, the worse it became: "Second generation subjects made more extreme ratings of the target than their first generation counterparts."²⁷

Parental Influences on Children's Memory

As jurors began to understand the effects of rumors, we turned our science presentation to the specific things the accusers' parents had done with them. Our experts explained that the coded statements charts as well as the numerous interviews and Social Services materials reviewed demonstrated that the children's stories of what they "remembered" changed dramatically under parental questioning. The jury was familiar with this description because our coded statements charts were extensively used in my cross-examination of the little accusers. Again, we did not want to denigrate the parents of the accusers; we wanted the jurors to come to those conclusions on their own. Consequently, we tailored our explication of the science of parental influences by starting with a description of how worried and anxious parents can make mountains out of molehills. For example: "Maternal over-reporting of anxious symptoms was related systematically to the level of maternal anxiety."²⁸ We used research from law enforcement to explain: "Many adults who talk to children about suspected sexual abuse prior to the forensic interview ... say and do things with the child that profoundly and permanently affect subsequent interviews."²⁹ We continued with this explanation: "Young children interpret adult questions such as 'Are you sure?' or 'What about this one?' as a cue that their first answer must have been incorrect and that they should produce a different response."³⁰ We continued with an explanation that mothers are not "able to accurately recall whether [statements] ... were the child's own words or if her statement is a reconstruction of a conversation in which the child provided one-word answers to a series of direct and possibly leading questions from the mother."³¹

We concluded this portion of the science explication with Debra Poole and Stephen Lindsay's stunning report of the "Mr. Science" experiments. In these experiments, parents merely suggested a behavior that Mr. Science may have performed: "Misinformation provided by parents is an extremely powerful contaminant of preschoolers' testimonies."³² When we played a portion of one accuser's description of her discussion with her mother on the way to the first CAC interview ("my momma told me ... which is which and where they touched me"), we could see the recognition in the faces of the jurors.

Hymen Morphology In Abused and Nonabused Girls

Despite their new information and slow, careful science training, we worried that the touted "physical evidence" would sway even the educated juror. For this reason, I cross-examined the State's "experts" — a SANE nurse and a medical doctor.³³ We drew upon literally hundreds of

longitudinal studies of little girls, medically evaluated for abuse and the comparisons with same age nonabused little girls. I hammered home two conclusions again and again with the experts: (1) rolled hymenal edges do not indicate sexual abuse,³⁴ and (2) crescentic hymens are normal.³⁵ Remember, one can get a great deal more mileage out of what the State's experts do not know than what they do. To complete the explication of this area of our science presentation, our medical expert from Emory University's medical school verified that all of the research used in our cross-examination was essential. And if one did not know it, one could not make a medically valid or reliable assessment.

Delayed Disclosure

Because the 22 felony counts all dealt with alleged events from months to years before the 2008 indictments, the State argued that delayed disclosure was the norm in these cases. To perfect its claim, one of the prosecution "experts" testified that there was good research to support this idea. When pushed, this State witness exclaimed that the research of Teena Sorensen and Barbara Snow made it clear that children delayed their disclosure of sexual abuse events. Here is a strategic point for courtroom practice: Never let any litigator use the word disclosure. This word has a psycholinguistic charge via subliminal connotation. When something is disclosed, people subconsciously imagine that it was hidden and now, due to someone's wonderful work, it has been revealed. Garbage! That's the prosecutor's game. We call it a "story." We say "the child said" or "the child related."

To deal with the terrible article by Sorensen and Snow, we began by describing reputable research that does "not support the view that disclosure is a quasi-developmental process with 'stages' that can be 'resolved.'"³⁶ Indeed, when actual cases are closely scrutinized, denial or delayed disclosure occurs "in 6 percent of cases, and recantation in 4 percent of cases in which a child had already disclosed abuse."³⁷ Dealing with the idea that it is only through persistent questioning or therapy that a child can come to describe episodes of sexual abuse, one quality study found that "83 percent of all allegations and disclosures were elicited through free-recall questions ... and ... these data dispel the belief that interviewers need to bombard children with suggestive techniques in order to elicit details of trauma."³⁸ Because this delayed disclosure idea had its origin in the junk science concept called the "child sexual abuse accommodation syndrome," we used two recent studies to explain how degrading this idea actually is.³⁹

Finally, two cases from the Utah Supreme Court really made the point about how terrible the Sorensen and Snow paper is (Utah is Sorensen and Snow's home state.):
[T]he victims' statements related through Barbara Snow and other experts were simply so unreliable that they should not have been admissible. In sum, the tainting, indeed the inducing of testimony in this case, was not benign — it was the product of a misdirected zealotry and the failure to adhere to any scientific standards for the eliciting of truthful testimony.

State v. Bullock⁴⁰

This passage was even more damaging:

The claimed new evidence includes ... testimony from law enforcement personnel that false information deliberately “fed” by them to Barbara Snow in their investigatory work promptly appeared in the statements of children she interviewed. ... [O]ne police officer ... described how the children in Dr. Snow’s care were able to reproduce specific information after he had suggested to Dr. Snow that such information should be present in their statements.

State v. Hadfield⁴¹

Suggestibility

We closed our science proofs with a recitation of suggestibility research and illustrated the suggestibility of children by slowly walking jurors through the accusers’ numerous videotaped interviews. Readers are familiar with concepts such as confirmatory bias, the repeated question effect, and source monitoring errors. For these concepts I used standard texts in the field of suggestibility for their “flash value” while walking around during direct and cross-examinations.⁴²

Through the efforts of attorney Clancy Covert, we discovered that the therapist the State assigned to the accusers had filed for divorce during the preceding year and requested a staggering amount of money from her soon-to-be ex-husband because she alleged the intentional infliction of emotional distress. To make good on her claim she produced a licensed psychologist in court, admitted her treatment records into evidence, and offered his testimony that she was really in bad straits. Members of the defense team had taken her deposition in the Tennessee family law matter and asked:

Q: All right. And forgive me for this question, but it’s one — it’s one of these standard ones we ask everyone that didn’t get asked last time. Have you ever been treated for any mental illness or psychological disorder?

A: No.⁴³

This deposition occurred just a few months after the social worker was arguing for financial compensation and entering her treatment records into evidence. These records described her as suffering from post-traumatic stress disorder with a Global Assessment of Functioning score of 35.⁴⁴ Indeed, according to her own filing, her treating therapist opined, “She has suffered under great emotional stress for the past year and [her doctor] testified she would need additional treatment.”⁴⁵ The doctor’s treatment notes for this therapist indicated, among other things, that she had frank paranoid ideas, purchased a handgun, threatened to turn in her husband to children’s protective services when his five-year-old daughter climbed into bed with him during a thunderstorm, and called his ex-wife to complain about the thunderstorm incident and “boundaries” issues.⁴⁶

Despite the fact that this therapist whom the prosecution said provided “a year of careful therapy” entered all of these records — as a public record — in a divorce case just minutes from the courthouse in which Tonya Craft was being tried, the prosecution presumed upon the trial

judge to cut off cross-examination into the therapist's mental health. Furthermore, this therapist was caught actively pleading financial harm if Tonya Craft was not convicted. In the Craft custody and child support case, the defense team complained to the guardian ad litem of Craft's children that this therapist was damaging the Craft children. After an investigation, the guardian ad litem asked the assigned judge to review the therapist's treatment records and her deposition. When the family court judge finished her review, she found:

After reviewing the videotaped/transcribed deposition of Laurie Evans, the court concludes that Ms. Evans' entire testimony was/is not credible; and that in addition to her lack of credibility, the court further finds that Ms. Evans' testimony concerning her diagnosis regarding [Tonya's son] is not supported by her written records; and further, that Ms. Evans' testimony concerning [Tonya's daughter] was unsupported by any records which this court has previously ordered her to produce.^[47]

Through her own attorneys, the therapist petitioned the same family court judge to intervene in the Tonya Craft custody and child support case. The therapist perjured herself numerous times in her affidavits filed in support of intervention. When her motion to intervene came before the family court judge, the therapist's attorney argued that the therapist's credibility was at stake and that a guilty verdict would validate the therapist's expertise.⁴⁸ When the defense sought to cross-examine the therapist with certified copies of the records containing her perjury, this too was suppressed by the State v. Craft trial judge. But we had made our point.

After laying this foundation in cross-examination, we used our experts and quotes from Jeopardy in the Courtroom to describe the deleterious effects of therapy for children in these circumstances:

[A]dults may tilt the odds toward false disclosures for two reasons. First, the presence of extra adults, all of whom share the same beliefs about what may have transpired, may induce a child to join them. Second, extra adults multiply the number of questions that the child is asked about the same theme: "Tell us how you were sexually abused."^[49]

[A]nd the harmful part of the so-called treatment is that there was no attempt to help the child with their reality testing, so that manifestly implausible things ... were simply accepted at face value. ... You do harm to the child because you don't help the child to distinguish between what is possible, what is real, what is not real, and what is a fantasy. ... So a lot of these children got worse in the course of treatment.^[50]

On the basis of what we now know, it would be imprudent to use fantasy inductions, imagery play, and "memory work" during the therapy sessions conducted before the completion of forensic interviews. These practices can be saved for after the legal resolution. Prior to it, therapy should be restricted to working on everyday coping strategies.^[51]

After cross-examining the accuser's State-ordered therapist, these quotes all hit home.

We finished our science explication with standard reported experiments⁵² in suggestibility to describe memory interference and explained the effects of modifications by interviewers and

therapists. “Modification” is a form of suggestive questioning in which the interviewer contradicts or incorrectly restates what the child just said. “[C]hildren frequently agree with interviewers who either reword their statements in a way that changes their meaning or who claim that the children made statements they did not make.”⁵³ Indeed, when reviewing actual forensic interviews, researchers found 93.9 percent of them overflowing with modifications.⁵⁴ In a follow-up study, Amye Warren and her colleagues found that this form of suggestive questioning “may be equally or even more detrimental to children’s testimonial veracity than leading questions.”⁵⁵ Citing a high rate of modifications by police and forensic interviewers and a low rate of disagreement from children in actual interviews, researchers Hunt and Borgida explained that these “commonly used interviewing techniques can have serious, deleterious effects on children’s testimony.”⁵⁶ Because memory researcher Elizabeth Loftus has repeatedly demonstrated that when people do not have an original memory, they can and do accept misinformation and adopt it as their own memory,⁵⁷ we also zeroed in on additional memory confounding interview techniques.⁵⁸

Jury Verdict

On the last day of Tonya Craft’s ordeal, the Sheriff’s Department protected the courtroom. There had been “credible death threats” thought to have come from the telephone network of the accusers. And then it was over. After two years of preparation, the prosecution team that “never lost a sex case” heard the Clerk of the Court say not guilty 22 times. Craft was spirited out of the courtroom to avoid the threats reported by the Sheriff’s Department. A hasty news conference was set up across the state line in Tennessee. By this time every national news outlet and thousands of email inquiries were on hand. Tonya Craft and I appeared on the Today Show, Good Morning America, Larry King Live, The View, and local stations. At every appearance the message was the same: We want to see that this never happens again. It was the science that saved her life.

Notes

1. Chickamauga, The River of Blood (<http://ngeorgia.com/history/chickam.html>); The Battle of Chickamauga (http://en.wikipedia.org/wiki/Battle_of_Chickamauga). There are numerous sites in the Chickamauga / Chattanooga valleys and a wonderful National Park and Civil War Center (<http://www.nps.gov/chch>).

2. Chattanooga, Tenn., is a few minutes from Catoosa County, Ga. The Chattanooga news and television market serves upwards of two million viewers locally. There are at least four local newspapers and 10 local television stations (http://en.wikipedia.org/wiki/Chattanooga_Tennessee#Newspapers).

These outlets devoted gavel-to-gavel resources to the coverage of this sensational case. National bloggers fastened onto this case from the very beginning. The most prominent of these was William L. Anderson (<http://williamlanderson.blog.spot.com/2010/08/did-tonya-crafts-trial-produce-oj.html>). A professor of economics, Anderson was instrumental in bringing down prosecutor Mike Nifong after the Duke Lacrosse debacle. Hits on the newspaper and television station blogs concerning allegations of prosecutorial misconduct and corruption ran into the tens

of thousands by the time the trial concluded. Tonya Craft has filed a \$25 million lawsuit in the North Georgia federal court citing many examples (with documentary proof) of witness tampering; fabrication of evidence and outright fraud by the prosecutors and Sheriff's Department personnel (<http://williamlanderson.blogspot.com/2010/05/tonya-crafts-lawsuit-childrens-advocacy.html> and <http://www.timesfreepress.com/news/2010/may/26/craft-lawsuit-asks-federal-court-to-change/?local> and http://www.chattanooga.com/articles/article_180995.asp).

3. Tonya Craft's contemporary in age, Clancy Covert is a smart and compassionate young attorney in Chattanooga, Tenn., with Luther-Anderson PLLP.

4. Actor Sean Penn produced and narrated Witch Hunt (<http://witchhuntmovie.com>). The documentary describes the trials and eventual exonerations of John Stoll, Jeff Modahl, Marcella and Rick Pitts, and Brenda and Scott Kniffen, all arrested and convicted in scandalous trials held in California's Kern County in the early 1980s. The film includes vignettes about the children (now adults) who were coerced and manipulated by law enforcement and the prosecution. The folks who were manipulated and coerced as children are in much worse psychological shape today than their parents, who served decades in prison.

5. See, e.g., http://articles.latimes.com/1986-09-30/news/mn-10262_1_kern-county; <http://reason.com/archives/2009/12/21/kern-countys-monstrous-da>; <http://www.spectacle.org/896/witch.html>.

6. Tonya Craft can be very tenacious. The office manager explained that "Doc" Lorandos was deep into a 500-page writing assignment for West Group, and Craft explained that this was exactly why she had come. When the manager explained deadlines and editorial scrutiny, Craft was undeterred and began to unpack her documents and materials in the waiting room.

7. The Clancy Method is a trial planning and presentation methodology developed by Patrick Clancy of The Innocence Team in California (<http://www.theinnocenceteam.com>). After law school and a stint in the California Public Defender's Office, Clancy became a certified criminal law specialist and began to specialize in sex cases. Today, Clancy does more sex cases than anyone else — and he is very successful. In these convoluted cases, Clancy developed a method for electronically scanning, organizing, and categorizing trial materials. Several years ago, in association with this author's company Psychlaw.net, a five-part video seminar series was developed to teach certified family law and certified criminal law specialists how to successfully defend against well-organized false allegations of sexual abuse. Part five of this series concerns trial preparation and the use of technology (<http://www.youtube.com/user/psychlawnet#p/f/76/Sd3BsZrmMh0>).

These training videos are available free on the web.

8. It would be difficult to give too much praise to attorneys Cary King, a retired U.S. Army Colonel and Vietnam combat vet; Scott King, an extremely sharp attorney and an absolute bulldog of a cross-examiner; or Clancy Covert, a smart, diligent and compassionate family law specialist. These attorneys constantly put egos aside, took frank criticism well, and fought their hearts out for Tonya Craft.

9. Thousands of photographs, tape and video recordings, documents, statements, and transcripts were scrutinized, catalogued, and inter-related. The Lorandos Joshi firm contributed the part-time work of two associate attorneys, a paralegal, and the full-time work of Sarah Vasquez, an extremely bright science and fact researcher with a Master's in Public Health Research from the University of Michigan. The Jacobs, King & Wallack firm contributed the work of numerous secretaries and the diligent work of two young law clerks: Steven Lefkoff and Jon Brezel.

Following the trial and media blitz, Sarah Vasquez provided cite checking and editorial help with this article, for which I am very grateful.

10. NACDL Board Member Mark J. Mahoney's excellent monograph is frequently updated and available at <http://www.harringtonmahoney.com/publications/Rtpad2009%20v1.pdf>.

11. Written with co-author and Forensic Psychologist Terence Campbell, the two volume Cross-Examining Experts in the Behavioral Sciences is available from West:

<http://west.thomson.com/productdetail/12416/18362076/productdetail.aspx>.

12. Not only did the newly elected trial judge and the prosecution team live down to their reputations, when frankly perjured testimony (directly contradictory to sworn testimony from the witness in another proceeding) occurred, or ham-handedly fabricated documentary "evidence" was presented, the assigned judge refused to take action and so did the essentially worthless Georgia Bureau of Investigation.

13. See, e.g., Hollida Wakefield & Ralph Underwager, Sexual Allegations in Divorce and Custody Disputes, 9 BEHAV. SCI. L. 451-468 (1991); and see Hollida Wakefield & Ralph Underwager, The Alleged Child Victim and Real Victims, in THE HANDBOOK OF SEXOLOGY: BIOMEDICAL AND CRIMINOLOGICAL PERSPECTIVES 223B264 (J. Krivacska & J. Money eds., 1994); Wakefield, a licensed psychologist living in Minnesota, worked tirelessly behind the scenes to aid this author and his research staff in our quest for peer-reviewed scientific papers in each content area that could be easily explained to the jury.

14. This process can be replicated by any NACDL attorney near a university. A little searching will find social sciences graduate students who are already plugged into numerous medical and social sciences databases through their study. They all need money, and the good ones can break down the science jargon easily.

15. The acronym stands for Sexual Assault Nurse Examiner. These nurses have as little as an Associate's Degree and a few hours of "what to look for if you suspect sexual abuse" classes.

16. The "Clancy Method" and Cross-Examining Experts in the Behavioral Sciences explain this use of cross-examination at length. Once learned, it is easy to do. Remember, most states' "forensic interviewers" are paid less than the county dog catcher.

17. One of the authors in the International Handbook of Parental Alienations Syndrome: Conceptual, Clinical and Legal Considerations — 2006 (Gardner, R., Sauber, R. & Lorandos, D. eds.) Dr. Bernet literally "wrote the book" on the subject of child abuse and neglect. See, e.g., William Bernet, Child Maltreatment in KAPLAN & SADOCK'S COMPREHENSIVE TEXTBOOK OF PSYCHIATRY (9th ed., 2009). Trained at Harvard and now researching and teaching at Vanderbilt, Dr. Bernet is the Director of Vanderbilt's Forensic Psychiatry Services. The first question I asked Dr. Bernet in direct examination was, "Harvard, huh? Are they snooty?" This broke the ice and allowed Dr. Bernet to speak heart-to-heart to our rural jury.

18. Dr. Nancy Aldridge was the best possible expert witness in a child sexual abuse case. She had decades of practical experience, a depth of compassion, and extensive training in how science is done and not done. Her ability to call up many examples of serious error in each content area — interviews, parental questioning, and harmful therapy — was uncanny. As a social worker of national standing, Dr. Aldridge was able to describe the "year of careful therapy" the prosecution crowed about as outrageous, grossly negligent, and delivered by a woman with serious mental health issues. See, e.g.,

<http://www.wrcbtv.com/Global/story.asp?S=12415069> and

http://www.chattanooga.com/articles/article_174811.asp.

19. Dr. Ann Hazzard is a well-trained and board certified clinical psychologist. She is an

associate professor in the Department of Pediatrics, Emory University School of Medicine, with extensive experience in the evaluation of children and adults. She cogently testified about many of the science content areas and excoriated the mentally ill social worker who provided the “year of careful therapy.”

20. With extensive experience in the evaluation of children suspected of sexual abuse victimization, Dr. Fajman carefully walked the jury through what was normal about the physical examinations and the girls’ genital touching behaviors

21. Bjorn H. Gundersen et al., Sexual Behavior of Preschool Children: Teachers’ Observations, in CHILDREN AND SEX: NEW FINDINGS, NEW PERSPECTIVES 52 (Larry L. Constantine & Floyd M. Martinson eds., 1981).

22. Sharon Lamb & Mary Coakley, ‘Normal’ Childhood Sexual Play and Games: Differentiating Play From Abuse, 17 CHILD ABUSE NEGLECT 4, 522 and Abstract (1993).

23. Ingbeth Larsson & Carl G. Svedin, Sexual Experiences in Childhood: Young Adults’ Recollections. 31 ARCH. SEX. BEHAV. 267 (2002).

24. Harold Leitenberg et al., The Relation Between Sexual Activity Among Children During Preadolescence and/or Early Adolescence and Sexual Behavior and Sexual Adjustment in Young Adulthood, 18 ARCH. SEX. BEHAV. 300 (1989).

25. Paul Okami et al., Sexual Experiences in Early Childhood: 18-Year Longitudinal Data From the UCLA Family Lifestyles Project, 34 J. SEX. RES. 343 (1998). See also the extensive work of William N. Friedrich and colleagues such as William N. Friedrich et al., Normative Sexual Behavior in Children: A Contemporary Sample, 101 PEDIATRICS 4 (1998).

26. Terence W. Campbell, False Allegations of Sexual Abuse and Their Apparent Credibility 10 AM. J. FORENSIC PSYCHOL. 23, 25, 27 (1992). See also on this point Ralph Rosnow: “Recent work now suggests that rumor generation and transmission result from an optimal combination of personal anxiety, general uncertainty, credulity, and outcome-relevant involvement.” Ralph Rosnow, Inside Rumor — A Personal Journey, 46 AM. PSYCHOL. 484 (1991); “The notion is that rumors flourish in an atmosphere of uncertainty because they attempt to relieve the tension of cognitive unclarity.” Id. At 486.

27. Thomas Gilovich, Secondhand Information and Social Judgment 23 J. EXPER. SOC. PSYCHOL. 59, 59 (1987). See also Galen V. Bodenhausen, Stereotypic Biases in Social Decision-Making and Memory: Testing Process Models of Stereotype Use 55 J. PERS. SOC. PSYCHOL. 5 (1988); Gordon W. Allport, The Nature of Prejudice 179-185 (1954); and Gordon W. Allport & Leo Postman, The Psychology of Rumor 64-66, 111-113 (1965).

28. Paul J. Frick et al., Assessment of Childhood Anxiety Using Structured Interviews: Patterns of Agreement Among Informants and Association With Maternal Anxiety, 6 PSYCHOL. ASSESS. 376 (1994).

29. Stanley M. Slowik, Forensic Interviewing, Polygraph and Child Deception, 37 POLYGRAPH 217 (2008). Also note, “What is often assumed to be the original answer to a question appearing in the interview conducted at the CAC may, in fact, be a changed answer from similar questions that were asked in prior interviews.” Id.

30. Christine M. Ricci, Carole R. Beal & Dawn J. Dekle, The Effect of Parent Versus Unfamiliar Interviewers on Children’s Eyewitness Memory and Identification Accuracy, 20 LAW & HUM. BEHAV. 497 (1996).

31. Maggie Bruck, Stephen J. Ceci & Emmett Francoeur, The Accuracy of Mothers’ Memories of Conversations With Their Preschool Children 5 J. EXP. PSYCHOL.: APP 105 (1999).

32. Debra A. Poole & D. Stephen Lindsay, Interviewing Preschoolers: Effects of Nonsuggestive

Techniques, Parental Coaching and Leading Questions on Reports of Nonexperienced Events 60
J. EXP. CHILD PSYCHOL. 129, 147 (1995).

33. As the local television stations covered the trial, my cross-examination of the SANE nurse and the medical doctor were videotaped. These recordings have had the pauses and objections edited out. I will make these recordings available to NACDL.

34. See, e.g., S. Jean Emans, Sexual Abuse in Girls: What Have We Learned About Genital Anatomy? 120 PEDIATRICS 259 (1992); J. Jane Gardner, Descriptive Study of Genital Variation in Healthy, Nonabused Premenarchal Girls, 120 PEDIATRICS 255 (1992); Richard A. Gardner, Medical Findings and Child Sexual Abuse, 5 ISSUES CHILD ABUSE ACCUS. 12 (1993); David Muram, Child Sexual Abuse — Genital Tract Findings in Prepubertal Girls: The Unaided Medical Examination, 160 AM. J. OBSTET. GYNECOL. 332 (1989); David M. Paul, The Pitfalls Which May Be Encountered During an Examination for Signs of Sexual Abuse. 30 MED. SCI. L. 10 (1990); Susanne T. White, David L. Ingram & Pauline R. Lyna, Vaginal Introital Diameter in the Evaluation of Sexual Abuse, 13 CHILD ABUSE NEGLECT 217-224 (1989).

35. See, e.g., Jan Bays and David Chadwick, Medical Diagnosis of the Sexually Abused Child, 17 CHILD ABUSE NEGLECT 91, 96 (1993); Abbey B. Berenson et al., Appearance of the Hymen in Prepubertal Girls, 89 PEDIATRICS 387 (1992); S. Jean Emans, Marc R. Laufer & Donald P. Goldstein, Office Evaluation of the Child and Adolescent, in PEDIATRIC AND ADOLESCENT GYNECOLOGY 22-23 (5th ed. 2005); Richard A. Gardner, Medical Findings and Child Sexual Abuse, 5 ISSUES CHILD ABUSE ACCUS. 1, 4, 8 (1993); Astrid Heger & S. Jean Emans, Introital Diameter as the Criterion for Sexual Abuse, 85 PEDIATRICS 222 (1990); Marcia E. Herman-Giddens & Thomas E. Frothington, Prepubertal Female Genitalia: Examination for Evidence of Sexual Abuse, 80 PEDIATRICS 205, 207 (1987); John McCann et al., Comparison of Genital Examination Techniques in Prepubertal Girls, 85 PEDIATRICS 182, 185 (1990); John McCann et al., Genital Findings in Prepubertal Girls Selected for Nonabuse: A Descriptive Study, 86 PEDIATRICS 432, 437 (1990); David M. Paul, What Really Did Happen to Baby Jane? -The Medical Aspects of the Investigation of Alleged Sexual Abuse of Children, 26 MED. SCI. L. 94 (1986); Lawrence R. Ricci, Child Sexual Abuse: The Emergency Department Response, 15 ANN. EMERG. MED. 712 (1986); Susanne T. White, David L. Ingram & Pauline R. Lyna, Vaginal Introital Diameter in the Evaluation of Sexual Abuse. 13 CHILD ABUSE NEGLECT 217, 222 (1989).

36. April R. Bradley & James M. Wood, How Do Children Tell? The Disclosure Process in Child Sexual Abuse, 20 CHILD ABUSE NEGLECT 888 (1996).

37. Id. at 881.

38. Maggie Bruck & Stephen Ceci, Unveiling Four Common Misconceptions, 13 FORENS. DEVEL. PSYCHOL. 230 (2004) (citing Michael Lamb et al., Age Differences in Children's Responses to Open-Ended Invitations in the Course of Forensic Interviews, 71 J. CONSULT. CLIN. PSYCHOL. 926-934 (2003)).

39. Kamala London et al., Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell? 11 PSYCHOL. PUB. POL'Y L. 220 (2005) ("The research on denial and recantation shows that when directly questioned in a formal setting, only a small percentage of abused children demonstrate these behaviors."); Kamala London et al, Review of the Contemporary Literature on How Children Report Sexual Abuse to Others: Findings, Methodological Issues, and Implications for Forensic Interviewers, 16 MEMORY 1 (2008).

40. State v. Bullock, 791 P.2d 155, 176 (Utah Sup. Ct. 1989).

41. *State v. Hadfield*, 788 P.2d 506, 508 (Utah Sup. Ct., 1990).
42. By “flash value” we mean that the cross-examiner would hold up these standard texts and show them to the witness while asking questions about their contents. These standard texts in the field of suggestibility included: Stephen J. Ceci, Michael P. Tolia & David F. Ross (eds.), *Children’s Eyewitness Memory (The First Cornell Conference Into Suggestibility 1987)*; Hollida Wakefield & Ralph Underwager, *Accusations of Child Sexual Abuse (1988)*; Stephen J. Ceci, David F. Ross & Michael P. Tolia (eds.), *Perspectives on Children’s Testimony (The Second Cornell Conference Into Suggestibility 1987)*; John Doris (ed.) *The Suggestibility of Children’s Recollections: Implications for Eyewitness Testimony (The Third Cornell Conference Into Suggestibility 1991)*; Stephen J. Ceci & Maggie Bruck, *Jeopardy in the Courtroom: A Scientific Analysis of Children’s Testimony (1995)*; Debra Poole & Michael Lamb, *Investigative Interviews of Children: A Guide for Helping Professionals (1998)*; Terence Campbell, *Smoke and Mirrors: The Devastating Effect of False Sexual Abuse Claims (1998)*, and Kathryn Kuehnl & Mary Connell (eds.), *The Evaluation of Child Sexual Abuse Allegations (2009)*.
43. Deposition Transcript of Social Worker Laurie Evans on Dec. 30, 2008, in *Henke v. Henke (Craft)* Circuit Court of Hamilton County, Tenn., Case No. 03-D-2024. A certified copy of the sworn deposition was marked as an exhibit in *State v. Craft*, but blocked by the prosecution and judge.
44. The Global Assessment of Functioning (GAF) is a numeric scale (0 through 100) used by mental health clinicians and physicians to subjectively rate the social, occupational, and psychological functioning of adults — how well or adaptively one is meeting various problems in living. A score of 31-40 means there is some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school). See http://en.wikipedia.org/wiki/Global_Assessment_of_Functioning.
45. *Evans v. Gossman*, Circuit Court of Hamilton County, Tenn., Case No. 06-D-1254, Plaintiff’s Findings of Fact and Conclusions of Law, Aug. 27, 2007 at 12.
46. Paraphrasing some of the entries in the treatment notes Laurie Evans admitted into evidence and filed with her summary documents requesting money damages: Evans had purchased a handgun and obtained a certification to carry it concealed. Evans complained that a man was pursuing her and violating her “boundaries.” Evans complained that she was being followed (“a bad scare this week”). Evans contacted her husband’s ex-wife, encouraging her to have his five-year-old daughter “examined to determine if there had been contact that might infect her. ...” Evans complained that “recent strange events at her apartment regarding light bulb on her porch getting unscrewed ... rapid speech, mood shifting rapidly ... from fear to panic to anger to anxiety. ...”
And just one year before she began to treat all three accusers in *State v. Craft*, her doctor noted on June 28, 2007, “She is not coping.” Trial exhibits *Evans v. Gossman*, Circuit Court of Hamilton County, Tenn., Case No. 06-D-1254.
47. Court Order, Dec. 30, 2008, *Henke v. Henke (Craft)*, Circuit Court of Hamilton County, Tenn., Case No. 03-D-2024.
48. *Id.* Transcript, Motion Hearing on Intervention, Jan. 11, 2010 at 3; 8-9, 12-13. *Henke v. Henke (Craft)*.
49. STEPHEN J. CECI & MAGGIE BRUCK, *JEOPARDY IN THE COURTROOM: A*

SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY 155 (1995).

50. *Id.* at 226 (quoting Dr. Moise Shopper, an expert in the Little Rascal case).

51. *Id.* at 289.

52. We used three illustrative reported experiments in memory contamination: "The Mousetrap Study," Stephen J. Ceci et al., Repeatedly Thinking About a Nonevent: Source Misattributions Among Preschoolers, 3 *CONSCIOUS COGN.* 388-407 (1994); "The Sam Stone Study," Michelle D. Leichtman & Stephen J. Ceci, The Effects of Stereotypes and Suggestions on Preschoolers' Reports, 31 *DEVEL. PSYCHOL.* 4 (1995); and "The Simon Says Study," Stephen J. Lepore & Barbara SESCO, Distorting Children's Reports and Interpretations of Events Through Suggestion, 79 *J. APPL. PSYCHOL.* 1 (1994). These three experiments are discussed for lay audiences in STEPHEN J. CECI & MAGGIE BRUCK, *JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY* 89-90, 129-132, 218-222 (1995).

53. Amye R. Warren et al., 'It Sounds Good in Theory, But ...' Do Investigative Interviewers Follow Guidelines Based on Memory Research? 1 *CHILD MALTREAT.* 241 (1996).

54. *Id.*

55. Amye R. Warren & Dorothy F. Marsil, Why Children's Suggestibility Remains a Serious Concern, 65 *LAW & CONTEMP. PROBS.* 133 (2002).

56. Jennifer S. Hunt & Eugene Borgida, Is That What I Said? Witnesses' Responses to Interviewer Modifications, 25 *LAW & HUM. BEHAV.* 599 (2001).

57. See, e.g., Elizabeth F. Loftus & Hunter G. Hoffman, Misinformation and Memory: The Creation of New Memories, 118 *J. EXP. PSYCHOL. GEN.* 1 (1989).

58. See, e.g., Yael Orbach & Michael E. Lamb, The Relationship Between Within-Interview Contradictions and Eliciting Interviewer Utterances, 25 *CHILD ABUSE NEGLECT* 323, 324 (2000) ("Option posing, yes/no, and suggestive questions subvert children's competency, foster acquiescence to misleading information, and increase the retrieval of erroneous information.") ("Option posing utterances ... focus the child's attention on details or aspects of the alleged incident that the child has not previously mentioned.") *Id.* at 326.