

Michigan Forensic Interviewing Protocol, 4th edition review

By MICHAEL G. BROCK

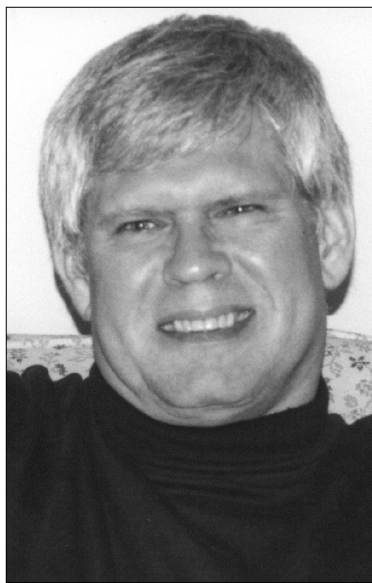
There is an update of the Michigan Forensic Interviewing Protocol,¹ (Protocol) which I recently ran across and printed off while doing preparation for an upcoming case. This article is a review of the changes in the new Protocol, and some thoughts about what this will mean to attorneys, experts, and clients involved in criminal sexual conduct cases. The preface states that the current (4th) edition began revision in 2016 and was posted in October 2017. Presumably, work on the current Protocol commenced subsequent to publication of Debra Poole's new book on forensic interviewing², which I reviewed on my blog and in the Legal News (Is Forensic Science an Oxymoron?) You may also read this and related articles on my website, michaelbrock.com.

The importance of the Protocol cannot be overstated, since it is the legally mandated format for the child's interview in an abuse case. The documented transcript and/or recording of the child's forensic interview should tell attorneys and expert witnesses whether the interview was conducted properly, and whether the child's statements provide a consistent and credible narrative. If the child was reporting an actual event or events, was coached, or is making up a story, the forensic interview should provide evidence of it and suggest possible effective direct and cross examination. Moreover, your expert will be expected to have knowledge of the Protocol and its use, and, though I am not a lawyer, I have no idea how counsel can prepare a defense without knowing how the evidence was obtained.

Forensic interviews are similar to what one might experience in other kinds of criminal prosecutions. In a murder trial, for example, the defense would be very interested in how a confession was obtained. If it was coerced from his client under threats, bullying, physical abuse or hours-long interrogation during which the defendant was denied access to counsel, the defense attorney could be expected to argue that the confession was obtained illegally and should be kept out of evidence, and the prosecution would argue that it should be admissible. In a child sex abuse case, there is typically no physical evidence and the decision to indict is based on the child's forensic interview. If the child makes an allegation, regardless whether the interview was done properly, or the story has any continuity or credible detail, the prosecution is going to indict, but unlike the murder trial, they will not want the jury to hear contradictions in the child's story, and will try to keep details of the interview out.

If defense counsel cannot keep the child's evidence out completely due to the child's statements being irreversibly tainted through bad interviewing techniques,³ they will need to be able to impeach the child's testimony by showing inconsistencies with previous statements, especially the first recorded interview, which the forensic literature reports to be the most reliable evidence obtained from the child.⁴ They may also explore this discrepancy at trial by allowing the child to expand on questionable allegations with details that are obviously untrue. The defense will also want to make sure the jury understands what constitutes a credible narrative, and what may be evidence of coaching or a motive to lie.

Multiple interviews, when employed, are more likely to produce disclosure of abuse, but they are also more likely to point out discrepancies between what was said in one interview and what was said in another, the preliminary hearing, the trial itself, and what was disclosed to the adult who presented with the child and made the initial report of abuse. As Dr. Poole states, "A second or third interview can benefit the prosecution when children do not contradict central details and new, valuable information emerges, but subsequent interviews are invaluable to the defense when these conversations document significantly changed stories, a pattern of adult influence (e.g., the infiltration of changing adult beliefs into children's reports), and expanding stories with obvious



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confabulations."⁵

Significantly, alterations to the Protocol⁶ in the three editions issued since the original have not made any changes to the basic format of the interview, or "The Phased Interview," as it is known (These phases consist of the following steps: • Prepare for the Interview. • Introduce Yourself and Start Building Rapport. • Establish the Ground Rules. • Conduct a Practice Narrative. • Introduce the Topic. • Elicit a Free Narrative. • Question, Clarify, and Test Hypotheses⁷. • Close the Interview (P. 7)), but tend to expand on it. One notable deletion from the original preface is the following statement. "The purpose of this Protocol and training is to prepare local investigators to conduct competent child interviews which will reduce trauma to children, make the information gained more credible in the court process, and protect the rights of the accused."⁸ Considering that all other changes through four editions (1998, 2005, 2012, and 2017) have expanded on the original concepts, it is curious that the reference to making sure the process is fair to the accused has been deleted.

The new edition reminds us that this Protocol, or a reasonable facsimile, must be followed when interviewing children suspected of being abused as a matter of law: "In 1998, the Child Protection Law was amended to require each county to implement a standard child abuse and neglect investigation and interview Protocol using as a model the Protocols developed by the Task Force as published in DHS Publication 794, A Model Child Abuse Protocol—Coordinated Investigative Team Approach and DHS Publication 779, Forensic Interviewing Protocol, or an updated version of those publications."⁹

In each edition subsequent to the first: "...the Committee edited sections for clarity, improved the examples, added Quick Guides, and provided some additional reference materials, including relevant statutes. Recent research continues to support the methodology used in Michigan's Protocol."¹⁰ Training of personnel employed by the State is required before they are considered qualified to conduct forensic interviews. "Training is to be provided only by the current holder of the MDHHS service contract that provides forensic interviewing training."¹¹ It is noteworthy that this training is not available to those who are not prosecution team members, and one has to wonder, why not. Law enforcement conducted in secrecy may not be in the public's best interest—indeed, the term "secret police" has an ominous tone. Since prosecutors represent "the people" of the State of Michigan, and since transparency is essential for preserving democracy, why are their website and trainings closed to non-prosecutors? However, defense attorneys need to be prepared for their experts to be attacked by prosecutors for not having had this training. It would seem that a major strategy of contemporary prosecution is to be sure that the defense cannot put on a case.

Training for forensic interviewers is, of course, a good idea for obvious reasons: many of the people performing forensic interviews for the State are not licensed mental health professionals (MHPs), and have no experience in the practice of mental health. Consequently, a police officer or bachelors level MHP would not be qualified to practice mental health treatment independently or as part of a freestanding outpatient mental health clinic,

licensed by the State, authorized by insurance companies to treat their clients, and accreditation by an appropriate agency.¹² Therefore, if they are going to be practicing mental health in a setting where they will participate in the process of deciding who remains free and who spends the rest of their life in prison, a weekend or even a weeklong training session is probably a good idea.

However, it should be noted that this Protocol is written as a requirement for State employees and not as a mandate for professional MHPs, who have their own forensic guidelines and standards of practice¹³, and who may choose between using Dr. Poole's Protocol, one developed by Katherine Kuehnle, or that authored by Michael Lamb (known as the NICHHD Protocol), to name some that are commonly used, or they may choose to develop their own. When I did forensic interviewing as part of child custody evaluations for many years, I used Dr. Poole's Protocol, since I did not see any reason to reinvent the wheel, nor did I think I could improve on what she had done. All viable protocols contain the same core elements in any case, as she noted in her most recent (2016) book: "The Protocols described later in this chapter [7] shared core recommendations...such as the benefits of eliciting freely recalled narratives, following witnesses' trains of thought, and avoiding suggestive questions."¹⁴

On page one, the Protocol introduction states that: "The goal of a forensic interview is to obtain a statement from a child—in a developmentally-sensitive, unbiased, and truth-seeking manner—that will support accurate and fair decision-making in the criminal justice and child welfare systems." This Protocol was developed subsequent to the daycare hysteria of the 1980s, when hundreds of people were falsely charged—and many convicted—of ridiculous and far-fetched allegations of child sexual abuse, for which there was literally no evidence except statements obtained from children using heavy-handed and coercive interviewing techniques. The underlying assumptions to the development of these protocols (Michigan's and others like it) is that a child's statements can constitute valid evidence in a court of law if they are obtained in a scientific and systematic manner, but that if they are not obtained in this manner, they are not reliable.

Hence, after a warning about mixing the dual and conflicting roles of treatment provider and forensic interviewer, previous versions of the Protocol continued by emphasizing the scientific nature of inquiry: "There are two overriding features of a forensic interview: Hypothesis testing [and] a child-centered approach. First, forensic interviews are hypothesis-testing rather than hypothesis-confirming (Ceci & Bruck, 1995)." What does this mean exactly? It means that if you start out prepared to find something (this child was molested by the accused), then you will find that. If you take a position of skeptical neutrality, including that the child could have been coached of may be lying for any number of reasons, then you are more likely to find the truth.

This emphasis on the science is extremely important, but experience has been the typical forensic interview is not well done. One main reason for this is apparent to anyone looking at one of these interviews with a degree of objectivity. The interviewers typically ignore exculpatory statements, absurd scenarios, and statements that provide opportunities for inquiry into alternative hypotheses. They are also anything but child-centered, and resemble interrogations more than interviews. My theory is that this is because interviewers see themselves as part of law enforcement team, allied with police and prosecutors. Moreover, this mindset is reinforced by the fact that the person evaluating their work is not an objective party, but the very prosecutor who will be arguing for conviction if the case goes to trial. The defense is completely unrepresented in the decision of whether to indict a suspect.

The law enforcement mindset is to get convictions, not to exonerate the innocent. This sounds (See BROCK, Back Page)

THE EXPERT WITNESS

Allegorical Economics — Using the Fibonacci series in storytelling (part three)

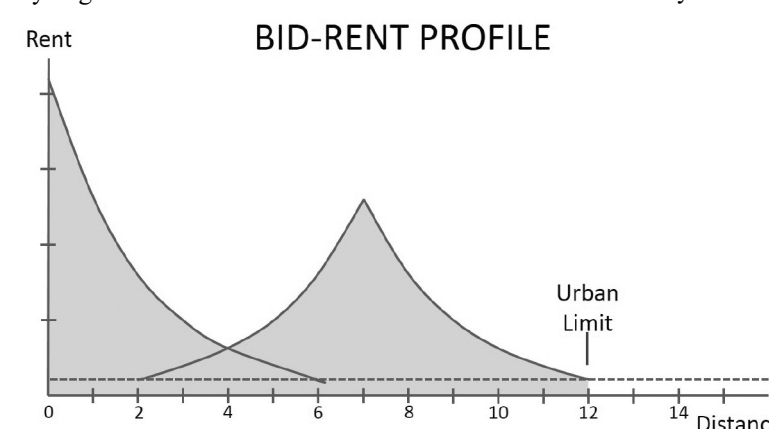
By JOHN F. SASE, Ph.D.
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"Advertising is to a genuine article what manure is to land—it largely increases the product."
—P.T. Barnum, 19th Century American Entrepreneur

Last month, we continued to explore Allegorical Economics by delving into the source of all economic understanding—ourselves as human storytellers. Economists and Attorneys tell stories in both the classroom and the courtroom. Attorneys need to condense client backgrounds and their respective cases in order to evoke understanding and empathy from jurors. Therefore, we began to address the use of numbers in the stories that we tell in our professional venues. This month, we continue this topic by focusing on how to simplify more complex mathematical relationships and graphs for a wider audience by using Economic logic and some simple algebraic tools such as the Fibonacci Series and related graphs. We will do this by using three examples from current media, two books and a film.

The Challenge

In my profession as an Economist, I (Dr. Sase) am called upon to explain advanced Economic measurements by using graphs like the Bid-Rent Profile, which I have presented below. For this research, I rely upon Negative-Exponential, Quadratic, and Cubic functions, which sometimes need to be doubly integrated for three-dimensional spaces such as cities. Simply by uttering the preceding sentence, I would expect to lose the attention of half of my audience or readership. However, I have discovered a way to illustrate higher forms of mathematical measurement by using simple arithmetic—a little trick that I learned from the ancient Greek polymaths Pythagoras and Plato.



The Fibonacci Series

Many scientists regard the Italian mathematician Fibonacci (aka Leonardo of Pisa or son of Bonacci) as the greatest European in his field during the Middle Ages. Born in Pisa, Italy, during the late 12th Century, Fibonacci received a North African education under the Moors, largely due to the professional focus of his father, a customs officer and trader in the Mediterranean Region. As a young adult, Fibonacci travelled extensively around the Mediterranean coast. We believe that he met with many Arabic merchants and learned of their systems of doing arithmetic during his business trips. From these experiences, Fibonacci began to understand the many advantages provided by the more ancient system of mathematics that is evidenced by the structure of the Giza complex in Egypt and by the many temples in India and beyond.

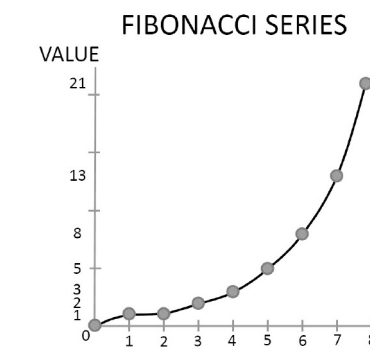


John F. Sase

The arithmetic sequence that we commonly call the Fibonacci Series begins with the numbers "zero" and "one" (0, 1). In many languages throughout the ages, philosophers have explained that these numbers form the foundation of the universe and that the root of all of creation is binary, as represented in the values of zero and one. We interpret this pair of symbols through the concepts of no and yes, off and on, nothing and all, and many other binary relationships. However, this pair of numbers is the seed for a series from which we can derive a universe of mathematical relationships. Starting with this binary pair makes the entire process of expansion transparent.

The sequence emerges through the sum of the two largest numbers in the sequence. We start by adding together our binary pair of numbers to obtain a third number that is also a "one": $0 + 1 = 1$. Now we have the pair of two "ones" that is necessary for further expansion of the series. We continue to sum the pair of largest numbers, which sit furthest to the right. At this point, we have a set of three numbers (0, 1, 1). By taking the sum of the second and third values, we obtain the fourth number: $1 + 1 = 2$ and the expanded set of four values (0, 1, 1, 2). Again, we sum the two largest numbers located furthest to the right to obtain the fifth number $1 + 2 = 3$ and the enlarged set (0, 1, 1, 2, 3). From here, the process is ongoing, such that $2 + 3 = 5$ and the set (0, 1, 1, 2, 3, 5) is produced. Next, we have $3 + 5 = 8$ for the set (0, 1, 1, 2, 3, 5, 8) and then $5 + 8 = 13$ in the set (0, 1, 1, 2, 3, 5, 8, 13).

Finally, for our immediate purposes, we take the sum of the two values furthest to the right, such that $8 + 13 = 21$, producing the set (0, 1, 1, 2, 3, 5, 8, 13, 21). Hey! We are done.



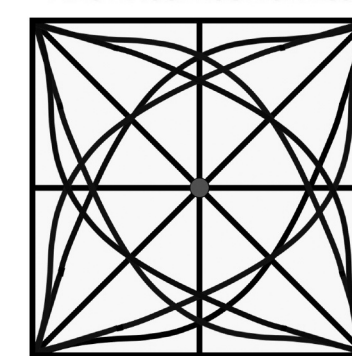
The preceding graph includes the full set through 21 (0, 1, 1, 2, 3, 5, 8, 13, 21). Alternately, the function represented by the Fibonacci Series herein is a Cubic Function in which $y = 0 + 1.29x - .45x^2 + .08x^3$ with an R^2 greater than 99%. In certain cases, we may delete the first two values (0, 1), move the remaining values leftward so that the y-intercept may equal 1. The function represented by this altered series would be a Quadratic Function for which $y = 1 - .57x + .63x^2$ with $R^2 = 99\%$. This Fibonacci Series can be expanded easily, depending on need. Expansion requires adding 13 and 21 from the set (0, 1, 1, 2, 3, 5, 8, 13, 21) in order to get the next number of 34. Then, 21 and 34 can be added to render the next value and so on toward infinity.

Working with the Fibonacci Series

By arranging these nine values on a square, we produce a curved line that we use to illustrate practical events. We can rotate and flip our line to get a total sixteen basic lines that can be truncated or expanded as needed. These variations allow us to model an airplane taking off and then accelerating steeply upward, a toboggan sliding down a run, and a car driving up a steep hill that gradually levels off near the top. In business, we also can approximate the change in Average Fixed Cost: as the quantity produced increases, the Average Fixed Cost decreases. Likewise, we can model Variable Costs, which rise at an increasing rate as production increases.

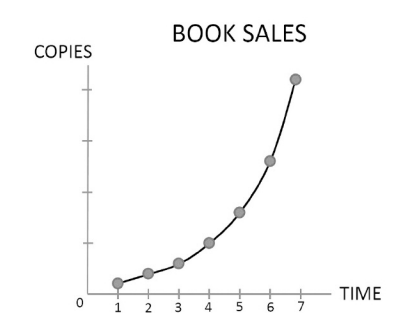
The following composite diagram contains the sixteen rotated and flipped variations of our Fibonacci Series discussed. In addition, the diagram includes four straight lines that may be used to represent Supply and Demand, to discuss the differences within the spectrum of elasticity, and to address other topics in the field of Economics. The four straight lines reflect the ratios of the two binary values that form the base of the Fibonacci Series.

FIBONACCI ECONOMICS



ci Series. The two diagonals are generated by the ratio of 1:1 and the horizontal and vertical lines are generated by the ratios of 0:1 and 1:0, respectively. With suitable expansion or contraction, this set of twenty lines within the square can be used to illustrate all of the relationships found in Economic Principles.

In the following example, we model book sales as they increase at an accelerating rate over a short period of time as we bring the Fibonacci Series into the world of contemporary publishing. The truncated Series used in the graph above provides a simple illustration of how the sales of hot best-sellers take off quickly when controversy-marketing techniques are applied. The concept and the measurement tool are simple. The question of why should be obvious (cha-ching). The rapid increase reflects promotion and sales strategies that effectively use "controversy" as a marketing tool.



Two well-known examples of this type of a marketing campaign have relied upon controversy generated on Twitter and Facebook in order to achieve a rapid spike in sales. These books are "Fifty Shades of Grey" by English author E. L. James (Vintage Books, 2012) and the recent "Fire and Fury: Inside the Trump White House" by Michael Wolff (Henry Holt and Company, 2018).

However, their stories are ones for another time. Our takeaway for attorneys this month is that, by using Economics and mathematical tools such as the Fibonacci Series, one can dig more easily through the muck within their cases in order to find some simple truth and possible answers to questions that arise during disciplined investigation.

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