

# Memory and Suggestibility Research: Does the Surreal World of the Laboratory Apply to the Real World?

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## I. INTRODUCTION: Children have historically been regarded to be highly suggestible and wholly unreliable witnesses

1. For hundreds of years, the statements of children have been viewed suspiciously by adults. In 1692, a group of children accused certain residents of Salem of Witchcraft. These statements contributed to the execution of a number of alleged witches. Several years later, some of the children recanted their previous statements. Following the Salem witchcraft trials, "the prevailing legal attitude for the following 300 years has been one of skepticism about the testimony of child witnesses...repeatedly, legal scholars have cited the excesses of Salem as a basis for their views of child witnesses." Stephen J. Ceci and Maggie Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis*, 113 PSYCHOLOGICAL BULLETIN 403, 405 (1993).
2. The failure of society to deem the statements of children as credible is reflected in the charging decisions of prosecutors. As one commentator notes, "legal scholars, eyewitness research psychologists, and clinicians involved with child victims of sexual assault have all suggested that prosecutors are reluctant to bring to court cases that rely primarily on a young child's eyewitness testimony, presumably because of burden-of-proof problems and a suspicion that jurors have negative stereotypes about children's memories. Given the entrenched institutional distrust of children's memory, this reticence is not surprising." S.J. CECI, D.F. ROSS, M.P. TOGLIA, EDS, PERSPECTIVES ON CHILDREN'S TESTIMONY 101 (1989).

3. Sigmund Freud may have fueled the view of children as unreliable. As one commentator notes, Freud's "audacious talk of childhood sexuality, incest, and the need to overcome repression of sexual urges tantalized the public imagination...his...Oedipus Complex—was the stuff of cocktail party chitchat." PATRICK GLYNN, GOD: THE EVIDENCE 59 (1997).

## II. MEMORY AND SUGGESTIBILITY RESEARCH: THE FIRST WAVE

1. Prior to 1979, there was a shortage of research of children's memory and suggestibility. From 1979-1992, more than 100 M & S studies appeared in the literature. Ceci & Bruck, *supra*, at 408.
2. Much of this literature challenged the earlier view that children are highly suggestible and prone to attack. Gail Goodman is the author of much of the literature that speaks positively of children's abilities. According to Ceci and Bruck, "(p)erhaps no researcher has done more to redress the historical imbalance in favor of child witnesses than Gail Goodman." Ceci & Bruck, *supra*, at 410.
  - A. *The trailer study.* Researchers Rudy & Goodman sent pairs of children ages 4-7 into a trailer. One child was instructed to watch while the other child interacted with a clown. The child interacting with the clown engaged in activities such as being dressed in a clown's suit, being lifted up, and being photographed. The children who interacted with the clown and those who merely observed the interactions were asked a number of leading questions such as "he took your clothes off, didn't he?" These questions produced only one false report of abuse. Specifically, a 4 year old bystander falsely claimed he and the participant were spanked by the clown). L. Rudy & G.S. Goodman, *Effects of Participation on Children's Reports: Implications for Children's Testimony*, 27 DEVELOPMENTAL PSYCHOLOGY 527-538 (1991).
  - b. *Medical exam study.* Goodman and other researchers studied the memories of 5 and 7 year old girls concerning a medical examination. The children were asked suggestive questions which might trigger a false report (e.g. "How many times did the doctor kiss you?") Not one of the seven year olds made a false report and 5 year olds made a false report only 3 out of 215 times. Ceci, *supra* at 411 citing Saywitz, Goodman, Nicholas, and Moan, *Children's Memories of a Physical Examination Involving Genital Touch: Implications for Reports of Child Sexual Abuse*, 59 Journal of Consulting and Clinical Psychology 682-691 (1991).
  - c. Some scholars believe that the positive outcomes of research by Goodman and others created a false sense of security that children do not lie and are not unduly suggestible. This "pro-child" attitude may regrettably have contributed to abuses in the interviewing of children. Such abuses are exemplified in the case of *State v. Michaels*, 642 A.2d

1372 (N.J. 1993); *also see State v. Michaels*, 625 A.2d 489 (1993). The Michaels case involved the alleged sexual abuse of 3-5 year old boys and girls at a day care center. Though a jury convicted Michaels of 131 counts of child abuse, the convictions were eventually overturned. For an overview of the case which is sympathetic to the prosecutor's case, *see LISA MANSHEL, NAP TIME* (1990). Without question, many of the children in the *Michaels* case were interviewed inappropriately. Some of the often-cited egregious interviews include:

- 1) In one interview, a 4 ½ year old child was told "lots of other kids" had been spoken to; that the sooner the child cooperated, the sooner they could get out of there. The child became annoyed, said he didn't want to talk and told the investigator "I hate you." The investigator assured the child he really did not hate the investigator and that, in fact, the child secretly liked the investigator. Eventually, the investigator tried this approach:

I: Come on do you want to help us out? Do you want to help us keep her (Kelly) in jail.

C: No!

I: Tell me what happened...I'll make you fall on your butt again.

\* \* \* \*

I: I'll let you hear your voice and let you play with the tape recorder. I need your help again, buddy. Come on.

C: No.

### III. THE SECOND WAVE OF RESEARCH

1. Some suggest that not all of the researchers in this field have a great deal of experience with the "real world" of child abuse investigations and prosecutions. As a result, a number of studies have been tailored to the type of child abuse cases that receive national attention from the media. The typical child abuse case profiled by the media involves multiple pre-school children who are victimized by someone outside the home. In the case of Kelly Michaels, investigators did use a number of suggestive, perhaps even coercive questions. Moreover, many children were interviewed on multiple occasions even when the children denied the abuse. *Michaels*, however, is not the typical case and research rooted in the *Michaels* scenario has less relevance to those of us for whom the sensational is not the norm. *See Thomas D. Lyon, False Allegations and False Denials in Child Sexual Abuse*, 1 PSYCHOLOGY, PUBLIC POLICY AND LAW 429 (1995).
2. Though much of this research does not reflect the typical abuse investigation, the research has been given great weight by many courts. I am told of a Judge who, in addressing a conference, held up a book and said "this is all you need

- to know about kids' statements about child abuse." The book was Ceci & Bruck's JEOPARDY IN THE COURTROOM (1995). Although we certainly need to know this research and we have attempted to incorporate many of Dr. Ceci's suggestions into our interviewing courses, the new wave research is only part of, it is not the entire puzzle.
3. Four of the "new wave" studies illustrate the uses and mis-uses of this research.
    - a. *The Sam Stone Study.* In this study, researchers made a series of untruthful statements to 3-6 year old children and, eventually, got many of the children to adopt these statements as being true. First, researchers told the children that a fictitious character by the name of Sam Stone really existed and that he was "very clumsy" and "always broke things that did not belong to him." The children were further deceived when "Sam Stone" visited their school for two minutes while the children were engaged in a story telling session. During the visit, "Sam Stone" did not break anything or otherwise behave clumsily. However, the following day, the children were shown a "ripped book and a soiled teddy bear." At this time, few of the children blamed Stone for the damage but 25% surmised he may have been responsible. Over the course of the next ten weeks, the children were interviewed once every two weeks for two minutes. During each session, the children were asked two questions which researchers Ceci and Bruck describe as "leading questions". These questions included "I wonder whether Sam Stone was wearing long pants or short pants when he ripped the book?" or "I wonder if Sam Stone got the teddy bear dirty on purpose or by accident?" It should be noted, however, that these are *not* leading questions that merely *suggest* the desired answer. These questions *give* the answer and do not allow the children the opportunity to reject the suggestion. In each of these "questions", the child is told that Sam Stone is responsible for the damage and is simply asked to speculate on why he did it or what he may have been wearing when he damaged the property. At the end of the ten week period, the children were interviewed by someone who claimed not to be present the day "Sam Stone" visited the school. When asked, 72% of the 3 and 4 year olds said Sam Stone had ruined at least *one* of the items and 45% of the 3 and 4 year olds actually claimed to have witnessed the events. Despite weeks of explicit deception, however, only 11% of the 5 and 6 year olds claimed to have actually observed Sam Stone damage the items. According to Ceci & Bruck, "these results indicate that not only do young children form stereotypes but that stereotype formation interacts with suggestive questioning to a greater extent for younger than older children." Ceci & Bruck, PSYCHOLOGICAL BULLETIN, *supra*, at 416-417.
    - b. *The mousetrap studies.* Children ages 3-6 were interviewed on multiple occasions. The kids were told the interviewer had met with

their parents and made up a list of events. Some of the events really happened to the children and some did not. The children were encouraged to try and remember if the events really happened. One of the fictitious events was that the child got his hand caught in a mousetrap and went to the hospital. This process continued once a week for a number of consecutive weeks. By the seventh interview, about one-third of the children eventually claimed to remember experiencing the fictional events they had denied during earlier sessions. During the *eleventh* session, one child remembered the experience in this way: "*My daddy, mommy, and my brother (took me to the hospital) in our van...The hospital gave me a little bandage, and it was right here (pointing to index finger)...I was looking and then I didn't see what I was doing and it (finger) got in there somehow...The mousetrap was in our house because there's a mouse in our house...The mousetrap is down in the basement, next to the firewood...*" Ceci, Loftus, Leichtman, Bruck, *The Possible Role of Source Misattributions in the Creation of False Beliefs among Preschoolers*, 62 INTERNATIONAL JOURNAL OF CLINICAL AND EXPERIMENTAL HYPNOSIS 304, 306 (1994).

- c. *The Mousetrap revisited.* Following up on the above research, Ceci and others decided to "change one major parameter of the paradigm...instead of merely asking children if they remember experiencing a fictional event, we tell the children that the fictional event actually did happen and ask them to create a visual picture of it in their head and then to tell us if they remember it." Ceci et al, *supra* at 307. Children ages 3-6 were interviewed 12 times for approximately 30 minutes. Each interview was separated by approximately one week. The children were told they were playing a "game" called "picture in the head". Children were given a list of real and fictional events. The interviewer lied to the children by telling them that all the events really happened to the child. The children were told to "think really hard" about the events and try to "make a picture of it in your head." In the 12<sup>th</sup> interview session, the children met with a new interviewer who explained that the prior interviewer "made lots of mistakes" and told many children things that happened to them which in fact did not. During the initial session, children assented falsely to a fictitious event 29% of the time. By the 12<sup>th</sup> session, this figure rose to 43%. Younger children were more suggestible than older children.
- d. *The inoculation study.* Four and five year old children received a medical examination by their pediatrician. After the examination, a research assistant greeted the children, spoke to them for several minutes, and then remained while the pediatrician administered an oral vaccine and an inoculation. The RA then took the child to another room and gave them treats and read them a story. Approximately 11 months after the visit, the children were interviewed four times over a two week period. During the first three interviews, the children were

told several false things about the earlier visit. The interviewer minimized the amount of pain and how much the child cried during the inoculation. The interviewer falsely told the children it was the RA who gave them the oral vaccine and inoculation and it was the pediatrician who gave them treats and read the story. In the fourth interview, kids were asked to recall everything that happened in the visit. Children were allowed to see pictures of the RA and the pediatrician and were asked to explain what each had done. In the fourth interview, kids receiving the false information reported less hurt and crying than a control group and over 40% falsely reported the duties performed by the RA and the pediatrician. Obviously, a majority of the children resisted at least some of the intentionally false statements of the interviewers and continued to correctly reconstruct the event. Bruck, Ceci, Francoeur, and Barr, *"I Hardly Cried when I got my Shot!" Influencing Children's Reports about a Visit to Their Pediatrician*, 66 CHILD DEVELOPMENT 193-208 (1995).

#### IV. IS THE "NEW WAVE" RESEARCH APPLICABLE TO "REAL WORLD" INVESTIGATIONS?

- A. If you interview children in the manner many of the "new wave" researchers do, your interviews are subject to challenge. To avoid this problem, keep in mind the following guidelines:
  1. Do not *tell* children the answer. Note that many of the new wave researchers go well beyond asking direct questions or even leading questions (questions which suggest an answer). As one commentator notes, a "significant feature of the suggestive questions Ceci and others typically use is that they *tell* rather than *ask* the child what occurred." Lyon, *supra*, at 434. In the Sam Stone study, for example, children were "not asked to affirm or deny whether Sam Stone committed the misdeeds but were given a forced-choice question regarding how the acts were performed by Mr. Stone." Lyon, *supra*, at 434.
  2. Do not stereotype the perpetrator. One of the falsehoods told children in the Sam Stone study was that Stone was a clumsy fellow. Investigators should avoid stereotyping alleged perpetrators. Indeed, many children may have positive feelings toward their perpetrator and introducing a negative stereotype may be counter-productive to getting the child to speak candidly with you.
  3. Be extra cautious in multi-victim cases. In cases with multiple victims where parents and others may be speaking to the children, "the temptation is great to use other children's revelations in a coercive manner, either to convince the child that abuse occurred, or to make the child feel disloyal by failing to confirm abuse." Lyon, *supra*, at

433. Interviewers should avoid suggesting to a child that what other witnesses say must be true.
4. Never refer to any aspect of the interview as a game. Unlike the interviewers in the mousetrap study, investigators should never encourage children to play a game or “picture” stories in their heads. On the contrary, children should be given the message that the interview is serious and truthfulness is important. Interviewers often inappropriately introduce dolls to children by saying “let’s pretend this doll is you” or “let’s pretend this doll” is the perpetrator. Instead, explain to the child the dolls are not to be played with but are instead used by children to show what they have told interviewers. A possible approach to get the child to make the representational shift is to ask the child “which doll looks most like you” and “which doll looks most like Dad” (or whoever the child has labeled as the perpetrator). Be aware that many young children cannot make this representational shift. For an overview on the proper and improper use of anatomical dolls, see the APSAC guidelines which are included as an appendix to the attached Myers article.
  5. The new wave research may reveal particular concerns for therapists. Ceci and his colleagues note that “therapists who treat children suspected of abuse frequently encourage them to engage in fantasy manipulation and self-empowerment activities...” Ceci, Loftus, Leichtman, and Bruck, *supra* at 317. To the extent therapists utilize the inappropriate interview practices of new wave researchers, these therapists are subject to attack. Ceci and colleagues claim that “many” of the interview transcripts they review contain these suggestive practices. *Id.* On the other hand, Ceci says that 2/3rds of the transcripts he reviews do *not* contain the potentially suggestive practices he considers inappropriate. Lyon, *supra*, at 434.

## V. ADDITIONAL POINTS

- A. Children, even very young children, can lie. Most parents know this already, but a number of studies confirm it. See Ceci & Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis*, 113 PSYCHOLOGICAL BULLETIN 403, 425-427 (1993).
- B. Younger children are more suggestible than older children. In general, once children reach the age of ten, they are no more suggestible than adults. John E.B. Myers, Gail S. Goodman, Karen Saywitz, *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 27 PACIFIC LAW JOURNAL 1, 26 (1996).
- C. Interviewers should avoid pre-fixed ideas of what happened and should explore alternative hypotheses.
- D. Investigators must never put the entire burden of proving a case on the shoulders of the child victim. Investigators must thoroughly investigate each allegation. This means interviewing the suspect and everyone else with

knowledge. Every aspect of the child's statement that can be corroborated, must be.

- E. Though relevant, the new wave research is less applicable to the majority of interviews of abused children. Consider this:

1. The average age of alleged victims in sexual assault cases is 10 years old, as opposed to the pre-schoolers in the new wave research. Lyon, *supra*, at 433.
2. Most investigative interviews occur shortly after the report of abuse and do not involve the long delays between the target events and suggestive questions used by new wave researchers. Lyon, *supra*, at 433.
3. Most real world victims are abused by close family members. Closeness between the victim and the offender increases the child's resistance to falsely reporting abuse. Lyon, *supra*, at 433.
4. Most real world cases involve one victim, not the multiple victims in cases such as *Michaels*.
5. Although many abused children are interviewed as many as 11 times, these interviews are of children who have *revealed* abuse. In contrast, the interviews in the new wave research involve multiple interviews of children who have *denied* an event. The new wave researchers then repeatedly interview the kids to get them to adopt the intentionally false statement of the interviewer. See Lyon, *supra* at 434.
6. Although coercive or misleading questioning may result in a false *report*, it does not necessarily produce a false memory. When researchers "gently challenge" a child's false report, such reports are reduced 50%. Lyon, *supra*, at 436.
7. Keep in mind that even though most real world interviews involve elements different from the new wave researchers, even the coercive practices employed in this research produced only a *minority* of false reports.

## VI. SUGGESTIBILITY AND ANATOMICAL DOLLS

- A. There is general agreement that anatomical dolls cannot be used to diagnose or test for sexual abuse. Myers, *supra* at 29.
- B. The majority of available research supports the position the dolls are *not* unduly suggestive or overly stimulating. *Id.* at 30.
- C. The dolls are useful to (1) stimulate memory, (2) allow children to demonstrate what they have difficulty putting into words, and (3) confirm that the interviewer correctly understands the child's vocabulary and meaning for various terms. *Id.*
- D. As a rule of thumb:
  - Do not use the dolls if the child cannot make the representational shift (understanding that the doll represents them or another person)

- Do not use the dolls if you do not need to
- The use of dolls is least likely to be effectively attacked when the child has articulated abuse but is having difficulty describing the abuse. In this scenario, the dolls are used to aid the child in describing what he has already articulated and to avoid the possibility the interviewer has misunderstood the child's statements.

VII. ATTACHMENTS: please find attached to this outline the following articles:

- A. Brian Holmgren, *Should Expert Testimony on Children's Suggestibility be Admissible?*, 10 UPDATE, no. 3 (1997).
  - B. John E.B. Myers, Gail S. Goodman, Karen J. Saywitz, *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 7 PACIFIC LAW JOURNAL 1 (1996) (THIS ARTICLE WAS DISTRIBUTED AS PART OF THE PRE-CONFERENCE HOMEWORK ASSIGNMENTS).
- I. For further reading, see Thomas D. Lyon, *The New Wave in Children's Suggestibility Research: A Critique*, 84 CORNELL LAW REVIEW 1004 (1999).