MEMORY AND SUGGESTIBILITY

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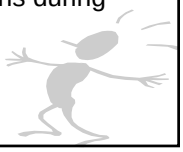


TOPICS TO COVER

- History
- Early Research
- Legal Fallout
- Recent Research
- Tips for Interviewing Kids
- Tips for Testifying in Court
- Defending the Interview

STATISTICS

- Juveniles age 12 to 17 are 2.5 times more likely to be the victim of a sexual assault then an adult
- 70% of sexual assaults reported to law enforcement have a juvenile victim
- 47% are under the age of 12
- Sexual assault accounts for 3 in 4 female victims and 1 in 4 male victims of violent crimes
  - 2006 Juvenile Offenders and Victims National Report

MEMORY AND SUGGESTIBILITY

Can we, through our interview, get a child to say something that is not true?

MEMORY AND SUGGESTIBILITY

Kids 10 and older are no more suggestible then adults

HISTORY

- Salem witch trials
- Freud
- Prosecutor's charging decisions

SALEM WITCH TRIALS (1692)

-Children accuse several people of witchcraft
-Some years after executions a few children recant

SALEM WITCH TRIALS (1692)

- "The prevailing legal attitude for the following 300 years has been one of skepticism about the testimony of child witnesses" Stephen Ceci & Maggie Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis,* 113 Psychological Bulletin 403, 405 (1993)

FREUD

- The Oedipal Complex
  - -Children fantasize sexual relationships with their parents

PROSECUTORS

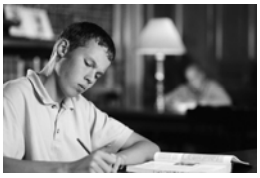
- "[P]rosecutors are reluctant to bring to court cases that rely primarily on a young child's eyewitness testimony, presumably because of burden-of-proof problems and a suspicion that jurors have negative stereotypes about children's memories" S.J. Ceci, D.F. Ross, M.P. Toglia, EDS Perspectives on Children's Testimony 101 (1989)

Jurors Perceptions

- Young children are less accurate then older children
- Young children are more credible then older children

RESEARCH

- Prior to 1979, a shortage of research.
- From 1979-1992, more than 100 studies.
- Much of the literature was pro-child.



THE CLOWN STUDY

- Pairs of 4 and 7 year olds
- One child interacts with the clown while the other child observes
- Asked open ended & misleading questions about the event
- Only 1 false report in entire study

THE MEDICAL EXAM STUDY

- 5 and 7 year old girls
- ½ had a scoliosis exam & ½ had an external genital exam
- Interviewed 1 week or 1 month later

THE MEDICAL EXAM STUDY

- Interviewers used free recall, anatomical dolls, direct, and misleading questions
  - "Did the doctor put something in your mouth?"
  - "Did you take your clothes off?"
  - "How many times did the doctor kiss you?"
  - "Did the doctor touch you there?" (while pointing to vagina on doll)
  - "Did the doctor ever touch you before that day?"

THE MEDICAL EXAM STUDY

- Only 3 to 5 % of the children made a false report
- 14 to 31 % failed to reveal genital touching
- 5 years olds were more likely to reveal genital contact then 7 year olds
- Children reported twice as much correct information when demonstrating on dolls
- None of the children demonstrated sexually explicit behavior with the dolls

THE MEDICAL EXAM STUDY

- Karen J. Saywitz, Gail S. Goodman, Elisa Nicholas, & Susan F. Moan, *Children's Memories of a Physical Examination Involving Genital Touch: Implications for Reports of Child Sexual Abuse,* Journal of Consulting & Clinical Psych., 1991, Vol. 59, No. 5

STATE V. MICHAELS, 625 A.2d 1372 (NJ 1993)

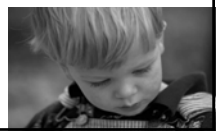
BAD FACTS

MICHAELS

- Allegations of sexual abuse by 3 to 5 year old girls and boys at a day care center
- Michaels originally convicted of 131 counts of child abuse
- Case overturned based on improper interviews of children

MICHAELS

- Anatomical Dolls used before disclosure
- Children offered police badges in exchange for disclosures
- Coercive & Suggestive interview techniques used
- Multiple interviews of children who did not disclose



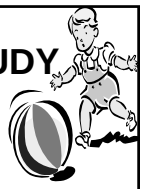
MICHAELS

- “Lot’s of other kids” have spoken to us
- The sooner you cooperate the sooner you can leave
- You don’t really hate me, you like me
- “Do you want to help us keep her in jail”
- “Tell me what happened . . . I’ll make you fall on your butt again”
- “I need your help again, buddy. Come on.”

MORE RESEARCH

- Research reflects high profile cases.
- Research is given great weight by some courts.

THE SAM STONE STUDY



- 3 to 6 year olds
- Children divided into 4 groups: neutral, stereotype, suggestions, stereotype & suggestion
- Children told 12 stereotypical statements about "Sam Stone" over 1 month period
- "Sam Stone" visits classroom for 2 minutes
- Following day children shown damaged toys
- Over next 10 weeks the children were interviewed 5 times
- Asked misleading questions during interviews

THE SAM STONE STUDY

- Stereotypes
  - "That Sam Stone is always getting into accidents and breaking things"
- Misleading questions
  - "When Sam Stone got that bear dirty, did he do it on purpose or was it an accident?"
  - "Was Sam Stone happy or sad that he got the bear dirty?"

THE SAM STONE STUDY

- Initially, no child blamed "Sam Stone" for the damage but 25% guessed he might have done it

THE SAM STONE STUDY

- After 10 weeks
  - 72% of 3 to 4 year olds said “Sam Stone” damaged at least one of the items
  - 45% of 3 to 4 year olds said they saw “Sam Stone” damage the items
  - When gently challenged only 21% maintained the claim
  - 11% of 5 to 6 year olds said they saw “Sam Stone” damage the items

THE SAM STONE STUDY

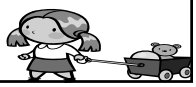
- Younger children were significantly more impaired by misleading statements then older children
- Children were effected equally by the introduction of stereotypes

THE SAM STONE STUDY

- Ceci & Liechtman stated “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”

THE SAM STONE STUDY

- Ceci & Leichtman concluded, “[W]hen the context of a child’s reporting of an event is free of the strong stereotypes and repeated leading questions that may be introduced by adults the odds are tilted in favor of factual reporting” *The Effects of Stereotypes and Suggestions on Preschooler’s Reports,* Dev. Psych. 1995 Vol. 31, No. 4

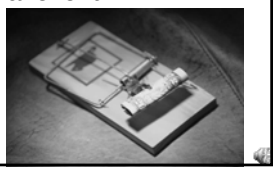


THE SAM STONE STUDY

- Researchers showed 3 different videos of the children’s interviews to mental health professionals
- The professionals were unable to determine which child’s account was most accurate.

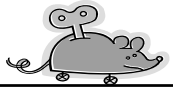
THE MOUSETRAP

- Children ages 3 to 6
- Multiple interviews
- Told to try and remember a fictional event
- After 7 interviews 1/3 of the children remembered the fictional event



THE MOUSETRAP REVISITED

- Children ages 3 to 6
- 12 interviews of 30 minutes each
- Children told about a fictional event and then told to picture it in their head
- Initially 23% remembered the fictional event
- By interview 12, 43% remembered the fictional event



THE INOCULATION STUDY

-Children ages 4.5 to 5.8 years

-Children arrived for a routine medical visit and received an oral vaccine and an inoculation

-Parents were present in the room with the children

-A research assistant was present and spoke with the children

THE INOCULATION STUDY

- Children divided into 3 groups and read a story by the research assistant
  - -Pain denying
  - -Pain affirming
  - -Neutral

THE INOCULATION STUDY

- Children were visited at home for a 1 week follow-up interview
- Different research assistant conducted the interview
- Children rated how much the shot hurt and how much they cried after the shot
- Three subsequent interviews were conducted
- Children were given misinformation about who gave them the shot

THE INOCULATION STUDY

- Initially the results indicate that the children in the study were not easily influenced to make inaccurate reports
- Repeated positive feedback 1 year after the shot produced reductions in children's reports of distress
- 1 year later 40% falsely report the name of the person who gave them the shot

THE INOCULATION STUDY

- Maggie Bruck, Stephen J. Ceci, Emmett Francoeur & Ronald Barr, *"I Hardly Cried when I got my Shot!" Influencing Children's Reports about a Visit to Their Pediatrician,* Child Development, 1995, Vol. 66.

BRAND NEW RESEARCH

- Jodi A. Quas, Elizabeth L. Davis, Gail S. Goodman, John E.B. Myers, *Repeated Questions, Deception, and Children's True and False Reports of Body Touch,* Child Maltreatment, Vol. 12, No. 1 (Feb. 2007)
- Study examines children's ability to maintain a false statement about body touch

ALSE TOUCHES STUDY

- Children ages 4 to 7 engage in play with an adult. During the play the adult touches parts of some of the children's bodies.
- Children divided into 3 groups
  - Liars-instructed to say they were touched when they really were not
  - Truth Touched-instructed to be truthful about touches they received
  - Truth Not Touched-instructed to be truthful about not receiving any touches

FALSE TOUCHES STUDY

- 1 to 3 weeks later the children are interviewed
- Children who lied about being touched were able to accurately maintain the lie during repeated, direct questioning
- Children who lied were less accurate then truth tellers when answering questions not related to the lie

FALSE TOUCHES STUD

- Children who answered truthfully about being touched were significantly less accurate and less consistent then those who lied
- Children who answered truthfully about not being touched were both accurate and consistent in their statements

RESEARCH AND THE REAL WORLD

- Average age of victims is 10 years old
- Most interviews occur soon after disclosure
- Interviewers use non-suggestive techniques
- Victims are most often abused by close family members
- Usually one, not multiple victims

RESEARCH AND THE REAL WORLD

- Real World: Children interviewed after they reveal abuse
- Research World: Children interviewed repeatedly after they deny an event

WHAT DID WE LEARN

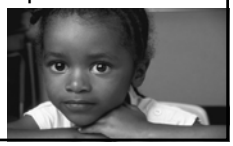
- Do not “tell” children the answer
- Do not stereotype the perpetrator
- Do not use other children’s revelations to obtain a disclosure
- Do not treat any aspect of the interview as a game
- Even very young children can lie
- Younger children are more suggestible than older children
- The majority of children “stuck to their guns”-only a minority made a false report

KEY POINTS

- Trained & unbiased interviewers are critical to the case
- Never let the child stand alone
- Always explore alternate hypothesis

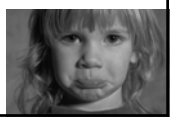
THE FORENSIC INTERVIEW

- Invite narrative during rapport building
  - Tell me about school (your pet, your friends, your favorite toy etc.)
- Don’t interrupt while the child is talking
- Avoid closed ended questions (yes/no, multiple choice) as much as possible



THE FORENSIC INTERVIEW

- 1. Open ended questions that call for free recall and invite lengthy responses
- 2. Specific questions (who, what, where, when, how)
- 3. Definitional clarifications (When you say he had ‘sex’ with you, what do you mean by ‘sex’?)
- 4. Yes-no questions & multiple choice questions



TIPS FOR INTERVIEWERS

- Avoid “misleading” questions
- Ask about the alternate hypothesis
- Be neutral
- Non-suggestive tone
- Ask open-ended questions whenever possible
- Avoid repetition
- Avoid multiple interviews

TIPS FOR INTERVIEWERS

- Don’t stereotype the perpetrator
- Don’t praise the child for “correct” answers

ANATOMICAL DOLLS

- Interviewers must be trained in the use of dolls
- Never use the word “pretend”
- Use <u>only</u> after the child has made a disclosure
- Use dolls only when necessary to clarify
- Special dolls are not to play with
- Present dolls fully clothed
- Remove dolls immediately when finished

CORROBORATE THE CHILD’S STATEMENT

- Where did it happen
  - “It happened when we lived in the blue house”
- When did it happen
  - “It happened while we were camping”
- What was used
  - “He used cream in a white jar”
- What did the room look like
  - “There was a big picture of him on the wall”
- There’s always a crime scene
- Motive evidence

THE CHILD IN COURT

“I want to be a lawyer - they still get recess.”

WHO ARE THESE PEOPLE?

ALEJANDRO AVILA THE BEGINNING

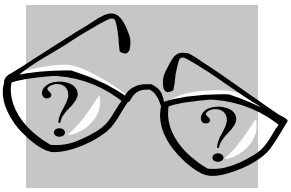
- Avila was acquitted of molestation charges of two elementary school age children
- Juror No. 9: They weren't consistent on their story. We know that they were young and we understand they are children but the story was like did he touch you three times, yes, did he touch you five times, yes, did he touch you fifty time, yes. EVERYTHING WAS YES, YES, YES.
  - Riverside Press Enterprise 8-15-02

ASKING QUESTIONS CORRECTLY?

- Q: Okay, While he was baby-sitting you, did he ever touch you in a way that you didn't like?
- A: Yes
- Q: Okay. Where did he touch you?
- A: In my private area?
- Q: Okay, Is the private area your groin area right-do you understand?

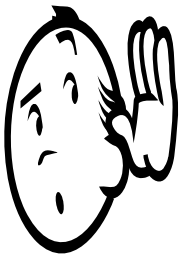
ASKING QUESTIONS CORRECTLY?

- A: Down here. (Indicating)
- Q: What would he do? Would he touch you over your clothes or under your clothes?
- A: Under



WHAT THE JURY HEARD

- Yes
- In my private area
- Down here (indicating)
- Under



ALEJANDRO AVILA ROUND TWO

- On July 15, 2002 in Stanton, CA, Samantha Runnion was abducted from her yard
- Her naked body was found the next day in neighboring Riverside County. She had been molested
- Avila was charged with her death on July 23, 2002
- Among other evidence, prosecutors found Samantha's DNA in Avila's vehicle. They stated the DNA was from her tears.

ASKING QUESTIONS CORRECTLY

- Yes-No questions can kill
- Asking open ended questions makes children look more competent on the stand

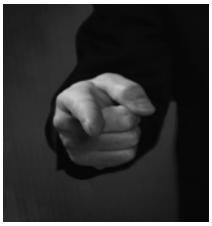
DON'T BECOME A TARGET

TIPS FOR TESTIFYING

- Be prepared
- Meet with the prosecutor
- Know your area of expertise
- Stay updated on the research
- Have a current CV
- Know the vulnerable parts of your case
- Know the adverse material

TIPS FOR TESTIFYING

No one knows your case better than you



DEFENDING THE INTERVIEW

- Training! Training! Training!
- Develop an interview protocol
- Stick to the protocol
- No protocol is perfect
- Choose a protocol you can defend in court

DEFENDING THE INTERVIEW

- Be Prepared
- Know the Research
- Concede there is no perfect interview
- Look at the whole interview
- Show the strong points in the interview

DEFENDING THE INTERVIEW-STRONG POINTS TO LOOK FOR

- Absence of threats or encouragement to lie.
- Encouragement to tell the truth.
- Numerous appropriate questions.
- Points on which the child disagreed.
- Limited number of leading questions.

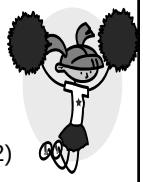
Difficult Questions: Lying and Suggestibility

- Children lie, don't they?
- Children also lie about abuse, right?
- And children are highly suggestible, right?
- Did you attempt to find out how suggestible this child was?
- Did you attempt to find out this child's reputation for honesty?

Difficult Questions: Pre-interview issues

- You interviewed this child because of a prior disclosure of sexual abuse, right?
- You interviewed this child because the police told you about the disclosure?
- You interviewed the child because the police asked you to, right?
- You read the police report before the interview?

FINDING WORDS



- Developed in 1998
- Half a Nation by 2010
- South Carolina (2000)
- New Jersey, Indiana, Mississippi (2002)
- Missouri, Georgia (2003)
- West Virginia, Maryland, Illinois (2004)
- Kansas, Ohio (2005)
- Delaware, Virginia, Arkansas (2006)
- Connecticut, Oklahoma (2007)

FINDING WORDS

- 16 States by 2007
- The most field tested protocol in use in the United States
- Has withstood appellate scrutiny

FINDING WORDS

- For more information contact Angie Scott, Senior Attorney, APRI-NCPTC at 507-457-2890 or angela.scott@ndaa.org

YOU ARE CHANGING THE WORLD ONE CHILD AT A TIME

CHANGING THE WORLD

- Perhaps we cannot make this a world where children are not tortured but we can lessen the number of tortured children

  – Allbert Camus, *The Plague*

SUGGESTED READING

- Maggie Bruck & Stephen J. Ceci, *The Suggestibility of Children's Memory*, Annu. Rev. Psychol. 1999, Vol. 50
- Michael R. McCauley & Janat Fraser Parker, *When will a Child be Believed? The Impact of the Victim's age and Juror's Gender on Children's Credibility and Verdict in a Sexual-abuse Case,* Child Abuse & Neglect, 25 (2001)

SUGGESTED READING

- Thomas D. Lyon, *The New Wave in Children's Suggestibility Research: A Critique*, Cornell Law Review, Vol. 84 (1999)

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