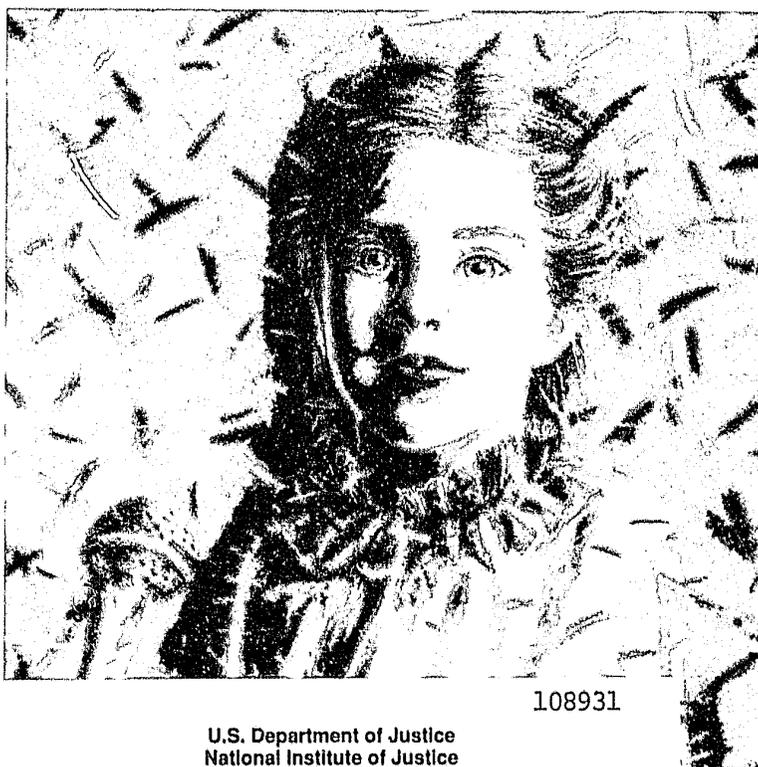


Prosecutors Perspective

SUPPORTED BY THE NATIONAL INSTITUTE OF JUSTICE

Volume II, Issue 1

January 1988



Prosecuting
Child
Abuse

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new research of interest to prosecutors. Published in cooperation with
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Editor's Note:

Ten years ago it was practically unheard of for a young child to testify in a criminal case. In recent years, however, children have become a regular source of information for police and prosecutors and an increasingly common sight on the witness stand. Prosecutors are called on daily to determine whether to pursue criminal charges when children relate accounts of physical or sexual abuse.

As a result of rising numbers of reports, serious concerns are being voiced by the public and professionals alike:

- How widespread are false allegations of child abuse?
- Are false allegations prevalent in situations involving divorce and custody disputes?
- How reliable are children's memories?
- Are children more suggestible than adults?
- Are children necessarily harmed by involvement in the criminal justice system?
- What medical findings are indicative of sexual abuse?

- Is it advisable to use anatomical dolls when interviewing a child about abuse?
- How much significance can be attached to a child's behavior with anatomical dolls?
- How many victims and what frequency of abusive acts are typical for child molesters?

Our colleagues in the medical, mental health and social services fields are conducting a variety of research projects involving these and other important issues. Many of the findings to date contradict current popular opinion shaped by negative publicity surrounding cases such as those in Jordan, Minnesota, and the McMartin case in California. Though we are a long way from conclusive answers, awareness of existing information can prove to be of substantial benefit to prosecutors dealing with child abuse cases.

This issue of *Prosecutors Perspective* includes reviews of the latest research addressing areas relevant to child abuse investigation and prosecution. Child abuse is not a passing phenomenon. It will remain a significant challenge and responsibility for the nation's prosecutors.

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The American Prosecutors Research Institute is the research, technical assistance, and program affiliate of the National District Attorneys Association.

Anatomically Correct Dolls: Assessment of Children's Behavior Interviewing Sexual Abuse Victims Use in Reporting an Event

Summaries of:

Jampole, Lois;
Weber, M. Kathie.
**An Assessment of the Behavior
of Sexually Abused and Nonsex-
ually Abused Children with
Anatomically Correct Dolls.**
Child Abuse and Neglect,
Vol. 11, No. 2 (1987).

and

White, Sue;
Strom, Gerald A.;
Santilli, Gail;
Halpin, Bruce M.
**Interviewing Young Sexual
Abuse Victims with
Anatomically Correct Dolls.**
Child Abuse and Neglect,
Vol. 10, No. 4 (1986).

and

Goodman, Gail S.;
Aman, Christine.
**Children's Use of Anatomically
Correct Dolls to Report an Event.**
In M. Steward (Chair), Evaluation of
Suspected Child Abuse: Develop-
mental, Clinical, and Legal Perspec-
tives on the Use of Anatomically
Correct Dolls. Symposium presented
at the Society for Research in Child
Development Convention, Baltimore,
April 1987.

**An Assessment of the Behavior of
Sexually Abused and Nonsexually
Abused Children with Anatomically
Correct Dolls** reports on a study of the
behaviors of two groups of children in
their play with anatomically correct
dolls. One group had been determined
to have been sexually abused and the
other group had not been determined to
have been sexually abused. Ten children
were in each group.

Results showed that there was a
significant difference between the two
groups of children as evidenced by the
presence or absence of sexual behaviors
in their play with the dolls. Of the
children who had been sexually abused,
9 (90 percent) demonstrated sexual
behavior with the dolls; 1 (10 percent)
did not. Of the children who had not
been sexually abused, 8 (80 percent) did
not demonstrate sexual behavior with
the dolls; 2 (20 percent) did. The
authors conclude that anatomically cor-
rect dolls are a useful instrument in sex-
ual abuse investigations.

In **Interviewing Young Sexual
Abuse Victims with Anatomically
Correct Dolls**, two groups of children
were interviewed to elicit their reactions
to sexually anatomically correct dolls.
Significant differences were found be-
tween the reactions of children who had
not been referred for suspected sexual
abuse and those who had. Nonreferred
children (n=25) revealed very few
behaviors indicative of abuse whereas
referred children (n=25) demonstrated

*"Nine out of ten
sexually abused children
brought sexual behavior
into their play. Eight
out of ten of those who
were not sexually
abused did not."*

significantly more sexually related
behaviors when presented with the
dolls. Of the age groups studied (2-6
years), 3-year-olds were the most
responsive to the dolls, while older
children tended either to reveal their ex-
periences or to become very nonresponsive.

**Children's Use of Anatomically
Correct Dolls to Report an Event**
questions whether anatomically correct
dolls facilitate children's abilities to
report events accurately or whether they
lead to false reports of abuse. Three and
5-year-old children participated in an
experiment in which they were question-
ed after participating in a game. The

children were interviewed after a delay of one week.

The questioning occurred under three conditions or sets of circumstances. In one condition (the anatomically correct doll condition), children were questioned with the use of four anatomically correct dolls. In the second condition (the regular doll condition), the children were questioned with dolls that looked exactly like the anatomically correct ones except they did not possess secondary sex characteristics. In the third condition, the children were interviewed without any dolls.

Analysis revealed a significant age effect, with 5-year-olds answering the abuse questions more accurately than the 3-year-olds. However, there were no significant differences in the children's interactions with or without the dolls. The authors also found that children's suggestibility (by asking misleading questions) did not significantly differ with use of the dolls.

The authors conclude that anatomically correct dolls do not lead to false reports of sexual abuse in children. ■

Review

by
Michael D. Bradbury
District Attorney
Ventura, California

McMartin! Just the mention of the name, perhaps the most famous child abuse case in recent history, makes a prosecutor's knees go weak. Certainly, it will give rise to an encyclopedia of what can go wrong in an investigation of allegations of mass child molestation. One of the most frequently mentioned criticisms of the investigation is that law enforcement abandoned its proper role by turning over the interviews of suspected victims to

other "professionals." Because those interviews relied heavily upon the use of what we have come to call "anatomically correct dolls," the use of such dolls has come under intense scrutiny.

Although anatomically correct dolls have been used to facilitate the interviews of children for a number of years, there have been no significant studies of the dolls' effectiveness in eliciting accurate records. **An Assessment of the Behavior of Sexually Abused and Nonsexually Abused Children with Anatomically Correct Dolls, Interviewing Young Sexual Abuse Victims with Anatomically Correct Dolls, and Children's Use of Anatomically Correct Dolls to Report An Event** appear to be the first serious efforts to address these questions.

The first study revealed significant differences between the behavior of abused and nonabused children in their play with the dolls. Nine out of ten sexually abused children brought sexual behavior into their play. Eight out of ten of those who were not sexually abused did not.

The second study resulted in similar findings. Here, two groups of children, one suspected of having been sexually abused and one that was not, were interviewed in a structured format using the dolls. Again, significant differences were found between the two groups. Those children believed to have been molested demonstrated much more sexually related behavior when the dolls were used.

The third study, perhaps the most significant, concerned whether the use of the dolls affects the accuracy of a child's report of a molestation. Conducted under three different sets of circumstances, the study determined that the use of the dolls did not lead to false reports of molestation. Although more research is necessary before any final conclusions can be drawn, these studies should provide substantial comfort to prosecutors who rely on this investigative technique.

The studies also provide guidance for those entrusted with the important responsibility of interviewing suspected victims of child molestation. For example, the dolls should

"...the dolls should be used only by those who have been trained in their use. Their use should be governed by written guidelines."

be used only by those who have been trained in their use. Their use should be governed by written guidelines. Careful notes should be maintained regarding their use in individual cases.

The reason for these precautions is clear. Prosecutors may be called upon to defend their use of anatomically correct dolls, not only before the courts, but in an attorney general or state bar association inquiry. (Such inquiries have already taken place in several states.)

These studies are short, readable and concise. I recommend them to any prosecutor handling crimes against children. ■

Children's Testimony: Age-Related Patterns of Memory Errors

Summary of:

Saywitz, Karen J.
**Children's Testimony:
Age-Related Patterns
of Memory Errors.**

In Ceci, S.J.; Toglia, M.P.;
and Ross, D. F. (eds.)

Children's Eyewitness Memory.
New York: Springer-Verlag, 1987.

In this study, third, sixth, and ninth-graders were tested on their ability to recall the description of a crime, in an effort to assess age-related patterns of memory errors that might have implications for the legal setting. The study examined the quality of what was recalled, specifically (a) whether younger children distort more of what they freely recall than older subjects and (b) whether they fill in gaps in memory by adding more extraneous (made-up) material to their accounts than older subjects.

The study found there was a lack of significant grade-related differences in (a) percent correct recognition, (b) the ratio of distorted to accurate recall, (c) the various types of distortions made in free recall, and (d) intrusions of suggested misleading information. Although 8 to 9-year-olds did not exhibit a greater proportion of distorted to accurate recall, they did add significantly more extraneous information to their recall than older subjects. In this study, younger children were particularly likely, at both immediate and delayed testings, to produce recall errors by adding information not in the original stimuli.

The authors suggest that there may be ways to prepare children for testimony and to educate judges and jurors so that the memory errors that are more frequent in the reports of younger children will interfere less with the course of justice. For example, if third-graders add more extraneous information to their recall because they assume that "more" means "better", then they could be cautioned against this tendency with prequestioning instructions. The child could be warned that the investigator does not want more information, but rather accurate information. ■

Review

Peter S. Gilchrist, III
 District Attorney
 Charlotte, North Carolina

The author's research permits several conclusions that are of importance to individuals concerned with children as witnesses.

- (1) Third graders can provide accurate information.
- (2) Their ability to relate in a narrative form "what-happened" is less than that of an adult.
- (3) If properly questioned by being asked leading questions or being provided cues, i.e. "Can you remember anything about the man's clothes?", young children have the ability to provide additional accurate information.
- (4) The accuracy of information provided by a third grade witness may depend upon whether or not they were interviewed by a trained interviewer. A trained interviewer is one who knows how to extract accurate information using techniques that direct the child's recall to areas that the child would not realize were relevant.
- (5) Third graders have a greater tendency to "add-to" or embellish recall if asked to "tell more" by adults. This tendency of children to add extraneous information when asked to "tell more" might be effectively used in cross-examination as a method of causing a child to embellish testimony and thus be presented as not credible.

In spite of containing some important research conclusions, the article has flaws. The language used is technical and that of a social scientist, not a lawyer. Even with a dictionary at hand it is difficult to

understand technical terms. Of more significance is the fact that the research is sandwiched between opening statements about the roles of judges that are fallacious and questionable conclusions about future research. The conclusions reflect a total lack of understanding of the theories and practices of direct and cross-examination used in trials. These inaccuracies concerning the legal process which precede and follow the research portion of the

"A trained interviewer is one who knows how to extract accurate information using techniques that direct the child's recall to areas that the child would not realize were relevant."

article will undermine a lawyer's confidence in the research. If the author had the article critically reviewed by a knowledgeable trial judge or attorney, these flaws could easily have been identified and this article and its research would have been of significantly more value.

The author inadvertently made an important point. Experts in one aspect of dealing with children often possess very little or even erroneous information about the roles of other experts. ■

Children's Testimony: Sexual and Physical Abuse Age Differences When a Child Takes the Stand Research and Policy Implications

Summaries of:

Goodman, Gail S.; Aman, Christine; and Hirschman, Jodi. **Child Sexual and Physical Abuse: Children's Testimony** In Ceci, S.J.; Toglia, M.P.; and Ross, D.F. (eds.), Children's Eyewitness Memory. New York: Springer-Verlag, 1987.

and

Goodman, Gail S. and Reed, Rebecca S. **Age Differences in Eyewitness Testimony**. Law and Human Behavior, Vol. 10, No. 4 (1986).

and

Goodman, Gail S.; Golding, Jonathan M.; Helgeson, Vicki S.; Haith, Marshall M.; and Michelli, Joseph. **When a Child Takes the Stand**. Law and Human Behavior, Vol. 11, No. 1 (1987).

and

Goodman, Gail S.; Hirschman, Jodi; and Rudy, Leslie. **Children's Testimony: Research and Policy Implications**. Paper presented at the Society for Research in Child Development Meetings, Baltimore, April 1987.

These articles by the same research group report on studies designed to reveal the capabilities of children in accurately reporting events after the fact and the consequences of their capabilities for trial situations.

Child Sexual and Physical Abuse: Children's Testimony reports on three studies. All examine the testimony of children who were actively involved in an event and who interacted with an unfamiliar person. These are laboratory studies involving recall about (1) playing a game (low stress situation) (2) having blood drawn at a clinic (high stress situation), and (3) having an inoculation (high stress situation).

The findings include: (1) there were no significant age differences in the children's ability to recall the event and their recall did not deteriorate over time. The children's reports were quite accurate. (2) The older children (5-6 years) answered more objective questions correctly than the younger ones (3-4 years) and the younger children showed a decline, after a delay, in their ability to answer questions about the actions involved. (3) Children did not make up false stories of abuse even when asked questions that might foster such reports.

Age Differences in Eyewitness Testimony reports on a study comparing the recall ability of 3 and 6-year old children to that of adults about interaction with an unfamiliar man for five minutes. After a delay of five days, the witnesses answered objective and suggestive questions about the inter-

action, recalled what happened, and tried to identify the man from a photo line-up. The adults and the 6-year-olds did not differ in their ability to answer objective questions or to identify the man, but the 6-year-olds were more suggestible than the adults and recalled less about the event.

The 3-year-olds answered objective and suggestive questions less accurately than the older age groups, recalled very little, and had more trouble recognizing the man. While children proved to be more suggestible than adults, suggested information was unlikely to appear in their free recall of an event. The authors suggest that the relative competence of 6-year-olds as witnesses argues against the requirement of a competence examination for children this age and older.

"Even children as young as four were able to remember quite accurately the central information about the event which occurred."

Children's Testimony: Research and Policy Implications reports on two laboratory studies—one in which children received an inoculation and the other in which they played a game.

In the first they were questioned 4 or 7-9 days later and also after one year. Suggestive questions were asked. However, in neither time period did the children make false reports.

In the second study one child was designated to play a game with a strange adult and another was designated as a bystander to "watch." After a delay of 11 or 12 days, the children were interviewed, and suggestive questions were asked. The 4-year-olds answered on an average only 3 percent of the questions incorrectly and the 7-year-olds virtually none. The authors conclude that their studies demonstrate that children as young as 4 years of age are far more resistant to suggestion than formerly believed when the suggestions concern actions associated with abuse. They suggest that cases should not be thrown out of court because leading questions about abuse have been asked of children.

When A Child Takes The Stand involves studies of exposing mock juries to trial descriptions in which the age of the eyewitnesses who provided the crucial testimony varied. In three experiments, potential jurors judged children to be less credible eyewitnesses than adults. Eyewitness age did not, however, determine the degree of guilt attributed to the defendant. The studies indicate that mock jurors are concerned that children may remember less than adults do and that children may be easily manipulated into giving false reports. The findings indicate that biases against children's credibility are likely to appear when a child bystander witness takes the stand. ■

Review

by
Stephen Goldsmith
Prosecuting Attorney
Indianapolis, Indiana

This group of articles addresses two major points: first, that children are quite capable of providing accurate and "undefiled" accounts of events in which they have been involved; and second, that jurors do not know this yet.

"...children were found to have a better memory for the action which occurred than for the identity of the actor or the room in which the action took place."

Three of the articles describe laboratory experiments intended to measure the ability of children to recall accurately events which have occurred and the level of their resistance to suggestion. The flaws of prior studies in this area include:

1. The child tested as an observer only, rather than as a participant in the event.
2. Tests based on events which are uninteresting to the child and which have no personal significance to the child.
3. Mundane questions asked about peripheral aspects of the event rather than the types of questions which normally would be asked in the investigative situation.

In other words, prior studies have not been related in any way to the experience of a child who is the victim of a crime.

The studies reviewed and conducted by the authors attempt to remedy the above failings, and create a more true-to-life atmosphere. Their findings show a surprising ability on the part of even very young children to recall events accurately and to resist suggestion imposed by the interviewer. Even children as young as four were able to remember quite accurately the central information about the event which occurred, while having more difficulty, as did the adult subjects, with peripheral detail. What mistakes were made tended to be errors of omission; the young subjects were not prone to make false reports, even in response to suggestive questioning designed to elicit such reports. In the few situations in which a child succumbed to an incorrect suggestion made by the interviewer, he did not adopt the suggestion when later questioned objectively; nor did he expound with a further description of activity which had not in fact occurred.

Not surprisingly, children were found to have a better memory for the action which occurred than for the identity of the actor or the room in which the action took place. It should be added, however, that the adult subjects reacted in much the same manner. Further, very young (age 3) children were less capable of good eyewitness identification of strangers. However, this was presumed to be at least in part a function of the degree of attention paid by the child subject to the actor in the study. Identification is normally not a factor in cases of child abuse, which usually involve a perpetrator known to the child.

The information gleaned from these studies should make prosecutors more comfortable with the testimony of young children in most instances. Further, the studies have found children resistant to suggestion, though very young (under age 4) children are somewhat less resistant than older children and adults. The popular notion that leading interview questions result in false reporting should be rejected. A case

should not be dismissed, for example, on the basis that the child was subjected to questioning by her mother before the investigative process began, or because the interviewer was forced to ask leading questions in order to obtain information from the child. However, it is not recommended that interviewers deliberately adopt a suggestive questioning style. Whether or not the child's testimony is affected by this type of questioning, the attitude of the trier of fact will be.

Further, the researchers found that children's answers to "competency" questions ("Do you know the difference between the truth and a lie?") had little or no relation to their ability to recall and relate accurately what had happened to them. Therefore, the findings support the current trend toward relaxation of competency requirements, and suggest that children as young as six should be presumed competent to testify.

Finally, the findings of these researchers will be of great assistance to prosecutors in blunting the effect of the defense expert witness who testifies to the contrary, especially if the prosecutor has determined on what research the adverse witness based his opinions.

The fourth article **When a Child Takes the Stand**, makes it clear that the message of the other three articles has not reached potential

jurors. The studies outlined in the article demonstrate a general bias against children as witnesses on the part of the persons chosen as mock jurors: they were less likely to rely on a child's word than on that of an adult making the same statements.

The lesson taught by this article should not be one favoring a timid approach by prosecutors, however. Instead, it is suggested that prosecutors file such cases aggressively, and look for ways to buttress the child's testimony through corroboration of nonessential facts (demonstrating the child's ability to remember and relate them accurately). ■

Child Sexual Abuse and Custody Disputes

Summary of:

Corwin, David L.;
Berliner, Lucy;
Goodman, Gail;
Goodwin, Jean;
White, Sue.

**Child Sexual Abuse
and Custody Disputes,
No Easy Answers.** Journal of
Interpersonal Violence, Vol. 2,
No. 1 (March 1987).

children are very infrequent. In addition, the authors discuss the limits of clinical impression, the difference between unfounded or unsubstantiated and false accusations of abuse, and the high prevalence of actual child sexual abuse in the setting of marital dissolution. ■

Review

by
Thomas L. Johnson
County Attorney
Minneapolis, Minnesota

This article alerts professionals to the emergence of oversimplified approaches to the complex problem of alleged child sexual abuse in the context of custody disputes. The authors argue that reliance on such methods is likely to result in misdiagnosis and failure to protect children who are both sexually abused and caught in custody battles. They specifically take issue with Green's (1986) recent formulation for distinguishing between true and false accusations of incest in child custody disputes because that formulation is based on an inadequate data base, biased sample, and unsupported conclusions.

The authors cite the Jones and McGraw study (also reviewed here) as demonstrating that fictitious accounts by

How could you make a prosecutor's life easier? The answer is simple: Develop a checklist for use in determining the truth or falsity of allegations of child abuse.

But life — certainly not prosecutorial decision making — is not that easy. This article effectively demonstrates the pitfalls of relying on a "checklist" approach to determine whether a child's allegations of abuse should be believed. Through an analysis of the checklist factors proposed by Green, the reader is not only exposed to the hazards of an "easy answer" approach, but additionally acquires some valuable information regarding clinical diagnostic approaches.

For example, Green proposes to have the child directly confront the alleged abuser with the allegations. A reaction of "fright" by the child is indicative of truthfulness. Corwin, et al. shoot down this approach as nothing short of victimizing the child as part of the truth-finding evaluative process. As prosecutors, to the extent that such a confrontation is similar to what happens in court, we know well that you cannot predict how any witness will do on the stand, particularly a child witness.

Finally, the prosecutor will gain from the empirical data contained in this article. It is significant to know, for example, that research has now demonstrated that an increase in child abuse occurs after marital dissolution. That is a fact the prosecutorial community has always suspected, but may not know with any demonstrable certainty. ■

Reliable and Fictitious Accounts of Sexual Abuse to Children

Summary of:

Jones, David P.H.
and McGraw, J. Melbourne.

**Reliable and Fictitious
Accounts of Sexual
Abuse to Children.**

Journal of Interpersonal
Violence, Vol. 2, No. 1
(March 1987).

This article explores the difference between unfounded reports of suspected child sexual abuse and what these researchers designated as fictitious reports which included those reports believed to be based on misperceptions as well as those believed to be deliberate falsification.

The researchers reviewed all cases of suspected child sexual abuse made to the Denver Department of Social Services (DSS) in 1983. Of the 576 reports of suspected sexual abuse that year, DSS categorized 53 percent as founded, including recantations. The remaining 47 percent were designated as unfounded.

After analyzing the DSS records, the researchers concluded that only 8 percent of the total reports were probably fictitious. Of these fictitious reports, three-fourths were generated by adults (often involved in custody disputes). Of the other 39 percent considered unfounded, 24 percent consisted of cases with insufficient information to categorize. The remaining 17 percent included cases in which appropriate suspicion was unsubstantiated through investigation. Thus the suspected fictitious reports constitute only a small portion of the reports classified as unfounded. ■

Review

by
L. Scott Harshbarger
District Attorney
Cambridge, Massachusetts

This article discusses the characteristics of these reports of child sexual abuse deemed "founded" and "unfounded" by child welfare agencies, explores the frequency with which false reports of child sexual abuse are made, describes the features of false cases, and discusses the clinical implications of this information.

The authors reviewed certain validating factors which have been noted in other literature: inclusion of explicit, unique or distinguishing detail; language congruent with the child's age and development, and reflecting a child's perspective on the events; expression of emotion congruent with the events described; the child's psychological response to the incident; the pattern of abuse alleged; evidence of secrecy (coercion or threats); and, at times, descriptions of pornographic involvement, sadism, or ritualism.

Examination of certain factors was found to support or detract from the reliability of allegations: family history, the behavior of the child during and after the period of abuse; the nature and timing of the disclosure; a comparison of the child's statements to various people and the consistency of the statements; the child's use of toys, play, drawings; the child's knowledge of sexual anatomy and function; and input from other children in the same family.

The authors draw the following conclusions:

(1) There is a need for professionals with specialist training in child development and the dynamics of child sexual abuse to be involved in the initial investigative process;

- (2) Interviews with the child must be conducted and, in certain cases, the quality of the child's interactions with the parents must be assessed;
- (3) Every investigation should include a clinical validation process, conducted with an open mind;
- (4) Adults and children making allegations should be screened for prior victimization and post-traumatic stress syndrome which, if discovered, should signal caution;
- (5) It should be remembered that even those making fictitious allegations need help; and, finally,
- (6) All clinical conclusions should be offered with caution.

In reading and assessing this study, it must be remembered that it was limited to child abuse cases reported to a Department of Social Services in Denver, and that all data apparently were collected from a review of DSS files, without any interviews or other direct observation of the parties involved. As such, the population examined cannot be inclusive of all child abuse cases, even in Denver. In addition, the factors examined were not subjected to any independent validation. It follows, however, that substantial numbers of child abuse reports that should be pursued or at least tracked, are inappropriately closed as unfounded. ■

Children's Understanding of Legal Terms: A Preliminary Report of Grade-Related Trends

Summary of:

Saywitz, Karen J.
and Jaenicke, Carol.
**Children's Understanding
of Legal Terms: A Preliminary
Report of Grade-Related
Trends.** Paper presented at the
Society for Research on Child
Development Biennial Meeting,
Baltimore, April 1987.

This study gathered data from three groups of children: 18 kindergartners, 20 third graders and 20 sixth graders. First the children's nonlegal receptive vocabulary was assessed. Then the children were presented with a verbal vocabulary test involving 35 common legal terms. Legal terms were presented alone and in a sentence with other terms used in a legal context. The children's definitions were rated as accurate or inaccurate.

As expected, older children accurately defined significantly more legal terms than younger children. Group I terms were easy—over 90 percent of the children gave accurate legal definitions. Group II showed grade-related effects—older children achieved more accuracy. Group III terms were difficult — 15 percent or less of the children gave accurate legal definitions. ■

GROUP I	GROUP II	GROUP III
Judge	Facts	Parties
Lie	Witness	Evidence
Police	Case	Objection
Remember	Truth	Swear (sworn)
Promise	Date	Jury
Seated	Lawyer	Testify
Difference	Hearing	Allegation
	Attorney	Petition
	Identity	Approach the Bench
	Oath	Minor
		Motion
		Competent
		Hearsay
		Strike
		Charges
		Defendant

Review

by
 Thomas L. Johnson
 County Attorney
 Minneapolis, Minnesota

Legalese is a disease. Try as they might, lawyers have a difficult time finding "the cure." The study conducted by Karen J. Saywitz and Carol Jaenicke, as presented in their paper entitled **Children's Understanding of Legal Terms: A Preliminary Report of Grade-Related Trends**, gives lawyers and judges, but particularly prosecutors, an important, empirical reason to "clean up" their language when dealing with children. Depending upon the exact legal term used, only 15 percent of all children might understand its meaning. In other words, for the prosecutor to use such legalese as "allegation", "incompetent", and "petition" is simply not to communicate.

For the prosecutor, it is not so much a matter of explaining a particular legal term, it is more a matter of not using the term in the first instance. For example, there is no need for a prosecutor to tell a child, "Regretfully, that is hearsay, Johnny." In most instances, Johnny does not need to know what is and what is not hearsay. To use such language is unnecessarily confusing and invites the child to use a term which, if repeated before a jury, would sound

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inappropriate and might effect the child's credibility.

For those terms for which there is no escape from using (e.g., "judge", "testify", "courtroom"), the prosecutor must have ready an age-appropriate explanation. For example, "to testify" is "to talk in court."

The answer, it seems, lies in training. For the prosecutor, this means re-learning the English language, particularly in a way that is appropriate for children of various ages. Legalese, the prosecution's native tongue, does not work. ■

Children's Reactions to Sex Abuse Investigation and Litigation

Summary of:

Tedesco, John F.
and Schnell, Steven V.
**Children's Reactions to
Sex Abuse Investigation
and Litigation.** Child Abuse
and Neglect, Vol. 11 (1987).

This investigation attempted to begin to qualify the extent to which children are helped or further victimized by sex abuse investigation and litigation procedures. Although there is virtually no research on the subject, frequent assumptions have been made that these procedures often further victimize children. Significant changes in state legislation have and are being considered which would protect victims from further victimization.

A child victim questionnaire was sent to the presidents of all area child abuse and neglect councils in the state of Iowa as well as to other personnel working with sexually abused children. The somewhat surprising findings revealed that of the 48 questionnaires returned

only approximately 21 percent of the victims perceived that the questioning and investigation was harmful, while approximately 53 percent saw it as helpful.

Other analyses found that ratings of helpfulness were not correlated with the age of the victim, the presence of a supportive adult during questioning, the number of abuse incidents, whether or not the interviews were videotaped, and whether or not the perpetrator was a family member. Results of this study should be interpreted cautiously due to (1) the high non-response to the mail questionnaire and (2) the small sample (48). The high degree of non-response could mean that those who had negative (harmful) experiences in litigation did not participate. ■

Review

by
 Edwin L. Miller, Jr.
 District Attorney
 San Diego, California

How much are children helped or harmed by sexual abuse investigation and prosecution? Probably most people believe that children are harmed by such proceedings, although there is little data to support this assumption.

In an interesting study, conducted by John Tedesco, Ph.D., and Steven Schnell, Ph.D., this basic assumption is challenged. While the authors don't go the final step and suggest that child abuse investigation and litigation are actually helpful to the victims, they do strongly suggest that further study be conducted in this area.

That result is entirely appropriate considering that their study was based on only 48 questionnaires. The authors mailed the questionnaires to 120 child abuse councils, mental health facilities, individual therapists and others in Iowa during November 1984. Each questionnaire elicited 19 answers and those questioned were child abuse victims who had testified in a criminal trial.

Despite the small response, the authors stated the responding group

appears similar to the national norm. That is, they were predominantly female, with an average age of 13, and the majority of them were repeatedly abused by a male household member.

Victims were asked about various procedures and to rate the degree of helpfulness or harmfulness on a seven-point scale. They responded by stating that the interview process was helpful to 48 percent (23) of them and harmful to 19 percent (9) of them. Nineteen percent (9) said the questioning was both helpful and harmful while five percent (2) said it was neither.

“. . . 21 percent of the victims perceived that the questioning and investigation was harmful, while approximately 53 percent saw it as helpful.”

A rating of “helpful” by the victims did not correspond to the age of the victim, the presence of a supportive adult during questioning, the number of abuse incidents, the use of a videotape during the interviews or whether the perpetrator

was a family member. However, more “harmful” ratings were given for testifying in court and for enduring a high number of interviews. It is interesting to note that those who treat child abuse victims were more likely than the victims to rate procedures as “harmful.”

An important caveat that should be kept in mind is that all of these victims have been in therapy and at this point it is unknown how that affects the victim's view of her abuse and the subsequent litigation. The authors suggest that this data does not support the idea that the interview and litigation process, overall, is harmful to children. Therefore, they argue, “the current data does not provide support for a wholesale change of laws.” Instead, Tedesco and Schnell suggest that lawmakers pursue changes that do not raise complicated constitutional issues, presumably pending further investigation of the true effect of the legal procedures on the victims.

This research raises some interesting questions about one of our most basic assumptions. However, the minuscule size of the responding group requires that the data be used only as a challenge for further study, not as a definitive answer. It is suggested that a future comprehensive study segregate the younger from the older children for purposes of examination, and that “helpful” or “harmful” ratings be correlated with a conviction or acquittal. ■

Distortions in the Memory of Children *and* Differentiating Fact from Fantasy: The Reliability of Children's Memory

Summaries of:

Loftus, Elizabeth F.
and Davies, Graham M.
**Distortions in the
Memory of Children.**
Journal of Social Issues,
Vol. 40, No. 2 (1984).

and

Johnson, Marcia K.
and Foley, Mary Ann.
**Differentiating Fact from
Fantasy: The Reliability of
Children's Memory.**
Journal of Social Issues,
Vol. 40, No. 2 (1984).

These two articles review research studies that focus on the conditions which distort the memories of children or cause distortion by outside suggestions.

Distortions in the Memory of Children begins by reviewing the literature regarding adult memory and its vulnerability to suggestion. The authors conclude the previous experiments show that people will pick up information, whether it is true or false, and integrate it into their memory, thereby supplementing or even altering their recollection.

The research results of memory capabilities of children were mixed. In one study proficiency in answering orthodox (non-leading) questions improved steadily with age. However, no simple relationship emerged between age and susceptibility to leading questions. Children and adults were found to be equally influenced by postevent questions. However, a second analysis found younger subjects to be less influenced. In another study younger subjects again failed to show a disproportionate effect of misleading questions. The effect was greater for older children and college-age subjects.

Taken together, the authors conclude that the studies they reviewed support the conclusion that adults spontaneously recall more about events they have witnessed than do children, but not the simple notion that children are more suggestible than adults. The authors suggest that whether children are more susceptible to suggestive information than adults probably depends on the interaction of age with other factors. If an event is understandable and interesting to both children and adults, and if their memory of it is still equally strong, age differences in suggestibility may not be found. If the memory of the event is weaker or becomes so over time, differences with adults may emerge.

Differentiating Fact from Fantasy: The Reliability of Children's Memory reviews developmental studies of memory. The authors' review of their own and other researchers' findings suggest that several aspects of memory relevant to courtroom testimony need more research.

The authors point out that it is well documented that younger children typically recall fewer items than do older children. They suggest that children will typically produce less detailed

testimony in the courtroom, although not necessarily for all aspects of an event. For example, it is not clear whether children should be expected to be any worse than adults in recalling spatial arrangements of objects and people, or the time order and frequency of events.

The authors conclude that their studies suggest that even young children may be able to recognize who did what. On the other hand, recall of complex events that children do not understand (e.g. adult conversations) would show that younger children would have less accurate recall than older children.

With regard to separating events from imagination, the authors conclude that children in their studies did not appear to be more likely to confuse what they had imagined or done with what they had perceived. On the other hand, younger children did have particular difficulty discriminating what they had done from what they had thought about doing. ■

Review

by
Charles R. Wise
Associate Professor of Public
and Environmental Affairs
Indiana University

These articles fall into the category of basic research on the memory capabilities of children. Those looking for specific research concerning the ability of children to remember events accurately during child abuse incidents will not find it here. That is not the authors' objective. Rather, the purpose is to address the question of whether the memory capabilities of children are subject to distortion to the point that their credibility should be reasonably discounted.

These articles represent reviews of research, and do not present full

research reports of original research. As such, they afford an opportunity for the reader to obtain an overview of research on memory capabilities in children.

Neither review presents findings that would support the notion that children's, even fairly young children's, memory capabilities are subject to extreme distortion compared to that of adults. That is not to say that the memories of children do not falter. Prosecutors are all too familiar with the failings of adult memories. However, the authors conclude that children do not demonstrate extreme suggestibility; only demonstrate suggestibility when an event was not impressed upon their memory at the time or was subject to long delays; and in some instances are less suggestible than adults.

This research concludes that if any negative effect of age on memory is to appear, it depends on the interaction with other factors. For example, the complexity of the event could have an effect. If the prosecutor asks the child to remember the substance of an adult conversation for which the child does not have a frame of reference, this will be problematical. On the other hand, even young children seem to be able to recall accurately objective information (time order of events, spatial distribution of objects in a room) although with not as much detail. One caution is raised in *Differentiating Fact From Fantasy: The Reliability of Children's Memory*, however, that younger children did have difficulty in discriminating

what they had done from what they had thought about doing.

In sum, popular notions about the many deficits in children's memory appear not to be supported by research. In that deficits sometimes appear, as a result of interaction with other factors, it cannot be concluded that children may in all cases be questioned in the same way as adults. For example, *Differentiating Fact From Fantasy: The Reliability of Children's Memory* suggests that younger children's recall is facilitated by highly structured situations in which directive (but non-suggestive) questioning is applied. However, the authors do not provide examples of such directive questioning.

As to the state of research about memory capabilities of children, more remains to be done focusing on the interaction of such factors as time delay and complexity of event with children's recall capability. Then, too, more remains to be done on the characteristics of particular types of questions and questioners that affect children more than adults. Prosecutors are familiar with tactics used by defense counsel to challenge the general competency of child witnesses including the use of hostile experts. In light of this research, prosecutors could aggressively challenge tactics that assert diminished capacity of children as witnesses. ■

"... popular notions about the many deficits in children's memory appear not be supported by research."

Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs

Summary of:

Abel, Gene G.;
Becker, Judith V.;
Mittelman, Mary;
Cunningham-Rathner, Jerry;
Rouleau, Joanne L.
and Murphy, William D.

**Self-Reported Sex Crimes of
Nonincarcerated Paraphiliacs.**
Journal of Interpersonal Violence,
Vol. 2, No. 1 (March 1987).

This article presents data gathered by the authors through interviews of 561 subjects regarding demographic characteristics, frequency and variety of deviant sexual acts, and number and characteristics of victims. Results show that nonincarcerated sex offenders (1) are well educated and socioeconomically diverse; (2) report an average number of crimes and victims that is substantially higher than that represented in current literature based on studies of incarcerated offenders; and (3) sexually molest young boys with an incidence that is five times greater than the molestation of young girls.

Subjects were young, had previously been married or lived with an adult female, and were representative of predominating ethnic, religious, and educational subgroups of the population. Therefore, such offenders were found in all sectors of society. There was also an enormously high frequency of offending behaviors reported by the various categories of offenders. These findings indicate that arrest records do not provide a reliable indication of the true scope of offending and thus, understate the level of activity.

The authors also found a very high percentage of total child molestations were committed by those who target young boys outside the home. These individuals appeared to have committed the greatest number of child molestation acts against the greatest number of child victims compared to those who molest girls or those who molest boys within the home. The authors suggest that since only limited resources are available to provide assessment and treatment for child molesters, it would be advantageous to target those individuals who molest boys specifically since effective treatment of this group would dramatically reduce the total number of current and future child molestations. ■

"...the majority of all child molestations are committed by individuals who prey upon young boys outside the home."

Review

by

Norm Maleng
Prosecuting Attorney
Seattle, Washington

We in prosecution have seen a staggering increase in the numbers of sexual assault cases and incidents of child molestation over the last few years. What kinds of people are committing these horrible crimes? The authors of **Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs** interviewed 561 sex offenders (paraphiliacs) under conditions which best encouraged candid, accurate accounts of the range and frequency of their deviant sexual behavior. While the profile of the sex offender that emerges is generally one that any prosecutor active in this area would readily recognize, one interesting result bears further inquiry. The authors found the majority of all child molestations are committed by individuals who prey upon young boys outside the home, not the dads or live-in boyfriends abusing children in the home.

Starting from the obvious belief that both arrest reports and self-reports by prisoners or parolees grossly understate actual rates of sexually deviant behavior, the authors only used voluntary subjects not under court order and encouraged them to omit specific facts beyond the general characteristics of their victims and their crimes. Confidentiality was scrupulously honored and subjects were allowed to withdraw at any time.

The authors seemed surprised to find, as prosecutors already knew, that sex offenders come from all socioeconomic levels and are thus better educated and more likely to be employed than the usual "street" criminal whose motive is to obtain money, drugs or both.

Much of what the data show in terms of incidence of sexually deviant acts is not very useful in a comparative sense, since an act of voyeurism is distinctly different from a rape. But, one rather surprising result occurred in regard to the breakdown of child molesters. While conviction rates would indicate that in-family child molestation occurs more frequently than assaults outside the home, the authors found that two-thirds of all child molestations were committed by individuals who preyed upon young boys out-

"...child molesters... who targeted young boys outside the home reported a shocking total of 281 acts per offender."

side the home. One out of five molestations was on a female incest victim while young girls outside the home were victims in 8.1 percent of the cases. The least likely victims were boys in the home (4.2 percent).

Society must take note of this startling fact, since it demonstrates that this type of sex offender has been quite successful in molesting many young boys without being caught. These offenders are doubt-

less drawn to occupations or vocations where they have access to a pool of potential victims. They are the coaches, scout leaders, teachers, clergymen, school custodians, "big brothers" and others who occupy positions of trust where society unwittingly provides them with the access and the power to abuse young boys.

The authors also point out that while pedophiles are convicted of less than three acts per offender, child molesters in this study who targeted young boys outside the home reported a shocking total of 281 acts per offender. This means that 153 offenders were responsible for 43,100 completed acts of child sexual abuse against 22,981 victims. Unlike incest, these child molesters only averaged about two assaults per victim.

While the authors view this knowledge from the perspective of evaluation and treatment, the primary goals should be detection and prevention. We must do a better job of educating young boys about how to avoid inappropriate touching and provide them with the tools to evade abuse and report predators to the police.

Society must also allow meaningful background checks on those entrusted with our children to ensure that we are not allowing proven pedophiles to move from state to state or school district to school district where they can merely start again on an unsuspecting group of children. While registration of sex offenders creates concerns about privacy interests, it is time to recognize that the rights of the 22,981 victims should far outweigh the rights of the 153 pedophiles who cause so much grief and destruction. ■

The Role of the National Center for the Prosecution of Child Abuse

The National Center for the Prosecution of Child Abuse was established in 1985 by the American Prosecutors Research Institute, the non-profit affiliate of the 7000-member National District Attorneys Association. Founded in recognition of the dramatic increase in reported cases of child abuse and the need for more effective prosecution of these highly complex and sensitive cases, the Center concentrates its efforts on assisting prosecutors in bringing abusers to trial while promoting aggressive advocacy for the rights of the child victims.

The cornerstone of the Center's efforts to date is publication of a comprehensive training manual, **Investigation and Prosecution of Child Abuse**, an unparalleled resource for prosecutors and other professionals involved in these cases from the fields of medicine, law enforcement and child protection. The 500-page manual provides authoritative guidance on trial strategies, statutory and appellate reforms, medical advances, treatment options and detailed procedures for investigations. Practical checklists, sample transcripts and interview guidelines are among the reference materials included.

In only two years the Center has become a national clearinghouse on the legal aspects of child abuse prosecution and provides research, technical assistance and intensive training to prosecutors, based largely on the research and techniques pioneered in the manual. The Center is funded through a grant awarded by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Recently, the Center, in conjunction with the Education Development Center of Newton, Massachusetts and the University of North Carolina, was the recipient of another major grant award from the Office of Juvenile Justice and Delinquency Prevention. This grant will establish the Child Victim as Witness Research and Development Program which will explore a number of research questions:

- What characteristics of the child, the family, the incident, the community, and the legal environment influence the decision to prosecute child sexual abuse cases?
- How does the availability of innovative techniques influence the decision to prosecute child sexual abuse cases?
- What impacts do the use of innovative techniques have on case outcome and on the child victim's well-being?
- Are there additional factors that influence the decision to prosecute, the use of innovative techniques, and ultimately case outcome and child trauma? During the project's three years, the research team will track the cases of 800 children in four sites.

These research findings should begin to resolve the issue of whether involvement in the prosecution process is necessarily harmful or whether it has the potential to be therapeutic for the child victim.

For more information about the National Center for the Prosecution of Child Abuse, contact:

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