



PsychLaw

Eyewitness memory in context

“...eyewitnesses providing an unexpectedly high level of inferential and imaginative memories.”

The importance of eyewitness evidence in criminal proceedings is well known, as is the potential for eyewitness error. Recent studies and evidence have shown that the major source of wrongful conviction lies in the extraordinary fallibility of eyewitness memory. Recent studies have built toward an understanding of memory for forensically-relevant inanimate objects such as weapons and vehicles, and toward a systematic understanding of eyewitness memory for person, object, and setting in context.

Memories typically change in three major respects; they become shorter; details are lost; and memories are frequently reconfigured in the direction of personal belief or prior attitudes. Thus, witnesses typically encode an original memory as a configuration of its elements, with little actual attention to details which might assist in the avoidance of error. Over time, the original details may be degraded, and the overall memory becomes shorter. As the witness reviews the given memory, and especially if legal practitioners, police or others influence the viewpoint from which such memories are considered, additional features may be added after the fact. This post-event information may further confuse the memory, and may lead to additional memory errors.

Research conducted in the United States¹ involved two hundred and fifteen (215) ‘witnesses’ being shown digital photographs of a variety of ‘crime scenes’, involving the use of a weapon. Exposure times were varied across a realistic spectrum of half a second, two (2), or five (5) seconds in which the short-term memory would be expected to be engaged.

The research found every witness made nearly two (2) errors in regard to the ‘offender’ or the ‘offender’s’ clothing, and 90% got at least one attribute of the surrounding environment wrong. Errors in weapon identification were common (57%), indicating that weapon misidentification, and the failure to see a weapon at all when one is present, should be treated with extreme caution in police and courtroom settings. The overall incidence of inferential or imaginative errors across the witnesses was high, with 62% providing at least one wholly fictitious idea of how the ‘situation’ came to be, or of how the offender or ‘victim’ came to be in the circumstances.

An additional 49% provided at least one opinion of the emotional state of offender or victim, or of their intent. These entirely inferential opinions were reported by the witnesses as facts, as true memories of what they had observed. Although the witnesses saw only a still photograph of a momentary action, over 12% described some account or speculation as to what happened next.

This research found eyewitness performance in person, scene, and weapon description was generally poor, with eyewitnesses providing an unexpectedly high level of inferential and imaginative memories. Given the potential for obstruction and poor viewing conditions, and the high arousal levels typical of real-world crime scenes, it is reasonable to expect the frequencies of these types and categories of error would be increased, even beyond the relatively high levels observed in the controlled research environment.

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¹Sharps, M.J., Janigian, J., Hess A.B., & Hayward, B. (2009). Eyewitness Memory in Context: Toward a Taxonomy of Eyewitness Error. *Journal of Police and Criminal Psychology*, 24, pp 36–44 DOI 10.1007/s11896-008-9029-4



Child sexual abuse in Family Court cases

There is significant concern among the general public, experts, litigants, and interest groups about the likelihood of false allegations of child sexual abuse being raised in Family Court cases. In Australia, the Family Court is obliged to protect children against risks in the future, while concurrently fostering family relationships; a task made more complicated when one parent accuses the other of sexually abusing their child.

Opinion seems to be that allegations of child sexual abuse in Family Court cases are commonplace, and that the rate of which is on the rise. However the most recent Australian research found the rate of child sexual abuse allegations in disputed custody cases is approximately two to six percent (2-6%), which is considered to be low, but is greater in high-conflict cases with up to twenty three percent (23%) of cases alleging child sexual abuse. It has been suggested there is a widespread misperception that intentionally false allegations of child abuse are made by mothers in order to gain a tactical advantage in custody bat-

ties, or to seek revenge upon their estranged partners.

Australian researchers conducted an exploratory study¹ of expert testimony in Family Court of Australia cases in which allegations of child sexual abuse were raised. Records of Judgement and Psychiatric Reports for twenty (20) cases were extracted from one hundred and two (102) cases, with analysis identifying eight (8) clearly distinct themes.

The study found that many alleging parents experienced doubt in their own suspicions of sexual abuse. Their concerns were found to have developed in the context of emotional vulnerability and anxiety for their children's welfare. Retrospective interpretation of behaviour as indicating that abuse had occurred, and input sought from health care professionals, served to validate and reinforce alleging parents' concerns.

The researchers suggested that for the alleging parents, their allegations of sexual abuse against their ex-partners unconsciously expressed deep fears for

their children's welfare and acted to meet their needs for personal affirmation, in the context of the painful upheaval of a relationship break-up.

Some authors have argued the Family Court functions to protect sexual abusers at the expense of children's safety, due to a dominant belief within the legal community that women and children who make allegations of sexual abuse are likely to be mentally ill or vindictive liars. This belief has not been supported by the current research, which found that factors more complex than either mental illness or vindictiveness alone contribute to the development of false allegations.

The current findings provide a picture of the mothers involved in these Family Court cases as women who were in a profoundly vulnerable space. It is hypothesised this context was conducive to mothers having developed suspicion that their ex-partners were unpredictable and capable of severe hurt to the family, including sexual abuse of their children.

¹Black, F.A., Schweitzer, R.D., & Varghese, F.T. (2011). Allegations of Child Sexual Abuse in Family Court Cases: A Qualitative Analysis of Psychiatric Evidence. *Psychiatry, Psychology and Law*, DOI:10.1080/13218719.2011.613905

Heroin addiction and long term effect on impulse control

Long term changes in the nervous system resulting from drug use has been widely reported, playing a central role in both normal and abnormal arousal and mental processes. For example, chronic exposure to opiates (heroin, morphine) has been shown to provoke adaptations in some of the same cell pathways that bring about the intense actions of the drug.

Heroin has a strong adverse effect on the self-control mechanisms of people who use it, with increased impul-

siveness of heroin addicts, and their behaviour characterized by distinctive hostility and alienation.

Research conducted in Hong Kong¹ sought to establish whether the adverse effect of heroin on impulse control would continue even after the user had abstained from it. Twenty-eight (28) men participated in the study, fourteen (14) of which belonged to the ex-heroin addiction group and the other 14 served as normal controls (non-heroin users).

The findings confirmed the adverse effect of heroin addiction on impulse control could be long lasting. The research indicates that heroin addiction, even after an average period of addiction of 5 years, may have some long-lasting effects on the ability to inhibit impulses, resulting in the ex-heroin addicts tending to be reckless, ignoring rules and regulations, and lacking the ability to problem solve.

¹Lee, T.M.C., & Pau, C.W.H. (2002). Impulse control differences between abstinent heroin users and matched controls. *Journal of Brain Injury*, 16(10), pp 885-889



Repetition and children's false reports.

Extensive research has established that children are capable of producing highly accurate accounts of events that they have experienced or observed, and can make competent witnesses. However, studies have also revealed that children can be coached to tell convincing fabricated reports or to maintain secrets, which has significant implications for the court system.

Before testifying in court proceedings, children are commonly exposed to repeated investigative interviews that can have both positive and negative impacts on the quality of the report. Literature suggests that repeatedly recalling an event may increase the strength of the mental representation of the event, which therefore may lead to more accurate event recall at future times.

On the other hand, interviewer biases, inaccurate suggestions, or untruthful statements made during an interview may become incorporated into a child's future statements, potentially creating less accurate accounts over time. Furthermore, both children and adults' reports have been found to be negatively influenced by misleading or suggestive questioning procedures, which can alter their future recall.

Researchers in Canada¹ recently undertook a study to examine the linguistic characteristics of children's statements in an attempt to; a) distinguish truthful statements from fabricated statements and; b) to consider how the language patterns in children's statements change across repeated interviews. The study involved a play session between the child and researcher that involved placing stickers on various parts of the child's body (arm, hand, knee, foot, cheek). During the next week the child's parent coached the child to report both the game they played (true report) and a game that they had not

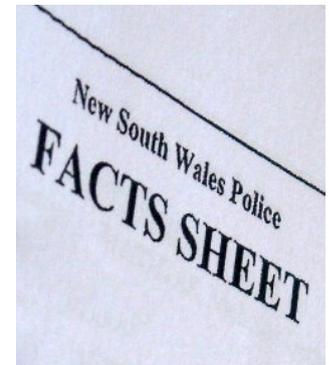
played (false report). At the end of that week the child was interviewed by a second researcher three times about the initial play session.

The research found during repeated interviews children used significantly more sensory terms ("see", "touch") in their false reports compared to their true reports. This suggests that children use greater amounts of sensory terms as they may be simpler, and accordingly are used in their fabricated reports in an effort to make these reports more convincing.

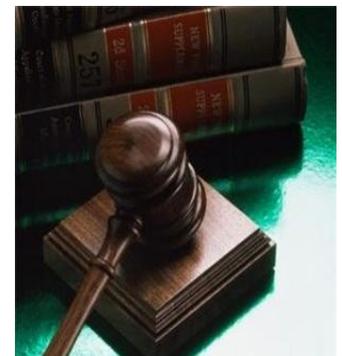
Also, children aged between six (6) and seven (7) years used significantly less references of themselves ("I", "we") and more references about others ("you", "your", "she", "their") in false reports. This suggests that by referring to themselves less and others more with repetition, children may be distancing themselves from their false reports.

Given the amount of information that can be skewed across multiple interviews, the present study supports the importance of minimising the number of interviews of children in a forensic context. Such findings again support the importance of video recording the initial interview and minimising the number of interviews children are exposed to prior to testifying in court.

This research suggests that while it is possible to differentiate children's true and false reports, children are quite capable of fabricating reports that resemble truths. Furthermore, children may use different techniques than adults in order to maintain consistency in their false reports. Though children seem skilled at creating and maintaining false reports, it appears the initial interview is crucial for differentiating truths and lies, and may lead to the most accurate veracity classifications.



"... children used significantly more sensory terms ("see", "touch") in their false reports compared to their true reports."



¹Evans, A.D., Brunet, M.K., Talwar, V., Bala, N., Rod, C.L., & Lee, L. (2011). The effects of repetition on children's true and false reports. *Psychiatry, Psychology and Law*, DOI:10.1080/13218719.2011.615808



Jurors and consent – at what age do girls know?

Prosecution and conviction rates in child sexual assault (CSA) cases are low, particularly when compared to other crimes involving adult victims. A factor that may be associated with the low rates of conviction in cases of CSA is the beliefs and attitudes of jurors.

Attitudes and beliefs of jurors relating to children's capacity to consent to sexual activity may potentially be influenced by several factors. Previous research has found that, in general, women tend to be more 'pro-victim' than men, implying that women are more likely than men to view child or adolescent victims of childhood sexual abuse as unable to make decisions about engagement in sexual activity.

Research conducted in Victoria¹, aimed to investigate how estimates of age vary across gender, age, and whether or not one is a parent. The focus of the study was on female children/

adolescents, as it is well documented that they are the majority of victims of childhood sexual abuse.

The research found the age estimate by males was significantly higher than that of females. Thus, in general, among a community sample of men and women, women believe that female children know the difference between right and wrong more than one year earlier than do men. Women believe that female children are capable of behaving in a sexually seductive manner some 6 months earlier than do men. Women also believe that female children are sexually naive for almost 1.4 years less than men.

The research also found that those working with children reported children know the difference between right and wrong earlier, than those who did not work with children. Whilst older participants (over 42 years) be-

lieve females become capable of behaving in a sexually seductive manner and to initiate a sexual act at a significantly earlier age than did younger participants.

Attitudes and beliefs about female children/adolescents' understanding and maturity in relation to sexual activity, are factors that may influence jury decision making in cases of alleged childhood sexual abuse. This research indicates that females know the difference between right and wrong at between seven and eight years of age; that females become capable of behaving in a sexually seductive manner at approximately 12 years of age; that females when around 14 years of age become capable of initiating a sexual act, and begin to understand the implications of sexual behaviour.

¹Klettke, B. & Mellor, D. (2011). At What Age Can Females Consent to Sexual Activity? A Survey of Jury-Eligible Australians. *Psychiatry, Psychology and Law*, DOI:10.1080/13218719.2011.559901

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- *Fitness to Plead assessment*
- *Offender Risk/Needs analysis*
- *Recommendations for incarceration or diversion to alternate rehabilitation programs*
- *Assessment and opinion for the likelihood of re-offending*
- *Behaviour modification program/assessment*
- *Forensic psychological court reports*