

Premise 5: Accounts of past events can be contaminated, producing inaccurate reports.

Supporting Research and Opinion :

- It should not be surprising that children can be influenced to give inaccurate reports - a finding that many seem to find depressing, negative, and disconcerting. Although some have tried to dilute this finding by referring to the strengths of children's memory and reporting, it is equally true that there are pronounced developmental differences that contribute to reporting, beliefs, and memory. There are developmental differences in the degree to which children accurately encode, store, and retrieve memories (Brainerd & Ornstein, 1991). There are developmental differences in forgetting, retention, and relearning curves (Brainerd, Reyna, Howe & Kingma, 1990). Young children are especially prone to making source misattributions (Ackil & Zaragoza, 1995; Parker, 1995; Poole & Lindsay, 1996). Each of these factors is thought to contribute to suggestibility. In the non cognitive domain, there are also developmental differences in social compliance and in the willingness to please an authority figure and to provide information when requested for it. Generally, young children believe adults and accept their statements as credible (Ackerman, 1983; Sonnenschein & Whitehurst, 1980). Thus, young children are more suggestible when interviewed by an adult than by a peer (Ceci, Ross & Toglia, 1987), and they are more likely to be swayed when interviewed by an adult of high prestige or authority (Robey & Goodman, 1992). (at page 147).⁵⁸

Suggestibility and Memory

- The research indicates that there may be many ways in which a child's reports may be contaminated. Specifically, suggested information is most likely to be incorporated into children's "memories" when inter alia (1) details are suggested repeatedly, (2) alternative hypotheses are not pursued, (3) the questioner appears to be knowledgeable about the events, (4) an air of accusation is established, (5) the questioner responds positively to certain contents and ignores others, (6) some details are rehearsed (e.g. incorporated into a book about allegations that is then reviewed and revised), (7) the child is led to believe that others have already reported the details in question, (8) multiple conversations with multiple sources of contaminating information, (9) any real memories are weak⁵⁹. Other sources of contamination are (10) involving the child in suggestive trips to alleged scenes, (11) increased parental attention and other rewards that may mean children feel compelled to make further allegations to maintain the positive reinforcing environment and in the event of possible punishment may divert the parents' attention by making further allegations (12) Counselling (13) peer contacts (14) creativity and imagination (fantasy) (15) prior sexual knowledge⁶⁰.

⁵⁸Bruck, M., Ceci, S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports: From Research to Policy and Practice, *American Psychologist*, Vol. 53, No. 2, 136

⁵⁹(First Affidavit of Dr Lamb, p53)

⁶⁰(First Affidavit of Dr Parsonson, p32)

- Although we have concluded that pre-school children (those 6 years old and younger) are most at risk for suggestibility, this does not imply that children older than 6 years of age are immune to the effects of suggestive interviews. In some studies that we have reviewed in this book, significant suggestibility effects were obtained for children in older age groups. In some studies, 8-year-old, 9-year-old, and even 10-year-old children were found to be significantly more suggestible than adults (Ackil & Zaragoza, in press; Warren & Lane, 1995). (at page 236)⁶¹.
- Most researchers agree that the manner in which children are questioned can have profound implications for what is "remembered". Misleading or suggestive questioning can manipulate young witnesses, with the very young being especially vulnerable.⁶²
- Suggestive interviewing is most likely to be influential when the memory is not rich or recent, when the content was imagined rather than experienced, when the questions themselves are so complicated that the witness is confused, and when the interviewer appears to have such authority or status that the witness feels compelled to accept his or her implied construction of the events.⁶³
- Suggestibility is a multifaceted concept that involves social, communicative and memory processes. Children may respond inaccurately because they (a) infer the interviewer would prefer a particular response, (b) do not understand the questions but are eager to co-operate, (c) retrieve the most recently acquired information about the event in question, although they might be able to retrieve information about the actual event if prompted to do so, or (d) suffer from genuine source-monitoring confusion that prevents them from discriminating between the original event and misinformation (First Affidavit of Dr Lamb, p24). Thus there may be a number of factors that impact on suggestibility, including (a) memory (where memory traces are weaker children are more suggestible); (b) language (children's ability to encode and report information may impact of their susceptibility to suggestion), (c) knowledge (the less knowledge a child has the more susceptible they are), (d) social factors (such as compliance, willingness to please, a high status questioner, responding for reward or attention) (e) lying (children lie for differing motivations which may include the avoidance of punishment, to sustain a game, to keep promises, for personal gain and to avoid embarrassment) (First Affidavit of Dr Parsonson, p13,14).
- It is not the case that children's event reports are generally distorted and unreliable, nor is it the case that children cannot be prompted to falsely report events that might be considered abusive. Rather, the quality of children's testimony is a joint product of their cognitive and social maturity, their experiences outside formal interviews, and the interviewing context⁶⁴
- The danger of contamination such as unrecorded interviews by anxious parents is that 1999 research has indicated that both professionals and parents cannot describe interviews and conversations accurately, even when

⁶¹Ceci and Bruck (1995) Jeopardy in the Courtroom extract from page 233:

⁶²(First Affidavit of Dr Lamb, p28)

⁶³ (First Affidavit of Dr Lamb, p28)

⁶⁴Poole, D.A., and Lamb, M.E. Investigative interviews of children: A guide for helping professionals, American Psychological Association, Washington DC.

they are motivated to do so⁶⁵. In particular, both parents and professionals misrepresent their reliance on focused and suggestive prompts and are more likely to attribute details to the children's spontaneous utterances when they were in fact stated by the adults or elicited in a leading fashion from the children⁶⁶.

The Incorporation of Misinformation into Memory

- Although most laboratory analog studies examine erroneous responses to misleading or suggestive questions, there is growing and alarming evidence that children not only respond inaccurately but incorporate the misinformation into their memories of the event. Ackil and Zaragoza (in press), for example, reported that children had trouble distinguishing between correct details and details that they had confabulated at the investigators' request; first graders performed more poorly than 3rd and 4th graders who were in turn inferior to college students. Similarly, Ceci and his colleagues (Ceci, Huffman, Bruck, & Loftus, 1994; Ceci, Loftus, Leichtman, & Bruck, 1994) reported that at least some pre-schoolers came to believe that they had actually experienced fictitious events to which they had assented and Garven, Wood and Malpass (1998) reported that the same was true of 5- to 7-year-olds. When explicitly instructed to distinguish between multiple possible sources of (mis)information, children can frequently distinguish between what they experienced and what they were told (Poole & Lindsay, 1997; Newcombe & Siegal, 1996, 1997) although such instructions do not appear to facilitate accuracy in pre-schoolers (Poole & Lindsay, 1997; Gopnik & Graf, 1988; Taylor, Esbenson, & Bennett, 1994).⁶⁷
- Age trends in susceptibility among school-aged children are less clear, with some researchers reporting that suggestibility continues to decline through the early grades (Ackil & Zaragoza, in press; Cohen & Harnick, 1980; Duncan, Whitney, & Kunen, 1982; King & Yuille, 1987; Marin et al., 1979; Poole & Lindsay, 1996, 1998) and others suggesting conditions that reverse these age trends (Brainerd & Reyna, in press). Suggestions are less likely to affect children's accounts when they pertain to central or salient details (Dent & Stephenson, 1979; Dodd & Bradshaw, 1980; King & Yuille, 1987) and when interviewers counsel children to report personally experienced events only (Poole & Lindsay, 1996). Unfortunately, little research has been conducted on suggestibility regarding memories of incidents that traumatised or affected individuals profoundly, although Goodman, Hirschman, Hepps, and Rudy (1991) found that children who were more distressed by inoculations were less suggestible than children who appeared less stressed by the inoculations.⁶⁸
- Whatever the vagaries and strengths of children's memories, the competency of child witnesses is often doubted on the grounds that children are too susceptible to influence by misleading questions or other sources of misinformation (Ceci & Bruck, 1993, 1995; Ceci et al., 1987b). Suggestibility is a multifaceted concept that involves social, communicative, and memory processes. Children may respond inaccurately because they: a) infer that

⁶⁵(First Affidavit of Dr Lamb, p48)

⁶⁶(First Affidavit of Dr Lamb, p48)

⁶⁷First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 34

⁶⁸First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 35

the interviewer would prefer a particular response (Ceci & Bruck, 1993), b) do not understand the questions, but are eager to be cooperative (e.g., Hughes & Grieve, 1980), c) retrieve the most recently acquired information about the event in question, although they might be able to retrieve information about the actual event if prompted to do so (Newcombe & Siegal, 1996, 1997), or d) suffer from genuine source-monitoring confusion that prevents them from discriminating between the original event and misinformation about it (Poole & Lindsay, 1997).⁶⁹

- Given the number of processes that underlie suggestibility, it is not surprising that the research literature appears at first glance both confusing and contradictory. Intense recent research has increased consensus, however, especially about the special susceptibility of pre-schoolers to suggestion (e.g., Ceci, Ross, & Toglia, 1987a, 1987b; King & Yuille, 1987; Toglia, Ceci, & Ross, 1989; see McAuliff, Kovera, & Viswesvaran, 1998, for a review). In a series of studies, Goodman and her colleagues (Goodman & Aman, 1990; Goodman, Aman, & Hirschman, 1987; Goodman, Bottoms, Schwartz-Kenney, & Rudy, 1991; Goodman, Rudy, Bottoms, & Aman, 1990; Goodman, Wilson, Hazan, & Reed, 1989) showed that three- to four-year-old falsely assented to 'abuse-related' questions such as "Did he keep his clothes on?", "Did he kiss you?", and "He took your clothes off, didn't he?" between 20% and 35% of the time, even when the questions implied actions quite different from those that were witnessed or experienced. Even greater levels of suggestibility might have been obtained if the actions had been more ambiguous and the suggestions more plausible (Steller, 1991), or if the misleading questions had referred to details observed or experienced in other contexts instead of being totally unfamiliar (Roberts & Blades, 1998). Levels of acquiescence to suggestion also vary depending on the circumstances; children are more resistant to suggestion when the same misleading questions are not posed, children are not exposed to misleading stereotypes about target individuals or given incentives to respond falsely, and conditions that are often associated with recognition errors (such as a combination of specific questions and dolls or instructions to think about non-events, "pretend," or "guess") are avoided. All of these conditions increase the susceptibility to suggestion (e.g., Bruck, Ceci, Francoeur, & Barr, 1995; Bruck, Ceci, Francoeur, & Renick, 1995; Cassel, Roebers, & Bjorklund, 1996; Ceci, Huffman, Smith, & Loftus, 1994; Eisen, Goodman, Qin, & Davis, in press; Garven, Wood, Malpass, & Shaw, 1998; Goodman et al., 1989; Leichtman & Ceci, 1995; Poole & White, 1991; Siegel, Waters, & Dinwiddy, 1988; Thompson, Clarke-Stewart, & Lepore, 1997). Pre-schoolers and young children are also more likely to acquiesce to suggestive questions when exposed to misleading information (Poole & Lindsay, 1996).⁷⁰

External Contamination (i.e. outside the formal interview)

- The interview itself may not be the only source of suggestion or influence that affects the accuracy of a child's reports through interference with memory source monitoring or influencing the current environment in which the child is being asked to report information. The process of the evidential interview is but one point in a chain of events that begins when

⁶⁹First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 32

⁷⁰First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 33

the child either volunteers information or is specifically questioned, about, alleged abuse (pA32).⁷¹

- Parental Questioning: Recent research points to the problematic effect on accuracy of suggestion from outside of the immediate interview context (pA33).⁷²
- Other Parental Action: Concerned parents in cases of alleged ritualistic type large scale abuse may engage in a variety of activities which could have a contaminating effect, for example, children may be taken back to the site of alleged abuse or engage in other suggestive behaviour. These actions have two problematic effects, they may consolidate false memories and contaminate true recall and they may allow a child to produce what appears to an interviewer or trier of fact as clear memories and convincing detail (Rosenthal, 1995) (pA33).⁷³
- Reinforcement: Parents may feel, because of the abuse their child has described, considerable guilt. This may lead to additional parental attention and rewards. One possible consequence of rewards is that the behaviour of generating allegations is encouraged and maintained, so that in order to sustain the positive reinforcing environment, the child feels compelled to make more allegations. In the event of a decline or termination of the rewarding situation (known as extinction) additional consequences may well be the production of more varied, intense and/or frequent allegations. A further possibility is that in the event of threatened punishment, a child may divert attention and change in the contingencies (negative reinforcement) by producing an allegation (pA33).⁷⁴
- Counselling: Another potential source of contamination of memory is the ongoing counselling which children often are referred to as soon as an allegation is made. Counselling, as noted earlier, is not concerned with discovery of the truth, but accepts without question or value-judgement the client's stated experiences, beliefs, attributions, and emotions. Counsellors use various means, including art, drama, play, and "acting out" to try to assist the child remember, confront, and overcome their abuse experience (pA34).⁷⁵
- Peer Contacts: One of the features of the situation in which allegations are made in the context of a pre-school is the large number of children who may become involved in the evidential process. These children may, even after leaving pre-school, still maintain contact through school or social interactions. This makes possible the cross-contamination of allegations or fantasies when peers meet and share their ideas or testimony. As a result, what appears to be common themes or stories, which may be

⁷¹First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

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seen by a trier of fact as confirmatory on the grounds of consistency of allegation, may arise instead from the children's sharing of allegations (pA34).⁷⁶

- Creativity and Imagination: While it might be argued that young children rely on their knowledge and experience in reporting events, the sources of knowledge and range of experiences of young children today include a wide array of media (for example television and film) which include special effects and toys (some with weapons or 'special' powers) which encourage creative and imaginative activity. There is research that points to the possibility that children can combine their existing knowledge in unique ways that might give an adult an impression that the child has been abused. In a review of the Kelly Michaels case, in which a pre-school teacher was accused of, and imprisoned for, sexually abusing children in her care, Rosenthal (1995) demonstrated that allegations made by the children of being made to eat faeces and drink urine, inserting of knives, forks, and spoons into vaginas and anuses, and adults and children urinating on each other, were generated by children in circumstances of very suggestive, biased, and inappropriate procedures, and demonstrated the capacity for children to exercise their imaginative and creative talents in ways that can convince a trier of fact that something must have been going on (p34/35).⁷⁷
- Mass Allegations from Pre-School Children: The risks of contamination through peer contact may well be higher where the allegations are in the context of a group situation such as a pre-school. This has been demonstrated on an international scale in the McMartin case and in the Kelly Michaels case (pA36).⁷⁸
- As the Rosenthal (1995) report highlights, in situations where allegations are made by young children who attend the same school, the risk of contamination is higher and that possible evidence of contamination must mean that the "disclosures" are to be viewed with considerable caution (pA36).⁷⁹
- Sexual Knowledge: Young children typically have an incomplete and essentially primitive or basic knowledge of sexual activity and sexual anatomy, although this is believed to be changing with the advent of sex education and more accessible sexually explicit material. Often the first source of "information" is from peers, who pass on their own misinformation of incomplete knowledge. Some parents may provide their children with books or tell their child details. Prior sexual knowledge must be regarded as a potential contaminating factor. When a child makes an allegation of sexual abuse it is imperative to ascertain the level of sexual knowledge of the child (pE3).⁸⁰
- Children not only respond inaccurately with erroneous responses to misleading or suggestive questions but also incorporate the misinformation into their memories of events (First Affidavit of Dr Lamb, p25). The research has indicated that children aged 5 and 7 years can come to believe that they actually experienced fictitious events to which they had assented (First Affidavit of Dr Lamb, p25).

⁷⁶First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

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- Factors that impair memory-including delays between events and presentation of misinformation, delayed testing, and questions about less salient events- also increase suggestibility (Pezdek & Rose, 1995; Reyna, 1995). (page 66)⁸¹
- Young children are more susceptible to influence when negative stereotypes about the person being discussed are conveyed, for example through an accusative tone or negative stereotyping (First Affidavit of Dr Lamb, p28).
- Subtle differences in the interviewers' style may also affect children's suggestibility, for example, research has found that 7- and 10- year old children were surprisingly likely to accept suggestions made "in an atmosphere of accusation" four years after the event being recalled. Furthermore, research indicates that children are more likely to accept the suggestions of an adult than a child confederate and in some instances, 5 year old children are most likely to acquiesce to suggestions made by their parents and were most inaccurate when interviewed by them rather than by unfamiliar interviewers (First Affidavit of Dr Lamb, p27/28).

Suggestibility and Motivation

- Susceptibility to misleading suggestions should also vary depending on the child's motivation to be completely accurate and/or comply with the interviewer's implicit or explicit agenda (King & Yuille, 1987). Children may feel obliged to answer adults' questions no matter how bizarre (Hughes & Grieve, 1980) and may assume that the repetition of a question implies that the initial answer was unsatisfactory (Ceci & Bruck, 1993). Subtle differences in the interviewers' style may also affect children's suggestibility. Goodman, Bottoms, Schwartz-Kenney, and Rudy (1991) reported that 3- to 7-year-olds were equally resistant to suggestions by "nice" and more neutral interviewers, whereas Davis and Bottoms (1998) and Carter, Bottoms, and LeVine (1996) found that 6- and 7-year-old children interviewed by supportive interviewers made fewer errors in response to misleading questions than did children interviewed by neutral or nonsupportive interviewers. Saywitz, Geiselman, and Bornstein (1996) found that "neutral detectives" elicited less inaccurate and more accurate information from 8- to 10-year-old children whereas "supportive detectives" elicited more accurate and inaccurate details. Goodman et al. (1989) reported that 7- and 10-year-old children were surprisingly likely to accept suggestions made "in an atmosphere of accusation" four years after the event being recalled (Goodman & Clarke-Stewart, 1991) and Ceci et al. (1987a, 1987b) reported that pre-schoolers were more likely to accept suggestions made by an adult than by a 7-year-old confederate. Overall, then, the effects of interviewer characteristics are less consistent and impressive than one might expect. Most alarming, as far as its relevance to the Ellis case is concerned, however, is Ricci, Beal, and Dekle's (1996) report that five-year-old children were most likely to acquiesce to suggestions provided by their parents and were, in fact, most inaccurate when interviewed by them rather than by unfamiliar interviewers.⁸²

Law Commission on Suggestibility:

⁸¹Poole, D.A., and Lamb, M.E. Investigative interviews of children: A guide for helping professionals, American Psychological Association, Washington DC.

⁸²First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 38

- Law Commission. Total Recall? The Reliability of Witness Testimony. A Consultation Paper (July 1999):
 - It seems fair to conclude from recent research that although the accuracy of both adults and children can be affected by leading or suggestive questions, the ability to resist the influence of external suggestion increases with age (Ceci and Bruck, 1993). Children of 10 or 11 appear to be no more suggestible than adults (Myers, Saywitz, and Goodman, 1996; compare Pipe, 1996, who suggests that the likelihood that a child will resist a misleading suggestion increases with age, until about the age of 8). As younger children have been shown to be more suggestible than adults and older children, interview aids must be used carefully to avoid the possibility of influencing the child's recall.
 - Children's suggestibility is not just a function of age - it also depends on the interaction of age with other cognitive and social factors (Goodman and Schwartz-Kennedy, 1992).
 - As Bruck, Ceci and Hembrooke (1998: 14) note, in the first 80 years of this century much of the research on suggestibility focused on the effects of asking a single misleading question or of providing erroneous post-event information. They state that suggestive interviews are now conceived of as a complex mingling of motives, threats and inducements which may appear in the form of misleading questions. Unfortunately, this reflects the conduct of some real life investigations. In their review of relevant studies, Bruck et al conclude that suggestive techniques not only influence recall of peripheral and unimportant details, but also lead to false claims about a wide range of events, many of which are personally meaningful such as bodily touching (1998: 142).
 - there is ample evidence that children do not reach adult levels of resistance to erroneous suggestions prior to early adolescence. (at page 146).⁸³

Conclusion: Suggestibility

- Regardless of the resolution of the various controversies concerning children's suggestibility, most researchers agree that the manner in which children are questioned can have profound implications for what is 'remembered', and this increases the importance of careful interviewing (Brainerd & Ornstein, 1991; Lamb et al., 1998; Poole & Lamb, 1998). Misleading or suggestive questioning can manipulate both young and old witnesses but the very young are especially vulnerable. Suggestive interviewing is most likely to be influential when the memory is not rich or recent, when the content was imagined rather than experienced, when the questions themselves are so complicated that the witness is confused, and when the interviewer appears to have such authority or status that the

⁸³Bruck, M., Ceci, S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports: From Research to Policy and Practice, American Psychologist, Vol. 53, No. 2, 136

witness feels compelled to accept his or her implied construction of the events.⁸⁴

Premise 6: Delay is detrimental to reliability.

Supporting Research and Opinion :

- Extended delay between the time of questioning and the time of the experiences has serious implications for those attempting to understand children's alleged experiences. Firstly, the delays should have facilitated extensive forgetting making accounts sketchy and in response interviewers may ask more focus questions which are more likely to elicit erroneous responses. Thirdly, the delay increases the likelihood that children will be misled by suggestive questioning and will incorporate erroneously suggested detail into their accounts.⁸⁵
- The additional problematic effect of delay between experience and reporting needs to be noted, since misattribution of imagined versus actual events appears to be enhanced by even quite brief (1-2 week) delays. When events alleged to have occurred months or even years earlier, the possibility of contamination of memory from a wide range of sources increases significantly, posing greater danger of misattribution. The contamination could include either deliberately planted information or accidental contamination (pB7).⁸⁶
- Delay is also significant to suggestibility, the greater the opportunity to forget details about the original event, the more likely it is that memories will be contaminated by misinformation. The research indicates that suggestibility increases as a function of the time between the to-be-remembered event and the questioning, for example, researchers have found that 3- to 6- year olds were roughly twice as susceptible to suggestive questions about body touch one month after rather than immediately after a to-be-remembered event. Acquiescence was even more common after a 6 month delay. No researchers have studied acquiescence and the incorporation of misleading information after delays as long as those in the Ellis case but there is every reason to expect both to be even higher (First Affidavit of Dr Lamb, p27).

⁸⁴First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 39

⁸⁵(First Affidavit of Dr Lamb, p20)

⁸⁶First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.