

Defending the Forensic Interview in Court: The Law and the Science

Thomas D. Lyon, Ph.D., J.D.

USC Gould School of Law

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What we'll do today

- Legal arguments against expert testimony
- Uncover the methodology
- Criticize fit
 - Exaggeration of error rates
 - Neglect of true allegations
 - Importance of genital touch
 - Importance of age

Potential legal arguments against suggestibility testimony

- Invades the province of the jury to decide credibility issues.
- Doesn't assist the jury.
- Doesn't fit the facts of the case.

Invades province of the jury?

- Problems
 - Jury can always reject testimony
 - Expert can avoid commenting on individual child
 - Expert can criticize the interviewer rather than the child
- Probably can keep out conclusions regarding individual children's credibility

Doesn't assist the jury?

- Most jurors have general understanding of younger children's suggestibility, but
 - Many will lack understanding
 - Won't know specific factors
 - Won't know specific studies
- Argument backfires for Accommodation testimony

Scientifically reliable?

- Much of the research meets the standards (e.g., peer reviewed publication; systematic exploration of error rates)
- But challenge requires expert to reveal the methodology of the research underlying his conclusions.
- E.g. United States v. Kime (8th Cir. 1996): summary citations to eyewitness research said "nothing whatsoever to the district judge attempting to assess the credibility of the research underlying [the expert's] opinions" (p. 883).
- Why? Court cannot perform next steps in admissibility determination without specifics.

If it doesn't fit, you don't admit

- The expert
 - Must reliably apply the research (research = conclusions)
 - Must fit the facts of the case (conclusions = this case)
- Heightened standard of “conditional relevance,” given potential prejudicial effect of expert testimony.

How to think about accuracy

- There are two measures that contribute to accuracy
 - True disclosures (e.g. they WERE touched and they say they WERE)
 - False disclosures (e.g. they were NOT touched and they say they WERE)
- The **RATIO** of the two tells you how much your confidence that touching occurred should increase if any child discloses touch using the technique (aka the likelihood ratio).

True disclosures: False disclosures

- If it is greater than 20, this is usually considered **STRONG** evidence.
- If it is less than 5, this is usually considered **WEAK** evidence (Wood, 1996)
- Technically, the Ratio tells you by how much the **ODDS** of touching are increased by an affirmation.
- E.g. if you think chances are 50:50 before interview (1:1 odds), and the Ratio is 3, then the chances are 3:1 odds (or 75%) after the interview.

How to think about accuracy

- Studies ideally should have BOTH conditions (e.g. touched and not-touched).
- E.g. 10% of children make false disclosure in response to a question.
- Need to know what percentage would make TRUE disclosure in response to the same question.
- However, if false disclosure rate is very high, disclosure CANNOT be highly probative.

The importance of reading the original study

- Finnila, Mahlberga, Santtilaa, and Niemib (2003) staged an event... One week later, half the children were given a low-pressure interview that **contained some misleading questions with abuse themes (e.g., “He took your clothes off, didn’t he?”)**. The other children received a high-pressure interview; they were told that their friends had answered the leading questions affirmatively, they were praised for assenting to the misleading questions, and when they did not assent, the question was repeated. In both conditions, there were no significant age differences in the percentage of misleading questions answered affirmatively, although a **significant number (68%) were assented to in the high pressure condition.**
- Bruck, Ceci, & Principe, 2006

Finnila et al., 2003

- “I have already spoken to the big kids and they told me that he did some bad things that he shouldn't have done. Now I would like to know if you also have such a good memory and can help me, because I really need your help to find out what happened.”

Finnila et al., 2003

- For each question, the interviewer first told the child what other children had reported (e.g., “The other kids told me that he took their clothes off. He took your clothes off too, didn’t he?”)
- If the child said “no,” the interviewer implied that the child’s answer might be wrong, repeated what “the other kids” had said, and re-asked the question.

What percentage said “yes” to “he took your clothes off, didn’t he?”

- 9% (Table 3 p. 45)
- Is this type of questioning probative of abuse?
- Can’t tell—no true allegation condition.

Dolls and drawings

- Importance of fit:
- True disclosures and false disclosures
 - What is the probative value of a disclosure in this case?
- Genital touch
 - Genital touch is different than other touches
- Age
 - Older children much less suggestible

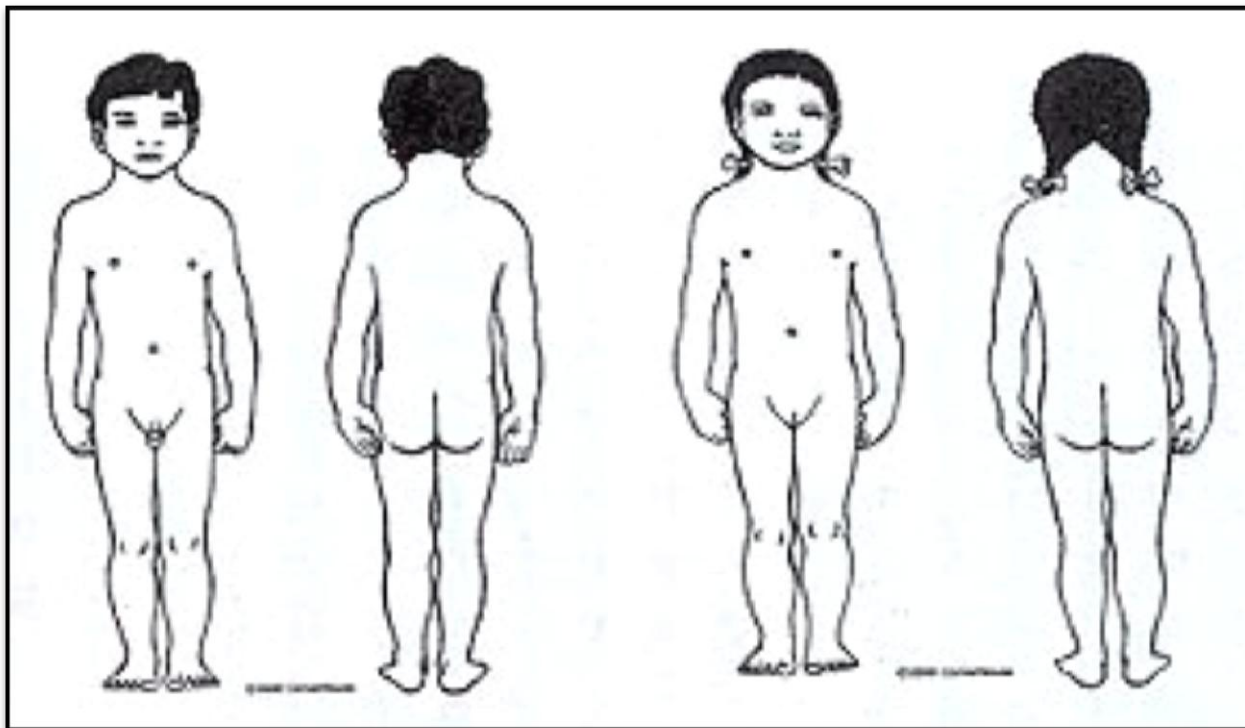
Anatomically correct dolls

- Saywitz et al., 1991
- Free recall
 - True disclosure: 22%
 - False disclosure: 0%
 - Disclosure is **CONCLUSIVE** evidence of touching.
- Point to doll's vagina; Did dr. touch you here?
 - True disclosure: 86%
 - False disclosure: 3%
 - Disclosure is **STRONG** evidence of touching (Ratio > 20)
- Limitations
 - 5-7 year olds
 - Nothing between free recall and direct questions (no invitations, no wh- questions).

Anatomically correct dolls/Diagrams

- Steward et al., 1996
- Free recall
 - True disclosure: 18-33%
 - False disclosure: 0%
 - Disclosure is CONCLUSIVE evidence of touching.
- Point to doll's vagina; Did dr. touch you here?
 - True disclosure: 73-86%
 - False disclosure: 8-12%
 - Likelihood ratios 5 to 9
 - Disclosure is MODERATE evidence of touching
- Limitations
 - Anal touch (dolls only): Likelihood ratio only 2 (80%:36%)
 - Nothing between free recall and direct questions (no invitations, no wh- questions).

Body diagrams in Steward



Anatomically correct dolls

- Bruck, Ceci, Francouer, & Renick, 1995; Bruck, Ceci & Francouer, 2000
- Did the doctor touch you here?
 - 3-year-olds (mean 2-11)
 - True disclosure: 50%
 - False disclosure: 42%
 - Disclosure is NOT evidence of touching
 - 4-year-olds (mean 4-1)
 - True disclosure: 45%
 - False disclosure: 14%
 - Disclosure is WEAK evidence of touching

Willcock, et al. (2006)

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Body Maps Do Not Facilitate Children's Reports of Touch

EMMA WILLCOCK, KIRSTIE MORGAN and HARLENE HAYNE*

Department of Psychology, University of Otago, Dunedin, New Zealand

Willcock, et al. (2006)

- 125 5- to 6-year-old children
- Trip to Dunedin central fire station
- 5 touches (head, under arms, both shoulders)
- Interviewed one month later
- I What I want you to do now is to use this picture to show me where [the male confederate's name] touched you when he put the costume on. Point to where he touched you.
- Did [the male confederate's name] touch you anywhere else?

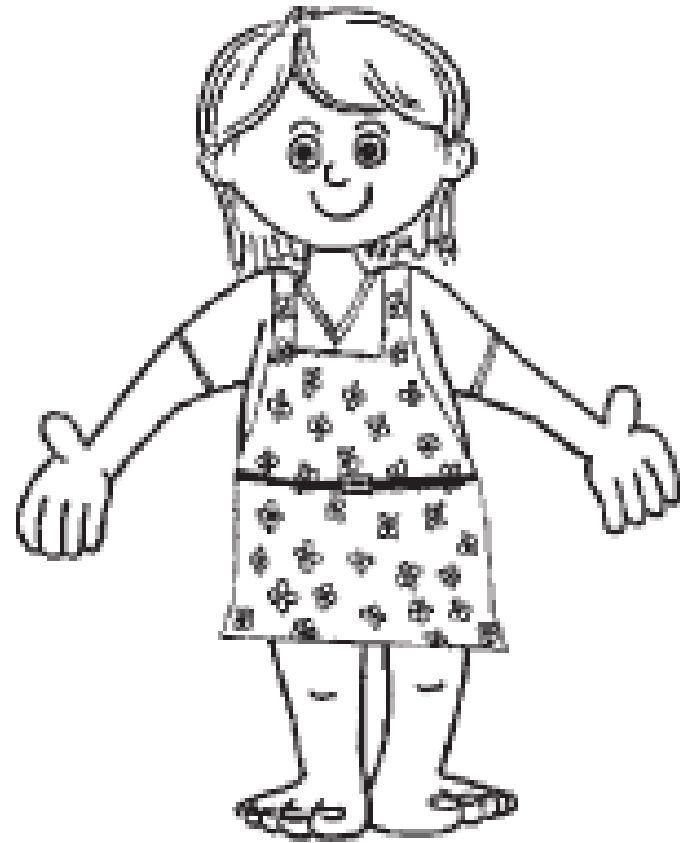
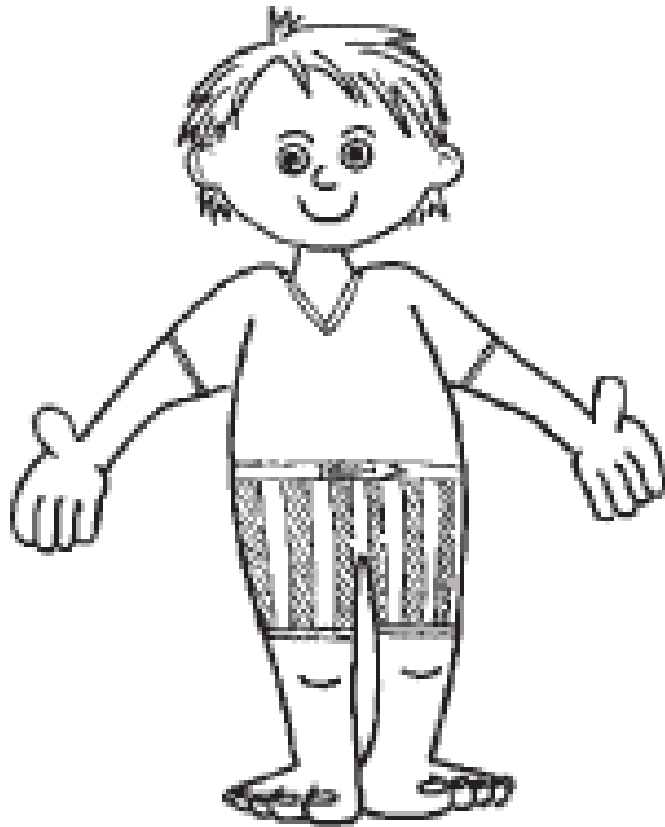
Willcock et al. (2006)

- Children correctly identified 62% of the places they had been touched
- On average named three places in which they really had not been touched
- False reports of genital: 11%
- False reports of breast: 26%
- 2nd study varied delays; similar rates of error

Willcock et al. (2006)

On the basis of these findings and those previously reported by Steward et al. (1996), we caution professionals against the use of body maps in clinical and legal interviews with children of this age.

Body maps in Willcock



Brown et al. (2007)

- 79 5- to 7-year-old children
- “Meet the photographer” trying on costumes and taking pictures, 7 touches (e.g., tickling feet, wriggling ear, squeezing wrist)
- Questioned 4 to 6 weeks later
- NICHD protocol, then
- General question: Did any part of the photographer’s body touch any part of your body?
- 6 direct questions (face, chest, arms-hands, front genital region, bottom, legs-feet), e.g. “Did the photographer touch your feet?”
- Questions only
- Body drawing only
- Body drawing with instruction (touched on elbow, asked to indicate where child touched)

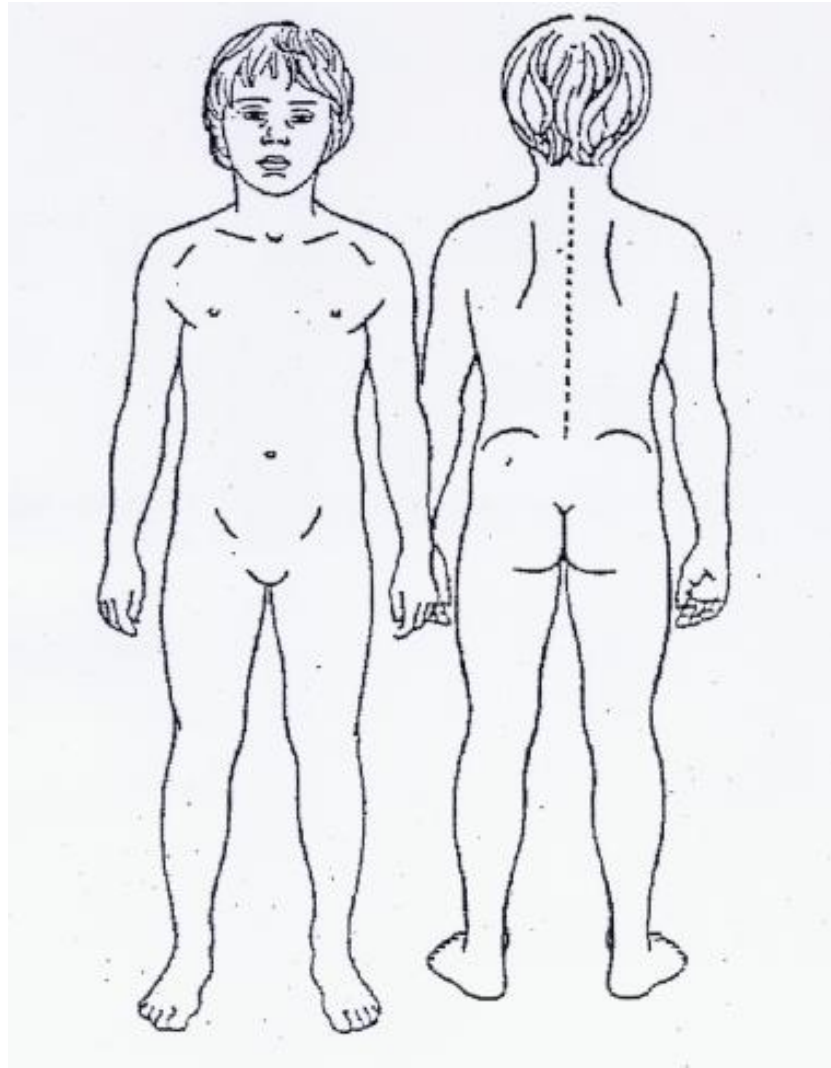
Brown et al. (2007)

- NICHD:
 - 0% mentioned target touches, therefore 100% failed to mention target touches (only 4 children reported any touching)
- General question:
 - 61% mentioned touching (highest among Body drawing condition)
- Direct questions:
 - 62% correct yes responses (highest among Body drawing condition)
 - 8% false alarm rate (no difference among conditions)

Brown et al. (2007)

- False reports of genital: 4%
- False reports of breast: 17%

Body Drawing in Brown



Are all false claims of touch alike?

- Children are less likely to make false claims of genital touch than other types of touch.
 - E.g., Steward et al., 1996: In free recall, 42% false alarmed to being touched on the ear by doctor six months after exam (cf. 0% genital touch)
- Higher false claims of “genital” touch may be attributable to lacking genitalia

Poole & Dickinson , 2011



Contents lists available at [ScienceDirect](#)

Child Abuse & Neglect



Evidence supporting restrictions on uses of body diagrams in forensic interviews[☆]

Debra Ann Poole^{a,*}, Jason J. Dickinson^b

^a Department of Psychology, 231 Sloan Hall, Central Michigan University, Mt. Pleasant, MI 48859, USA

^b Department of Psychology, Montclair State University, Montclair, NJ, USA

Method

- 261 4- to 9-year-old children
- Mr. Science manipulation: participated in science demonstration,
- Touch condition: wrapped wrist band around child's wrist, stick reward sticker on child's shoulder
- 4 months later, parents sent book that they read on 3 consecutive days before the interview
 - 2 experienced events
 - 2 suggested events
 - Non-touched: 2 touch events

Method

- Standard interview
 - What happened that day in the science room
 - Tell me more
 - Tell me how everything looked
 - Tell me the things you heard
 - If mentioned wrist band or sticker, What happened with band or sticker.
 - Did Mr. Science give you anything else?
 - Tell me about that

Method

- **“Did someone touch you in any of these places in the science room?”** while motioning her finger around the body diagram. Each report of touching by the child was marked on the body diagram and the child was asked, “Who touched you there?”, followed by “Did someone touch you anywhere else?” After marking all reported touches, the interviewer returned to the each report and asked two open-ended questions that invited the child to tell everything that had happened (touch questions phase). (p. 664)

Results

- For children who were touched
- Standard interview
 - 1.6% mentioned touching
- Body diagram interview
 - 9% mentioned touching
- For children who were not touched
- Standard interview
 - 18.8% falsely reported touching
- Body diagram
 - 25.4% falsely reported touching

Results (touches that were not suggested)

- No false alarms in standard interview
- Body diagram
 - 14.5% false alarmed

Any false reports of genital touch?

- No
- Authors emphasized that the drawings did not depict the genitalia.

Doesn't apply to genital touch?

- The fact is that findings from early research on risky practices replicated as studies progressed from relatively neutral to more sexually explicit materials and emotionally charged events, probably because these findings reflect general principles of memory and social influence. (For examples, consider the impact of combining interviewing aids with specific questions in **Steward & Steward, 1996**, and data on forensically-meaningful false reports in **Bruck, Ceci, & Francoeur, 2000**).
- Poole & Dickinson, 2011, p. 668

Emphasize age effects

- First and foremost, contrary to the claims made by some (e.g., Melton, 1992), there do appear to be significant age differences in suggestibility, with preschool-aged children being *disproportionately more vulnerable* to suggestion than either school-aged children or adults.
- Ceci & Bruck, 1993

The Sam Stone study

- Leichtman, M.D., & Ceci, S.J. (1995). The Effects of Stereotypes and Suggestions on Preschoolers' Reports. *Developmental Psychology*, 31, 568.

The Sam Stone study

- Once a week for four weeks before visit, were told about a total of 12 mishaps witnessed by the interviewer.
- Three of four interviews after visit contained suggestive questions about both target events (e.g., “When Sam Stone ripped the book, did he do it because he was angry, or by mistake?”)

The Sam Stone study

- 3-4 year olds vs. 5-6 year olds in the Sam Stone study: “All experimental conditions showed *dramatic developmental trends* favoring older children.” Leichtman & Ceci, 1995

The Sam Stone Study

1. Percentage claiming Sam did one or both misdeeds

3-4: 72%

5-6: 35%

2. Percentage claiming they *saw him* do one or both misdeeds

3-4: 44%

5-6: 13%

3. Percentage resisting “mild countersuggestion” (“He didn’t really do this, did he?”)

3-4: 21%

5-6: 5%

No age effects?

- Ceci et al., 2007, attacks the misconception that “Suggestibility Is Primarily a Problem for Younger Age Groups” (p. 314)
- “The bottom line is that, expert testimony notwithstanding, all age groups are vulnerable to misleading suggestions, even if preschoolers are *disproportionately more vulnerable.*” (p. 316)

No age effects?

- Was age factored out? (e.g., Finnila et al., 2003)
- Did the researchers count errors rather than percentage correct? (e.g., Poole & Lindsay, 2001)
- Is the finding of uncertain applicability? (e.g. Ceci et al., 2007: older children more likely to confuse egg sandwich with cheese sandwich, because older children better understand similarities between cheese and eggs)

For further information

- Google “bepress Lyon”
 - Copies of all published papers
 - Practitioner aids
- Google MRCAC and click on “webinars”
 - Child interview seminar
- tlyon@law.usc.edu