

Child Witness Testimony/Interviews

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Mitigating the Negative Consequences of Divorce

- Negative Consequences of Divorce
 - Internalizing psychopathology (anxiety, depression)
 - Externalizing psychopathology (substance abuse, criminology)
 - School difficulties
 - Own relationship instability
- Can child outcomes be improved by hearing from children directly?

History of Child Involvement

- Historically, children seen as property of father
- Then, children in “tender years” should be with mother
- *Uniform Marriage and Divorce Act* (1973) became framework for every state:
 - “The court shall determine custody in accordance with the best interest of the child.”
 - One relevant factor is “the wishes of the child.”
- Article 12 of the *Convention on the Rights of the Child* (1989):
 - “the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Why Listen to Children?

- 2 Rationales:
 - “Enlightenment” – Children have important information we cannot obtain any other way.
 - “Empowerment” – Children gain from being involved in the process & having their opinions considered.
- Most children want to be heard – especially when custody is contested.

Why Not Listen to Children?

- Children may be influenced/pressured by parent
- Puts children in the middle
- Forces children to assume an adult role
- Developmental issues (i.e. decision-making)
- Children may not want what is actually best for them
- Difficult to interview children appropriately
- Primary concerns of children in court:
 - Credibility
 - Emotional Trauma

Framework for Examining the Credibility of Children's Testimony

Child witness credibility is a product of the relationship between:

- Strengths & limitations of the child
- Characteristics of the interview
- Environment in which questioning occurs

not a sole function of the child.

1st Aspect of Child Witness Credibility: Strengths & Limitations of the Child – Developmental Factors

Memory – age is a primary factor found to affect memory

- Children perceived as less credible than adults
- Older children more accurate & less suggestive than younger children
- Children as young as two have been shown to be credible

Communication Skills

Cognitive/Academic Skills

Social-Emotional Maturity

Children's Memory & Communication

- Children's spontaneous reports are more accurate than responses to specific questions
 - Often incomplete, may omit pertinent information during recall
- Questions elicit more detail stored in memory
 - Can distort children's reports
 - Children may produce errors in response to specific questions
 - Suggestibility
 - Complex questions

Children with Disabilities

- Limited literature on capabilities and limitations of child witnesses with disabilities
- Most of the literature focuses on children with learning disabilities (LD) & intellectual disability (ID; formerly “mental retardation”)
- Definitional problems with “learning disabilities”
 - Many studies (i.e., UK) include children with LD & ID in definition of LD
 - Children with LD are a very heterogeneous group, thus different abilities & deficits

Intellectual Disability & Memory

- Memory for incidental (witnessed) events as accurate as non-disabled peers; not more likely to fabricate or distort information spontaneously
- More difficulty than typical children recalling details of events – may be due to processing difficulties
- More suggestive than their non-disabled CA peers, not more than their MA peers
- Source monitoring (i.e., knowing the origin of event memory) problematic

Learning Disabilities & Memory

- Deficits in meta-cognitive processes (i.e., deficient strategies for utilizing memory, attention to detail, verbal comprehension)
- More difficulty than typical children recalling details of events, may be due to processing difficulties
- Similar to typical children, free recall is more accurate than responses to specific questions
- Free recall less complete than that of typical children without disabilities, however just as accurate
- May have sequencing difficulties

Children with Disabilities' Responses to Specific Questions

- Children with learning & cognitive disabilities respond more accurately to open-ended questions
- Yes/no questions result in the least reliable information from children with learning & cognitive disabilities
- Complex questions adversely affect accuracy in children with learning & cognitive disabilities

LD, ID & Communication

- **ID:** Language delayed, both receptive & expressive, articulation difficulties, delayed concept development, may never reach CA equivalence
- **LD:** Some children have very specific auditory processing deficits that affect comprehension, expression, sequencing

Conclusions for Children with Disabilities

- Generally reports are less detailed, not less accurate when suggestive questions are not used
- Children with ID more suggestible
- Generally retrieval is less strategic, systemic, thorough, efficient
- Need interview techniques that help tell as much as they can in their own words with minimal adult influence or distortion

Research-Based Strategies for Interviewing Children

- Instructions to Improve Recall
- Instructions to Increase Motivation and Truth-Telling
- Improving Communicative Ability
- Reducing Suggestibility

Instructions to Improve Children's Recall

- Completeness Instructions to increase amount of information reported independently
- No Help Instructions to reduce acquiescence to leading questions and adult bias
- Warnings about Repeated Questions to reduce changing answers to please adults
- Warnings about Leading Questions to reduce acquiescence

Completeness & Accuracy Instructions (C & A)

- Supportive empirical evidence for C&A found in studies of packaged interview techniques, such as cognitive interview, narrative elaboration, Lamb/Sternberg script.
- Additional evidence from memory development lab studies showing children's memory performance benefits from instructions.

No Help Instructions

- To reduce children's deference to adults
- Adult not knowledgeable, can't help child answer, child is expert-not adult, child present at event-not adult
- 3 studies of No Help Instructions
 - 4-5 yr-olds made fewer errors with NH instructions
 - 8-10 yr-olds more resistant to suggestive question
 - 4-8 yr-olds less susceptible to misinformation

Warnings About Repeated Questions

- Some children change their answer when question repeated, assuming first answer not acceptable

Warnings About Misleading Questions

- To curb effects of leading questions
- Two studies
 - Questions might be tricky reduced suggestive effects (Warren et al, 1991)
 - Interviewer might put his/her guess into the question by accident reduce suggestive effects as part of larger package (Saywitz & Moan-Hardie, 1994),
- Warnings reduced but did not eliminate suggestibility

Instructions to Increase Motivation and Truth-Telling

- Do your best; Try your hardest Instructions to promote motivation and effort
- Tell the Truth Instructions
- Permission to say “I don’t know” Instructions

Motivating Instructions

- Try you hardest, Do your best
- Studies show more complete free recall of staged event for both school age and preschoolers

Tell the Truth Instructions

- Various methods for increasing children's awareness for the need to tell the truth have been studied
 - Sternberg et al., 1999
 - Huffman, Warren, Larson, 1999
 - Saywitz & Moan-Hardie, 1994
 - Lyon & Dorado, 1999
- Findings generally supportive of TtT or promise to tell the truth

“I don’t know” (IDK)

- Adults instructed that IDK is an acceptable response make fewer mistakes
- 5 studies of children
 - One study found no effects if IDK given once before interview
 - Three studies of 4-10 year olds given reminders during interview or practice with feedback show benefits and drawbacks
 - Reduces acquiescence to misleading ?s
 - Reduces correct responses in favor of IDK
 - Does not raise error
- One study eliminated drawback with added warning
“If you don’t know the answer, say you don’t know.
But if you know the answer, tell the answer.”

Facilitating Children's Comprehension & Verbal Reports – Comprehension Monitoring Strategy

- Problem: When confronted with difficult to understand questions, children try to answer but are as likely answer incorrectly as correctly.
- Strategy: “Sometimes adult questions are hard to understand and sometimes they are easy. When you don't understand, Tell me you don't understand. Put up your hand like a policeman stopping traffic, saying, ‘I don't get it, I don't know what you mean.’”

Summary of CM Findings

- When given instructions prior to interview to verbalize lack of comprehension, interview performance improves.
- When given instructions and a chance to practice detecting and coping with non-comprehension prior to interview, school age and preschool children show significantly more improvement.
- Children can be taught to ask adults to rephrase incomprehensible questions instead of guessing at questions they don't understand and this leads to more correct responses to interviewer re-phrasings.

Reducing Suggestibility

- Structuring questions
- Rewording suggestive questions
- Avoiding certain types of questions (i.e., yes/no)
- Respecting denials
- Warnings
- Interviewer demeanor

2nd Aspect of Child Witness Credibility: Characteristics of the Interview

Often children are questioned in language too complex for them to comprehend about concepts too abstract for them to understand.

For example, a four-year-old was asked, "On the evening of January 3rd, you did, didn't you, visit your grandmother's sister's house and did you not see the defendant leave the house at 7:30, after which you stayed the night? The child was silent and tearful, the case was dismissed, and as a result, the child was returned to a potentially dangerous environment. Her response was misinterpreted as a lack of both competence and credibility, despite the fact that the question was linguistically complex, with embedded clauses, uncommon uses of negative, all beyond her stage of language development; despite the fact that the question required a knowledge of kinship, dates, and times that four-year-olds have not mastered; and despite the fact that it asked several questions under the guise of one question whose answer was restricted to yes or no.

Characteristics of the Interview

- Form of Questions
 - Vocabulary
 - Linguistic Complexity of Questions
 - Yes/No Questions
- Pragmatics of Questions
 - Suggestibility
 - Transitions
- Content Questions
 - Measurement - Time
 - Measurement - Number
 - Measurement - Physical Appearance
 - Kinship Terms
- Abstract Reasoning
- Perspective

Form of Questions: Vocabulary

- Problem: Many common legal terms are unfamiliar to children under 10 (i.e. When asked, “Do you know what an allegation is?”, a young child is likely to answer “yes” but may be thinking about alligators.
- Solution: Use age-appropriate terms. Check for understanding by asking children what a term means in their own words.

Form of Questions: Linguistic Complexity of Questions

- Problem: Lengthy compound sentences with embedded clauses (e.g. “When you were on vacation the summer of 3rd grade and you visited your maternal grandmother’s house, did your uncle take you to his apartment and what happened there?”) are beyond the comprehension level of many children under eight.
- Solution: Ask short questions that require short answers.

Form of Questions: Yes/No Questions

- Problem: Children are often asked “yes/no” questions (e.g. “Did he push you down and then hurt you?”). Children under seven or eight may only respond to part of a question.
- Solution: Ask open-ended questions.

Pragmatics of Questions: Suggestibility

- Problem: Children under nine may expect a degree of sincerity not present in the adversarial process.
- Solution: Refrain from asking leading questions.

Pragmatics of Questions: Transitions

- Problem: Comments that link topics of conversation are common in typical conversations, but often omitted in formal questioning.
- Solution: Utilize transitional statements.

Content of Questions: Measurement - Time

- Problem: Children cannot tell clock time until age seven; have difficulty understanding before or after until age eight or nine.
- Solution: Relate events to familiar routines (i.e., nap time, mealtime).

Content of Questions: Measurement - Number

- Problem: Young children may know how to count but do not understand number concepts.
- Solution: Ask specific questions; however, questions about how many times things happen often contribute to inconsistencies in children's reports. Therefore, do not ask number questions to young children.

Content of Questions: Measurement – Physical Appearance

- Problem: Children cannot estimate age in years, height in inches, weight in pounds.
- Solution: Ask concrete questions (i.e. “Is the person old enough to drive a car?”)

Kinship Terms

- Problem: Children under ten do not understand kinship relations.
- Solution: Use proper names.

Abstract Reasoning

- Problem: Children under twelve years of age have difficulty with abstract reasoning.
- Solution: Do not use hypothetical situations.

Perspective

- Problem: Children do not develop another person's point of view accurately until the age of seven (i.e. "Why didn't you run away when he shut the windows and closed the doors?")
- Solution: Mold language and content of question to child's developmental level (i.e. Do not ask perspective questions of children younger than seven).

Additional Interview Characteristics

- Multiple interviews
- Delays in legal proceeding
- Circumstances of event to be remembered

Conclusions for Interviewing Children

- Interviewer Guidelines
- Pre-Interview Instructions for Children
- Strategies for Asking Specific Questions

Interviewer Guidelines

- Supportive, non-threatening environment
- Slow down rate of speech
- Allow extra time for child to:
 - Process what is said
 - Prepare a response
- Avoid interrupting
- Ask child to provide a narrative account in open-ended question initially
 - “Is there anything you want to tell me?”
 - ... anything you think I should know?”
- Use general prompts such as “tell me more”, “what happened next?”, “what else?”

Guidelines for Interviewing Children: Pre-Interview Instructions

- “If you do not know an answer, tell me.”
- “Do not guess or make up anything.”
- “Tell only what you remember.”
- “You may tell me, “I don’t understand.”
- “You may tell me, “I don’t want to answer.”
- “I may ask some questions more than once; sometimes I forget. You do not have to change your answer, just tell what you remember the best you can.”

When Asking Specific Questions:

- Choose age-appropriate words
 - *Many common terms are not familiar or are misinterpreted by children under age ten*
- Ask questions that are simple, concrete, and easily understood
- Use short questions that require short answers
 - *Complex grammatical construction may be beyond the comprehension of children under eight*
- Use open-ended instead of leading questions that require a yes/no response
- Do not use abstract words or ideas
- Do not use suggestive questions
- Use transition statements to go from one topic to another
- Ask child to repeat back to ensure understanding

Additional Suggestions When Asking Specific Questions:

- Ask short questions that require short answers
 - *Avoid long compound sentences*
- Use simple grammatical constructions
 - *Avoid embedded clauses, double negatives*
- Use 1-2 syllable words
- Use simple tenses (-ed, was, did)
 - *Avoid multi-word verbs (might have been)*
- Use proper names (Did you see John?)
 - *Avoid pronouns (Did you see him?)*
- Use concrete terms (a lot, a little)
 - *Avoid relational terms (more, less)*
- Use stable terms (in front/back of room)
 - *Avoid referents (here, there)*

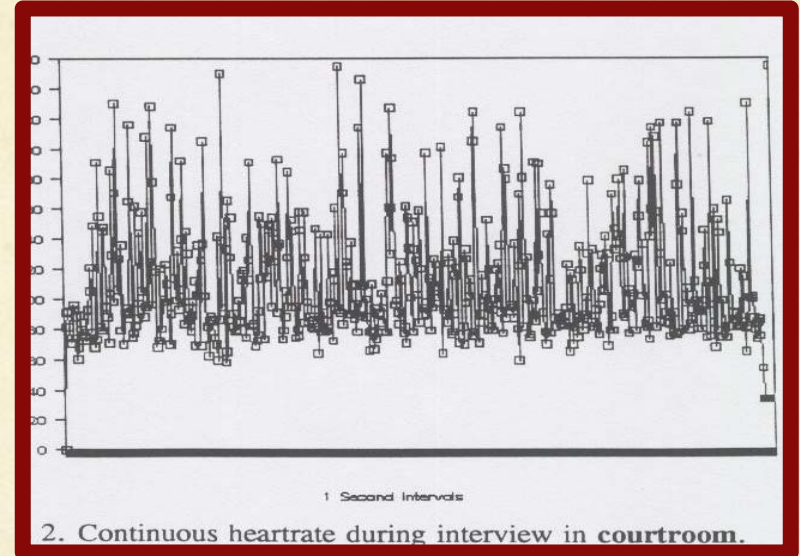
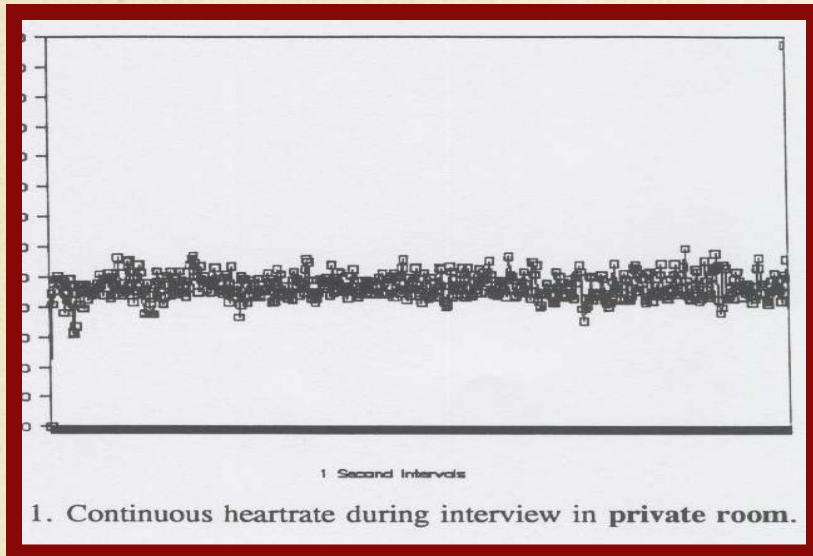
3rd Aspect of Child Witness Credibility: Environment in Which Questioning Occurs

Nathanson, R. & Saywitz, K. (2003). The effects of the courtroom environment on children's memory and anxiety. *Journal of Psychiatry & Law*, 31(1), 67-98.

- 81 children (ages 8 – 10)
- Participated in stage event
- Interviewed two weeks later:
 - 50% in private room
 - 50% in mock courtroom
- Courtroom results:
 - Incomplete, inaccurate recall (50% less)
 - Heart rate variability/stress response



Heart Rate Data



Kids' Court School:

Educate children about court proceedings & reduce system-related stress

- UNLV Boyd School of Law; Reno
- Children & youth ages 4-17
- Evidence-based, standardized curriculum
- Two one-hour sessions
- Over 1,600 participants
- 2012 Harvard University “Bright Idea” Award; 2015 Senatorial Commendation; 2018 NCJFCJ Innovator of the Year Award; UNLV Community Service Outreach Award

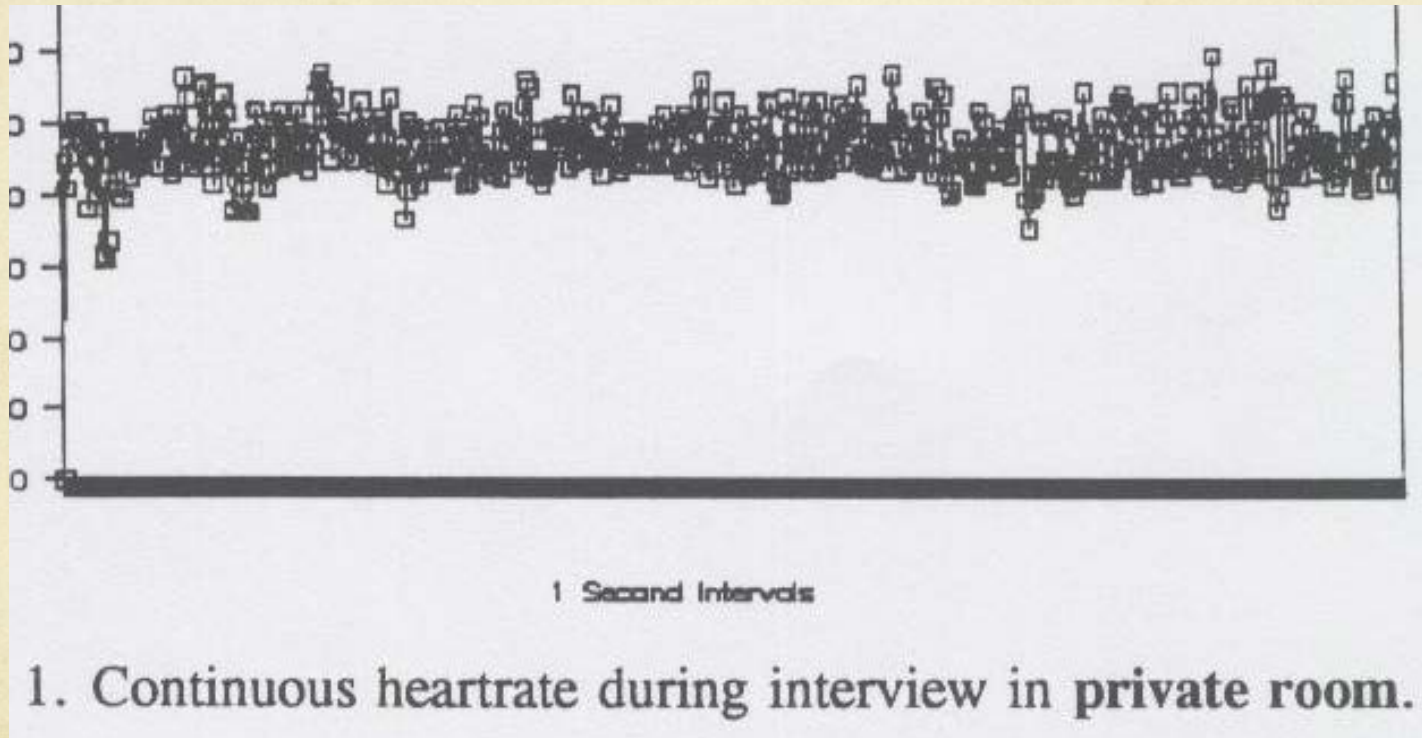


Kids' Court School Curriculum

- Pretrial processes
- Trial processes
- Roles & functions of courtroom participants
- Stress Inoculation Training:
 - Deep breathing
 - Positive self-talk
- Mock Trial



Effects of the Kids' Court School on Court-Related Stress



Methodology

- **Participants:** 189 KCS child witnesses (4-17)
- **Instrument:** Court-Related Stress Scale
 - 10-item measure of stressfulness of court experiences
 - 5-point likert scale



- **Procedure:** Pre/Posttest design

Court-Related Stress Scale

10-item measure that assesses children's stress about the following court-related experiences:

- Going to court
- Being a witness in court
- Having an attorney ask you questions in court
- Answering questions in front of a judge in court
- Answering questions in front of a lot of strange adults in court
- People not believing you in court
- Not knowing the answers to questions you are asked in court
- Answering embarrassing questions in court
- Answering questions in court in front of a person who may have hurt you
- Crying in court

Results

- Children rated overall court-related experiences as significantly less stressful after attending Kids' Court School.
- Children rated 7 of 10 individual court-related experiences as significantly less stressful after attending Kids' Court School.

Hierarchy of Court-Related Experiences

- 4.03 People not believing you
- 3.63* Answering embarrassing questions
- 3.60 Answering questions front of a person who may have hurt you
- 3.24* Answering questions in front of a lot of strangers
- 3.21* Crying
- 2.65 Having an attorney ask you questions
- 2.56* Being a witness
- 2.56* Answering questions in front of a judge
- 2.48* Not knowing the answers
- 2.33* Going to court



Preparing children for court during COVID: Evaluation of remote delivery of a model program

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Methods

Design:

Pretest-posttest design was used to evaluate the effects of the KCS program on child witnesses with impending legal proceedings.

Participants:

Child witnesses, ages 5-13 ($M=10$), participating in KCS through remote delivery.

Procedure

- First, children were administered the *Court-Related Stress Scale (CRSS-R) Pre-Test*.
- Next, children participated in both sessions of the Kids' Court School program through Zoom.
- Lastly, children were administered *CRSS-R Post-Test*.

Results

Paired sample t-tests were conducted on the total scores of the CRSS-R pre and posttests. **Children rated the overall court-related experience (total score) as significantly less stressful after attending KCS ($M_{pre}=33.43$, $SD_{pre}=7.34$; $M_{post}=26.69$, $SD_{post}=6.05$), $t(12)=4.71$, $p<.001$.**

Conclusion

- Continued controversy over whether children should testify in family law proceedings
- Despite concerns, children's participation is:
 - Enlightening
 - Empowering



- The United Nations Convention on the Rights of the Child (1989) guarantees children the right to be heard in any judicial proceeding affecting them
- Credibility & emotional trauma can be mitigated by programs such as Kids' Court