

2013 SENATE HUMAN SERVICES

SCR 4020

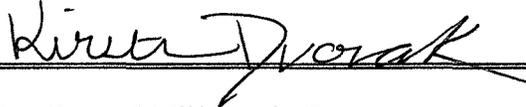
2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SCR 4020
2/25/2013
19433

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To study the child abuse and neglect laws and the child protection service system in the state, including review of the authority of and the criteria used for child protection services to remove a child from the home.

Minutes:

See testimony

Chairwoman J. Lee opens testimony on SCR 4020

(0:00:25) Senator Tim Mathern: from District 11 in Fargo. Testified in favor of SCR 4020. See attachment #1.

(0:04:17) Nikki McAlpin: Is here to testify on behalf of others that have been effective by Social Services. Ms. McAlpin gave various examples of children that were taken from the home and how it has effective their lives of the child and that of their parents. Would like the laws looked at and the processes of how child protection services remove the child from the home. Evidence should prove abuse before a child is removed from the home. In addition, to look at the immunity of the social workers. Ms. McAlpin also states that lawyers do not represent these types of cases, and stated that Family lawyers have told her that evidence does not matter.

(0:18:04) Chairwoman J. Lee questions Ms. McAlpin whom she is quoting when Ms. McAlpin says "evidence does not matter"?

(0:18:10) Nikki McAlpin: She talked with 18 lawyers that she talked with, and her list was not with her.

(0:19:05) Chairwoman J lee: questions and discusses with **Ms. McAlpin** what is appreciate discipline and at what age. **Senator Larsen** asks **Ms. McAlpin** if she then embraces spare the rod spoil the child.

(0:21:46) Charles Tuttle from Minot: Testified in favor of SCR 4020. See attachment #2. Mr. Tuttle states that lawyers will not represent individuals that are involved in social service cases. See also attachments #3 and #4.

(0:26:53) Senator Larsen: Asks Mr. Tuttle if this resolution will loosen the laws or will it make the tighter? That the ideals look at deeper and that the current child removal system be relieved a little.

(0:27:35) Charles Tuttle: yes it will make the problem public.

(0:27:45) Chairwoman J lee: Comments about how child hearings are closed because minors are involved.

(0:28:05) Charles Tuttle: when one is affecting property, livelihood, family it needs to be public. I had to force them to give me a polygraph, I had to find this out for myself and I prevailed in that way. Most people can't afford or not highly educated.

(0:28:45) Senator Dever: Wondered if there are situations that are justified for children to be taken from the home?

(0:29:03) Charles Tuttle: references *Parental Alienation* by Dr. Gardner no matter how bad the situation is to take the child away from the parent is more harmful than good. That we protect the child and we are not doing that.

(0:30:44) Alicia Redmond: A resident of billings county and a foster care parent. She has had positive experiences with Billings and Golden valley Social Workers. Gave own example of her own experiences. She went through foster care classes; saw others that were in trouble for things that were going on in their homes. One of the parents in Stark County had many children go through their home and was being investigated once again. We realized that there was nothing losing our child over and gave up our license. We didn't have any foster children in our home, and is very happy that happened. A friend's son who had three accidents in a row, each time social services showed up at their door and the parent was excited that there was a witness. This seems to be a problem in our area after talking with individuals in the Fargo area. Ms. Redmond asks for a review to see if there is a problem and a place for foster parents to report things that are going on.

(0:36:10) Senator Dever: Wanted to know if she talked county commissioner about this situation.

(0:36:16) Alicia Redmond: No she has not it was not in our county. Child protection services cover a region in SW North Dakota. We didn't have problems with them in Billings County.

(0:37:31) Paul Sorum: Testimony in favor of SCR 4020. Talked about conversations that he has had with individuals that have been accused. Parents are afraid to speak out, because they know people think less of them because their children were taken. There is not a day in court for those individuals, because they are closed courts. Parents cannot defend themselves. Wants transparency in the system. Talked with lawyers and verified that they will not take cases that involve social services. States that there are financial incentives that are taking children out of the home, and gives examples.

(0:41:34) Chairman J. Lee: Disagrees with the statement about financial incentives for those that are taking children out of the home.

(0:44:30) Senator Anderson: Wants to know what attorneys have been talk to and why are they not testifying as he would like to talk them.

Paul Sorum: I can give names but would not like to on record, because the attorneys feel like their statements are made official that there reputation will also be marginalized.

(0:45:40) Chairwoman J Lee: states social service agencies and DHS are obligated by the privacy laws to not discuss any of these with anybody. So we are hearing one side of it.

(0:46:19) Dona Lowman, Billings's county: Gives personal experience to the committee. Has not have any personal problems with Social Services; however her son has for stopping medical treatment for his daughter. Doctors turned them in for not getting medical treatment. Social services let them go and the family was afraid that they were going to lose all of their children. Doctors should not have to turn them over to Social Services, for not seeking medical treatment for cancer.

(0:49:40) Tim Hathaway Executive Director of Prevent Child Abuse North Dakota. Testifies in opposition of SCR 4020. See attachment #5

(0:55:49) Senator Axness: Has talked with individuals that social services did several visits before anything was done and was forced to act. Discussed not just about weaking the system, how the study can make the system stronger.

(0:56:46) Tim Hathaway: part of it is due process and that individuals are protected and a misunderstanding of the process. I would agree that if there was to be a study to look at those issues and helping the public understand what the system is and how it works.

(0:57:42) Senator Anderson: Would like explanation of how those that are accused are legally represented.

(0:58:17) Tim Hathaway: Defers Senator Anderson question due not having an understanding that system.

(0:58:44) Senator Dever and Mr. Hathaway have a discussion about having a study when only one side can be heard, and how the system could be better. The cases are closed and confidential.

(1:01:13) Chairwoman J. Lee: what suggestions the resolution would read, with his (Hathaway) recommendations.

(1:01:37) Tim Hathaway: The bill that addresses how the child is removed from the home. Look at supporting the family, resources, and education.

(1:03:21) Chairwoman J lee discusses community programs already in place and using those more.

(1:04:49) Steven Riser Director of Dakota Central Social Services: Is neutral on SCR 4020. The study is alright and we can always improve. However there are a few things to share. Because of confidentiality you can only here one side of the story. There are just as many reports as we take too much action, as are not enough action. The study of child protection system involves a lot of systems. The court system, the medical systems that Social Services have no control over. Mr. Riser likes the idea of alternative services.

(1:07:10) Chairwoman J lee: Makes a statement that there were several personal stories today, and there is not an opportunity what the other side of it is, however anyone that would like to do a privacy waiver the department then can visit the committee, not that the committee can change any personal situations but we are hearing one side, and are willing to permit the department to share by signing a waiver the committee would welcome that. It is important to be aware of all of the circumstances.

(1:08:07) Chairwoman J lee: Closes the hearing on SCR 4020

(1:08: 20) Discussion:

Chairwoman J lee discusses that most of the testimony is one sided due to the confidentiality, that the committee can only here one side of the story. There are groups (agencies) that are making policies that are family friendly. We are trying to keep children out of foster care, and assisting families in becoming more whole.

(1:09:25) Senator Anderson, talks about how we are teaching child abuse, and how we hear about stories that we have heard and we have gone overboard on scaring the kids.

(1:11:09) Chairwoman J lee: Shares a personal story of someone that was being neglected. Asks **Michael Bommarito the state coordinator for the Children Advocacy Centers of North Dakota (CACND)**, what challenges there are with the system.

(1:11:44) Michael Bommarito: it's not a perfect system on both sides. One issue is the rural communities were everyone knows everyone; there are situations where the social worker knows the people involved. The CACND sees a problem with the reports moving forward. There is due process, even with the confidentiality making it difficult. We support mandated reporting because we want them reported. CACND is looking into expanding their services so that it is more neutral investigations. Education of the community.

(1:14:28) Senator Anderson: Questioned if the study would hurt the system?

Michael Bommarito: Would be somewhat concerned that it would hurt the system. A lot of the cases are custody cases, not family unit being torn apart.

(1:16:13) Senator Larsen: can there not be a civil case against social services, is there immunity?

(1:17:08) Senator Anderson and Chairwoman J Lee: there is discussion about immunity of social workers.

(1:17:36) Chairwoman J Lee: Discussion about the process and the removal of the child process and the laws. The study may not create the solutions, and to enhance the policies that are in place.

(1:19:56) Senator Anderson: To hold the bill and look at changing it to look at what is the problem.

(1:20:32) Senator Dever: discusses visiting with Senator Mathern and this being a bill instead of a resolution. It was also interesting that there was no first person testimony. Don't know if we should prevent the process, because it's sometimes uncomfortable. Doesn't have a problem with the study, somehow the chairperson on the committee that hears the study has to be able sort out the testimony so that both sides are heard.

(1:22:32) Senator Larsen: the language is questionable.

Discussion about changing the language of the resolution and looking at making it a bill next session.

Senator Dever motion for Do Not Pass

Seconded by **Senator Larsen**

Roll Call Vote: Do Not Pass 5-0-0

Chairwoman J lee will carry to the floor.

Date: 2-25-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4020**

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen Dever Seconded By Sen. Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent _____

Floor Assignment Sen. J Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4020: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4020 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SCR 4020

Senate Human Services Committee
February 25, 2013, Red River Room 9:30 AM
Senator Tim Mathern

Madame Chairman Lee and Members of the Human Service Committee

My name is Tim Mathern. I am the Senator from District 11 in Fargo and am here to introduce SCR 4020. Passage of this bill asks Legislative Management to study the child abuse and neglect laws and the child protection services system in the state, including a review of the authority of and the criteria used for child protection services to remove a child from a home.

Attached to my testimony please see a bill draft that I was asked to introduce by families concerned about child welfare practices in North Dakota. It raises questions about practice, philosophy, and underlying questions of trust of our service and judicial system. While I do not have awareness of such issues and did not introduce the bill, it is important that families with concerns have a proper forum to raise their concerns. As such I bring you SCR 4020.

I had Vonette Richter of Legislative Council draft the Resolution with full disclosure to Maggie Anderson of the Department of Human Services.

There are families here to testify and I encourage appropriate agencies to testify also. I did notify the Department of Humans Services and Prevent Child Abuse North Dakota of the bill and hearing.

I am happy to address any questions you have but I need to go to the Appropriations Committee next door at this time so cannot stay for the rest of the testimony.

Thank you for your time and consideration. I hope that you as a policy committee will work on this further and make changes that reflect all of our ideas that are supportive to children and families.

PROTECT CHILDREN AND FAMILIES

No government, private or public funded, sponsored or organized agency, organization, coalition, department, or group, at any level, inclusive of but not limited to school, village, town, city, county, state, or federal, SHALL HAVE ANY authority or power over parents, step-parents, or guardians, in the raising, training, relational communication, spirituality, education, medical treatment, work ethics, or any part of parenting, chosen for their children and any generation of their children (eg: grandchildren, great-grandchildren).

CHILD ABUSE IS DEFINED AS the intentional infliction of burning, breaking bones, or physical injury requiring medical care to a child, forced injection or consumption of illegal drugs or alcohol into a child, and sexual molestation of a child, any and all of which must be proven by evidence beyond reasonable doubt of both the intention to inflict and the injury or abuse. Minor bruising on a child is not considered physical injury. NO CHILD SHALL BE QUESTIONED OR EXAMINED WITHOUT a representative of the accused person present, and not without a parent, step-parent, or guardian present. No child shall be removed from his home, from his parents, or from his guardians unless a conviction of child abuse has been ruled in a court of law, resulting from the legal proceedings written herein.

No anonymous reports of child abuse accusations shall be accepted by any court or law enforcement person or agency.

The person who has been accused shall be presumed innocent until proven guilty by evidence beyond reasonable doubt, and shall have the right to a jury or bench trial; choice of jury or bench trial is made by the person accused. If the accused person has reasons of bias interfering with a local court hearing, the accused may choose a court in a neutral district.

If child abuse is proven beyond reasonable doubt, and the jury or judge determine a child/children should be removed from his/her home, a County Sheriff who is in office by election may then remove the child/children from the home. The child/children shall be placed with relatives or in a home that is acceptable by the agreement of all parties, inclusive of parents or guardians, the child/children, and law enforcement, for a period of time as determined by the judge presiding over the child abuse case.

No government, public or private funded or sponsored agency, department, organization, coalition, or organized group, at any level, inclusive of but not limited to school, village, town, city, county, state, or federal, except law enforcement as defined herein, shall have any right or power to take children from their parents or to take children from their homes.

Child Support shall be paid by the person guilty of child abuse, the financial amount of Child Support being determined by the Judge presiding over the case. No person shall receive any type of government financial assistance, aide, or payment for raising children other than their own.

Upon the passing of this Bill, every government, private or public funded, sponsored or organized agency, organization, coalition, department, or group, at any level, inclusive of but not limited to school, village, town, city, county, state, or federal that is in violation of this Bill shall be terminated immediately.

Upon the passing of this Bill, every child currently held in the custody of the State of North Dakota by Social Services, and every child who was placed by Social Services into guardianship or custody other than the child's parents, shall immediately be restored to the custody of his/her parents, unless parents are incarcerated or are currently in a rehabilitation facility.

In the event that BOTH parents are incarcerated or in a rehabilitation facility, family members shall determine where the minor children of incarcerated or rehabilitation parents shall live. When the parents are released from rehabilitation or incarceration, the family members and child/children shall determine whether the child/children return to the parents or remain with family members.

Charles Tuttle

Every day in the USA families face false allegations of child abuse, and children are often unjustly ripped from their families and placed in foster homes.

These families suffer trauma and depression in their attempts to be together again.

~~Sir Edmund Burke, a British statesman, said, "Evil flourishes when good men do nothing."~~

~~Many accusations of abuse or neglect are false. False accusations can come from anonymous callers, doctors, nurses, neighbors, school teachers, or even the social workers themselves. People who are falsely accused and have their children taken are devastated, and need legal information and social support. ~~Right CPS helps with both those needs~~~~

When parents are sent to juvenile court they are denied ^{Legal} ~~constitutional~~ rights such as the right to a jury trial, the right to a public trial, and the right to be confronted by their accusers. Yet they stand to lose their children, one of the saddest and most heartrending losses known to humankind. This lack of ^{Legal} ~~constitutional~~ safeguards leaves child detention hearings open to gross injustices, the like of which few people believe could happen in America - unless they've been through it.

Federal statistics show that children in foster homes are about ten times more likely to be abused sexually, physically, emotionally, and mentally than children in their natural family homes. They are even more likely to be killed. A recent study concluded that foster children are more likely to have teen pregnancies and to become juvenile delinquents. The study said that children are better off when left with their natural families, even if those families have severe problems.

Social work should be a process of helping families resolve and recover from problems, not a process of tearing families apart forever and traumatizing children for life. This imbalance in the social work profession has been caused by federal legislation that gives financial incentives in the form of federal funding and social security reimbursements when children are torn from their homes and placed in foster homes.

701 870-2694

Red River
Room

Ceci Shapes Judicial Policy on Testimony of Children

Department: CIRC

For more than 25 years, Stephen Ceci has probed the accuracy of testimony given by children. His credibility as a researcher enables him to have a great impact on how judges perceive the information garnered by court interviewers and investigators.

When Stephen J. Ceci addresses members of the Family Law Association, he knows at least one thing most likely to be said about him.

“Judges who introduce me almost always say to the audience, ‘I’ll save you the bother of putting Dr. Ceci in your Rolodex; he isn’t for hire,’” says the Helen L. Carr Professor of Developmental Psychology in the Department of Human Development, who has turned down more than 1,000 offers from organizations as big as the Boy Scouts of America, the YMCA, and the Catholic Church and celebrities as high profile as Woody Allen and Michael Jackson.

Why does Ceci refuse to be an expert witness? Because, he says, he learned early on that the adversarial atmosphere of the courtroom isn’t the best venue for conveying science. And in steadfastly refusing to profit from his work, Ceci has gained the respect of judges across North America and Europe. They cite his publications in their decisions and invite him back again and again to give talks or seminars based on the latest research in children’s testimonial competence and accuracy.

“Judges are understandably very wary of people who may have an alternative motive, so I never testify for either side,” Ceci says, by way of explaining one of the reasons why—during the past 27 years—he has had such an impact on judicial policy.

Instead, Ceci offers the latest research findings from studies conducted in his own laboratory and those of other scientists—most notably his frequent collaborator Maggie Bruck, a professor of child and adolescent psychiatry in the Department of Psychiatry and Behavioral Sciences at Johns Hopkins University School of Medicine—to illuminate the issues that arise when law enforcement officers, social workers, court-appointed evaluators, lawyers, and judges deal with the testimony of children.

Misconceptions abound. Ceci’s goal is to convey what the science shows about, for example, the way that children disclose whether they have been abused.

For more than 20 years, a group of beliefs that has come to be called the Child Sex Abuse Accommodation Syndrome (CSAAS) has been accepted as true. The CSAAS posits that when children are abused, they delay reporting it—sometimes for decades. When they are asked directly, they will deny any abuse has occurred; yet after repeated questioning, they gradually begin to give fragmentary disclosures, little bits and pieces about how they were abused. Next, they recant altogether. Only later, when they are in what is perceived to be a psychologically safe situation, do they give a full and elaborate disclosure.

The CSAAS is routinely used by expert witnesses for both the defense and the prosecution.

“So the first thing I tell judges is that neither side is right, that the CSAAS doesn’t accurately capture the way abused kids disclose what happened to them,” Ceci says. In analyses of dozens of published studies, Ceci, Bruck, and Kamala London separated out the methodologically sound

studies on children's mode of disclosure from the abundance of poorly conducted ones and found that the only part of the CSAAS that is valid is that abused children typically deny any abuse has occurred when first questioned. The high-quality studies showed that children (even into adulthood) delay reporting what happened to them. And while it is true that children don't tend to spontaneously tell of their abuse, data show that the vast majority do tell, in full detail, when explicitly asked.

"It's important for judges to know what science shows, because this set of invalid beliefs animates the whole investigatory process," Ceci points out. "It motivates investigators and interviewers to pursue reluctant children, who may be reluctant because nothing actually happened."

Social workers and police officers who hold to the beliefs of the CSAAS will continue to question a child who, when asked directly, denies being abused. After repeated questioning, when the child then begins to give fragmentary disclosures, the interviewer determines this behavior to be consistent with CSAAS theory. Then, when a mother or grandmother asks the child and they recant, this denial is additionally seen as consistent with child sex abuse.

"In actuality, what it is consistent with is the child being badgered so often that he or she finally relents and tells the person what the child thinks the person wants to hear to get out of an uncomfortable interview situation," Ceci explains.

Demonstrating that the CSAAS does not hold up under rigorous scientific scrutiny was the first of three points that Ceci made in a webcast aired in April of 2005 to an audience of New York State judges as part of the New York State Judicial Institute's continuing education programming. Video streaming is the latest forum to bring Ceci and practitioners together.

The second misconception he corrected in the webcast was a common way that judges evaluate the veracity of an interview: by looking for whether the interviewer has asked leading questions.

"They think that the absence of leading questions indicates a good interview, whereas the presence of leading questions indicates a bad interview," Ceci explains.

Instead, judges should be looking at the interviewer's attitude. It is simple, Ceci says, to detect interviewer bias. A biased interviewer has a preordained belief about what happened to the child and conducts the interview to confirm this belief. Such an interviewer will reinforce the child for information consistent with this belief and ignore or even punish the child for information contrary to it. A fair-minded interviewer, however, can do a very fine job, even if he or she asks occasional leading questions, as long as the interviewer is listening to what the child is saying and from that generating some plausible alternative hypotheses.

"Judges resonate with this because they see this kind of thing in their courtroom all the time," Ceci says. "I show them how we do controlled experiments that demonstrate how a biased interviewer can ask very few suggestive questions and yet do a very bad interview, while a very fine interview can still contain leading questions."

The third point in the webcast focused on the infallibility of memory—not only the child's memory but the interviewer's memory as well.

Ceci presents data from studies done in his laboratory and elsewhere, in which experienced interviewers are videotaped questioning children. In comparing the videotape with the

interviewer's description of what happened, it becomes apparent that even 20 minutes after an interview is concluded, the interviewer can't remember details of what transpired. The interviewer often can remember the bottom line but has no recollection of the give and take of the interview—hence whether something was freely reported by the child or was the outcome of a series of highly leading questions at first met with denials, then finally with assent. In other instances, the interviewer reverses what he or she said with what the child said.

Ceci advises judges to insist on electronically recorded interviews and then listen for themselves to how the interviewer got from point A to point B.

Nothing is more eye-opening to judges than when Ceci uses examples taken from actual court cases such as audiotaped therapy sessions. The transcriptions make clear that what the psychiatrist testified to in court is not what the child had said during therapy.

“The therapist wasn't lying; she provided those tapes to the court in good faith. She had just forgotten exactly what she had said and exactly how the child had responded,” Ceci says.

Ceci's credibility as a research scientist is another reason he has been so influential in shaping policy regarding children's testimonial competence and accuracy. For the first third of his career, Ceci conducted purely theoretical research and published his results for a scientific audience. From the beginning, Ceci's papers were accepted by the most rigorously peer-reviewed journals. His studies have appeared in *Psychological Bulletin*, *Developmental Review*, *Journal of Experimental Psychology*, *Psychological Review*, and *American Psychologist*, among many others.

Over time, such premier journals have also accepted his papers about applied research of judicial relevance, thus conferring not only credibility but visibility as well.

One article alone, “The Suggestibility of Children's Recollections: A Historical Review and Synthesis,” co-authored with Maggie Bruck and published in *Psychological Bulletin* in 1993 has been cited nearly 500 times in other scientific articles.

The influence of Ceci's thinking on other scientists' work is evidenced by the more than 4,500 citations of his writings in other books and journal articles. Between 400 and 500 new citations of his work appear each year.

Such productivity is possible because Ceci's laboratory attracts top talent—accepting typically a dozen doctoral and post-doctoral students at any one time. To prepare them for the job market, Ceci tries to publish one or more articles with each of them.

“For graduate students interested in this field, Cornell is the first place they think to apply because we are so well known,” Ceci explains. “Consequently, I have the good fortune of working with many creative, very smart young people.”

The volume of e-mails Ceci gets asking for help is a big motivator to conscientious graduate students. Nearly every day, Ceci's in-box brings yet another anguished tale: one from a pediatrician charged with misconduct while evaluating elementary school children, another from the mother of an incarcerated child molester desperate to clear her son's name. (Ceci's administrative assistant keeps a list of expert witnesses across the country to offer to all who ask.)

Ideas for dissertation studies can also be sparked by a steady stream of requests for help from professionals on the front line: judges, social workers, lawyers, and law enforcement officials.

“We always try to respond,” Ceci says. “First we ask ourselves what science already knows about X, then what kind of study would be needed to find out more.”

Two recent examples show how Ceci’s scholarship has had far-reaching effects on judicial procedure and policy. In *U.S. v. Desmond Rouse* decided before the United States Court of Appeals for the Eighth Circuit (the court directly beneath the Supreme Court), Ceci’s and Bruck’s work is relied upon almost exclusively in establishing new case law. Heavy quotations from their book *Jeopardy in the Courtroom: A Scientific Analysis of Children’s Testimony* run for pages. And on the state level, their research recently was cited in *John Delbridge v. Commonwealth of Pennsylvania* to establish a wholly new procedure for vetting children’s testimony.

Ceci’s influence on judicial thinking about child witnesses also has been widely recognized by his peers. In 2003, he was awarded the American Psychological Association’s Award for Lifetime Contribution to the Scientific Application of Psychology. This spring, he is being given the James McKeen Cattell Award “for a lifetime of outstanding contributions to the area of psychological research whose research addresses a critical problem in society at large” by the American Psychological Society (APS). Thus, Ceci recently has received the highest honors of the world’s two largest psychological societies.

“His studies of children’s suggestibility with Johns Hopkins’ psychologist Maggie Bruck are an elegant integration of cognitive, social, and biological processes and have been cited by courts at all levels,” reads part of the APS announcement that Ceci will receive the James McKeen Cattell Award.

APS past president Frank H. Farley has noted, “I believe Ceci’s work is having more salutary impact on pressing social and legal issues than almost any in our field.”

The field of children’s memory and the testimonial reliability of young children is constantly evolving, spawning large numbers of published studies.

“Nearly every month, findings appear that are intriguing, provocative, and controversial,” Ceci says, referring most recently to a study showing certain ploys that seem to increase by 10 percent an interviewer’s chance of detecting children who are lying.

“So,” says Ceci, “it’s very exciting when my students and I get together to try to figure out how we could design the definitive study to verify this.”

CHAPTER 5

CHILD TESTIMONIAL COMPETENCE AND RELIABILITY

Rebecca Nathanson, Ph.D.

Child Testimonial Competence & Reliability

Child Testimonial Competence & Reliability

Rebecca Nathanson, Ph.D.

Children's involvement in the judicial process, either as victims/witnesses in criminal cases or as participants in civil proceedings, is often accompanied by questions of their competency and reliability as witnesses (Ceci & Bruck, 1995; Myers, Saywitz, & Goodman, 1996). Research related to the reliability of children's testimony has focused primarily on children's memory and specifically on their ability to accurately recall and report information as well as on their susceptibility to suggestion (suggestibility). In examining the veracity of children's testimony, one must consider the relationship between the strengths and limitations of the child as well as characteristics of the interview and of the environment in which questioning occurs, rather than viewing witness competency and reliability as a sole function of the child (Saywitz, 1995).

Developmental Factors

When compared to adult witnesses, children are often perceived as less reliable (Goodman, Golding, Helgeson, Haith, & Michelli, 1987; Leippe & Romanczyk, 1987), yet numerous studies have found even young children to be quite accurate in recalling past events (Fivush, Gray, & Fromhoff, 1987; Hudson, 1990; Nelson, 1988; Sheingold & Tenney, 1982; Todd & Perlmutter, 1980). A primary factor that has been shown to affect children's memory performance is age (Quas et al., 2000). Typically, older children are more accurate and less suggestible in their recall than younger children. However, children as young as two years of age have been shown to accurately recall details of past events (Ceci & Bruck, 1995; Fivush & Schwarzmuller, 1995). Although verbal reports of young children have been shown to be accurate, several factors can lead to limitations in the completeness and accuracy of what is recalled. These include difficulties in organizing narrative accounts, utilizing memory retrieval strategies, and knowing what information is important to recall in forensic context (Flavell, Friedrich, & Hoyt, 1970; Kail, 1990; Nelson, 1993).

Two major models of memory attempt to explain memory in children and give clues to the believability of children's oral reports of prior events. Cognitive developmental theory, as presented by Piaget, proposes that memory is highly associated with cognitive development. Practically speaking, memory correlates strongly with age, i.e., older children have better developed memories than younger children. This explains why the testimony of older children may well be more accurate than that of younger children. Another predominant and more currently accepted explanation of memory is presented via information processing theory. This theory suggests that memory is associated less with chronological age and more with the processes of acquiring, storing and retrieving memories. Moreover, information processing theory states that cognitive strategies such as rehearsal, imagery, and visual depictions can be used for improving recall.

Young children have been shown to be limited in their ability to utilize strategies to retrieve information from memory (Case, 1991; Cox, Orenstein, Naus, Maxfield, & Zimler, 1989; Flavell, Miller, & Miller, 1993; Kail, 1990). Research suggests that children typically begin spontaneously utilizing retrieval strategies to recall information by age eight or nine (Myers et al., 1996). Some strategies have been developed and shown to be effective in aiding children in organizing their narrative accounts and in providing complete and accurate reports (Nathanson, Crank, & Saywitz, 2001; Saywitz & Snyder, 1996; Sternberg, Lamb, Esplin, Orbach, & Herschkowitz, 2001). Saywitz & Snyder (1996), for example, developed a strategy referred to as Narrative Elaboration Training (NET) for improving children's recall of past events. The strategy utilizes visual cues to assist children in categorizing the content of their narrative accounts to facilitate retrieval of information from memory. Strategies such as NET could

potentially enhance the completeness of children's narrative accounts and decrease the need for additional specific questioning. Although significant additional information is often obtained through such questioning (Hammond & Fivush, 1991; Hudson, 1990; Myers et al., 1996; Nelson, 1993; Saywitz, 1995; Tessler & Nelson, 1994), it may lead to inaccuracies in children's accounts and therefore contaminate testimony.

Interview Factors

Not only have children been criticized for having fallible memories, they have also been shown to acquiesce to leading (or misleading) questions. The latter issue is referred to as suggestibility. Similar to memory improvement with age, resistance to suggestion also appears to improve with age (Meyer, 1997). Ceci and Bruck (1995) discuss the inherent inadequacies in children's communication, such as impoverished linguistic skills, fragile memories, and tendencies to fantasize. However, it has also been suggested that these communication failures may actually be reflective of the manner in which an adult elicits information from children (Saywitz, 1995). Myers (1992) asserts that even young children possess the memory skills needed to describe events, especially when they are asked simple questions in a supportive atmosphere. Thus, to counter the misperception that children necessarily provide inaccurate testimony, interviewing strategies have been developed for the purpose of eliciting testimony that is valid. Appropriate interviewer techniques can affect the quality and quantity of children's responses to legal questioning.

Questions that are phrased in language beyond children's level of comprehension, for example, can adversely affect recall performance. Studies have shown that attorneys often ask linguistically complex questions that lead to miscommunication that adversely affects children's testimony (Davies & Seymour, 2000; Goodman, Bottoms, Hersiovishi, & Shaver, 1989). In addition to the utilization of linguistically complex questions, many legal terms commonly utilized with children in court are unfamiliar or misinterpreted by young children (Flin, Stevenson, & Davies, 1989; Melton, Limber, Jacobs, & Oberlander, 1992; Saywitz, 1989; Warren-Leubecker, Tate, Hinton & Ozbek, 1989). Children, however, have been shown to successfully answer linguistically complex questions when taught a strategy to detect and communicate moments of non-comprehension (Saywitz, Snyder, & Nathanson, 1999).

One potentially damaging factor to accurate testimony is that witnesses are often interviewed numerous times during the course of an investigation. This allows the dubious effects of leading questions and/or suggestibility to infect the veracity of testimony (Fivush, Peterson, & Schwarzmuller, 2001). However, researchers have found that children as young as five and six report accurate information even after repeated questioning about false events (Quas, Denton, Goodman, & Myers, 1996; Poole & White, 1996). It has even been suggested that repeated questioning actually facilitates memory performance (Brainerd & Ornstein, 1991).

Another issue which emerges as problematic relates to delays in legal proceedings. The length of time between referral for prosecution and the eventual trial or legal deposition is often between 2 and 10 months (Whitcomb, 1992). Thus concerns about memory loss or degradation have arisen. Fivush and Schwarzmuller (1995) studied the impact of delays in time on accurate memory recall showing that over time there is some decrease in memory of peripheral details of an event but that central information is recalled accurately. However, some research shows that children's memory for salient experiences can endure over long periods of time (Brainerd & Ornstein, 1991). Tucker, Mertin and Luszcz (1990) summarized the research of repeated interviewing of child witness by stating that children should be interviewed as soon as possible after the investigated incident and minimally thereafter. Standardized protocols for interviewing children may well do away with the hidden effects of multiple interviews by myriad persons.

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The circumstances of the particular event to be recalled has also been shown to affect children's memory performance and suggestibility (Fivush, Hamond, Harsh, Singer, & Wolf, 1991; Goodman & Helgeson, 1985; Murachver, Pipe, Gordon, Owens, & Fivush, 1996; Rudy & Goodman, 1991). Children have more accurate memories for events that are significant to them and for events that they have participated, rather than events they observe (Goodman, Rudy, Bottoms, & Aman, 1990; Hammond & Fivush, 1991). Numerous studies have also examined the accuracy of children's memories of stressful past events including mildly experimentally stressfully-induced events and more severe actual events (Goodman, Quas, Batterman-Faunce, Riddlesberger, & Kuhn, 1994; Merritt, Ornstein, & Spicker, 1994; Peterson & Bell, 1996; Stein & Boyce, 1995; Terr, 1988). Results of some of the studies indicated a positive effect on memory performance as a result of the stressful event (Goodman, Hirschman, Hepps, & Rudy, 1991; Peterson, Moreno, & Harbeck-Weber, 1993), while other studies resulted in negative effects of stress on memory performance (Merritt et al., 1994; Peters, 1991). The inconsistencies in the findings of these studies appear to be primarily related to the variance in the type and level of stressfulness of the events. Children's responses to stressful events as well as measurements of stress (i.e. self report or physiological) may also impact study findings.

Sometimes children report events which they have not directly experienced but have actually learned from another source. "Source monitoring refers to the process of identifying the origin of one's knowledge or event memories" (Poole & Lamb, 1998, p. 42) and is also a potential contaminant of a child's testimony. This emerges, for example, when a child reports that she actually saw an activity or was present during an event but actually learned of the event from another person, e.g., parent or sibling. In this situation, the child incorporates the story into her memory as if she has witnessed it herself. Special interviewing techniques using open-ended questions tend to reduce the production of statements that are tainted in this way. Interviewers should be wary not to mention actions, names, or objects before the child has mentioned them in order to reduce potential contamination.

Environmental Factors

The setting of the interview has also been shown to affect memory performance in children (Saywitz & Nathanson, 1993; Nathanson & Saywitz, 2003). Some studies have found that children's memory ability is adversely affected when interviewed in an intimidating or unfamiliar environment (Ceci, Brofenbrenner, & Baker, 1988; Dent, 1977; Peters, 1991). Saywitz and Nathanson (1993), for example, found that children interviewed in an informal setting, as opposed to a courtroom, offer more accurate accounts of past events. Moreover, erratic heart rate patterns, indicative of a stress response, have been shown in children when testimony is given in a courtroom setting versus an informal setting (Nathanson & Saywitz, 2003).

Conclusion

Overall, children's accounts of prior events have been shown to be quite accurate, even as early as two years of age. Children possess the memory skills to communicate effectively in the forensic context, especially when asked simple and specific questions in a generally supportive environment (Goodman, Bottoms, Schwartz-Kenny, & Rudy, 1991; Melton, 1981). However, numerous personal and situational factors, such as age, particulars of the interview process (e.g. task demands of the interview, type of information requested), and the environment in which questioning occurs, contribute to more or less reliable reports from children (Quas et al., 2000).

In evaluating research findings, one must consider, not only the memory performance of the child, but other variables that may affect their recall. These include: type of recall task, i.e., free recall or specific questioning; type of questions, i.e., leading, misleading, and/or yes/no or open-ended questions; the details to be recalled, i.e., central or peripheral; the event to be recalled, i.e. stressful or non-stressful, true

or false; and the environment in which the questioning occurs. The manipulation of each of these variables can potentially affect children's recall, either positively or negatively.

Despite developmental limitations, young children can provide accurate accounts of past events but often need assistance in retrieving specific details of an event from memory, organizing their narrative reports, and determining what information is relevant in the forensic context (Quas et al., 2000). Although characteristics of the interview also pose a threat to the validity of children's reports, these issues can be addressed as well. First, questions can be posed in a non-leading, developmentally appropriate manner. Second, children can be taught effective strategies that have been shown to be successful in enhancing the accuracy of children's recall and reducing their suggestibility.

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Senate Resolution 4020**Senate Human Services Committee****February 25, 2013**

Chairperson Lee and committee members, my name is Tim Hathaway and I am the Executive Director of Prevent Child Abuse North Dakota. The spirit in which this legislation is offered is one of protecting children and families in North Dakota. The North Dakota Department of Human Services and our County Social Service Offices have worked to create a humane system for keeping children safe from abuse and at the same time balance due process. Serving in these institutions are dedicated public servants who work tirelessly to ensure children are protected. These are smart, caring people. They are well trained, disciplined folks and I am proud of their work. We should all thank them for standing in the breach for you and I and our children. They have difficult, heartrending work every day.

Very recently in our nation's past, children were considered little more than property. SR 4020 should not be viewed as a means of rolling back the human rights clock in our state. It is not a way to weaken or eliminate protections for children. There is dire concern among advocates that a great deal of damage can be done by calling an entire system into play. Once open, will we be able to get it all back together in a way that enhances safety or will we be fixing old problems and rehashing hard fought battles? Make no mistake. Very bad things are happening to children in our state. The stakes for children and our communities are unimaginably high and we cannot afford to waste time with unnecessary distractions and regressive, undisciplined approaches that are thinly veiled attempts at retribution against the system. Our current system makes enemies. Any weakening of protections couched in the language of bolstering "parental rights" should be considered with the greatest care. I recognize the risk of opening an entire system to scrutiny. It is a monumental risk.

But what if this is also a way forward?

Our office has been working with a number of partners in the state to launch a comprehensive approach to reducing child maltreatment. In this "State Plan" we are striving at real solutions to

drive the child abuse numbers down. I believe that we can significantly drop the number of children being harmed in the next ten years given the right focus, smart policy and continued investment. Progress has been made across the nation; the numbers are moving in the right direction. We believe this same thing can happen in ND. Here are a couple of thoughts on how SR 4020 might create the opportunities to get us there.

Many states, including ND, have employed Alternative Response approaches in child protection services. Alternative Response acknowledges that many parents reported in the system are at low risk to harm their children but are in great need of more education and better support networks. The *Administration for Children and Families, U.S. Department of Health and Human Services* has characterized these responses—usually applied in low- and moderate-risk cases— as ones that generally involve assessing the family’s strengths and needs and then offering services to meet the family’s needs and support positive parenting. Alternative Response avoids “criminalizing” and stigmatizing families but rather focuses on strong community based response networks that get to work to support families now, in real time. It is not mindless stripping of resources but rather willingness to invest smart in evidence based methods that are proven to help families and protect children. DHS has made a number of good innovations in the direction of Alternative Response and this study resolution should create room to expand those opportunities.

A second area of great potential is data and research. A huge amount of resource is dedicated to the collection and categorizing of the data related to child abuse and neglect. How can that system be leveraged to its full potential? How can it be linked with other systems to enhance the resources available to families and the tools available to CPS?

The goal of this system is the protection of children. Sadly, I talk with members of the public, professionals included, who feel the system is confusing, unresponsive and inaccessible. This leads to apathy, unwillingness to report and a lack of confidence in the system. There is genuine confusion and concern about how the system works. Denying this reality is unhelpful. I believe this study resolution is a way to create better laws, a clearer system and help the public report more effectively with greater confidence and increased child safety.

PCAND's vision for SR 4020 is a path to the states recommitment to the protection of its children, support of healthy families and creation of safe environments for all citizens. Please consider this work carefully and with a clear vision for positive change on behalf of our children. Thank you for your time today.