

Reliability of Hearsay Testimony

by [Dr. Dan Swerdlow-Freed](#) on April 14, 2017

What is hearsay testimony?

There are numerous circumstances where adults provide information about their conversations with children. In informal settings, one parent may report to the other a child's statement, or a teacher may report a conversation with a child to the child's parent. In a legal proceeding, statements made by a child to a parent, teacher or therapist may be presented to the court in support of a motion. In legal terms, when one individual describes what another person said to him/her, this is known as "hearsay" testimony.

If there is suspicion that a child has been physically or sexually abused or neglected, the child may be interviewed by police, a Child Protective Services investigator, a medical professional, and/or a child forensic interviewer. If the allegation leads to a criminal proceeding, the court may recognize an exception to the hearsay rule (which generally does not permit one person to quote another) and permit the adult or professional who spoke with the child to testify about their conversation.



How reliable and accurate is hearsay testimony?

An implicit presumption that underlies the acceptance of hearsay testimony is that adults can accurately recall their conversations with children (Bruck, Ceci & Francoeur, 1999). For many years, this presumption went untested. Consequently, there was no empirical evidence that established whether adults can accurately and reliably recall and report their conversations with children. Accuracy and reliability are essential when a layperson, therapist, forensic interviewer, or other professional provides hearsay testimony in lieu of the child's own testimony, and the trier of fact must decide how much weight to give that evidence.

The ability to reliably report a conversation with a child is dependent upon two factors. One factor is how precisely and thoroughly the interviewer extracts the information from the child and the other is how precisely and thoroughly the interviewer recalls the details of the interview. The importance of precision in both areas is emphasized by researchers who noted: "To properly evaluate a child's statements presented through hearsay, jurors and fact finders need to hear not only what the child said (the gist of the interview), but how it was said (a verbatim account including specific questions and answers)" (Warren and Woodall, 1999, p. 356).

What affects the accuracy of children's reports?

There is substantial research that shows young children, even preschoolers, are capable of accurately reporting events they have experienced (Poole and Lamb, 1998). An important factor affecting children's ability to report accurately is their susceptibility to suggestion (Lamb, Sternberg & Esplin, 1998). An effective way to minimize suggestibility is to ask questions in a neutral tone, using developmentally appropriate, open-ended questions that permit a child to describe an experienced event in her own words. Whenever possible, questions that may be suggestive or leading should be avoided entirely. If such inquiries are unavoidable, these should be posed at the end of the interview and phrased in the least suggestive way possible ("Did something ever happen to your butt?" is preferable to "Did he touch your butt?" or "Did he stick something in your butt?"). In addition, recommended forensic interviewing practice involves following an affirmative answer to a suggestive or leading question with an open-ended inquiry that elicits elaboration in the child's own words and requires recall memory (State of Michigan Governor's Task Force on Child Abuse and Neglect and Department of Human Services, 2011).

How accurate are hearsay reports?

One study that investigated the reliability of hearsay testimony involved 27 practiced forensic interviewers who interviewed preschool children about an event the children had experienced (Warren and Woodall, 1999). Following each interview, the researchers questioned the forensic interviewers and these conversations were audio taped. Next, the forensic interviewers wrote detailed analyses of their interviews with the children, from memory, with instructions to provide as much of the exact wording of questions and answers as possible.

The results showed that even these experienced forensic interviewers failed to report a significant amount of information in both their audio recall and written analyses, compared to the original taped interviews with the children. Furthermore, the forensic interviewers were unable to recall accurately many of the verbatim questions they had asked as well as the children's verbatim answers.

These findings led the study's authors to conclude, "In summary, our results suggest that the hearsay testimony of children's interviewers is degraded. Even immediately after an interview, important content was omitted from hearsay accounts, and the majority of the verbatim information (specific wording and content of questions and answers) was lost. Our results also suggest that interviewers are unlikely to be able to accurately reconstruct verbatim information later" (p. 369).

A second study evaluated the accuracy of "verbatim" contemporaneous notes by comparing them with transcribed audio recordings of the same interviews (Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000). The interviewers were 20 experienced forensic youth investigators who questioned the children about suspected incidents of physical and sexual abuse.

The results of this study showed that investigators' notes did not reliably and accurately reflect many of the details reported by children or the questions used to elicit these details. In addition, the investigators' notes did not accurately represent the information obtained from the children or the way the information was elicited. These findings led the authors to conclude, "Distortions like those described here are of great significance in forensic contexts: Both the incomplete reporting of utterances and the misidentification of eliciting utterance types seriously impede the evaluation of children's accounts" (p. 705).

The results of these two studies raise important questions about the reliability of interviewer's notes and the ability of adults to precisely and exactly recall and report conversations with children. One solution is to audiotape or videotape all forensic interviews of children. This procedure can accurately memorialize child interviews and help limit the number of investigative interviews to which a child must submit. This approach also offers the best procedure to substantiate that a forensic interview was properly conducted. Unfortunately, electronic recording is not standard practice in the United States and studies such as the ones reviewed here indicate there

is reason to be concerned about the accuracy and reliability of forensic interviewer's reports of their conversations with children.

For more information about this topic or to schedule a consultation appointment, please call Swerdlow-Freed Psychology at 248.539.7777. Our offices are conveniently located at 30600 Northwestern Highway, Suite 210, Farmington Hills, Michigan 48334, and 55 North Pond Drive, Suite 6, Walled Lake, Michigan 48390.

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