

**THE INFLUENCE OF PSYCHOLOGICAL RESEARCH IN
OBTAINING INFORMATION FROM CHILDREN- A CHANGING
PERSPECTIVE IN NIGERIAN LEGAL PARLANCE***

Abstract:

Obtaining Information from children is very important in criminal proceedings as sometimes, only the evidence of such children are available and crime perpetrators especially in sexual offences capitalize on the provisions of the law that unsworn evidence of a child needs corroboration and when such corroboration is not found, crime offenders go home free and keep on committing such sexual crimes on innocent children. The finding of this work is that psychological research have changed the trend of the law in Western Jurisdiction including England from where our evidence Act was tailored that credible evidence of such unsworn child needs no corroboration to convict. Doctrinal method was employed in this paper and it is suggested that more research and advocacy be made on this topic in Nigeria to change the law.

1.0 Introduction:

The Nigerian Legal System and indeed most legal system in other jurisdiction have over the years had their laws and enactments that the evidence of a children not sworn on oath requires corroboration at all times. In *Dagayya v. The State*¹ the court held that the unsworn evidence of a child of a very tender age requires corroboration. Although the evidence of a child given on oath needs not be corroborated² but that of a child not sworn on oath needs to be corroborated.

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¹ (2006) LPELR- 912 (SC)

² *Obot v State* (2014) LPELR- 23130 Ca;

In any case, a child who does not understand the nature of an oath is competent to give unsworn evidence if in the opinion of the court such a child is possessed of sufficient intelligence to justify the reception of his evidence³ but such evidence requires corroboration. It is the problem that is posed by this requirement of law in Western Jurisdiction that led to research which changed the law and same is intended from this paper in the Nigerian context.

2.0 Need for Corroboration

In many countries one of the first major changes in criminal law in recent times has been concerned with the issue of whether a child's evidence needs to be corroborated by some other type of evidence before a person can be found guilty. In England and Wales according to the Children and Young Person's Act, 1993, the evidence of child witness/victims too young to be sworn (i.e too young to understand the meaning of the oath) had to be independently corroborated. A major problem with this was that those who wish to abuse children could focus on the young ones (whose evidence would need corroboration) and commit their crime for example oral sex in a way that would make any type of corroboration (e.g. from the child's body or an adult witness) impossible. The criminal laws' inability to convict the perpetrators of such crimes led many people in the 1980s in England to call for reform, especially in the light of society's sad but important, growing realization that the abuse of young children was, and is, much more prevalent than many think.

In 1987, the Home office (the relevant government department) in England, published a report which addressed this issue of corroboration.

³ *Solola v. State* (2005) 11 NWLR pt 937 page 460. S. 209 Evidence Act 2011

Instead of relying solely on the opinions of politicians, pressure groups and so on, the Home office commissioned an overview of psychological research on relevant issues. The report was an important first step in the subsequently growing contribution of psychological principles to law concerning children's evidence.

In the introduction to her report, Hedderman made the crucial point that the evidence which is presented to a criminal court needs to meet certain standards of reliability and veracity. She stated that the sexual abuse of young children is a heinous crime deserving of severe legal and social censure. However, for this very reason, she stated that it is fair that the rules of evidence be applied stringently to reduce the rate which innocent people are wrongly convicted. Her report focused on whether young children were likely to be the very inadequate witnesses that some lawyers in the 1980s believed⁴.

Hedderman noted that many people in the 1980s (and perhaps today) thought that (i) that children may lie more frequently than adults (but we could ask how often adults lie to courts and to the police), and (ii) that children are unable to distinguish fact from fantasy. She noted that 'these stereotypical assumptions have been given greater credibility in relation to children who claim to be abused.'

The longest Chapter in Hedderman's report is entitled 'Empirical Research'. This demonstrates how much her report's recommendation relied upon the published psychological research available at the time. She began the Chapter by noting that the 1972 Criminal Law Revision Committee recommended retention of the requirement that children's

⁴ J Heydon. Evidence, cases and material. (London, Butterworths, 1984).

evidence be corroborated regarding alleged sexual abuse victims 'on the grounds that under the age of fourteen, children's poor memories make them unreliable witnesses'. In 1972, there existed and therefore was available to the committee little recently published research on the likely abilities of child witnesses. Work much earlier this century could be taken to suggest that children make poor witnesses, but it is to the discredit of psychologists that had not more recently conducted good, relevant research that the 1972 committee could have referred to. Fortunately, for Hedderman in the late 1970s and early 1980s, research psychologists had become brave enough to begin to conduct ecologically more relevant research rather than hide in the laboratory doing easier research. In her chapter Hedderman said that: 'The need for independent corroboration should be determined on the basis of what we know about child witness and not what is assumed'. Hederman summarized the result of the empirical research based on psychological findings as discussed below:

3.0 Children's Memory

Hedderman noted that psychological research which had examined adult's recall and recognition performances had demonstrated that these can be poor and susceptible to suggestion, as those of children, and that very few studies have compared adults and children. This is the reason why a study of children's and adult's recall of the same event after a five months delay was conducted by Flin, Boon, Knox and Bull⁵.

⁵ *Ibid.*

She reviewed recent relevant research on children's memory and susceptibility to suggestion⁶ and came to the view that: 'On a balance ... the available evidence does support the view that accuracy and reliability of recall are related to a certain level of cognitive maturity⁷ and that 'memory capacity does not appear to be a function of age'. However, the acquisition and orchestration of techniques for operating the memory system appear to be related to other forms of cognitive maturation, such as the ability to think conceptually. Estimates of the age at which children began to think conceptually vary between five and seven years whilst children younger than five may have some stored information about an abusive experience, the question of whether they can be reliable witnesses depends on whether their memories are robust and whether it is possible to compensate for their lack of deliberate recall skills by external cues.

4.0 Fantasies and Fabrication

Hedderman came to the view that the 'question of whether children do lie more than adults cannot be answered from existing empirical evidence. She noted that Feldman's research [Feldman, Jenkins and Popoola⁸, suggested that as children grow older they like adults have learned how to deceive.

⁶ R Cohen & Harnick 'The Susceptibility of Child Witnesses to Suggestion' (1980) 4, *Law and Human Behaviour*, 201-210; see also G Davies & R Flin. 'The Accuracy and Suggestibility of Child witnesses'. In G. Davies and J. Drinkwater (eds) 'The Child Witness: do the Courts Abuse Children?' (1987) *Issues in Criminological and Legal Psychology* 13 Leicester: British Psychological Society; H Dent, 'The Effects of Interviewing Strategies on the Results of Interviews with Child Witnesses'. In A Trankell (ed), (1982) *Reconstructing the past*. Stockelm Norstedt.; G Goodman & RS Reed 'Age Differences in Eyewitness Testimony' (1986) 10, *Law and Human Behaviour*, 317-332; B Marin et al, 'The Potential of Children as Eyewitnesses' (1979) 3, *Law and Human Behaviour*, 295-305 and J Parker et al, 'Eyewitness Testimony of Children' (1986) 16, *Journal of Applied Social Psychology*, 287-302.

⁷ DF Bjorklund, (4th ed), *Children's Thinking* (CA: Wadsworth Thomson, 2005). p

⁸ R. Feldman et al, 'Detection of deception in adults and children via facial expression' 50, *Child development* 350-355; see also R. Feldman & J White, 'Detecting deception in children' 30, *Journal of Communication* 121-128

She also noted the work of Johnson and Foley⁹ which suggested that six-year-olds seemed able to distinguish between what they had only thought and what they had actually done. However, in her report, she said that their work did not examine whether young children can equally make this distinction regarding their recall of the actions (real or imagined) of other people. Hedderman noted that 'one group of Freudian psychiatrists do claim that allegations of abuse made by children under the age of nine should be carefully scrutinized'. They say that children aged eight or less are often less- able to distinguish between fantasy and reality than older children.

Overall, on the question of lies/fantasies, Hedderman came to the view that: there is virtually no evidence available on which to judge whether children are prone to fantasy about abuse.... This question really needs much more vigorous and thorough investigation.

In the light of available research studies (some briefly mentioned above) Hederman concluded that 'A general legal requirement that children's evidence be corroborated does not appear to be necessary. However, she also concluded that: 'most of the studies were experiments which, with a few recent exceptions, were carried out in unrealistic, oversimplified stimuli which were of no interest to the subject. She quite rightly called for more realistic/ecological valid studies to be carried out.' The government took Hedderman's report seriously and the statutory ban on convicting on the uncorroborated evidence of un-sworn children was abolished by the 1988 Criminal Justice Act.

The criteria for deciding whether a person is not competent to give evidence in criminal evidence in criminal proceedings in England and Wales are stated in Section 3 of the Youth Justice and Criminal Evidence

⁹ M Johnson & M Foley, 'Differentiating Fact from Fantasy: the Reliability from Children's Memory' (1984) 40, *Journal of Social Issues*, 33-50.

Act (YJCEA) of 1999. According to McEwan¹⁰. There is no age limit for child witnesses in England and Wales and if a judge rules that a 4-5 year old child is a competent witness, the court of Appeal will not interfere *DPP v M*¹¹. Regarding the question of whether a child is capable of giving intelligible evidence, expert evidence may be given in some jurisdiction but not in others¹². In Queensland, Australia, Section 9A of Evidence Act 1977 provides for such expert evidence in the case of children under 12 years of age whereas in the case of *G v DPP*¹³, it was held that a judge or magistrate has no need of expert evidence to be adduced on the question of whether a child is capable of giving intelligible evidence. Drawing on¹⁴, in England and Wales, children are considered prima facie and Wales children are considered prima-facie competent to give evidence in criminal proceedings¹⁵ unless as with any other person, it appears to the court in the course of ordinary discourse with them¹⁶, that they are not able to (a) understand questions put to them and (b) to give comprehensible answers¹⁷. Witnesses under the age of 14 years do not give sworn evidence. In considering the concept of 'competent witness', it should be remembered that by operating a strict test of competency in effect, the law makes it most unlikely that abusers of rather young children can be successfully prosecuted¹⁸. Furthermore, testifying in court is a daunting experience especially for children, those

¹⁰ *Ibid*, p. 127

¹¹ *DPP v M* [1997] 2 ALL E.R 749.

¹² I Freckelton & H Selby, (3rd ed), *Expert Evidence. Law Practice Procedure ad Advocacy* (Pymont New South Wales, Australia: Law Book Co. 2005).

¹³ *G v DPP* [1997] 2 ALL ER 755 at 759.

¹⁴ C Tapper, *Cross and Tapper on Evidence* [New York Oxford university, 2004].

¹⁵ Section. 54 (11) YJCEA, 1999.

¹⁶ Stated in *Hampshire* (1995) 2 ALL ER 1019, Auld at 1026 cited by McEwan, 2003:211.

¹⁷ S. 53 (3)

¹⁸ *Ibid*

under 11 years of age who have significant gaps in their knowledge of court¹⁹ and even older children (aged 12- 15 years) who are confused about the meaning of such crucial concepts as 'cross-examination' 'jury' and 'defendant'²⁰

The field of children's evidence has been in turmoil since about the early 1980's. This is seen for example in the plethora of publications in the UK²¹. The turmoil has also been reflected to relax the rules pertaining to children's competency. Examples of such reform are amendments to the Criminal Code of Canada Evidence Act to allow children under 14 years to provide either sworn or unsworn testimony²². In the United States, various grounds of witness incompetence, including age, have been eliminated by rule 601 of the Federal Rules of evidence, the consequence of which is that child witness are treated by the courts like witnesses generally as far as competency is concerned. In other words, the basic test is: Does the witness understand the difference between lying and telling the truth in court and does the witness, whether on oath or affirmation, also understand the duty of telling the truth? Similar reforms to children's testimony requirements have included the abolition

¹⁹ KJ Saywitz, Development Under Pinning's of Children's Testimony. In HL Westcott et al (eds) 3-19. (2002).

²⁰ A Crawford & R Bull, (2006) 12 (6), 'Teenager's Difficulties with Key Words Regarding the Criminal Court Process Psychology', *Crime and Law* 653-67.

²¹ D J Birch. 'Children's Evidence'. *Criminal Law Review*, 262-276; 1993; see also M. Brennan. 'The battle for credibility'. *New Law Journal*, 143. 623-6 1993; G. M. Davies. 'Children's Testimony: Research Findings and Policy Implications'. (1994) 1, *Psychology, Crime and Law* , 175-180; H. I. Westcott. 'Children's Experiences of being Examined and Cross Examined': the Opportunity to be heard. *Expert Evidence*, 4, 1319; 1995 and also R. Mile and R. Bull. *Investigative Interviewing: Psychology and Practice* (Chichester: Wiley 1999)

²² MD, Ruck. 'Why Chidden Think they should tell the Truth in Court: Developmental Consideration for the assessment of Competency'. (1996) 1, *Legal and Criminological Psychology*. 103-16

of the corroboration requirement in New South Wales, Australia, in 1985, the abolition in the Criminal Justice Act, 1988 in England and Wales of the rule that there could be no conviction on the unsworn evidence of children.

5.0 Use of Closed-Circuit Television

In England and Wales, another part of the 1988 Criminal Justice Act permitted for the first time child witnesses to give their evidence in criminal trials not in the actual court room but from another room in the court building linked to the court room by a Closed-Circuit live Television link (CCTV). This was done in an attempt to reduce the stresses that testifying in the courtroom might cause children²³ and facilitated children's coping 'on the stand' so that they have more cognitive resources available for retrieving and reporting accurate and detailed information about potentially traumatic events. For example, Flin, Davies and Terrants²⁴ survey confirmed the view that fear of seeing the accused and giving evidence in the formality of a large court room were believed to be major sources of stress for child witnesses. Indeed, in Flin, Bull, Boon and Knoxs²⁵ it was observed that children testifying in criminal court rooms in Glasgow, found it difficult to testify in a court room. Psychological research has evaluated the effects of the provision of CCTV for child witnesses, in Scotland²⁶.

²³ GS Goodman et al, Emotional Effects of Criminal Court Testimony on Child Sexual Assault Victims Monographs of Society For Research in Child Development (1992) serial no 229; see also JA Quas et al, 'Childhood Sexual Assault Victims: Long-term outcomes after Testifying In Criminal Court Monographs of Society For Research in Child Development' 2005, 70, 1- 145.

²⁴ RFlin et al, 'The Child's Witness' (1993) 95, Final Report to the Scottish Home and Health Department Grant 92-90.

²⁵ R Flin et al, 'Child Witnesses in Scottish Criminal Trails' (1993) 2, International Review of Victimology, 309-329; and also R Murray, Live Television Link: an Evaluation of Its Use by Child Witnesses in Scottish Criminal Trials. (Edinburgh: Scottish office, 1995)

²⁶ R Murray, Live Television Link: an Evaluation of Its Use by Child Witnesses in Scottish Criminal Trials. (Edinburgh: Scottish office, 1995)

In England and Wales, Davies and Noon²⁷ were commissioned by the Home office to examine the effectiveness of the 'live link' for child witnesses which had been introduced into some courts in 1989. Overall, their conclusion was that the live link has been demonstrated to have positive and facilitating effects on the court room testimony of children and to have a widespread acceptance among the various professional groups involved in the process of justice²⁸. In the United States of America, an alternative method of presenting testimony of children is the use of closed circuit television (CCTV). In the case of *Maryland v Craig*²⁹ the Supreme Court held that if a child victim of sexual abuse was likely to experience significant emotional trauma by being in the presence of the defendant, the child's testimony could be presented via CCTV. A large television in the court room enables the defendant, the judge and jury to see the testimony, but the child and the defence and prosecuting attorney are in another room. The Craig decision was a significant departure from the courts prior rulings on this issue. In effect, the court held that a defendant's right to confront his or her accuser was outweighed by the need to protect child victims of sexual abuse from emotional harm. The Craig decision was also based on the reasoning that the truth-finding function of the trial was sometimes best served by allowing children to testify by means of CCTV. That is allowing children to testify outside the court room serves the goal of obtaining full and truthful testimony from children.

²⁷ G Davies & E Noon, *An Evaluation of the Live-Link for Child Witnesses*. (London: Home office, 1991)

²⁸ A Wade, *New measures and new challenges: Children's Experience of the Court Process*. In A. C. Westcott, G. M. Davies, et al *Children's Testimony: a Handbook of Psychological Research and Forcentive Practices* .(Chester Wiley 219-32 2002).p and also Home Office. *Achieving Best Evidence in criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures*. (London: Home Office. 2007).

²⁹ *Maryland v Craig* 110, S.ct 3157, 1990.

The government in England and Wales in 1988 not only brought in Criminal Justice Act which dispensed with the corroboration requirement for younger children's evidence and which permitted testimony by the 'live video link' but it also set up a committee chaired by judge Pigot to consider the question of whether future legislation should go even further and permit children's video-recorded evidence to be shown in criminal trials. This committee (which reported to the Home office) was very willing to receive evidence from psychologists. Most members of the committee took the trouble to attend the whole of a three-day conference on children's evidence which was organized at Cambridge where most of the speakers were psychologists from several different countries³⁰.

In the light of the psychological research evidence (plus other matters) put to the Pigot committee, it recommended that video recordings of children making their witness statements should be shown in criminal trials. This would (i) preserve on tape the child's statement which might otherwise suffer from the passage of time between being interviewed about an event and later testify about it in court³¹ and (ii) reduce the effects upon the child of giving testimony in court or via the video link. The government acted on some of the Pigot committee's recommendations. In the 1991 Criminal Justice Act it was proposed that a video recording of an interview with a child could act as the child's evidence in chief (i.e the evidence the child gives for the 'side' that called the witness, usually the prosecution. To be cross-examined (usually by the defence) the child would still have to be present at court during trial and give live evidence (often via the live video link).

³⁰ J Spencer *et al*, *Children's Evidence in Legal Proceedings: an International Perspective* Cambridge, Faculty of Law, (1990).

³¹ *Ibid*

6.0 Memorandum of Good Practice

The Pigot committee realized that if video recordings to earlier interviews with children were to replace their evidence-in-chief, these interviews (likely to be conducted by social workers and police officers) would have to be conducted in line with the rules of evidence that apply in criminal proceedings³² and in line with what was known about how best to interview children to help them give full and accurate accounts of what they may have witnessed.

Furthermore, the extent to which the interviewers succeeded in this would be very open to scrutiny via the videotaped recordings of their interviews. Only if an interview was conducted appropriately would the judge allow the video recording of it as evidence. The government accepted this recommendation and the Home office set up in 1991 a policy steering group to advise it on this matter. A psychologist, Ray Bull and a lawyer, Professor Diane Birch were commissioned by the Home office to write the first working draft of this document. This version was revised by the Home office and then sent to members of the policy steering group. In light of the feedback received from these representatives, the Home office revised the document and sent it out again. It was then revised again, and again each time the policy steering group meeting at the Home office. Eventually, the policy steering group having been made aware of the findings of relevant psychological research, a finalized version now called the 'Memorandum of Good Practice (MOGP) on video Recording Interviews with Child Witnesses for Criminal Proceedings'³³ and then incorporated into Achieving Best Evidence (ABE) in criminal proceedings: Guidance for vulnerable or

³² D Birch, 'Children's Evidence'. *Criminal Law Review*, April, 262-276, 1992.

³³ CJ Braicherd & VF Reyna, *The Science of false memory* (New. York: Oxford University Press) 2005.

intimidated witnesses, including children³⁴ while the MOGP was specifically designed for child witnesses, ABE was written for all vulnerable witnesses, including the elderly and people with learning disabilities. Both protocols were developed with substantial input from psychologists with expertise in interviewing and eye witness testimony which was published in 1992.

The memorandum of Good practice (MOGP) and Achieving Best Evidence (ABE) made the following recommendations:

6.1 Internal phase:

- i. Develop rapport with the child.
- ii. Interview the child as soon as possible after the crime/abuse.
- iii. Conduct interviews in an informal setting with trained interviewers.
- iv. Explain the purpose and process of the interview.
- v. Establish the ground rules for responding to questions. Tell the child that not every question must be answered, nor has every question a right or wrong answer. This minimizes social demand suggestibility; and tell the child to answer 'don't know' when necessary.

6.2 Free Narrative Phase:

- i. Encourage free narrative.
- ii. Questioning phase of the interview.
- iii. Employ a phased-approach in questioning; begin with open-ended questions (eg 'can you please tell me in your words what happened'), followed by specific questions (e.g. 'what colour

³⁴ VF Reyna *et al.*, 'Explaining the Development of False Memories' (2002). 22., Development Review Special Issue on Developmental Forensics, 436-489.

was his shirt?') and non-leading questions (e.g 'where was your sister when this was happening?'), then closed questions (e.g 'do you remember anything about his clothing?') and leading questions only when necessary (e.g 'what happened after he took you into the bathroom?') ('when the child has not mentioned being taken into the bathroom'); avoid repeated questions.

- iv. Minimize or avoid forced-choice questions (e.g 'was the shirt red or blue?'). Minimize or avoid multi-part questions (e.g 'did he ask you to go upstairs with him and did you then go into the bathroom?').

6.3 Closure:

- i. At the end of the interview, summarize what the child has said in the child's own words and invite questions.

The effectiveness of the memorandum of Good practice has been in issue. Davies *et al*³⁵ evaluated a number of MOGP interviews conducted by police officers with children aged 4-14 years in the context of alleged sexual abuse. Davies et al found that the length of the interviews varies considerably from 20-90 minutes. Little time on average less than 10 minutes was spent developing rapport. Specific questions produced more information in the young children; open-ended question were more effective in the oldest children. Likewise, Sternberg *et al*³⁶ evaluated the quality of 119 video-recorded MOGP interviews in which children aged 4-13 years appeared to allege abuse. The police interviewers employed forced-choice questions much more often than open-ended questions.

³⁵ G M Davies *et al*, 'The Impact of Questioning Style on the Content of Investigative Interviews with Suspected Child Sexual Abuse Victims' (2000) 6. *Psychology, Crime & Law* 81- 97.

³⁶ KJ Sternberg *et al*. 'The Memorandum of Good Practices. Theory versus application'. (2001) 26 *Child Abuse Neglect*, 699-681.

Indeed, Sternberg et al found that more than a third of the details reported by the children were in response to forced-choice and leading questions. As a result of such findings, Lamb *et al*³⁷ developed an alternative interviewing procedure, the National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol.

7.0 The National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol.

Much of the debate about the reliability of eyewitness testimony and research examining eyewitness evidence has focused on the youngest of potential witnesses. Although children are less often involved in the legal system than adults, their developmental status and characteristics present certain challenges when their testimony is required in a legal case. Thus scientists have spent decades investigating children's eye witness capabilities-both in cleverly designed laboratory experiments and in the field. Quite simply children differ from adults in several important ways which must be considered when eliciting their testimony and using it in a court of law.

With any eyewitness-adult or children, the primary goal is to attain accounts that are accurate and detailed as possible. Although children testify in a variety of types of cases (e.g. they may witness murder or another crime, they most often testify about maltreatment, especially their own victimization³⁸. Interviewed in an appropriate way, even young children can provide the police with invaluable information.

³⁷ ME Lamb *et al*, 'Structured Forensic Interview Protocols Improve the Quality and Informativeness of Investigation Interview with Children: a Review of Research Using NIC H.D Investigative Interview Protocol' (2007) 31, *Child Abuse & Neglect*, 1201-1231.

³⁸ M Bruck *et al* . *The Children and the Law*. In RA Renninger et al (6th ed) (2006) 4. *Handbook of Child Psychology* 776-816 Hoboken NJ Wiley & Sons Inc; see also ME Lamb *et al*, *Tell me what happened. Structured Investigative Interview of Child Victim and Witness*. (Hoboken, N.J: John Wiley & sons Inc. 2008).

In maltreatment cases, the legal system is typically faced with a complete lack of external (or corroborative) evidence or an inability to tie external evidence to the identity of a particular suspect. Children statements are often not only how these cases come to the police and social services in the first place, but are also the only evidence available for prosecutors to decide how best to proceed. For these reasons it is crucial to elicit children's testimony and to do so in ways that are mindful of their abilities and limitations.

As is known, children have more limited memory capacities, are more suggestible and are less communicatively competent than adults³⁹. Thus, the tone and content of forensic interviews are of critical importance, and the burden is on adults involved in the legal system to ensure that interviews are conducted according to best practice guidelines⁴⁰. The most discussed investigative interview protocol designed for interviewing children is the National Institute of Child Health and Human Development (NICHD). The NICHD Investigative Protocol provides interviewers with structured guidelines to assist them with adhering to best practice. The NICHD protocol is based on research evidence concerning child development (e.g memory, language) and was designed with practical needs and legal requirements in mind. The protocol has undergone extensive and international field testing⁴¹.

³⁹ R London & S Kuikofsky. Factors Affecting the Accuracy of Children's Forensic Reports. In G.M Davies & D.B Wright (Eds). *New Frontiers in Applied Memory* (New-York: Psychology Press 2010) p. 119-141; see also LC Mallloy & JA Quas. *Children's Suggestibility: Aras of Consensus and Controversy*. In R. Kuehnie & Conned (Eds). *The Evaluation of Child Abuse Allegation: A Comprehensive Guide to Assessment and Testimony* (Hoboken, NJ John Wiley & Sons Inc. 2009) p. 267-297

⁴⁰ Home Office. *Memorandum of Good Practices on Video Recorded Interviews with Child Witnesses for Criminal Proceedings*. (London HMSO. 1992)

⁴¹ D Graham & B Anthony. *Forensic Psychology Crime, Justice, Law interventions*.(N.J. John Wiley & Sons Ltd. 2012)

The NICHD Investigative Interview Protocol consists of two primary parts - the presubstantive phase and the substantive phase. Within the presubstantive phase, there are several key phases. During the introductory phase, several features prepare children for their role as 'information providers'. For example, children are told that it is okay to say 'I don't know' and that they should not guess when providing answers. The instruction is included because research evidence shows that children tend simply to answer questions rather than admit or even notice that they have misunderstood⁴². Due to legal requirements in many jurisdictions, the protocol next advises that developmentally appropriate questions assess whether children understand the difference between the concepts of 'truth' and 'lies' (i.e whether they can demonstrate 'truth – lie competency'). Children may not be able to articulate the definitions of abstract concepts, so questions that ask them to define 'truth' or 'lies' (e.g 'what does it mean to tell the truth') may not allow them to demonstrate their conceptual understanding. However, young children can demonstrate adequate truth-lie understanding when questioned in an age appropriate manner using more concrete questions and examples (e.g 'if I say that my shoes were red, would that be the truth or a lie'⁴³).

During the rapport building phase, children practice describing mental event memories (e.g what they did yesterday or for a recent holiday).

⁴² A Memon & R Vartoukian, 'The Effect of Repeated Questioning on Young Children's Eyewitness Analysis of the past 25 years Psychology' (1996) 16, *Public Policy & Law*, 340- 372; see also A. . Waterman, M. Blades, *et al*, 'Do Children try to Answer Nonsensical Questions?' (2000) 18, *British Journal of Developmental* 211-226.

⁴³ TD Lyon, *Assessing the Competency of Child Witnesses: Best Practice Informed by Psychology and Law*. In M.E. Lamb, D La Rooy, L.C Malloy & C Katz (Eds) *Children's Testimony: A handbook of Psychological Research and Forensic Practice* (Chichester. John Wiley & Sons; 2011) p. 69-85; see also TD Lyon et al, 'Young Children's Competency to take the Oath: Effects of Task, Maltreatment, and Age' (2010) 34, *Law and Human Behaviour*; 141-149.

This 'episodic memory practice' conveys the level of detail that will be expected of children, later in the substantive phase of the interview while allowing them to practice responding to open ended questions. In a sense, it gives children a chance to 'warm up' by providing narrative practice and allowing them to spend time becoming comfortable with the interviewer. Finally, the phase gives interviewers an opportunity to practice asking appropriate questions to elicit free-recall reports from children. The rapport building phase was designed in light of research showing that a supportive environment is beneficial in terms of children's willingness to cooperate and their reporting capabilities⁴⁴.

Next, interviewers careful transition into the substantive phase where substantive issues are discussed typically. Interviewers begin by asking open-ended invitations to identify the target event(s) (e.g 'I understand that something may have happened to you. Tell me everything that happened from the beginning to the end'). If the child makes an allegation, interviewers progress from open-ended invitations to more focused questions. Information obtained via free-recall prompts is more likely to be accurate than information derived from other question types⁴⁵. Thus, focused questions are used only if necessary, as the goal is to elicit as much information as possible in the form of free-recall narratives that are provided in response to open-ended invitations and follow-up 'cued invitations' e.g 'then what happened?';

⁴⁴ B Bottoms *et al*, The Influence of Interviewer Provided Social Support on Children's Suggestibility, Memory and Disclosures. In M.E Pipe, M. E Lamb, et al Child Sexual Abuse: Disclosure, Delay and Denial (Mahwah, N.J Lawrence Erlbaum Associates, 2007) p. 135-157; see also I Hershkowitz et al. 'Dynamics of Forensic Interviews with Suspected Abuse Victims who do not Disclose Abuse' (2006) 30, Child Abuse & Neglect, 753-769; I bid, p. and KP Roberts et al, 'The Effects of Rapport. Building Styles on Children's Reports of a Staged Event' (2004) 18, Applied Cognitive Psychology, 189-202.

⁴⁵ PS Dale *et al*, 'The Influence of the form of the Question of the Eyewitness Testimony of Preschool Children' (1978) 74, Journal of Psycholinguistic Research, 269-277; see also I bid , p; G S Goodman *et al*, 'Children's Testimony about a Stressful Event: Improving Children's Reports' (1991)1, Journal of Narrative and Life History, 69-99.

'Earlier you mentioned a (person/object/action tell me everything about that'). Cued invitations are also free of interviewer contamination because they only enquire about aspects of the event that children have already mentioned.

When children are unable to provide any more information via free-recall prompts, interviewers may need to ask some direct questions that request information in specific categories. These are often in the form of 'what' questions. For instance, if a child has mentioned a car, they might be asked, 'what colour was the car?' If important details are still missing from a child's report, an interviewer may progress to asking limited option-posing questions, typically in the form of yes/no or forced choice questions such as 'was the touch over or under your clothes?'

Suggestive questions include those that bring up details that children have not mentioned (e.g 'where did he touch you?'. If the child has not mentioned being touched) or communicate to children an expected response (e.g 'He hit you, didn't he?'). Suggestive questions should always be avoided because they may contaminate memory reports and diminish credibility. Research studies demonstrate that suggestive interviewing procedures, especially if they are repeated, can lead young children to provide seriously distorted accounts of events they have witnessed.

When interviewed, young children typically say less than older children, especially in response to general open-ended invitation, but even a 4-year-old can provide information about their memories in response to free recall prompts⁴⁶.

⁴⁶ ME Lamb *et al.*, 'Age Difference in Young Children's Responses to Open Ended Invitations in the Course of Forensic Interviews' (2003) 71, *Journal of Consulting and Clinical Psychology* 926- 934.

Although they typically provide sparse accounts that leave out many details, free recall narratives from young children are no less accurate than narratives provided by older children. However, younger children will usually require more cues and prompts to report more details⁴⁷. Around the world, field studies have shown the value of the NICHD protocol in improving the quality of investigative interviews; open-ended invitations increase, and focused and suggestive questions decrease when the protocol is used⁴⁸. NICHD protocol has also had positive implications for case evaluation and prosecution meaning that its forensic value extends beyond the interview room.

Researchers and practitioners are also concerned with how children's evidence is presented and used in the court room. There are several innovative ways that the legal system may try to lessen the stress associated with children's participation as eyewitness. For example, in some jurisdictions, children may participate in a preparation programme or they may have a support person available to help them cope with the legal process⁴⁹. One innovative measure borrowed from other arenas- closed circuit television (CCTV)- was implemented with child witnesses to reduce their stress by allowing them to testify from outside the courtroom.

⁴⁷ NR Hammond & R Fivush, 'Memories of Mickey Mouse' (1993) 6, *Young Children Recount their trip to Disney World*. *Cognitive Development* 433-448 ; see also *Supra*.

⁴⁸ M Cyr & ME Lamb. 'Assessing the effectiveness of the NICHD investigative interview protocol when interviewing French speaking alleged victims of child sexual abuse in Quebec' (2009) 13, *Child Abuse & Neglect* 257-268; see also *Ibid*, p.; Y Orbach et al, 'Assessing the value of structured protocols for forensic interviews of alleged child abuse victims' 24. *Child Abuse & Neglect*, 733-752; K. J. Sternberg, M.E. Lamb *et al*. 'Use of a Structured Investigative Protocol Enhances Young Children's Response to Free re-call Prompts in the Course of Forensic Interviews'. *Journal of Applied Psychology* 86, 997-1005; 2001.

⁴⁹ LC Malloy et al, *Children's eyewitness memory: Balancing children's need and defendant's right when seeking the truth*. In MP Toglia, J.D Read, et al, *Handbook of eyewitness psychology: volume 1; Memory for events* Mahwah, NJ: (Lawrence Erlbaum Associates Inc. 2006) p. 545-574.

From a separate room, the child can respond to direct and cross-examination and avoid facing the defendant, while the testimony is played live in the courtroom. Theoretically, CCTV should serve multiple purposes, benefiting both child witnesses and the legal system. That is CCTV should simultaneously reduce children's stress and negative consequences associated with legal involvement⁵⁰. This memorandum advocates a phased approach within the interview involving (i) Rapport, (ii) Free narrative (iii) Questioning (in various forms in sequential order) and (iv) Closure. Research on the effectiveness, usefulness and acceptability of this memorandum of Good Practice indicates that it is highly effective, useful and accepted by stakeholders in the field⁵¹.

8.0 Suggestibility

A number of lawyers⁵² have voiced their concern that children may be suggestible in that their accounts can be biased by suggestions put to them, either purposely or unwittingly. Some psychologists have found children to be very resistant to suggestion, whereas others have found suggestions to have a strong biasing influence on children's responses to questions and on their subsequent accounts. Children are vulnerable to misinformation effects yet the nature of the underlying mechanism responsible for these effects continues to be debated⁵³. Suggestibility can be the result of alterations of memory or of social pressure to say something counter to that in memory, or both⁵⁴. In order to try to arrive at a consensus view on what psychological research can reveal about the suggestibility of children, Professor Stephen Ceci of Cornell University

⁵⁰ *Supra*; see also *Ibid*, p. and *Ibid*, p

⁵¹ E Davies *et al*, Videotaping children's evidence: an evaluation. (London: Home office, 1996).

⁵² *Ibid*.

⁵³ *Ibid*

⁵⁴ VF Reyna *et al*, 'Explaining the development of false memories' (2002) 22, Development Review (special issue on Developmental Forensic) 436-489.

co-organized a conference in 1989 to which leading psychological researchers and children as witnesses were invited. This conference was sponsored by the American Psychological Association which subsequently published a book⁵⁵ containing the major papers presented at the conference and commentaries upon these. This conference and the book did achieve a measure of consensus among the international delegates and book chapter authors. The point was also made⁵⁶ that what the general public, Juries, police, lawyers, judges e.t.c believe about the suggestibility of child witnesses was more important than any disagreements among psychologists. In their view and synthesis of the research they particularly focused on two types of factors that need to be considered, these being (i) Cognitive (ii) Social⁵⁷. They concluded that age differences exist in suggestibility, but also that even very young children are capable of recalling much that is forensically relevant.

8.1 The Effects of Suggestion on Children's Accounts

Ceci and Bruck⁵⁸ pointed out that for nearly a century; researchers have tried to study the effect of suggestion upon children's accounts. They noted that since 1983, more research had been conducted on this topic than in all the previous decades and that had been prompted by the fact that in several countries young children were increasingly being called upon to give accounts as witnesses or victims. Much of the research conducted prior to the 1980s was of poor quality, and little of it had compared the suggestibility of children with the suggestibility of adults.

⁵⁵ J Doris. *The Suggestibility of Children's Recollections: Implications for Eyewitness Testimony.* (Washington D.C. American Psychological Association, 1991)

⁵⁶ R Bull (ed), *Commentary: The Issue of Relevance.* In Doris (ed) *The Suggestibility of Children's Recollections.* (Washington D.C. American Psychological Association 1991.)

⁵⁷ *Ibid*

⁵⁸ S Ceci & M Bruck 'Suggestibility of the Child Witness: A Historical Review and Synthesis' (1993) 114 *Psychological Bulletin*, 403-439.

This later point which even today is under researched, assumed greater significance with the seminal research of Elizabeth Loftus who showed⁵⁹ that some adult's accounts could be manipulated by the experimenter's use of suggestion. The dilemma facing experts whose opinions were sought on child witness suggestibility was that as Ceci and Bruck noted:

On the one hand, children are described as highly resistant to suggestion, as unlikely to lie, and as reliable as adult witnesses about acts perpetrated on their own bodies⁶⁰. On the other hand, children are described as having difficulty distinguishing reality from fantasy, as being susceptible to coaching by powerful authority figures, and therefore as potentially being less reliable than adults⁶¹.

Their overview sought to reconcile these apparently opposing views, though they were aware that both camps express the belief that children are capable of high levels of accuracy, provided that adults do not attempt to bias their reports. This last point, about the influence of adults is a crucial one. It is absolutely essential that people are made aware of how the interviewer can unwittingly or purposely make suggestion to the child.

⁵⁹ E Loftus, *Eyewitness Testimony*. (Cambridge, M.A. Harvard University Press.1979).

⁶⁰ GS Goodman *et al*, *Children's Concern and Memory: Issues of Ecological Validity in the Study of Children's Eyewitness Testimony*, in R Fivush & JC Hudson (eds) *Knowing and Remembering in Young Children* (New- York, Cambridge University Press, 1990) p. 249-284.

⁶¹ S Ceci & MBruck. 'Suggestibility and see also A Memon *et al*, 'Pre-event Stereotypes and Misinformation Effects in Young Children. *Memory*', (2006) 14, 104-114.

Both adult's⁶² and children's⁶³ accounts can be biased by the interviewer's behaviour. To realize this and to be fully aware of it is even more important than any differences which may or may not exist between children's and adult's suggestibility.

In fact, some measure of suggestibility may be found in the adults who conduct research and write on the topic of children's suggestibility. Though psychologist put great effort in endeavouring that their research studies follow established principles of science, they always have to interpret the meaning of the data they collect. To some of them, their own data can appear to support their theory, whereas to others (e.g. in opposing 'camps') this may not appear to be the case. As Ceci and Bruck pointed out, "... although there is controversy, it is less the result of inconsistent data than of how the data are interpreted". Siegal and Petterson found that children's recollections are not always biased by misinformation provided by adults. When Siegal and Petterson⁶⁴ gave some of the young children in their study a reason for discounting the misinformation provided by an adult, these children's recollection were less biased by the misinformation than were other children's. Similarly, Newcombe and Siegal⁶⁵ have found that the effects on children's recollections of subsequent biased information is reduced if the interviewer makes it clear to the child that recollection of the original event is required.

⁶² G Gudjohnsson. *The Psychology of Interrogation, Confessions and Testimony*. (Chichester: Wiley, 1992).

⁶³ C Carter *et al*, 'Linguistic and Socio-emotional Influences on the Accuracy of Children's Reports' (1996) 20 *Law and Human Behaviour*, 359-374.

⁶⁴ M Siegal & C. Petterson, 'Memory and Suggestibility in Conversations with Young Children' (1995) 47 *Australian Journal of Psychology*, 38-41.

⁶⁵ P Newcombe & M Siegal, 'Where to look first for Suggestibility in Children's' (1996) 59, *Cognition*, 337-356.

Recent research by Memon *et al*⁶⁶ showed that young children were less likely to reject misinformation presented prior to a class room visit by an adult male when the misinformation was positive. An applied analogy can be made to the murders of two British school girls in the summer of 2003, known as the Soham murders. Both the murderers, Ian Huntley and his girlfriend, Maxine Carr (who was found guilty of conspiracy to pervert the course of justice) were known to the girls through their connection with local schools. Indeed, Huntley pretended to assist in early searches for the girls and even appeared on television during the days after the girls' disappearance. It is possible that witnesses did not come forward at first with information about Huntley and Carr's movement and behaviours because they held positive images of them.

8.2 Repeating Questions

Another example of the detrimental effect is children's belief that adults 'know' comes from research on the effects of repeating a question. In a 1987 study by Stephen Monston the same questions were asked twice within a single interview session. He found that the number of correct responses to such questions was lower than the second time the questions were put especially for his youngest group (of six years old). This drop in accuracy he attributed to the children's assumption that by asking the same question on a second occasion, the adult questioner was implying that their first answers were incorrect. Poole and White⁶⁷ found a similar effect for 'yes-no' questions but not, we should note for open-ended

⁶⁶ DA Poole *et al.* 'Psychotherapy and the Recovery of Memories of Childhood Sexual Abuse: US and British Practitioners' Opinions, Practices and Experiences' (1995) 63 (3) *Journal of Consulting and Clinical Psychology* 426-437.

⁶⁷ D Poole & L White, 'Effects of Question Repetition on the Eyewitness Testimony of Children and Adults' (1991) 27, *Developmental Psychology*, 975-986.

questions (repetition for which might merely be taken as a request for more, rather than different information⁶⁸. The conclusion from studies of the effects of repeating questions is to avoid using repeated 'yes-no' questions. Gudjonsson⁶⁹ uses adult's willingness to alter their responses to 'yes-no' questions as an indication of their suggestibility.

A further example of how a misleading/suggestive question might bias a child's reply to it involves questions on matters about which the child has no memory. Again, if the child believes that the adult would only ask a question if it were sensible to do so; children who have been taught at school (or at home) that saying 'don't know' is frowned upon may wish to avoid giving this response (even when it may be correct). Thus if asked 'was the man's jacket blue or red?' (when in fact it was yellow, this being unknown to the questioner) a child might reply 'blue' rather than with the correct reply 'neither' or with 'don't know'. Young children have been found rarely to respond 'don't know' to misleading questions. Cassell and Bjorklund⁷⁰, and some investigative interviewers seem rarely to inform children that such responses are acceptable (Warren, Woodall, Hunt and Perry, 1996). A few studies have attempted to increase children's appropriate use of 'don't know' responses but these have not been very successful⁷¹.

⁶⁸ M Bruck *et al*, 'Anatomically Detailed Dolls do not facilitate Preschoolers' Reports of a Pediatric Examination Involving Genital Touching' (1995) 1, *Journal of Experimental Psychology: Applied* 95-109.

⁶⁹ G Gudjonsson, *The Psychology of Interrogation, Confessions And Testimony*. (Chichester: Wiley, 1992).

⁷⁰ W Cassell & D Bjorklund, 'Developmental Patterns of Eyewitness Memory and Suggestibility' (1995) 19, *Law and Human Behaviour*, 507-532.

⁷¹ S Monston, 'The Suggestibility of Children in Interview Studies' (1987) 7, *First Language*, 67-78.

8.3 Rapport

The deleterious effect of misleading questions upon replies may well be heightened when a good, warm, respectful relationship exists between the interviewee and interviewer⁷². Many of the respected protocols for interviewing child witnesses for example, the 1992 Memorandum of Good Practice quite rightly emphasize the necessity of rapport being established between the interviewer and interviewee before the witness is asked to provide relevant information Goodman, Ruddy, Bottoms and Aman⁷³. However, the positive atmosphere characteristic of good rapport may increase the likelihood of the child giving incorrect information to the types of misleading/ suggestive questions mentioned above. Although this possible interactive effect between rapport and inappropriate questioning has rarely been researched, interviewers need to be alive to its possibility, though Carter, Bottoms and Levine, found that children interviewed in a warm, supportive manner were more resistant to misleading questions than were those interviewed in an intimidating manner.

Interviewers should try to maintain rapport with the child throughout an interview. However, doing this successfully may not be as easy as it seems. In everyday conversation one main way to maintain (and establish) rapport is to express interest in what the other person says by paying attention and responding appropriately, (both verbally and non-verbally) in order to keep a person talking, his/her behaviour is rewarded/reinforced. In an interview conducted for legal purpose, if their delivery of reward/reinforcement is not appropriately attended to, it might bias what the child says.

⁷² A Vrij & FW Winkel . 'Strategies to detect and reduce false statements in children: a Social-Psychological Approach' (1994) 10, Journal of Police and Criminal Psychology 22-29.

⁷³ *Ibid*, p 153

If the interviewer reacts more positively to certain information from the child, this could lead (i) by standard 'conditioning' procedures to the child producing (correctly or incorrectly) more of the same behaviour, and / or (ii) to the child working out in his or her own mind what specific types of information the interviewer seems to want to hear and providing more of it.

Loftus, Loftus⁷⁴ and Ketcham⁷⁵ have established that suggestions put to adults after they witnessed an event can bias their later recall. The kinds of biasing effects found by Loftus could be explained in one of two competing ways. Loftus herself tends towards the view that the suggestive post-event information actually alters or changes somewhat the memory for the original event. Other psychologist⁷⁶, explain the results of studies like those of Loftus by positing that both the originally event information and the subsequent suggestion are now both stored in the subject's memory. When the subject later try to recall, some of them access the memory for the suggestion (which was part of question previously put to them) rather than the (probably 'nearby') memory for the relevant part of the original event.

8.4 Scripts

In addition, many people may never have set down in their memory some aspect of the original witnessed event. The subsequent (inappropriate) suggestion contained in a question put to them may, however, be remembered.

⁷⁴ *Ibid*, p.173

⁷⁵ *Ibid*.

⁷⁶ M McCloskey & M Zaragoza, 'Misleading Post Event Information and Memory for Events: Arguments and Evidence against the Memory Impairment Hypothesis' (1985a) 114, *Journal of Experimental Psychology: General*, 381-387; see also M McCloskey & M Zaragoza. 'Post Event Information and Memory: Reply to Loftus, Schooler and Wegenaar,' (1985b) 114, *Journal of Experimental Psychology: General*, 381- 387.

Later when asked about the event, they remember information contained in the suggestive question but attribute their recall of this information to the original event rather than to the suggestive question. This seems particularly likely to occur if the information incorrectly suggested by the question nevertheless makes sense. If the suggestive/misleading question had been: 'was the man wearing a barrel eating a sandwich or a cake?' far fewer people would later recall him as wearing a barrel as would those given the suggestive/misleading question containing mention (incorrectly) of a jacket. People's knowledge of the world, of what usually happens will affect the influence of suggestive/misleading questions⁷⁷. If children scripts are not as well developed as those of adults they may not easily realize that what is being suggested to them by a skillful misleading question likely to have happened (even though it didn't)⁷⁸. An adult with a well developed script may be more likely to be 'tricked' by a script-consistent (yet incorrect) suggestion.

Another psychological factor which may influence the effects of suggestive/misleading questions upon later recall is called 'source monitoring'

8.5 Source Monitoring

Source monitoring (or 'reality monitoring') refers to the extent to which individuals are able to distinguish between their memories of events that they have actually experienced and memories of imagined or suggested events. The writings of early psychologists such as Freud and Piaget were taken to imply that children may well have difficulty in discriminating fact from fantasy.

⁷⁷ L. Snyder, R. Nathanson, et al 'Children in court: the Role of Discourse Processing and Production'. Topics in Language Disorders; 13, 39-58, 1993

⁷⁸ GF Principe & J. Ceci s. 'I saw it with my own Eyes'. The Effects of Peer Conversations on Preschoolers Reports of No Experienced Events'. Journal of Experimental Child Psychology, 83, 1-25

However, Freud never conducted any proper experimental studies on this topic, and the children Piaget studied may not have understood his instructions and therefore failed to demonstrate discriminations which they might have been capable of.

In the 1970s, researchers at last conducted good empirical studies on this topic and those 'researchers converged on the view that young children were able to distinguish between reality and fantasy⁷⁹'. However, when the boundary between reality and fantasy is not very clear cut Ceci and Bruch suggest that young children may experience some discrimination difficulties. Steve Lindsay is one of the leading researchers on this topic. His research suggests that when asked to discriminate their memories for actual, real events from their memories of suggested events, children only have greater difficulty than adults when these memories, that is actual suggested arise, from very similar (or the same) sources⁸⁰. In addition, young children have difficulty discriminating between their memories for similar things they themselves have done and their memories for similar things that they have been asked merely to imagine doing. However, they seem to have little difficulty distinguishing their memories of what other people have done from their memories of merely imagining what other people have done. However, research on this topic is still at a relatively early stage and so it would be premature to use it as a way of explaining the results of other types of research on children's suggestibility. Nevertheless, this exciting, complex research on sources monitoring clearly indicates that in some circumstances children may be no more suggestible than are adults.

⁷⁹ *Ibid*

⁸⁰ S Lindsay *et al* . Aware and unaware uses of memories of post event Suggestions. In M. Zaragoza, J Graham, *et al* Memory and testimony in the child witness. (Thousand oaks', CA sage, 1995).

Again, whether children are more suggestible seems to depend more on the relevant circumstances than on any general deficit in children. These circumstances will often be of a social or of a cognitive type. Social circumstances may cause a child to acquiesce (i.e. say 'yes') to a leading question (and therefore produce possible incorrect recall). Cognitive circumstances would affect whether an incorrect reply would 'carryover' to become part of a child's report on a subsequent occasion. As in much psychology, human behaviour and the mind, the effects of social circumstances/factors are mediated by cognitive circumstances/factors (and vice versa). What is clear from research findings is that the more suggestible the interviewing circumstances, the more likely it is that biased accounts will be provided by child witnesses, especially if both social and cognitive suggestibility are involved.

8.6 Stereotypes

This is exemplified in Steve Ceci's experiment involving 'Sam stone,' Ceci and Bruch⁸¹, describe this study⁸² in which the character, Sam stone was described to three to six- year old children across a period of one month as a very clumsy man who broke things that weren't his. After this 'stereotype induction procedure' Sam stone visited the nursery school. He spent two minutes interacting with the children in a friendly way during a class story- telling session but did not break anything or be clumsy. The next day, the children were shown a sailed teddy bear and a ripped book, and asked if they knew who had done this. Few of them said that they saw Sam stone do it, but quarter said that may be Sam stone had done it. Following this the children were interviewed at fortnightly interviews five times in the ensuring 10 weeks.

⁸¹ S Ceci & M. Bruck, *Jeopardy in the Court Room: A Scientific Analysis of Children's Testimony*. Washington, D.C. (American Psychological Association, 1995)

⁸² M Leichtman & S Ceci. 'The Effects to Stereotypes and Suggestions on Preschoolers' Reports'. (1995) 31, *Developmental Psychology*, 568-578.

Each interview contained two suggestive questions: 'I wonder whether Sam stone was wearing long pants or short pants when he ripped the book?' 'I wonder if Sam stone got the teddy bear, dirty on purpose or by accident?' At the end of the 10 weeks the children were interviewed by another interviewer who said she had not been present during Sam Stone's visit but needed to know everything that had happened. Three quarters of the three- and four- year olds indicated that Sam stone had ruined the book or dirtied the bear, and when asked almost a half of them replied that they had seen Sam stone do this. Some of these false replies were spontaneously accompanied by (apparently) relevant details. However, only 10 percent had seen Sam stone ruin the book or dirty the bear. Ceci and Bruck⁸³ take such findings as indicating that not only can young children (of three and four years of age) form powerful social stereotypes, but also that this information interacts with suggestive questioning to produce false accounts. They echo Sue White's⁸⁴ point that in response to strongly suggestive interviewing children (even young ones) may initially realize that interviews or when testifying, the children may then remember their previous incorrect recall rather than what they initially could remember.

Ceci and Bruck⁸⁵ note that their research (and writings) have been severally criticized by those who advocate that all child witnesses should be believed and by those more skeptical about child witnesses. They stated that: 'There have never been times when representatives on each side have tried to thwart the publication of our ideas by organizing letter-writing campaigns to pressure editors against publishing our work'.

⁸³ *Ibid* p.

⁸⁴ S White The Investigatory Interview with Suspected Victims of Child Sexual Abuse. In A La Greca (ed) Through the Eyes of a Child. (Boston, Allyn and Bacon, 1990).

⁸⁵ *Ibid* p, 178

Such pressure reveals how crucial the work of psychologist in this area of law is. Pressure of somewhat similar nature was exerted upon Poole, Lindsay, Memon and Bull⁸⁶, concerning their surveys of therapist's practices and beliefs concerning adults' possible memories of childhood sexual abuse. Children can be tricked into providing false information and they can on one occasion, purposely lie. Those who have argued on the one hand, that children's testimony is less reliable than adults or, on the other hand, that children should more readily be believed than adults, miss the essential point. It is how the witness' testimony is obtained⁸⁷ and the circumstances surrounding this (including the motivation of the witness) which are very much more important than debates (though academically and theoretically important) as to whether children are more suggestible than adults.

8.7 Assisting the Court

In 1995 the American Psychological Association published a book on child witness suggestibility by Ceci and Bruck. This book not only presents a comprehensive, easy-to-read summary of many of the psychological factors likely to influence children's accounts, it also relates this to five notorious trials which involved child witnesses.

⁸⁶ DA Poole *et al.* 'Psychotherapy and the Recovery of Memories of Childhood Sexual Abuse: US and British Practitioners' Opinions, Practices and Experiences' (1995) 63 (3) *Journal of Consulting and Clinical Psychology* 426-437.

⁸⁷ R Bull Innovative techniques for The Questioning of Child Witnesses Especially Those Who are Young and Those With Learning Disabilities: In M. Zaragoza J. Graham; et al (eds), *Memory and Testimony in the Child Witness*. (Thousand oaks', CA: sage, 1995a) see also R Bull. Interviewing People with Communicative Disabilities. In R. Bull and D. Carson (eds); *Handbook of Psychology in Legal Contexts* (ChilChester: Wiley, 1995b) and M Lamb et al 'Factors Influencing the Reliability and Validity of Statements made by Young Victims of Sexual Maltreatment' (1994) 15, *Journal of Applied Developmental Psychology*, 255-280

This ruling was almost certainly influenced by an amicus brief sent to the court when it was deliberating on the appeal made by Kelly Michaels. This amicus brief (a briefing document submitted by 'friends' of the court) was signed by 45 leading social scientists knowledgeable about factors likely to affect the performance of children in investigative interviews⁸⁸, and the penultimate chapter of their seminal book with a quotation from this brief which is:

The authors of this brief also wish to convey their deep concern over the children in this case. Our concern is that if there were incidents of sexual abuse, the faulty interviewing procedures make it difficult to detect real abuse. But we have further concerns. And these involve the interviewing techniques which we view as abusive in themselves. After reading a number of these interviews, it is difficult to believe that adults charged with the care and protection of young children would be allowed to use the vocabulary that they used in these interviews that they would be allowed to interact with the children in such sexually explicit ways, or that they would be allowed to bully and frighten their child witnesses in such a shocking manner. No amount of evidence that sexual abuse had actually occurred could ever justify the use of these techniques especially with three- and four year-old children.

⁸⁸ *Ibid* p.210; see also *Supra*

Above and beyond the great stress, intimidation, and embarrassment that many of the children so obviously suffered during the interviews, we are deeply concerned about the long- lasting harmful effects of persuading children that they have been horribly sexually and physically abused, when infact there may have been no abuse until the interview began. The authors of this brief will be permanently disturbed that children were interviewed in such abusive circumstances regardless of the ultimate innocence or guilt of the accused. Ceci and Bruck⁸⁹.

8.8 The Public Opinion

Even if a child witness/victim is interviewed properly, their testimony still faces a number of hurdles to be overcome. Some of these involving laws and legal procedures have been reduced but others remain⁹⁰ especially the general public's view partly supported by weak psychological research that children are inherently unreliable providers of testimony. However, a worthwhile, free narrative, uncontaminated account from a child as recommended by the 1992 memorandum of Good practice can have a strong effect. For example, in 1995, Luus⁹¹, Wells and Turtle noted that their findings suggest that jurors may enter the court room with a negative bias against child witnesses. However, qualities of the witness's testimony seem to play a more important role than those the witness's age in judgments of eyewitness credibility.

⁸⁹ *Ibid*, p 178

⁹⁰ J Cashmore & K Bassey. 'Judicial Perceptions of Child Witness Competence' (1996) 20, *Law and Human Behaviour*, 313-334.

⁹¹ E Luus *et al*. 'Child Eyewitnesses: Seeing is Believing.' (1995) 80, *Journal of Applied Psychology* 80, 317-326.

People's pre-convinced negative views ... may be quickly discarded on actually observing a child testify. Saywitz and Geiselman⁹² overview some developed, innovative methods of maximizing the completeness and minimizing the error in child witnesses' accounts, and Hutcheson, Bazter, Jelfer note that the child's age may well influence which type of question. Marxsen, Yuille and Nisbet⁹³ made the point:

That young children are more suggestible than adults is well established. This does not mean that the investigative interviewing of children is impossible, only that it requires skill and care. However, the literature's overemphasis on suggestibility can give the police, the judiciary, the media and the general public the mistaken impression that children are inherently unreliable. Psychologists have a duty to inform the people, for example relevant professionals of the findings of their research.

Assumed unreliability may be even more the case for children who have communicative disability or learning disability (formerly called mental handicap). Unfortunately, such children may be the ones most at risk from abuse⁹⁴, yet the ones requiring most skill from the interview⁹⁵.

⁹² K Saywitz & E Geiselman. *Interviewing the Child Witness: Maximizing Completeness and Minimizing error*. In S. Lynn (ed) *Memory and Truth*. (New York: Guilford, 1996)

⁹³ D Marxsen *et al* 'The complexities of eliciting and assessing children's Statements' (1995) 1, *Psychology, Public Policy and Law*, 450- 460.

⁹⁴ G Hutcheson *et al* . 'Child witness statement quality: question type and errors of omission' (1995) 6, *Law and Human Behaviour* 631-648; see also H Westcott. *Institutional Abuse of Children from research to policy: A Review*. (London: NSPCC, (1991).

⁹⁵ H Westcott. 'The disabled child witness' paper presented at the NATO Advanced Study Institute on The Child Witness in Context' (1992) *Italy*,

Few psychologists have attempted to conduct research concerning the investigative interviewing of these children though Milne and Bull⁹⁶ found the cognitive interview to be of use.

9.0 Conclusion

From the psychological research presented in this paper and from the adoption of some by most Western Jurisdictions, the bar that unsworn evidence of children of tender age need corroboration have been abolished in their legal system. Although laws is meant for the society and culture it serves one will not be quick to advocate for the full implementation of their new law in respect to Nigeria without more research in the area from the Nigerian perspective. As can be seen from the paper, investing heavily on research seminars, workshop and committees led to the adoption of the law. We suggest that such research, seminars, workshop and committees will be set up in Nigeria to do the same thing.

⁹⁶ *Ibid* p 180.