

## Assessing the Competence & Credibility of Children

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Children's Participation in Justice Processes: Finding the Best Ways Forward  
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## The Challenge of Assessing Credibility

**"Assessing credibility is not a science.** It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events...where the charge is a serious one, and where...the evidence of a child contradicts the denial of an adult, an accused is entitled to know why the trial judge is left with no reasonable doubt."

-Bastarache & Abella JJ., *R v Gagnon* (SCC, 2006)

SCC affirms adequacy of reasons of trial judge who convicted based on testimony of 5 year old girl and her hearsay statements to mother and grandmother and video to police.

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## Objectives of Presentation

Increase knowledge of psychological research on communication, memory, suggestibility & honesty of children (under 12 years)

Implications for credibility assessment for interviews & court testimony

Just an introduction to a complex, interdisciplinary topic. Won't make your job easier, but hopefully you will do it better!

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### Child's Statements

- Report on Events: (autobiographical or observed)
  - Objective -> most likely in criminal & some child protection
  - Comprehension of events & memory
  - Suggestibility
  - Communication & Questioning
  - Honest or deliberate deception (veracity)
- Child's "Wishes and Preferences"
  - Subjective-> most relevant for parenting cases
  - How reflective or self-aware is the child?
  - Manipulation, pressure, guilt or alienation from parent
  - Does child want to reveal to interviewer (& parents)?
- In reality, many interviews have elements have both

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### Perceptions of Child Witnesses: A Brief History

- Early notions from 1900s
  - Children and women are inherently unreliable, especially about abuse allegations
    - Legal requirement for corroboration
- 1980s
  - Greater understanding & support -> many adult victims of child abuse start to come forward
  - Children "do not lie" about abuse (Dr. Summit)
- 1990's
  - Many genuine adult survivors come forward
  - False memory syndrome & false allegations
- Today -> more sophisticated, balanced view
  - Research helps understanding

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### Credibility & Competence to Testify

- Competence: CEA s. 16.1
- Credibility depends on:
  - capacity to communicate
  - reliability of memory
  - suggestibility
  - honesty

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### Reform of Child Competency Inquiry:

- Prior to 2006 reforms
  - Before being allowed to testify in criminal proceeding, child under 14 yrs had to **demonstrate understanding** of “oath,” or “**promise to tell the truth.**” CEA s. 16
- Bala et al research (1999 – 2005)
  - ability to correctly answer questions about “promise” & “truth” NOT related to whether children will tell the truth
  - BUT promise may increase truth telling with children
- *Canada Evidence Act* amended s. 16 (2006)
  - Test: “**able to understand & respond to questions**”
  - child to “promise to tell the truth,” but no questions about understanding of promise

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### Ontario survey of judges (1999): oath

- Child asked questions about religion - 86% of cases
- Judge acknowledges:
  - “I find this the hardest part of the inquiry - reducing to understandable language the nature and consequences of the oath.”
- “What would God do if you swear on the Bible to tell the truth and then you lie?”
- “Do you know that God knows if you tell me anything but the truth?”
- “Do you know what God is?”

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### Pre-2000 Psychological Research

- By age of 4, most children can correctly **identify** statements as truth or lies, but most have **difficulty with defining** concepts of “truth” or “lie” until 7 years or older
- Young children do much better with example questions
- Better understanding of immorality of lying
  - know meaning of “lie” [ as an untrue statement]
  - “truth” is hard to define.
- Young children have great difficulty in explaining meaning of abstract terms like “promise,” but usually correct use of the term

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### Lee, Lindsay, Talwar & Bala research

Is child's honesty in answers to questions about their own transgressions related to correctness of answers to competency questions?

Children aged 3 -11 yrs

- Temptation resistance procedure
  - Child play guessing game with researcher & told that they would get a prize if correct answers. Left alone for 1 min. and told not to peek at a toy that was making a sound
  - Researcher returned
- 4 questioning conditions for different children (randomly assigned)
  - Prior to child being asked whether they peeked:
    1. No moral questions or promise to tell truth;
    2. Questions about morality of lying & truth telling only;
    3. Questions and promise to tell the truth (old CEA s. 16); or
    4. Promise only (reformed provision)

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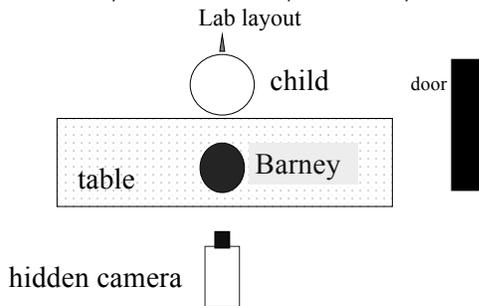
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### Temptation Resistance Paradigm

"Did you turn around and peek at the toy?"




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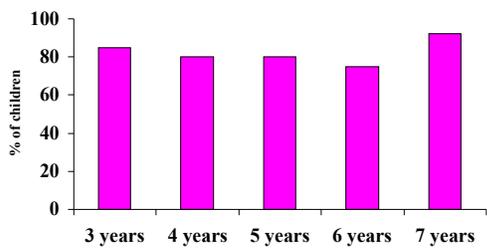
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### Did children peek after being told not to?



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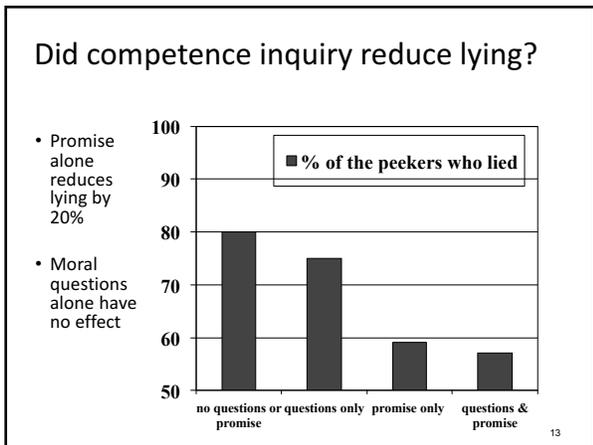
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### Summary of Psychological Research

1. Children's correct answers to questions about moral understanding of lying is **not** related to their lie-telling behaviour.  
i.e old CEA s. 16 served no purpose
2. BUT Children's truth-telling behaviour significantly increased when asked to promise to tell the truth.

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### Bill C-2: s. 16.1 for children (2006)

16.1 (1) A person under fourteen years of age is presumed to have the capacity to testify.

(2) A proposed witness under fourteen years of age shall not take an oath or make a solemn affirmation...

(3) The evidence of a proposed witness under fourteen years of age shall be received if they are able to understand and respond to questions.

(6) The court shall, before permitting a proposed witness under 14 years of age to give evidence, require them to promise to tell the truth.

(7) No proposed witness under fourteen years of age shall be asked any questions regarding their understanding of the nature of the promise to tell the truth for the purpose of determining whether their evidence shall be received by the court.

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**Practice Suggestions:  
Promise & Judicial Instructions**

**If inquiry: “ability to understand and respond to questions”**

- Ask child questions about one or two memorable past events, like a birthday, school trip or vacation
- Assess ability to answer questions

**If Competent - Promise**

- Child should be asked explicitly:  
“Do you promise to tell the truth today?”

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**Children’s Credibility**

<p><b>Child Development</b></p> <ul style="list-style-type: none"> <li>• Cognitive development</li> <li>• Language development</li> <li>• Social-Emotional development</li> </ul>		<p><b>Child Credibility</b></p> <ul style="list-style-type: none"> <li>• Communication Capacity</li> <li>• Memory</li> <li>• Suggestibility</li> <li>• Veracity</li> </ul>
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**Communication**

**Need for special care in questioning of children  
& listening to answers**

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### Ability to Communicate?

- Vocabulary
  - By 3 years, about 1,000 words in vocabulary in preschool years, concrete (ball) understood better than abstract (truth)
  - By 5 years about 7,000 words
  - By 16 years about 60,000 words
  - At any age, more words understood than used
- Young children have difficulty with questions about
  - Motivation
  - Causation
  - Why questions...
- Adult-like communicative competence does not fully develop until 10-12 years of age

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### Communication Difficulties

- Young children difficulties with:
  - Passive voice
    - *"The man was hit by a car"*
    - May confuse with *"the man hit the car"*
  - Preposition confusion
    - 3 year old boy excitedly reports to Mom, after access visit:  
*"Dad put his pee pee in my pee pee."*
    - Child actually communicating:  
*"Dad put his pee pee on my pee pee"*
    - Dad teaching son to urinate standing up, and used the toilet after son.

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### Language Abilities

- Difficulty with embedded clauses, conjunctives, and double negatives
- Typically can only process sentence constructions with 5 to 7 words
  - Transcript of 4 year old being asked question by police:

**Officer:** *"When your mom took you to you uncle' s house last Saturday, did you stay the night or did you drive back to San Diego and have dinner with your dad?"*

**Child:** *"No".*

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### Young children's communication

- Elaboration
  - More limited for children
- Sequencing
  - Difficult with sequencing
- Limited comprehension
  - Adults often ask questions that are too complex

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### "Auditory misperception" & understanding

To a young child

- "jury"=something my Mom wears  
i.e. jewelry
- "date"= what my Mom does on Friday night
- "court"= where I play basketball

23

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### Capacity: How children communicate?

- **Children usually don't say that they do not understand a question**
  - Children more likely to guess than adults, because they are socialized to "respond."
  - They are likely respond to whatever parts of question that they understand
    - "Is red heavier than blue?"
  - Some children have "yes bias" if they do not understand questions

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**Speaking to Children**

- Avoid jargon
- Use simple, direct short sentences
- Encourage: "I don't know."
- Encourage child to clarify:
  - I don't understand your question
  - I don't know the answer
  - I don't want to answer
- Clarify confusing answers

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## Children's Memory

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## Types of Memory

- **Semantic Memory:**
  - Long term storage of an individual's world knowledge
    - Example: *Paris is a city in France.*
    - *The Eiffel Tower is in Paris*
- **Episodic Memory:**
  - Memory of specific events
    - Example: *A recent trip to Paris, mentally reliving events that happened there: the places visited, sights seen, sounds heard, aromas smelled, and people met.*
  - Children as young as 2.5 years have reliable & stable memories of daily & stressful events (injury & hospital visit)

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### Are children’s memories reliable?

- Preschoolers recall less but accurate concerning central events, especially if traumatic (hospital emergency visit)
- Amount of accurate *and* inaccurate recall increases with age i.e. **adults will give more accurate & inaccurate information**
- Retention: children’s accuracy declines faster than adults as delay increases
- Infantile amnesia
  - Between 6-10 years lose memories of early childhood
- Children under 9 years of age tend not to understand their own memory capacity and have difficulty in monitoring their recall for inconsistency
  - limited self-editing when reporting
  - may have trouble with “source attribution”

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### R. v W.(R.) SCC 1992, McLachlin J.

“it may be wrong to apply adult tests for credibility to the evidence of children.... Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection.”

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### Memory is not a video recorder

- Orienstein et al (1998):
  - Children between 4 and 6 years of age
  - medical examination administered by a pediatrician
    - Typical components
    - Absent typical components
    - Atypical components included (measured circumference of head)
  - Interview: 1 day, 12 weeks
  - At 1 day interview, few mentioned the absent components.
  - After 12 weeks, many “remembered” some “absent” components
- Their memory conformed over time to their knowledge and expectations about the event.

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### Adult memory is also unreliable!

*Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm), per Leggatt J:

"16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

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### Repeated events & script memories

- Repeated events have 'scripts'
  - Remember patterns and may not have accurate memory of individual events
  - even adults cannot accurately remember details of 1 incident in repeated "script event"
  - Special problems of children
    - Difficulty with sequence of events
    - Lack of familiar scripts makes memory more difficult (e.g., sexual event for child)
    - Unique, understood event may be recalled more accurately than repeated event

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### "How many times did this happen?"

- For repeated events, this is not a memory question
- calculation question
- young children cannot calculate

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### Factors that impact registering of memory

- Trauma
  - Memory usually enhanced, but may be more focussed
  - PTSD may affect memory
- Opportunity to observe
- Attention paid to detail
- Emotional state at the time of the event
- Age during the event
- Intoxicants
- Understanding of the event

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### Implications

- Video taping of child’s report as soon as possible after allegation
  - Videotape likely more accurate than testimony (SCC CCF 1997)
- Expedited trials with child witnesses
- Inconsistencies in evidence at trial may be less significant than for adult witness
  - R v R.W. (1992, SCC)
  - “wrong to apply adult tests for credibility to children”

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### Suggestibility

Questions that suggest answers can unconsciously distort memory and affect belief

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## Are children suggestible?

- Age factor: Preschoolers are more suggestible than school aged children
- Adults are also suggestible, but less than kids
- Interviewer factor: Interviewer prior belief affects the outcome of interview if suggestive questions are used

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## Suggestibility

- Questions that suggests answers can unconsciously & permanently distort memory
- **Age factor:**
  - Preschoolers are more suggestible than older children

Age Group	Non-Suggestive (% correct)	Suggestive (% correct)
4 yrs	~85	~35
6 yrs	~85	~55
9 yrs	~90	~65
12 yrs	~90	~75

Ceci et al 1997

- But: school aged children and adults are also suggestible

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## Are children suggestible?

- Individual differences
  - cognitive (knowledge base, memory)
  - social (compliance, self-esteem)
- Nature of issues
  - More influenced about peripheral details than central elements
  - More influenced if issues not familiar or understood
- In some cases of repeated, suggestive questioning -> children come to believe false, fantastic allegations
- Martensville, McMartin Day Care -> today better training & understanding by investigators

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## Suggestibility

- **Interview frequency**
  - Repeated suggestive interviews results in false memory
  - Studies have shown reports that emerge in first interview with a neutral interviewer are more accurate
  - But repeated suggestive interviews results in highly credible testimony!
    - E.g. Martinsville, Manhattan Beach

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## Suggestibility

- **Source Monitoring errors**
  - confuse memories from different sources (e.g. from real experience vs. another person)
- **Social factors**
  - Compliance with authority
  - Belief in others knowledge
  - Self-esteem
- **Interviewer Bias**
  - Interviewer prior belief affects the outcome of interview if suggestive questions are used

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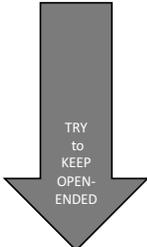
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## Suggestibility

- **Interview technique**
  - **Types of Questions:**
    - **Open ended Questions**
    - **Cued recall questions**
      - **General Wh- questions?**
        - » What, where when, who, why, how
      - **Specific WH- questions**
        - » "What colour were the man's shoes?"
      - **Recognition questions**
        - » "Did he touch you?", "Was he angry?"
      - **Tag or Negative-Term Questions**
        - » "Mike played with the toy, didn't he?"
        - » "Didn't you see the toy?"
      - **Forced-choice Questions**
        - » "Did you eat dinner or watch TV?"



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### Implications for Courts

- Video-recorded first interview important
  - How much suggestive pre-interview questioning?
- Concern about possibility of contamination of memory in investigations, parental questioning etc.
- Less concern about inconsistencies arising from leading cross-examination

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### Honesty

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### Do children lie?

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- Very young children do not lie
- About age 3 children develop understanding that they can lie to manipulate situations
- By age 5 most children are quite accomplished at hiding most facial signs of lying
- Children may lack cognitive knowledge to skillfully lie about unknown events (eg explicit abuse allegations, unless coached)
- No evidence that children lie more (or less) than adults

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### Children's Veracity (Honesty)

- A lie:
  - A statement made with the deliberate intent to deceive another

Self-Serving





Other-oriented



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### Why do children lie?

- For the same reasons as adults:
  - To avoid negative consequences
  - For personal gain
  - For impression management
  - To help another
  - To be polite

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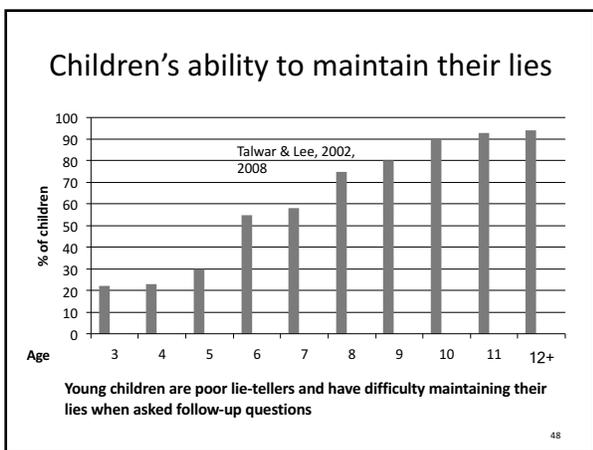
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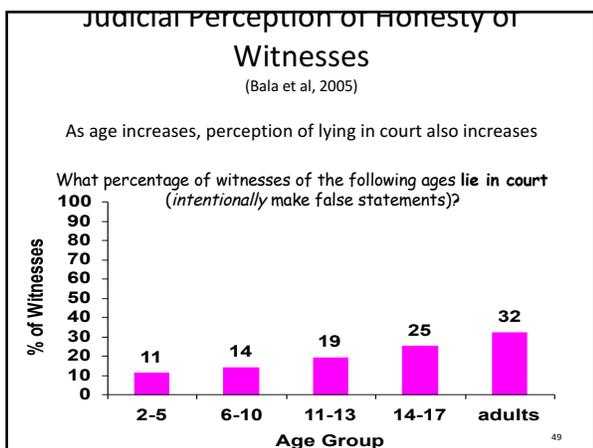
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### Accurately assessing credibility based on observation is very difficult

- Cultural factors greatly affect 'common sense indicators' like eye contact – not reliable
- More experienced liars less likely to have 'leakage' into body language or facial expression
- Most people cannot accurately & consistently detect adults' lies.
- Children may not be able to regulate their non-verbal responses as effectively as adults, and therefore may be a little more susceptible to lie detection by adults

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Bala et al (2005, Alta Law Rev)  
**Detection of Children's Deception by Judges,**

- Show video clips of competence inquiries, promise & then children telling truth or lying about non-stressful events ( 5 - 10 mins per child)
- Shown to judges, social workers, police & law students

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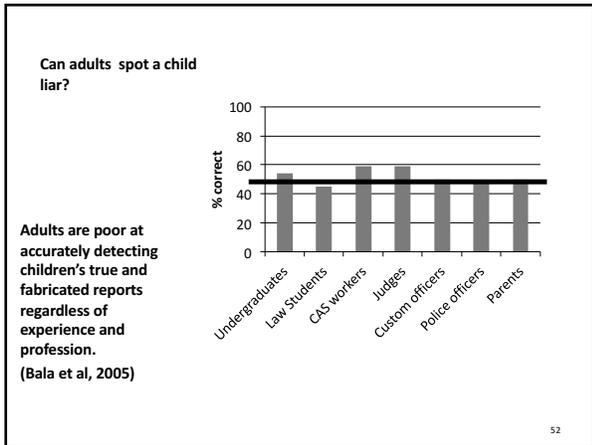
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- ### Limitations of Lab Studies
- Video clips not long ( 5 - 10 mins.)
  - No other evidence to put stories in context
  - Studies reveal that judges and other justice system professionals are not "human lie detectors"
  - Police not better at pure lie detection, but more confident based on their "experiences" with accused.
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- ### Children "Lying" about abuse
- In several studies of children aged 3 to 12 with STD (ie must have been sexually abused) only 50% - 70% disclose despite repeat questions (Lyon, 2006)
    - i.e. many child "lie" to protect adults, because of fear, guilt etc.
  - 20% - 25% of children recant even if very strong evidence of abuse (Malloy, Lyon & Quas, 2006)
    - More likely if child young
    - More likely if perpetrator is parent
  - False allegations of sexual abuse be more likely in some contexts (Bala et al, 2006)
    - e.g. parental separation, but even here many true allegations
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The end

Any comments or questions?

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