

Memory in the Courtroom
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Introduction and Overview

- Dr. Newring
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- Memory & Repressed Memory
- Memory in the Courtroom

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Kirk A. B. Newring, PhD

- BS, Washington State University
 - Learning and Cognition, Physiology
- MS, Western Washington University
 - Memory - Post McMartin
 - Lost in the Mall, creation of false memory
- PhD, University of Nevada, Reno
 - Evaluation of forensic interviews
 - Creation of false confessions and false witness statements
- APA Internship
 - VA Puget Sound Health Care, American Lake
 - Memory and trauma; TBI; Neurodegenerative changes

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Kirk A. B. Newring, PhD

- Licensure
 - Washington, Nebraska, Iowa
- Certification
 - Certified Threat Manager, Association of Threat Assessment Professionals

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Expert Witness Testimony

- Federal Court
 - Nebraska, Washington
 - Court Martial
- District Court
 - Washington, Nebraska, Iowa
- Separate Juvenile Court
 - Nebraska
- Board of Mental Health
 - Nebraska & Washington
 - Post-incarceration civil commitment sexual offenders

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Disclaimer

- Affiliated with Creighton and Nebraska Wesleyan University - content of this is Newring's, and should not reflect poorly on those institutions.
- No financial conflict of interest... though feel free to send me referrals later, the Toyota needs some repairs

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Memory



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Memory

Memory
 All alone in the moonlight
 I can smile at the old days
 I was beautiful then
 I remember a time I knew what happiness was
 Let the memory live again

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Memory Remains



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Memory


- Fortune, fame; mirror vain; gone insane
Fortune, fame; mirror vain; gone insane
But the memory remains
- Ash to ash, dust to dust, fade to black
But the memory remains, yeah
- I never said the name, Marianne Faithful - can anyone 'hear' her? Do you remember the sound of her voice, even without her name having been spoken?

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Memory

- Process
 - Encoding
 - Sorting
 - Storage
 - Retrieval




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Memory Errors

- Process
 - Encoding
 - Sorting
 - Storage
 - Retrieval



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Encoding Bias

- How we perceive it can impact how we remember it
- Example:
 - I saw Mackenzie, age 4, masturbating at the back of the classroom.
 - After Mackenzie saw the daycare workers arguing, Mackenzie went to the back of the classroom. She was observed to place her hand down the front of her pants, and was rubbing her hand up and down on her vulva. Her eyes seemed unfocused and she did not seem to be paying attention to the classroom.

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Memory Errors

- Did you see and hear what you thought you saw and heard?
- Misperceptions encoded

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Memory and Language

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How to insult and injure memory

- Organic properties are subject to organic insults and injuries
- Substances
 - Anxiolytics, alcohol, GHB, Benadryl, opioids, smoked nicotine
- Injury
 - Ceiling fans
- Disease
 - Thyroid; B-12
- Growth
 - Pregnancy, hormones, menopause
- Time
- Depression
- Manipulate it

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Retrieval Errors




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Memory & Daubert

- Thorndike's variation on Descartes
 - Whatever exists at all, exists in some amount.
 - Anything that exists in an amount can be measured
- Does a memory exist, and can it be measured?
 - If memories exist, they exist across a network of neurons
 - We can measure that, sort of
 - Can we access it?
 - Only through the funnel of language



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Back to Dumbledore

- How do we access someone’s prior experience?
- We ask questions, using words.
- We get answers, using words.
- Words are limiting and limited

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Memory & Daubert

- 1) Has memory been tested?
 - Has 'statements' been tested?
- 2) Has memory been subject to peer review and publication?
 - Has 'statements' been subject to peer review?
- 3) Is there a known error rate of memory?
 - Is there a known error rate of statement?
- 4) Existence and maintenance of standards controlling the operation of memory?
 - Existence and maintenance of standards controlling the operation of statements?
- 5) Has memory attracted widespread acceptance within a relevant scientific community?
 - Has statement evidence attracted widespread acceptance within a relevant scientific community?

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Memory vs. Statements

- We don’t access memories in the courtroom
- We access statements
- Statements can be evidence
- Evidence is stored, tracked, and evaluated
- Chain of custody for statement evidence

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Won't someone think of the children?

- Cognition
 - Abstract
 - Time
 - Space
- Language
 - Words, semantics
- Physiology
 - Anatomy, understanding

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Victim interviews

- Subject to bias
- Some specialized training
- Child advocacy interviewers

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Eyewitness interviews

- Subject to bias
- Subject to post-event information

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Children in the Courtroom

- Salem Witch Trials
- Little Rascals Day Care (North Carolina)
- Wee Care (Kelley Michaels, New Jersey, State v. Michaels, 1988)
- Old Cutler Presbyterian (Robert Fijne, Florida, State v. Finje, 1991)
- County Walk Babysitting Service (Florida, Frank Fuster, State v. Francisco Fuster, 1985)
- Devil's Dyke (R. v. Russell Bishop, 1990)
- Frederico Martinez Macias (1984)

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The cover of People magazine from March 1, 1993, features the headline "The woman who trapped D.C.'s Mayor Barry" with a photo of Barbara Bush. The main feature is "The McMARTIN NIGHTMARE" with the sub-headline "America's most notorious child sexual-abuse trial gave us one justice. The defendants are acquitted, but raised. The children still betrayed. Parents are outraged. Here's what went wrong." The cover also includes a photo of a man and a woman, and a small inset photo of a courtroom scene.

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The book cover for "Remembering Satan: A tragic case of recovered memory" by Lawrence Wright. The cover features a dark, moody image of a person's face in shadow. At the top, a quote reads: "The most powerful and disturbing true-crime narrative to appear since Truman Capote's In Cold Blood." The title "REMEMBERING SATAN" is prominently displayed in the center, with the subtitle "A tragic case of recovered memory" below it. The author's name "LAWRENCE WRIGHT" is at the bottom.

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Tell Me What Happened

- Memory: Recall vs. Recognition
- Premature focus on substantive issues limits interview
- Interviewer training yields knowledge improvement but no meaningful changes in the ways in which they conduct interviews

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Tell Me What Happened

- Young witnesses
 - May not comprehend question
 - May not correct misstatements about their statements
 - May not understand their unique source of important information
 - May not accurately identify single example of repeated event
 - Long delays lead to retrieval delays and vulnerability to suggestion
 - Shift from recall to recognition increases errors

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Tell Me What Happened

- Young witnesses
 - Performance improved when their words are used
 - Dolls do not increase quantity or quality of information
 - Drawing and talking produce more information
 - Both factual and fictitious
 - Memory is better in setting where event occurred
 - Children have provided elaborate descriptions of events that never happened
 - Opinion-posing and suggestive utterances aggregate error

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Tell Me What Happened

- Young witnesses
 - Repeated yes/no questions communicate to child the desired and undesired responses
 - After 4.5 minutes of suggestive interviews, children acquiesced to false accusations nearly 60% of the time
 - Children can provide meaningful and accurate accounts of their experience in specific settings (p. 57)
 - Props may communicate to child that it is pretend time of fantasy time
 - Open-ended vs. close-ended

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The Protocol

- I. Introduction
- II. Rapport Building
- III. Training in Episodic Memory
- IV. Transition to Substantive Issues
- V. Investigating the Incidents
- VI. Break

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The Protocol

- VII. Eliciting Information That Has Not Been Mentioned By the Child
- VIII. If the Child Fails to Mention Information you Expected
- IX. Information About the Disclosure
- X. Closing
- XI. Neutral Topic

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Protocol Summary

- Supposed to be non-biased fact finding
 - Tell me what, if anything, happened
- Some people say... confirmatory process to undergird prosecution
 - Tell me on tape what you told someone else already so we can convict this bad person

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Let's go the Research

- Fanetti and colleagues
 - Social processes
 - Child-based phenomena

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Social Processes

<ul style="list-style-type: none"> • 1. The child, because of rapport problems, may not have been comfortable and there may not have answered in a full, accurate manner. • 2. There were leading questions. • 3. The child's verbalizations were at times disconfirmed. 	<ul style="list-style-type: none"> • 4. The interviewer inappropriately reinforced certain types of answers. • 5. There were repetitive and perhaps coercive questions. • 6. Aspects of the child's total response (e.g., body posture, facial expression) gave a different interpretation to the child's answer.
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Social Processes

- 7. The interviewer encouraged the child to speculate about important details, after the child indicated that he/she was not sure about an answer or did not have the information.
- 8. The interviewer referenced the fact that other individuals (e.g. peers), had been interviewed regarding the interview topic and/or indicated what the other individual's responses were.
- 9. The interviewer focused or redirected the child toward information about a specific detail or individual.
- 10. The interviewer utilized an inappropriate mnemonic device to improve the child's report.

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Social Processes

- Swap out interviewer and substitute, therapist, or counselor, or self, or friend
- And... "this kid is almost ready to disclose, let's get them into therapy..." (Note: this was a detective, not a forensic interviewer)

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Child Processes

- 11. The child's report has been contaminated by some outside source (previous experience with another professional), e.g., retroactive interference from some other interviews.
- 12. The child did not understand his/her role in the interview or the purpose of the interview and therefore his/her answers may have been distorted.
- 13. The child had experienced some sort of externally derived threatening experience that may have served to distort answers (e.g., fear of threats to self, loved-ones, or property).
- 14. Child did not understand what it means to tell the truth.

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Child Processes

- 15. Child did not know the importance of stating the truth.
- 16. Child did not know that he/she could say, "I don't know" when the child did not know.
- 17. The child answered in a certain way in an attempt to please an authority figure.
- 18. The child did not feel as though he/she had a choice in type of response.

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Child-based phenomenon

- Previous interviews, interrogations, and conversations can bias present interview; children may acquire information during interview and include it in their 'memory'

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Children's Understanding of Reproductive Anatomy

- Private, front private, peepee, weewee, vajayjay, Willie, John Thomas, hoohah
- Penis, scotoma, buttocks, cleft of the buttocks, anus, perineum, labia majora, labia minora, clitoris, clitoral hood, breast, areola, nipple
- Newring pet peeve #13: Interviewers presuming a shared understanding of vocabulary with child

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Children's Understanding of Anatomical Prepositions

- On, in, over, under, against

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Put it together

- Children's functional demonstration of understanding reproductive anatomical prepositions is often lacking
 - It went in my butt
 - It was in my front private
 - The kiss was on my boobie
- 1st Degree, 3rd Degree, or not sexual contact
- Track the terms: who was the first person to use which term?

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Forensic Interviews

- Is there demonstration of rapport
- If rapport is insufficient, was interview postponed
- If the child failed to demonstrate understanding of the following, was the interview postponed
 - Truth, importance of telling the truth, shared vocabulary, I don't know, correcting the interviewer
- Written notes of the interview are likely to contain errors, including contextual information and para/non verbals

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Delays

- Delay in making a statement/disclosure
- Initial denial? Somebody is not telling the truth
- Research has revealed:
 - Human behavior is controlled by the variables of which it is a function
 - A multitude of personological and contextual variables can impact human behavior
 - Human behavior includes making statements about past events that may/may not have occurred

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Memory in the Courtroom

- We cannot access memories
- We can access statements
- Statements are subject to bias
- Forensic interviews are intended to reduce bias
- Forensic interviews should be reviewed for bias
- Humans can make errors in all stages of memory
- Language is limited and limiting; errors in use of language lead to errors in statements (aka, expressed memories)

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Wrap-up

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