Children, Psychology, and Law

Reflections on Past and Future Contributions to Science and Policy

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The 1999 American Psychology-Law Society’s Presidential Initiative has been the impetus for the field of Psychology and Law to examine itself carefully. The chapters within this volume reveal the products of that examination. For each subfield of Psychology and Law, scholars have reviewed noteworthy past accomplishments, evaluated the present state of knowledge, and identified future efforts needed to ensure that the subfield remains responsive to pressing societal questions. This chapter reflects our examination of the burgeoning subfield of Children, Psychology, and Law.

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which encompasses an exceptionally wide range of topics, including, but not limited to, juvenile justice and delinquency, custody and adoption, children's rights, child maltreatment, and children's eyewitness testimony. In fact, this subfield is so rich with knowledge directly relevant to law that Goodman, Emery, and Haugeard (1998) noted, "There are few other areas of law where the courts rely as heavily on social science data as they do for decisions about children's welfare" (p. 775). Not only do courts make use of the fruits of child/law research, but so do basic researchers, attorneys, policy makers, legislators, and mental health, social service, and police professionals. In keeping with the theme of this volume, we identify factors that led to the field's most notable past accomplishments and outline future challenges that must be met for the field to continue producing scientifically sound research that will have significant impact on law, policy, and practice relating to children.

OUTSTANDING PAST ACCOMPLISHMENTS: WHAT CAN THEY TEACH US?

To understand what is needed to ensure future success for our field, it is first helpful to identify outstanding past achievements that illustrate how influential research is accomplished and how far-reaching its contributions can be. What constitutes an outstanding achievement in the field of Children, Psychology, and Law? Our answer: a program of research that advances psychological theory and results in concrete, beneficial changes in policies, laws, and/or practices relevant to children and child welfare. A clear route for accomplishing these results is for researchers to (a) identify a key assumption of the legal system (often a myth) that can be tested through psychological research, (b) test the assumption by using solid psychological theory and ecologically valid methods, and (c) disseminate the results to both scholars and policy and law makers. A particularly noteworthy example that can teach us much about the nature of conducting meaningful work is Thomas Grisso's program of research on adolescents' comprehension of Miranda warnings. Grisso's research specifically meets all of the requirements we have outlined, and, as a result, has had lasting impact.

Grisso (1980, 1981) examined the critical issue of children's understanding of their rights and their ability to comprehend the warnings offered by law enforcement when being taken into custody. Grisso's research design employed multiple measures to assess comprehension from appropriate samples of adolescent and adult offenders matched with non-offending participants. He found that juveniles younger than age 15 do not understand the meaning and importance of their Miranda rights as well as adults. Also, contrary to popular belief, level of comprehension is not strongly related to juveniles' prior experience with the legal system. Grisso concluded that young adolescents' comprehension of their rights is so poor that they should not be able to waive them without legal counsel. Although older adolescents of average intelligence evince cognitive comprehension of rights comparable to adults, Grisso cautioned that even they should not be treated as adults in all cases because comprehension does not ensure the ability to exercise rights.

Grisso's work is significant to developmental psychology because it is informative about adolescents' cognitive competence and decision-making abilities. It also has direct applications. Importantly, Grisso made significant efforts to inform policy and lawmakers about these applications. Specifically, to assess the impact social science literature was having on the court system, Grisso and Melton (1987) surveyed court personnel to determine what they read and how often. Similar to Saunders and Reppucci's (1977) findings with juvenile correctional facility superintendents, Grisso and Melton found that court personnel rarely read the scholarly journals in which psychologists typically publish their work. The study indicated that to reach justice system personnel, researchers need to target publications those professionals actually read (e.g., Juvenile and Family Court Journal, Crime and Delinquency) and need to use other means of dissemination (e.g., presentations and workshops at regional and national conferences, as we discuss later). Throughout his career, Grisso has done this. As a consequence, his targeted dissemination of the Miranda warnings research has had a direct impact in the field: By 1999, more than 25 appellate courts nationally had cited his findings (Grisso, personal communication, 2000).

Thus, Grisso's work is a model for research that contributes to psychology, policy, and law. Fortunately, there are several other examples in the field of Children, Psychology and Law, and we will use many of these examples throughout our chapter to illustrate various points. Next, we turn to several major substantive areas of child/law research, briefly reviewing past accomplishments and focusing on legal assumptions and myths that have received some empirical attention, but typically deserve more. We begin by introducing an overarching theme for much of this work: children's competencies.

CENTRAL AREAS OF RESEARCH IN THE FIELD OF CHILDREN, PSYCHOLOGY, AND LAW

As mentioned above, influential child/law research often identifies a legal assumption that can be addressed by using psychological theory
and methodology. Legal assumptions often concern children's competence (their capacities or abilities) in various domains. For this reason, competence is a psychological construct that, in some way, is involved in much research in the field of Children, Psychology and Law (e.g., Melton, 1984; Melton, Koocher, & Saks, 1983; Woolard, Reppucci, & Redding, 1996). For example, psychologists study children's capacities to provide informed consent in medical decision making situations, to provide custodial preference in contested custody cases, to understand and participate in their own legal proceedings, and to provide eyewitness testimony. Societal perceptions of children's competencies in various domains frequently drive policy; for example, the public's misguided overgeneralizations of juvenile offenders as "superpredators," a phrase coined by Dilulio (1995), has probably hastened the stiffening of penalties for youths charged with crimes as well as policies promoting transfers of juveniles to adult courts (Zimring, 1998). Children's actual competencies, however, may differ in important ways from perceived competencies, discrepancies that can be illuminated by psychological research. For example, if children are incompetent to understand the nature of their crimes or their rights in a courtroom context, then it would be misguided to remove them from juvenile court and subject them to adult procedures and penalties. Determining the nature of both actual and perceived competencies is the first step in assuring that children are guaranteed all rights commensurate with their competencies.

Another critical element in any discussion involving children and the law is acknowledging the precarious task of balancing the rights of children, families, and the state. When conducting research in this field, it is necessary to examine legal precedent and practice to appreciate the interplay of rights provided to each entity. Traditionally, the law entrusts parents with the right to make any and all decisions on their children's behalf, and parents must consent to any actions involving their child. Considered a fundamental right for centuries, parental autonomy to make decisions for their children was reinforced by several Supreme Court decisions early in the twentieth century (e.g., Meyer v. Nebraska, 1923; Pierce v. Society of Sisters, 1925). Legal support of parental autonomy is based on two assumptions: (a) that children under the age of 18 are incompetent to make certain decisions for themselves, and (b) that parents will make decisions in the best interest of their children. However, in some cases, such as child abuse and neglect, the state exercises its parens patriae authority, whereby the state is responsible for protecting members of society who cannot protect themselves, particularly children. In other instances, the rights of children may conflict with those of their parents, because, as initially pointed out by Justice Douglas's dissent in Wisconsin v.

Yoder (1972), parents and children may not always have the same interests. In situations where parental autonomy is challenged, conflicts between the child, family, and state naturally arise. The notion of parental autonomy has been challenged in a number of situations: (a) reproductive health, including provision of contraception, treatment of sexually transmitted diseases, and abortion; (b) termination or refusal of medical treatment; (c) mental health commitment; (d) custody proceedings; and (e) abuse and neglect situations, including discipline/corporal punishment practices. In many of these situations, the determination of competence may be of utmost importance.

Regarding the link between children's competence and their participation in decision making, it is worth noting that Melton (1999) recently suggested a shift from understanding children's competence to restructuring intergenerational systems to accommodate decision making. Melton argues that enabling children's graduated decision making will give them a sense of dignity and foster maturity thereby providing a foundation for adolescents to self-regulate their own risky behavior. Although we agree that increasing children's participation in decisions that concern their lives should be encouraged as a matter of values, little empirical evidence exists to support this position per se. Rather than abandoning the focus on maturity and competence, as Melton seems to suggest, we advocate research on competence and its assessment and on participation in decision making (e.g., Caffman, Woolard, & Reppucci, 1999).

We now review several key areas of research in more detail (e.g., juvenile justice, medical decision making, divorce and custody, child maltreatment, children's eyewitness testimony), illustrating how child/law research has addressed legal assumptions in each area, and in turn, brought about improvements in law, policy, and practice. Throughout, we highlight current knowledge and future challenges psychologists face in each domain. It should be noted that this review, although covering much material, is neither comprehensive nor exhaustive, as each of the topics could have been chapters themselves.

**Juvenile Justice**

Before 1899, any youth older than 7 years who committed a criminal act was processed through the adult court system. At the turn of the century, many reformers made the assumption that juveniles lacked maturity and judgment, and therefore, juveniles under age 14 should be treated with a more tempered approach than the punitive focus of the criminal justice system. This reform movement led to the creation of the first
juvenile court in Cook County, Illinois (Whitebread & Heilman, 1988). The juvenile court’s philosophical underpinning was based on a rehabilitative ideal whereby children who came before the court would be provided individualized justice and treatment that would, in turn, result in community safety. Because the juvenile court was focused on treatment, reformers assumed that children would not need procedural safeguards, such as the due process rights afforded to adults processed through the criminal justice system. By the 1920’s, most states had a juvenile court system that had original jurisdiction over youth under age 18, and the notion of developmental immaturity had been incorporated as a rationale for the separate juvenile justice system (Reppucci, 1999).

By the 1960s, however, it was widely believed that the juvenile court was not working. In the opinion of the U.S. Supreme Court, “the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children” (Kent v. United States, 1966). A historic Supreme Court case (In re Gault, 1967) dramatically transformed the juvenile court from an informal treatment arena to a due process, just desserts model. Consequently, along with societal perceptions of increased rates of juvenile violence, the due process revolution has led the juvenile court to become more punitive, thereby more closely approximating the adult criminal justice system. (For a history of the evolution of the juvenile court see Feld, 1998; 1999, and for an examination of relevant due process cases and their impact see Manfredi, 1998.) Furthermore, the recent trend toward legislating lower and lower ages of presumed competence and maturity questions the role of the juvenile court (e.g., most states have lowered the age at which juveniles can be transferred to the adult court system to 14 or younger, and some such as Michigan have no lower limit).

As a result of these changes, a debate is underway regarding whether the juvenile court should be maintained and rejuvenated or abolished all together (Feld, 1999; Scott & Grisso, 1997; Slobogin, Fondacaro, & Woolard, 1999). Proponents for abolition argue that the granting of some due process rights to juveniles, the upsurge in violent crimes, and the lack of demonstrated effectiveness of the juvenile court all indicate the need to establish one justice system overseeing both adult and juvenile offenders. Within this unified system, Feld (1998; 1999) argues that an automatic consideration of offender age as a mitigating factor will safeguard children from unduly strict punishment and streamline the court process. In contrast, Scott and Grisso (1997) argue that the fact that children and adults are developmentally different necessitates a separate juvenile court. Without such a court, they fear that the goal of rehabilitation will be entirely abandoned, something that will benefit neither juveniles nor society in general.

This important debate highlights the urgent need to determine children and adolescents’ competence to understand legal concepts and to make decisions in legal contexts (Scott, Reppucci, & Woolard, 1995; Reppucci, 1999). Although psychological research has yielded a great deal of pertinent information (e.g., Grisso, 1980, 1981), psychologists in this field face the challenge of providing answers to a number of pressing questions that arise when juveniles enter our legal system. For example, more and more youth are being transferred to adult criminal court (Redding, 1997), an action that is predicated upon courts’ assumption that adolescents can understand and participate in the law as well as adults can (Grisso & Schwartz, 2000). This assumption, however, is countered by the results of psychological research: In fact, juveniles younger than age 13 appear to lack the capacity to understand the law or their legal rights as adults do (Scott et al., 1995; Steinberg & Cauffman, 1996), and youth between the ages of 13 and 16 may need individualized assessment to ascertain their capacities (Steinberg & Cauffman, 1999). Much more research must be completed to understand the extent to which children understand their rights and how the court system might accommodate their levels of comprehension. In addition, more information is needed regarding children’s adjudicative competence, including their ability to assist their own attorney when necessary (Caufman et al., 1999). Also, within the context of a blame- and punishment-focused justice system, the construct of culpability becomes a pressing research issue (Caufman et al., 1999; Fried & Reppucci, 2001; Grisso, 1996; Woolard, Fried, & Reppucci, 2001).

The goal of this research is both practical and theoretical. The practicality is directly focused on the nature of competence as a determinate of legal and public policy. To what degree should a youth be considered as responsible and thus as blameworthy as an adult for his or her illegal acts? Theoretically, the research has the potential to explicate the meaning of maturity and to seek understanding regarding the question “are children and adults different?” (Reppucci, 1999). Although the notion of a “bright line” separation based on age, as has been the case in law for decades, is clearly not applicable to everyone, developing probability ranges for youth’s responsibility may be useful. For example, being able to state that the vast majority of youth below the age of 13 are not as responsible for their actions as adults whereas the vast majority above age 16 are as responsible, provides guidelines for applying the law (Steinberg & Cauffman, 1999), knowing full well that sometimes the younger child is indeed competent and the older person is not. This of course leaves children in the middle age group requiring individual assessment of their competencies and maturity. However, the question
remains, what should be the components of that assessment? Currently, the components of assessment are all cognitive, e.g., knowing, understanding, and appreciating the facts, and voluntarily committing the action. Recent research is beginning to make a case for expanding the definition of competence by increasing the relevant components (e.g., psychosocial judgment factors, see Scott et al., 1995). It is in this realm that the research holds promise for our increased understanding of the nature of childhood versus adulthood.

Although adolescents 15 years and older may have cognitive capacities that are comparable to adults’ (Grissso, 1980; Scott et al., 1995), psychological research has yet to determine whether adolescents at this age are as mature as adults on other psychosocial judgment factors such as temporal perspective, risk perception, responsibility, and peer influence (Scott et al., 1995; Steinberg & Cauffman, 1996). Some initial findings suggest that adolescents differ from adults on these judgment factors (Cauffman et al., 1999; Woolard et al., 2001). For example, one in-depth study of the adjudicative competence of several hundred male offenders age 15 and under, age 16 to 17, and age 18 to 35 has been completed and data are being analyzed (Woolard & Reppucci, in progress). Although preliminary results suggest no differences in cognitive measures of adjudicative competence, measures of legal judgment and psychosocial maturity do differ, e.g., younger juveniles were twice as likely to waive their rights to silence in response to a police interrogation than were adults. These results have inspired a larger follow-up study of male and female offenders aged 11 to 24 (Grissso et al., 1999).

As juvenile crime, especially violent crime, escalates over the past 20 years, the measures and means by which the public is willing to punish these offenders has escalated as well. For instance, in the 1989 Stanford decision, the U.S. Supreme Court found it constitutional to execute youth who had committed a crime at age 16. Furthermore, the public’s willingness to abandon rehabilitation as a goal is clear in the widespread support for various changes in legislation endorsing increased punishment for a wide range of crimes for very young juveniles. As an example of this trend, Crosby, Britner, Jodl, and Portwood (1995) found that nearly 60% of a sample of former jurors indicated they would be willing to sentence a juvenile as young as 10 years old to death. What data relevant to these issues can child/law researchers provide? A basic assumption behind harsher policies is that they deter juvenile crime. Yet researchers’ initial examinations of the results of “get tough” punitive strategies of transfer and longer sentences challenge that assumption. Both short- and long-term recidivism rates are higher for adolescents tried in an adult criminal court than for juveniles processed within the juvenile justice system for the same type of crime (Bishop, Frazier, Lanza-Kanduce, & Winner, 1996; Winner, Lanza-Kanduce, Bishop, & Frazier, 1997). Policy evaluations of recently implemented waiver laws and blended sentencing (where a juvenile offender is initialized committed to a youth facility and ordered to be transferred to an adult facility to complete the imposed sentence once he/she exceeds the maximum age of the juvenile center) are necessary to determine their impact. Moreover, there is some evidence that treatment alternatives are beneficial, particularly with serious offenders, further indicating that “get tough” policies may not be the most effective approach. For example, multisystemic therapy, an alternative to out-of-home placement that targets serious violent offenders, is an intensive intervention that accounts for the multiple contexts contributing to the problems young offenders experience. Treatment directed toward the offender, his or her family, friends, school, and the neighborhood environment has reduced recidivism rates (actual arrests and self-report) among serious juvenile offenders (Henggeler, Schoenwald, Borduin, Rowland, & Cunningham, 1998).

There is a critical need to understand individual differences in background, offense, recidivism, and desistance. For example, some research indicates that the majority of male adolescents in their mid-teens engage in delinquent activity, and that those who do not have an early history of aggression, bullying, and other acting out behaviors are simply exercising their new found autonomy and will desist from their delinquent behaviors in a short period of time (Moffitt, 1993; Seidman, 1984). If this is the case, it may be reasonable to allow for a certain amount of jurisdictional leeway for making mistakes, similar to the “learner’s permit” idea suggested by Zimring (1982, 1998). This is not to suggest a total lack of accountability for these youth, but rather that delinquent behavior by adolescent boys occurs so frequently that it may be described as normative. Empirical research indicates that the vast majority of adolescents commit some illegal acts (Elliot, 1994) and Moffitt (1993) has claimed that “it is statistically aberrant to refrain from crime during adolescence” (pp. 685–686). A challenge for psychology is to determine who are the desisters and who are the “life-persistent” adolescents who will probably become career criminals—the 6–16% of youth who are responsible for the bulk of all serious crimes committed by youth (Moffitt, 1993). Although this determination has received an increasing amount of attention in the past decade, relatively little is known about when and why adolescents cease delinquent behavior (Scott & Grissso, 1997).

Finally, gender differences deserve attention. Although official delinquency rates clearly indicate that adolescent males are responsible for the majority of offenses against persons and property, in recent years,
adolescent female arrests for these crimes have increased dramatically and more rapidly than for males (Poe-Yamagata & Butts, 1996). For example, from 1985 to 1994, violent crime rates for males increased 67%, but for females 125% (Synder & Sickmund, 1995). Hoyt and Scherer (1998) reviewed such statistics and the current state of knowledge regarding female delinquency. They concluded that the standard practice of treating female delinquency as simply a subset or minor variation of male delinquency is unwarranted, and has led female delinquents “to encounter misguided justice and intervention” (p. 82). The empirical knowledge about female delinquency is sparse, and given the recent shifts in crime rates, this body of research should be expanded. To do this, Hoyt and Scherer argue that both same-sex and cross-gender studies of female delinquency are needed because substantial social and developmental gender differences change the etiology of delinquency. We argue that a major challenge for researchers is to develop comprehensive studies of female delinquency to enhance our understanding of the etiology of both female and male delinquents that can be used to create “efficient, impartial, and effective delinquency prevention and juvenile justice intervention efforts” (Hoyt & Scherer, p. 103).

Future Challenges

Although researchers are starting to address the competencies of youth within the justice system, knowledge regarding the causes and precursors of juvenile delinquency and violence, especially among females, is greatly needed. A related topic receiving considerable attention is the prevalence of mental health disorders among the youth in the juvenile justice system. The challenge of assisting with prevention is perhaps the most exciting faced by psychologists. The prevention of delinquency before it emerges is arguably the best solution to the constellation of troubling issues surrounding juveniles’ legal involvement. With the vast increase in knowledge regarding risk and protective factors (e.g., Gorman-Smith, Tolan, & Henry, 1999; Loeber & Farrington, 1998), prevention may be less “pie in the sky” than previously believed. Although mixed, preliminary findings from studies examining the impact of preventive efforts suggest that such efforts can be more effective than previously acknowledged (e.g., Fried & Reppucci, in press; Mulvey, Arthur, & Reppucci, 1993; Reppucci, Woolard, & Fried, 1999; Tate, Reppucci, & Mulvey, 1995; Tolan & McKay, 1996). Continued efforts at thorough program evaluation are likely to show that carefully designed interventions can have a positive impact on deterring juvenile violence. Such data would underscore the need to fund prevention initiatives.

Medical Decision Making

Psychological researchers have contributed to understanding children’s competence in medical decision making contexts, where questions of relevance to psychology and law abound. Children are generally not afforded the right to make medical decisions for themselves because they are considered incompetent to do so. As such, parents are trusted to make medical decisions for their children, whether deciding to administer or withhold treatment, because parents are expected to act in their child’s best interest. Most states, however, authorize some minors to make their own medical decisions because of their special status, such as those who are married, or in the armed forces, or when the situation is deemed to be a public health interest as in the case of treatment for sexually transmitted diseases (English, 1999). Unfortunately, very little research has been conducted to determine children’s and adolescents’ competence to make these kinds of choices. Much more research is needed to begin to answer questions such as: At what age is a child able to participate in making medical decisions? Should teens be able to refuse medical treatment if terminally ill?

In one of the first empirical studies of legal assumptions about children’s ability to make medical treatment decisions, Weithorn and Campbell (1982) compared young children and adolescents to adults in terms of their ability to choose between various medical decisions and the reasoning behind their choice. Results suggested few differences between 14-year-olds and adults in either reasoning or decisions. For younger children (age 9), the decisions were similar to adults, even though the reasoning was often not comparable. Subsequent research has tended to replicate Weithorn and Campbell’s initial findings. A challenge faced by researchers in this domain is to remedy the fact that most of this research is based on middle-class, white populations in simulated laboratory situations rather than on samples of ethnically and socio-economically diverse youth in “real” situations. Interestingly, in one of the few studies using an appropriate sample of 13- to 21-year-old women facing a real life decision (they were in a clinic receiving results from a pregnancy test; Ambuel & Rappaport, 1992), all girls between 13 and 17 years old were found to be as competent as 18- to 21-year-old women regarding decision making about pregnancy, with one exception: 13- to 15-year-old girls who never considered abortion as an option were found to be significantly less legally competent than adult women and other adolescents who had considered abortion. (To assess competence, the researchers used three indices of cognitive competence and the perceived ability of the girl to make a voluntary, independent decision.)
Not surprisingly, the issue of adolescents making abortion decisions has been controversial. In two court cases (Hartigan v. Zbarz, 1987; Thornburg v. American College of Obstetricians, 1986), the American Psychological Association (APA) submitted amicus curiae briefs strongly supporting an adolescent girl's competence (and right) to choose. Arguments were based on the medical decision-making literature in general. This stance provoked a heated debate about the role of values in the interpretation of scientific evidence (see Gardner, Scherer, & Tester, 1989; Melton, 1990; Scherer & Gardner, 1990). With the exception of the Ambuel and Rappaport (1992) investigation, little new research has been conducted on this topic, and ironically, the strong position taken by the APA (Interdivisional Committee on Adolescent Abortion, 1987) has precluded APA from taking an official stance regarding the possible lack of maturity of similarly aged juveniles regarding culpability for crimes because it would appear to be providing contradictory conclusions.

As we have noted, children are usually not able to make their own decisions about seeking treatment, except in specially delineated areas such as treatment for sexually transmitted diseases, which is viewed as being in the public good. Minors are generally not permitted to refuse treatment either, although this has been allowed in some instances (e.g., a 1994 Florida case resulted in a 15-year-old being allowed to refuse medication needed to sustain his life after two unsuccessful kidney transplants; Penkower, 1996). Parents are given the authority to seek and refuse needed medical treatment for their children because they are viewed as acting in the best interest of their children. A clear example of this reasoning is evident in Parham v. J. R. (1979), in which the Court upheld a parent's right, in conjunction with a doctor's concurrence, to admit his or her child to a mental hospital without a hearing, even against the child's wishes. Sometimes, even in life-threatening situations, medical treatment is refused by parents for religious reasons (Bottoms, Shaver, Goodman, & Qin, 1995). Although other countries such as England and Canada legally mandate medical care for children, all but a few states (e.g., South Dakota, Hawaii, Massachusetts, and Maryland) grant some form of religious exemption to child protection laws, allowing parents to escape legal consequences if failure to provide modern medical treatment results in harm to a child (Bullis, 1991). In such situations, balancing the rights between the child, family, and the state becomes quite complicated. In some cases where parents refuse obviously necessary treatment for their child, the state will use its parens patriae authority to temporarily terminate the parents' custody long enough to perform the necessary medical procedure. Parental custody is typically reinstated after the child receives treatment. Of course, this is only possible when the case reaches the attention of authorities.

**Future Challenges**

What avenues should psychological researchers take in their future efforts to understand children's competencies in medical decision making contexts? As mentioned above, research using more appropriate samples in more realistic settings is needed. Further, we note that most extant research has primarily focused on and continues to be embedded within a cognitive framework. Thus, as it has been argued in reference to juvenile justice issues (Scott et al., 1995; Steinberg & Cauffman, 1996), it is imperative that future evaluations of adolescents' capacities in medical contexts include an examination of judgment factors such as peer and parental influence and temporal perspective. These factors are especially important given findings that parental influence may significantly impact an adolescent's treatment decision (Scherer, 1991; Scherer & Reppucci, 1988).

**Divorce, Custody, and Technology-Assisted Family Planning**

Conflicts between the rights of children, family, and the state are perhaps never more prominent than when children are involved in adjudication proceedings surrounding divorce, custody, and technology-assisted family planning. Psychological research has much to offer on a variety of issues that arise in these situations.

**Divorce**

Much research has examined a question that has concerned our society for many years: What are the consequences of divorce on children? Our society's general assumption has been that the consequences are necessarily negative. Although psychological research has begun to delineate some of the effects of divorce, the extent to which and the ways in which divorce influences a child's welfare are still unclear. Research is needed to unravel the interaction of risk and protective factors that will likely provide the most useful model for determining the well-being of children from divorced and remarried families (Hetherington, Bridges, & Insabella, 1998). In general, researchers agree that children, adolescents, and adults from divorced and remarried families are at a higher risk for adjustment problems than children from stable marriages (Hetherington et al., 1998). Nevertheless, growing evidence suggests that many of the problems children from divorced families experience exist before the divorce occurred (Elliott & Richards, 1991; Hetherington et al., 1998). Similarly, researchers have found that the processes predicting marital
dissolution sometimes lead children to develop long-lasting, maladaptive behavior patterns (Katz & Gottman, 1995). In a meta-analysis of 92 studies of divorce, children from divorced families exhibited more behavior problems than children from non-divorced families; however, the effect size was moderate in general and even smaller for research with high methodological quality (Amato & Keith, 1991). Emery (1999b) notes that although divorce can increase the risk for psychological problems, the great majority of children do not require psychological treatment. Moreover, Kofkin and Reppucci (1991) found that parental divorce was the only major life crisis that people initially experienced as negative, but eventually considered it to be positive.

Another general assumption has been that unhappy parents should stay together for the sake of their children. In fact, psychological research finds that divorce is generally not in children’s best interest. Even so, some studies reveal that divorce is not the worst outcome for children whose parents are involved in a highly acrimonious relationship (Emery, 1982; Maccoby, 1999). Other evidence suggests that for parents in a highly conflictual marriage relationship, a divorce may sometimes increase the hostility between the parents, further placing the child at risk (Hetherington, 1999). Goodman, Emery et al. (1998) contend that instead of focusing primarily on children’s individual mental health status (as most existing research does), greater emphasis should be directed toward measuring well being more globally, by considering such factors as economic resources, which usually decline significantly for children after divorce (for a comprehensive review of issues related to divorce, foster care, and adoption, see Goodman, Emery et al., 1998). Psychological findings on the impact of risk and protective factors on child outcome over time could be useful in determining the extent to which marriage and divorce should be regulated by the state. For example, children’s well being might be enhanced if the state enforced pre-commitment strategies (Scott, 1990) or required parent education classes for divorcing parents (Goodman, Emery et al., 1998).

Custody Determinations

Society and the law have made a variety of assumptions in the domain of child custody determinations, assumptions that social science could address. Two central assumptions are that mothers are the best custodial parents, and that children, especially preadolescents, are not competent to participate in custody decision making. Are these assumptions correct? As fathers have become more involved with the daily tasks of child rearing and women have increased their participation in the workforce, determining custody arrangements has become a less automatic process than it was a few decades ago. Child custody decisions have generally been based on “the best interest of the child,” a standard that has been criticized as indeterminant and speculative (Mnookin, 1978; Reppucci, 1984; Reppucci & Crosby, 1993). Yet in the absence of clear guidelines derived from research, judges in contested custody cases have no alternative but to apply the best interest standard, which means making custody determinations based on value judgments formed from individual biases, court precedents, and various familial factors. Considerations are often given to the stability of the home environment, including the economic stability of each parent, and in some cases, more intimate details about the parents (e.g., sexual orientation, see below).

Some strongly advocate the awarding of custody solely to one parent as the least detrimental alternative for the child (Goldstein, Freund, & Solnit, 1973). Others, however, conclude that joint legal custody is preferable, and as a result, it is becoming the standard arrangement in most states (Goodman, Emery et al., 1998). Several strategies have been proposed for guiding judicial decisions: (a) the primary caretaker standard, which requires an accurate determination of who has served as the child’s primary caretaker prior to the contested custody (Maccoby, 1999); (b) the approximation rule, whereby the decision is based on the child care arrangements prior to divorce or separation (Emery, 1999a; Scott, 1992); and (c) the “friendly parent” rule, whereby preference is given to the more cooperative parent (Folberg, 1991). Unfortunately, there is little if any empirical evidence to inform courts of the relative merits of each approach. This provides a future challenge for psychological researchers to meet.

Several reforms have been introduced to improve custody determination processes and outcomes. For example, in an effort to make contested custody cases less antagonistic, some jurisdictions have begun to use divorce mediation as an alternative to the traditionally adversarial litigation process. Although few studies have empirically assessed the presumed benefits of mediation, advocates contend that the experience of having directly participated in the decision-making process increases the parties’ satisfaction with the outcome, increases the likelihood that the resulting arrangement will be upheld, and in turn, avoids future litigation (Dillon & Emery, 1996; Emery, 1994). Another reform movement challenges the assumption that children are not competent to participate in custody decisions. Specifically, reformers contend that allowing children to participate in custody decisions that directly affect their own welfare will lessen the presumed negative experience of a divorce and custody battle (e.g., Garrison, 1991; Melton, 1999). Even if future research supports
this assumption, we believe it is prudent to remain sensitive to potential harm that could result from asking a child to articulate a preference for one parent over the other, especially if he or she does not have a clear preference and feels caught in the middle of parental conflict (Goodman, Emery et al., 1998). Further, the assumption that children should participate in custody decision making presumes that children are competent to participate, an assumption that may be valid for most adolescents, but which may be much less so for younger children. Thus, a psychological assessment of a pre-teen’s maturity and competence to participate would seem in order. Several studies of children’s involvement in custody decisions indicate that most judges assess children’s wishes, and that, in general, children’s degree of involvement in decisions is linearly related to their age, with most adolescents being involved in contested custody cases (e.g., Crosby-Currie, 1996; Garrison, 1991; Scott, Reppucci, & Aber, 1988). Research has not yet examined the consequences of expressing a preference on children’s well-being.

As in the domains of juvenile justice and child abuse, highly publicized cases sway public opinion about custody issues. Several recent cases highlight interesting and controversial complexities involved in some custody situations, including political agendas, grandparents’ visitation rights, and the rights of lesbian parents. For example, few events in 2000 received more media attention than the contested custody of Elian Gonzalez, a 6-year-old Cuban boy rescued off the coast of Florida after his mother drowned while attempting to reach asylum in the United States. Legally, this case should have been straightforward; that is, the boy should have been returned to his father’s custody in Cuba. The mother’s vocal relatives in Miami, however, claimed custody by arguing that it would not be in the boy’s best interests to be returned to a communist country. Because there was no evidence that the father was an unfit parent, psychological theory and research would weigh in on the side of the father being the parental choice. The father was, in fact, ultimately awarded custody, but only after protracted legal appeals in the U.S. court system fueled by political nationalism and emotion.

Grandparent rights have also received media attention. In the past 25 years, every state (but not the District of Columbia) has initiated statutes allowing grandparents and other adults to petition the court to secure legal child visitation rights. Recently, the Supreme Court agreed to examine the constitutionality of grandparent visitation statutes being implemented in the state of Washington (Troxel v. Granville, 2000). Although most observers agree that loving extended families can play a positive role in a child’s life, no psychological research has examined the impact of situations involving continuing conflict between parents and grandparents. Analogous research on quarreling parents strongly suggests that contested custody and visitation disagreements can have a negative influence on the children involved. In June 2000, the Supreme Court ruled that the longstanding legal precedent that parents have a right to raise their children as they see fit (e.g., Meyer v. Nebraska, 1923; Pierce v. Society of Sisters, 1925), including the right to refuse grandparent visitation remains operational.

Another area of controversy in child custody focuses on gay and lesbian parents’ rights to raise their own children. In the case of Bottoms v. Bottoms (1995), the mother of a lesbian woman petitioned the court to be awarded custody on the grounds that the daughter’s lifestyle (i.e., her sexual orientation) rendered her an unfit parent. The court awarded custody to the grandmother and the Supreme Court of Virginia upheld the ruling. This ruling stands in direct contrast to research that discredits assumptions that lesbian and gay parents are unfit (Patterson, 1992; 1995; Patterson, Fulcher, & Wainright, in press). In short, Patterson and Redding (1996) assert that issues pertaining to the parents’ sexual orientation should not be considered when making determinations of child custody, visitation, foster care, or adoption “unless and until the weight of the evidence can be shown to have shifted” (p. 29). This provides an excellent example of the legal system’s rejection of social science research that is relevant to child law and policy.

The Complications of New Reproductive Technologies

Finally, various advances in reproductive technologies have initiated a new domain in which children and law are brought together. Laws delineating parental rights have lagged behind the challenges posed by new reproductive technologies. Although technological breakthroughs are considered victories in the field of medicine, the advances in the use of artificial insemination and other assisted reproductive technologies (ART) have created havoc in the legal arena, and there is little research or legal precedent to inform or guide the law. Examples of questions created by these new techniques range from who has the legal right to the preserved sperm or eggs of deceased persons, to whether parents who used ART should tell their children of their origins and whether the children should be provided with records indicating the identity of their biological/genetic parents. These and other questions challenge some of the basic assumptions regarding parental rights and responsibilities for their children, while complicating the matters further by challenging social custom with biological breakthroughs.

Some of the dilemmas in determining legal parenthood can be illustrated by one of the most controversial reproductive techniques, surrogate
motherhood. Although a few states such as Michigan developed laws more than a decade ago as a result of the much publicized case of Mary Beth Whitehead, a surrogate mother who decided that she wished to keep the child (note: after much time in the courts, the contractual parents maintained custody of the child Whitehead bore), most states have no laws in place regarding surrogacy (TASC, 1997). Accordingly, the lack of appropriate legislation regarding surrogacy and other assisted reproduction arrangements makes it extremely difficult for courts to delineate parental rights and responsibilities in these situations. For example, in the widely publicized case of Buzzanca v. Buzzanca (1998), ART made it possible for five different people to be considered a parent of a child: two parents contracting for the baby, a sperm donor, an egg donor, and the surrogate mother. The legal conflict commenced not as a result of a custody dispute between the surrogate and the intended parents, but when the intended mother, Luanne Buzzanca, filed for child support from the intended father, John Buzzanca, who had recently filed for divorce. Although the initial ruling in this case stated that the child had no legal parents, the California appellate court utilized an intent-based approach to declare Mr. and Mrs. Buzzanca the child's legal parents. The court reasoned that but for the actions of the Buzzancas to arrange for the surrogate mother to be impregnated with the donor embryo, the child would not have been created (Vorzimer & O'Hara, 1998). This ruling is significant in that it sets precedence for the enforceability of surrogacy contracts and was determined by the intent-based approach pioneered by the California court (Johnson v. Calvert, 1993).

To date, psychological research has offered little in the way of attempting to answer the questions posed by parenting facilitated by ART. Only a few studies have explored child well being and family relations in families where births resulted from artificial insemination (Golombok, Bhanji, Rutherford, & Winston, 1990; Golombok, Cook, Bish, & Murray, 1995), and there is very little research investigating the impact on families created by other assisted reproductive techniques. Even so, no evidence exists to suggest that new reproductive technologies pose a serious threat to child outcome or family relations.

Future Challenges

In summary, psychological research is of direct relevance to law and policy regarding a child's place in changing and novel family circumstances. Researchers in this area face many future challenges. More research is clearly needed to understand how policy can ensure that children are accommodated in the best manner possible when their parents

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divorce. Research is also sorely needed on the factors that contribute to custody determinations that are truly in the best interests of children. That research needs to be responsive to myriad complex factors such as parental sexual orientation, child age, family relationships, and socio-economic concerns. Finally, as scientific technology advances, producing increasingly complicated parenting situations, so too must psychological knowledge grow so that laws and policies can be informed and reflect the best interests of children and their families.

Child Maltreatment

Balancing parental and child rights against each other and against the state's responsibility to protect children who are being maltreated is an exceptionally precarious undertaking (Portwood & Reppucci, 1997). Laws and policies related to child maltreatment and children's subsequent involvement in the legal system are often based on psychological assumptions that may have little empirical foundation. In this section, we consider policy and research related to efforts to define child maltreatment, prevent child abuse, and accommodate children's eyewitness testimony.

Defining Abuse

According to national social service statistics, 13 of every 1,000 children in the U.S. were victims of some form of child maltreatment in 1998 (U.S. Department of Health and Human Services, 2000). As reported by Goodman, Emery et al. (1998), about half of child abuse claims received by social service agencies involve allegations of neglect, and the majority of the remainder involves reports of physical abuse (24%) or sexual abuse (13%). Estimates from retrospective victim surveys suggest that, before reaching adulthood, at least 25% of girls and 10% of boys will have an experience that many would define as sexual abuse (e.g., Elliot & Briere, 1995; Finkelhor, Hotaling, Lewis, & Smith, 1990), and more will experience other forms of child maltreatment including physical abuse and neglect (Goodman, Emery et al., 1998).

In light of these statistics, few would disagree that child maltreatment is a societal problem of great import, or that laws should protect children from maltreatment. Yet there is disagreement over the basic issue of what should be defined as child maltreatment (Reppucci & Fried, in press). Prevalence estimates such as those above depend on the definition of child maltreatment used by the information source. These definitions differ from researcher to researcher, as well as from discipline to discipline—in particular, from psychology to law. For example, Atteberry-Bennett (1987,
as reported in Haugaard & Reppucci, 1988) found significant differences between legal and mental health professionals in what they considered instances of sexual abuse, with mental health professionals having a much broader definition. Can psychological research inform the law as it struggles to define child abuse in a meaningful way? Consider neglect: As mentioned above, the failure of parents to provide needed medical care to children is often recognized by the law as a punishable instance of neglect, but not if the medical care is withheld for religious reasons (Bottoms et al., 1995; Bullis, 1991). Is harm to children any different when medical neglect is brought about by indifferent or indigent parents as compared to parents driven by religious beliefs? Consider physical abuse: Many laws and social service policies specify that certain physical actions taken toward a child constitute physical abuse (e.g., a teacher slapping or hitting a child), yet those same actions may not be defined as abuse when they are applied by parents in the name of discipline. Is the psychological or physical impact of being hit mediated by the identity or ideological motivations of the perpetrator? In fact, research suggests that corporal punishment has many negative consequences (Straus, 1994, 1996; Straus & Stewart, 1999).

Consideration of definitional issues surrounding child sexual abuse provides several examples of assumptions made by laws that could be tested through research. For example, laws in most states hold that sexual abuse is constituted when persons younger than a certain age have sexual contact with adults. There are, of course, constraining elements that vary from jurisdiction to jurisdiction, such as the nature of the actions and the age of the adult, but age of the child is always a key defining element. This age differs across states; for example, in California, the age defining victims of sexual abuse is 14 (Goodman, Emery et al., 1998). In Illinois, one can be a child victim through the age of 16 (or 17 if the adult perpetrator holds a position of significant trust or authority relative to the victim). These laws are based on bright line developmental assumptions. One such assumption is that precisely at a certain age, adolescents gain competence in matters relevant to giving consent to sexual activity. Another underlying assumption is that all such sexual contact is harmful to children. Illinois’ additional assumption appears to be that the crime is greater, perhaps more harmful and/or exploitative, when a perpetrator holds a position of power relative to the victim.

Are such assumptions correct? As we have illustrated already, psychological research has yet to understand fully children’s competencies in a variety of domains, and that is certainly true in the domain of children’s understanding of and ability to consent to sexual activity. Future psychological knowledge of this sort might be useful to courts in their task of defining the legal boundaries of sexual behavior (Oberman, 1994). Further, psychological research has already produced a great deal of information about the short- and long-term effects of various forms of adult/child sexual contact (for reviews, see Berliner & Elliott, 1996; Kendall-Tackett, Williams, & Finkelhor, 1993). Such findings may not, however, directly inform legal definitions of child sexual abuse, for at least two reasons. First, there is considerable variability in the way children respond to sexual abuse, with some children being remarkably resilient, and others severely harmed (Cicchetti & Rogosch, 1997; Kendall-Tackett et al., 1993). Psychology cannot yet offer enough specificity about the factors that determine various reactions to be of much practical use to law or policy makers. Second, in our society, child abuse is such an emotional topic that, as noted by Ondersma, Chaffin, Berliner, Cordon, Goodman, and Barnett (1999), “child maltreatment in all forms... is difficult to define, and may best be determined sociologically through consensus of a given society.” In a 1998 Psychological Bulletin article, Rind, Tromovitch, and Bauserman meta-analytically examined studies of the effects of child sexual abuse and questioned the harmfulness of some forms of adult/child sexual contact. They even suggested that lawmakers should heed their conclusions. The ensuing controversy, which raged from within the research community (where experts debated the merits of the authors’ methodology and interpretation) to U.S. Senators’ offices and Dr. Laura’s nationally syndicated radio talk show, suggests that society may not accept psychological research on the effects of adult/child sexual contact as relevant to the issue of what should and should not be defined by law as sexual abuse—at least research purporting to show non-negative effects of adult/child sexual contact. Ultimately, then, legal definitions may be based less on empirical demonstrations of harm than on societal norms and mores that view sexual contact between a child and an adult as morally reprehensible and exploitative under any condition (Ondersma et al., 1999).

**Preventing Child Sexual Maltreatment**

Laws are designed not only to identify abuse and punish abusers, but also to prevent future child abuse. Psychological research is relevant to the assumptions underlying these laws, and in turn, relevant when considering the effectiveness of these laws. To start, basic laws criminalizing child abuse and punishing its perpetrators are, of course, based on the assumption that incarceration will prevent future abuse by making it less likely that those incarcerated will reoffend and by deterring potential offenders. Unfortunately, research reveals high recidivism rates for adult child sexual abusers in particular, casting doubt on at least part of this
basic assumption (Winick & LaFond, 1998). As a result of particularly heinous and well publicized cases of reoffense, most notably the sexual assault and murder of 7-year-old Megan Kanka, politicians and legislators have turned to increasingly severe policies. For example, the Jacob Wetterling Crimes Against Children Act, enacted by the United States Congress in 1994, required convicted sex offenders to register with their local law enforcement agency. In 1996, Megan's Law amended the Wetterling Act to require community notification about the presence of sex offenders. Notifications now range from registries available at local police stations to signs posted in offenders’ front yards (Louisiana Criminal Code as cited in Winick, 1998). Note an implicit assumption of these laws: “stranger danger” (MacFarlane, Doueck, & Levine, 2000). That is, they assume that many children are abused by strangers and therefore, much child sexual abuse would be thwarted by notification that could allow parents to take protective measures. In fact, however, most child sexual abuse is not perpetrated by strangers; it is perpetrated by loved, trusted adults such as parents, parent's paramours, or other family members (e.g., U.S. Department of Health and Human Services, 1996). Consequently, these laws may have the unintended consequence of creating hardships for incest victims and their families. For example, in some cases it is deemed best for a family if the offending relative (e.g., father) remains with the family and receives treatment. In such cases, the offender will be subject to sex offender registration and community notification laws like any other offender (e.g., LaFond, 1998; Simon, 1998; Winick, 1998), bringing additional stigma and stress to the victim and the family. This becomes an especially problematic situation when it involves a juvenile sex offender because it obviates any possibility of normative rehabilitation for the youth. Moreover, existing data demonstrate that juvenile offenders recidivate at a much lower rate than adults (approximately 10% versus 40%, respectively), which suggests that the phenotypically similar behaviors of sex offending adults and youth may be genotypically very different (Trivits & Reppucci, 2000): a fact that should give pause to using the same intervention for both.

Of course, the main underlying assumption of registration and community notification laws is that they will curtail recidivism among convicted sex offenders. Schram and Milloy (1995) compared recidivism rates for 125 sex offenders in Washington State who were released before or after notification laws were enacted in the state. Offenders were matched in terms of number of sex offenses, victim type (child or adult), age, and race. After nearly 5 years in the community, offenders released after notification laws were enacted were statistically just as likely to be re-arrested for sex crimes (19% recidivism rate) as were offenders released before notification laws (22% recidivism rate). Notification did affect the timing of re-arrest, however: Offenders released with notification laws were re-arrested for new crimes sooner ($M = 2.5$ years) than offenders released without notification laws ($M = 5$ years). Thus, preliminary research is not supportive of the assumptions that drove these laws. Social scientists are challenged with continuing such informative studies, and with pursuing other avenues for prevention, such as developing effective treatment programs for perpetrators and designing community interventions to prevent child abuse by reaching both potential victims and potential offenders (see Wolfe, Reppucci, & Hart, 1995; for a review of child abuse prevention programs).

**Future Challenges**

Our discussion illustrates that psychology has much to offer policy and lawmakers subject to the tasks of defining child maltreatment and designing policies to prevent it. Future research must strive for direct relevance to the issues at the forefront of consideration in each domain. For example, the struggle to define child maltreatment properly continues, as evidenced by the disparity among state child sexual abuse laws: In particular, laws in various states have differing lower age limits at which adolescents can consent to sexual activity. Here is a clear opportunity for psychological research: to address the specific issue of sexual decision making competence among adolescents, and to inform the role of the findings. Psychology is also well positioned to join discussions about whether public policy or needs to address the recently recognized ills of psychological or emotional abuse. Psychology also needs to continue to test the assumptions behind laws and policies aimed at prevention. What will curtail recidivism among convicted sex offenders? Community notification? Involuntary civil commitment after time served? Or is there some other answer—perhaps to be suggested by informed researchers rather than by a fearful public and their political representatives who desperately want to prevent horrific murders like Megan Kanka's. Psychology needs to be proactive in suggesting novel and multidimensional prevention programs involving children, families, and the community.

**CHILDREN'S EYEWITNESS TESTIMONY**

The societal recognition of child maltreatment, particularly child sexual abuse, is responsible for bringing increasing numbers of children into the courtroom as testifiers (Myers, 1998), and with them, a number of interesting legal and psychological issues. Children also provide forensic
reports and eyewitness testimony in other types of cases. We now consider the basic and applied contributions of psychological research that has tested assumptions about children’s actual and perceived competencies; first, in relation to understanding children’s actual abilities to participate in forensic interviews and court proceedings as witnesses (usually victim/witnesses in child sexual abuse cases), and second, in relation to understanding the effects of courtroom accommodations for child witnesses on children’s actual and perceived competence.

**Actual Competence**

The accuracy of children’s eyewitness testimony has been of concern in psychology and in society in general for over a century. Initially, courts assumed that children were highly suggestible, inaccurate witnesses who were not competent to testify (Davis, 1998; Goodman, 1984). Laws that presumed children’s incompetence virtually excluded child witnesses from the courtroom. In fact, the earliest psychological research testing this assumption supported these perceptions of incompetence (Whipple, 1911; for reviews, see Ceci & Bruck, 1993; Goodman, 1984). After years of inattention, there was a resurgence in children’s testimony research in the early 1980s, mainly in response to the increased reporting of child abuse and after disastrous day care abuse cases highlighted children’s potential

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2Note that controversy has focused not only on children’s eyewitness reports, but also on some adults’ particularly on adults’ reports of childhood abuse based on allegedly repressed, then recovered memories. Interestingly, initial legal reactions to such a report were far less skeptical than some reactions within the field of psychology itself. Very quickly after the first celebrated cases involving repressed memory testimony, states passed laws that extended normal statutes of limitations to accommodate testimony based on repressed memories of abuse. In some states, for example, victims may seek legal redress against their abusers long after normal statutes of limitations have elapsed, as long as they had no memory of the sexual abuse until shortly before filing suit (Brown, Schefflin, & Hammond, 1998). These laws are obviously based on very specific assumptions about the nature of memory for traumatic events—assumptions that are not shared by some psychological experts (Loftus, 1993; Lindsay & Read, 1995). Data from psychological research actually suggest that very few victims who say they experienced a period during which they forgot their abuse actually mean they forgot it so completely that they could meet such legal standards (Belli, Winkelman, Read, Schwarz, & Lynn, 1998; Epstein & Bottoms, 1999), casting doubt on the need for such delayed discovery exceptions. Even so, research has not produced evidence ruling out the possibility of delayed reports. In any case, these legal reactions are reminiscent of the tendency for some state legislatures in 1980s and 1990s to pass special laws designating child abuse committed in connection with satanic rituals a more serious offense than otherwise. Psychologists’ (and the FBI's) best efforts failed to uncover evidence of the presumed epidemic of satanic ritual abuse cases which drove those laws (Bottoms, Shaver, & Goodman, 1996; Lanning, 1992).

suggestibility. At this time, assumptions of incompetence were tested again, with far more positive conclusions regarding children’s testimonial competence.

For example, research reveals that children are not as suggestible as once thought, particularly when questioned about meaningful events under optimal reporting conditions (for reviews, see Goodman & Bottoms, 1993; McGough, 1994). Some of the first modern research on children’s testimony revealed that children typically provide the most accurate information when they freely recall information in response to open-ended, non-leading questions (e.g., “What happened while you were in the house?”); however, they report very little information in response to such questions. The reality of legal investigations, however, is that more specific or focused questions (e.g., “Did you ride in Uncle Bill’s car?”) are often needed to determine what a child witnessed or whether a child experienced abuse. But, asking such questions raises the issue of suggestibility: Will children agree with an adult’s or a parent’s misleading (inaccurate) suggestion? This area of child/law research has been responsive to these applied questions, testing children’s accuracy and resistance to suggestibility under conditions directly relevant to forensic situations. For example, research finds that younger children, particularly preschoolers, are generally more suggestible than older children and adults, and that their accuracy is particularly likely to suffer when interviewed by biased, coercive, or intimidating interviewers (Davis & Bottoms, in press; Garvin, Wood, Malpass, & Shaw, 1998; Lepore & Sesco, 1994; for a review, see Ceci & Bruck, 1995); when questioned with developmentally inappropriate language including “legalese” (Carter, Bottoms, & Levine, 1996; Perry et al., 1995); when questioned repeatedly with misleading questions (Leichtman & Ceci, 1995); when told falsehoods by a trusted adult (Haugaard, Reppucci, Laird, & Naufeld, 1991; Portwood & Reppucci, 1996); when interviewed after a long delay (Goodman, Battacharjee, Skaarem, & Kenney, 2000); and when interviewed about events that were not central or meaningful or about events they did not directly experience (Pipe & Wilson, 1994; Rudy & Goodman, 1991). Note that such factors may or may not affect children’s actual memory, rather, they may affect only children’s reports. For example, like adults, children may be reluctant to report a well-remembered, embarrassing, or traumatic event or an event they are motivated to keep secret (Bottoms, Goodman, Schwartz-Kenney, & Thomas, 2000; Goodman & Schwartz-Kenney, 1992).

Because several researchers in this field heeded the call to conduct their research in ecologically valid manners, their findings have directly influenced policy. For example, the research has formed the basis for recommended guidelines for conducting optimal forensic interviews with
alleged victims (Poole & Lamb 1998; Sorenson, Bottoms, & Perona, 1997). Over the past decade, forensic investigators have been responsive to these policy recommendations, and interviewing techniques have improved, ensuring more accurate reports from children. Even so, child interview protocols are still evolving, because there are still many unanswered questions about children’s eyewitness abilities, questions that psychology should strive to answer.

Perceived Competence

As we mentioned previously, perceptions of competence may differ from actual competence. A growing body of child testimony research has focused on adults’ perceptions of children’s accuracy. This research is driven by the fact that although children’s actual accuracy may never be known in a legal context, children’s testimony must be evaluated by forensic investigators, jurors, and judges, and justice may not be served if these perceptions are biased. This research finds that adults may not be very accurate in determining children’s actual accuracy, and that their perceptions are influenced by a number of variables. These include case factors such as evidence strength and the presence of a corroborating child witness (Bottoms & Goodman, 1994); child witness factors such as age, race, child’s level of pre-court preparation, and whether the child is a bystander or victim-witness (Goodman, Golding, & Haith, 1984; Kovera & Borgida, 1996; Nightingale, 1993); and characteristics of the adults themselves such as gender, attitudes and biases, level of empathic concern, and personal history of abuse (Bottoms & Goodman, 1994; Gabora, Spanos, & Joab, 1993; Golding, Sanchez, & Sego, 1999; Haegerich & Bottoms, 2000; Isquith, Levine, & Scheiner, 1993). Although attorneys express interest in the latter findings to the extent that they want to use the findings during voir dire to identify the best jurors for their particular cases, the work has resulted in few policy or legal changes (e.g., education of juries or judges, modification of jury instructions).

Courts have, however, been very responsive to the results of some psychological research on children’s testimony, and court reform based on research findings has been implemented in some jurisdictions. Perhaps the most important reforms include the development of special programs to prepare children for the task of testifying in court (Sas, Wolfe, & Gowdey, 1996), and innovations aimed at removing children from the potentially stressful courtroom altogether (e.g., replacing children’s in-court testimony with testimony given via closed circuit television, in the form of hearsay testimony from another witness, or via videotaped pre-trial forensic interviews). Such accommodations have the potential to affect both the actual and the perceived credibility of child witnesses.

Do children need special accommodations when they enter a court of law? Two competing assumptions drive opposite answers to this question. On the one hand, there is a child advocacy based assumption that children need protections in the adult-designed courtroom, because testifying in court is a stressful and traumatic experience for children. On the other hand, the courts assume that face-to-face confrontation compels witnesses to tell the truth and promotes accurate fact-finding from jurors who will have many non-verbal cues to use to assess witness credibility (Coy v. Iowa, 1988). Both assumptions have been tested in research programs that have had impact on law governing children’s evidence—such noteworthy impact that we highlight this work as another model (like Grisso’s research on Miranda warnings) for researchers hoping to influence law through sound scientific research and effective dissemination efforts.

Goodman and colleagues (Goodman, Taub et al., 1992) tested the assumption that children are sometimes traumatized by testimony and could therefore benefit from accommodations. Their study of matched testifying and non-testifying child abuse victims in the Denver court system found that testifying was sometimes associated with emotional costs (though not always and perhaps not long-lasting costs), especially for children who had to testify multiple times and lacked maternal support. Children disclosed that their single greatest fear was facing the defendant in the courtroom, a fear that was associated with attenuated ability to answer prosecutors’ questions. Other researchers have similarly found evidence of trauma to children who had to confront their accused abuser (Murray, 1995; Sas, 1991; Whitcomb, Shapiro, & Stellwagen, 1985). Goodman and others summarized these and other relevant psychological findings in an amicus brief submitted by the American Psychology-Law Society (APLS) and filed on behalf of the APA (see Goodman, Levine, Melton, & Ogden, 1991). The brief had significant impact on the Supreme Court’s ruling in Maryland v. Craig (1990), which paved the way for the use of accommodating techniques in the courtroom.

Specifically, in the case at issue, alleged child sexual abuse victims testified via one-way closed circuit television (CCTV), where the defendant, judge, attorneys, and jury could see the testimony, but the children could not see them. Craig, the defendant, was convicted. The Maryland Court of Appeals reversed Craig’s conviction, reasoning that the CCTV was used without proper showing of cause (i.e., that the children could not otherwise have communicated reasonably). The U.S. Supreme Court subsequently considered the case. In contrast to disappointing instances in which the Supreme Court ignored relevant social science findings in other domains (e.g., jury bias in death penalty cases, Lockhart v. McCree, 1986; see Bersoff, 1987; Thompson, 1989), the impact of this APA brief and
the psychological findings it contained was remarkable. Justice O'Connor's majority opinion often paralleled the conclusions and even the language of the brief. The following quote from the majority opinion illustrates specific references to the APA brief and to Goodman's work (later published in 1992 as cited above): "Given the State's traditional and 'transcendent interest in protecting the welfare of children'... and butressed by the growing body of academic literature documenting the psychological trauma suffered by child abuse victims who must testify in court, see Brief for American Psychological Association as Amicus Curiae 7-13; G. Goodman et al., Emotional Effects of Criminal Court Testimony on Child Sexual Assault Victims, Final Report to the National Institute of Justice...., we will not second-guess the considered judgment of the Maryland Legislature regarding the importance of its interest in protecting child abuse victims from the emotional trauma of testifying. Accordingly, we hold that, if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant" (p. 16). As the authors of the brief themselves later noted, their effort in producing the brief "illustrates the need for psychological expertise on critical questions of social fact and the utility of the pro bono efforts of APLS members in bringing such knowledge to the legal system" (Goodman et al., 1991, p. 16).

We should note that the Craig decision did not end the debate over courtroom accommodations for children. Some state supreme courts (e.g., Pennsylvania) continue to rule that CCTV violates defendants' rights to state constitutional guarantees of face-to-face confrontation (Goodman, Tobey et al., 1998). Thus, psychological researchers continue to test assumptions surrounding courtroom accommodations for children with mock trial methodology designed to address how accommodations affect children's actual testimonial competence as well as jurors' perceptions of their competence (e.g., Davies & Noon, 1991; Goodman, Tobey et al., 1998; Ross et al., 1994; Swim, Borgida, & McCoy, 1993). Findings from this work are converging to indicate that although some children's actual accuracy may increase when they testify via alternative modes like CCTV, special accommodations may negatively influence jurors' perceptions of children's competence. Although special accommodations for children in the courtroom are not often requested by prosecutors (Gray, 1993) and in many cases, such alterations are not allowed, continued work investigating the impact of CCTV and other alternatives may directly influence future policy regarding courtroom accommodations of children's testimony.

**Future Challenges**

We have shown that child witness research has had a noteworthy impact on law and policy. The research has also brought about significant theoretical advances across several subdisciplines of psychology (developmental, cognitive, and social). For example, research on children's eyewitness testimonial competence has yielded important basic knowledge about developmental changes in children's memory, and models for understanding the impact of stress and social influences on children's memory. Future researchers face the challenge of continuing this tradition while addressing formidable empirical issues, including the need to (a) identify forensic interview practices that maximize disclosures of real abuse while minimizing false reports, (b) understand psychological mechanisms underlying accurate and inaccurate reports of past events, especially when stress and trauma are involved, (c) determine how to distinguish true from false reports, and (d) identify individual differences (e.g., temperament, working memory capacity) that might affect children's testimony (a paramount question in the eyes of the court, which is concerned about the accuracy of specific children in specific cases). Continued attention to conducting scientifically sound research with ecologically valid techniques will ensure that future child witness research on these issues will yield generalizable results of importance to law and policy.

**Other Legally Relevant Domains of Child/Law Research**

We have outlined the contributions of psychological research in illuminating the objective truth or falsehood of key legal assumptions in several major areas: legal decision making about juvenile justice, medical decision making, divorce and custody, child maltreatment, and children's eyewitness testimony. There are, of course, many other domains ripe for contributions from psychology viz a viz the models described above. For example, adoption, and other out-of-home placement policies and decisions are driven by assumptions about child development (Portwood & Reppucci, 1994). In particular, some groups, especially the National Association of Black Social Workers, argue that transracial adoptions may negatively affect a child's racial identity, and that courts should weigh child and parent race heavily when making adoption decisions, or prohibit transracial adoptions altogether (McRoy, 1989; Mini, 1994). In fact, however, psychological research finds no negative effects of transracial adoptions on children or families (e.g., Bagly, 1993; Simon, Altstein, & Melli, 1994). Furthermore, the Multiethnic Placement Act of 1994 prohibits an agency, or entity, that receives federal assistance and is involved...
in adoption or foster care programs from delaying or denying the placement of a child based on the child's or parent's race, color, or national origin. Unfounded assumptions about potential harm to birth parents or potential benefits for adoptees also drive laws and policies about sealing adoption records, yet very little empirical research has addressed these issues (Goodman, Emery et al., 1998).

Developmental assumptions also influence legal and political decisions regarding education, child labor, curfews, drinking age, and welfare reform. In particular, desires to curtail children's rights for the greater societal good and to protect children from harm drive policy decisions in these areas. It is important to note, however, that presumptions about competence that underlie policies in various domains are often blatantly discrepant. For example, nearly all states now sanction the legal drinking age as 21, yet adolescents can marry or be tried as an adult criminal at much younger ages in every state. More research on underlying competence issues and better dissemination of research findings could potentially bring about more rational laws and policies. Psychologists also have the potential to participate more actively in debates surrounding freedom of expression in schools, corporal punishment, and the right to receive special needs services. As we have noted throughout, societal perceptions of children's competencies in all these various domains currently drive policy and law, but children's actual competencies may differ in important ways from these perceptions. Such discrepancies can and should be illuminated by psychological research.

RESEARCH, POLICY, AND LAW: TOWARD CLOSER FUTURE ALLIANCES

We now turn to an examination of critical issues that researchers must tackle if the field of Children, Psychology and Law is to move forward in a meaningful way. For us, forward movement is multidimensional, defined in terms of improving the basic scientific integrity of child/law research as well as its applicability to the policy and law that psychologists hope to affect. It also means significantly increasing the presence of psychological knowledge in critical debates about social issues involving children. In the next section, we suggest that the field will move forward if researchers are successful in (a) changing their orientation by becoming more proactive and less passive in affecting societal change, (b) improving their methodology in a variety of ways, (c) becoming more sensitive to the role that personal and societal ethics and values should and should not play in research, and (d) increasing their success in disseminating knowledge to the professionals who can actively use it.

MOVING BEYOND CONVENTION, BECOMING MORE PROACTIVE

We argue that it is time to be more innovative, creative, and generally proactive in using empirical findings to design concrete, specific programs and interventions to help children and families who are involved with legal issues. Psychologists are uniquely equipped to use psychological principles and social science findings to produce novel programs, procedures, and tools of use to courts and various professionals who deal directly with children. For example, during the past two decades, research to identify and delineate risk and protective factors and their interactions regarding violence, delinquency, teen pregnancy, school dropout, and other maladies of youth have provided legal, educational, and mental health professionals with information upon which to develop various preventive interventions (e.g., Gillock & Reyes, 1996; Walberg, Reyes, & Weissberg, 1997). The data suggest that along with reducing or alleviating risk factors, the most effective programs may need to enhance protective factors early in life (e.g., preschool programs targeted to urban, low-income children) to enhance cognitive and social development and, in turn, to reduce serious and chronic delinquency (Yoshikawa, 1993). Other examples focus on procedures and tools. Psychologists have taken an active role in designing optimal research-based forensic interview techniques that have been of great help to front-line professionals who interview suspected child abuse victims (e.g., Geiselman, Saywitz, & Bornstein, 1993; Sorenson et al., 1997; Poole & Lamb, 1998; Yuille, 1993). Others are currently using research to expand the definition of both culpability and adjudicative competence (Cauffman et al., 1999; Woolard et al., 2001), which should (a) result in improved assessment procedures for clinicians charged with making such determinations about juveniles charged with crimes and (b) aid in the development of guidelines regarding when a child should never be treated as mature as an adult (Steinberg & Cauffman, 1999). These proactive attempts to help social service and legal professionals conduct their investigations more effectively should benefit youth involved in child abuse and juvenile justice investigations. Note that the researchers involved in these efforts necessarily understood the legal and social service context of the psychological issues they studied. That is, the psychologists who designed interview protocols and developed the competence research first built collaborative relationships with social service and legal professionals to understand the exact nature of the problems they wanted to address. Collaboration between researchers and
professionals in the legal system is essential for identifying opportunities for proactive intervention.

Psychological researchers are also in an excellent position to evaluate the success of innovative policies and programs that already exist. For example, laws requiring sexual offenders to register or to be committed to mental health treatment facilities after serving prison sentences were enacted in direct reaction to public sentiment and political agenda, not as a result of research findings. Are these programs achieving their goal of reducing sexual victimizations and criminal recidivism among sex offenders? And should the same guidelines apply for juvenile as for adult sex offenders given that recidivism rates for juveniles are significantly lower than for adults (Trivits & Reppucci, under review)? Some work is addressing this issue, but more is needed. A second example where psychologists could be helpful is in assessing programs derived from the restorative justice movement. Restorative justice is primarily concerned with addressing wrongs and establishing or restoring social equality in relationships (Llewellyn & Howse, 1999). A core element of most restorative justice programs is a direct encounter between the affected parties (i.e., victim, offender, and community) resulting in a plan for restoration; that is, an agreement of what the offender will do to restore relationships damaged by the offense. Restorative justice programs are gaining international support: A recent survey found that there are at least 1,000 such programs in North America and Europe (Umbreit & Greenwood, 1999). They have been pursued especially aggressively in Canada and reflect principles underlying alternative dispute resolution procedures common to the Maori of New Zealand (Levine, 2000). Psychologists are ideally suited to both evaluate current restorative justice programs and to facilitate expansion of such programs to new realms. Currently, youth participation in restorative justice programs is limited to juvenile offenders. Could the program work as effectively if the youth was a victim of crime? Could the victim-offender encounters be modified to accommodate child victims? Perhaps restorative justice is a particularly viable option in such cases if the victim and offender are related. These are just a few of the issues that will probably engage restorative justice researchers in the near future, and that should be informed by psychological theory.

Another excellent example of innovative policy is “teen court” or “youth court” programs, which have recently increased significantly in number. By 1998, there were between 400 and 500 teen courts in the United States, almost a tenfold increase since 1991 (Butts, Hoffman, & Buck, 1999). Although often under the administration of the local juvenile court or probation agency, teen courts serve primarily as a diversion alternative for first-time and young offenders charged with misdemeanors, such as traffic offenses, curfew violations, and truancy. Various models have been used to oversee youth courts, but a factor common to all the programs is the participation of community youth who serve in some capacity, either as judge, jury, or youth attorney. The most common model uses an adult as the presiding judge in the court and youth as the attorneys and other court personnel. The dispositions most often handed down by such courts, which are not given the authority to detain defendants, include community service and apology letters. Although preliminary observations suggest that teen juries often recommend tougher sentences than some judges, it is not yet clear what kind of impact teen courts have on recidivism rates or perceptions of the juvenile justice system. In response, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) recently funded an evaluation of teen courts. The evaluation will provide process and outcome data on four representative youth court programs in the next few years (Butts, Hoffman, & Buck, 1999).

Alternative programs aimed at prevention of social problems for youth are also good examples of programs that could benefit from systematic evaluation and psychological knowledge. Programs like Teen Outreach, which emphasize adolescent volunteerism, seem to have various positive effects, including the reduction of teenage pregnancy and school dropout. Although some Teen Outreach programs have been carefully evaluated (Allen, Kuperminc, Phylliber, & Herre, 1994), these kinds of programs are largely implemented on a local level, and careful examination of their implementation and comprehensive evaluation of their impact is generally lacking. Deterrence-type programs developed to scare children into behaving (e.g., Scared Straight) and boot camps gained popularity in the early 1990s and have proliferated with increasing public support of “get tough” policies. Initial investigations of the effects of these programs, however, reveal that most juveniles exposed to these interventions had comparable or even higher recidivism rates than did juveniles who were not exposed to these interventions (Lewis, 1983; MacKenzie & Brame, 1995). In the absence of methodologically sound evaluations, little is known about the efficacy of such programs, the reasons for their success or failure, and the types of children most amenable to their approaches. Even so, these types of programs continue to operate and to receive public support, further indicating the pressing need for program evaluations to determine their efficacy.

Many other preventive legal and social service initiatives are ripe for careful evaluation, or for the proactive involvement of psychologists armed with relevant data. Examples include (a) the establishment of children’s advocacy centers nationwide to enhance the accuracy of information obtained from alleged child abuse victims and, in turn, to prevent
child abuse by making prosecutions more effective (Sorenson et al., 1997); (b) the enforcement of curfews to prevent youth crime; (c) increasing the age at which teenagers may obtain driver’s licenses as a way of addressing the high prevalence of serious car accidents involving inexperienced young drivers; and (d) holding parents responsible for their children’s actions in an effort to increase accountability within families and prevent youth crime.

METHODOLOGICAL ISSUES

The issues studied by researchers in the field of Children, Psychology, and Law are complex, and as a result, the research is very difficult to do well. Yet research can effectively influence law and policy only if it is performed in a scientifically sound manner using ecologically valid techniques. What are some of the methodological challenges psychologists face in meeting these requirements? How can researchers become better prepared to move the field forward in the meaningful ways we described earlier?

Psychology and Law: Disciplinary Differences

On the one hand, the disciplines of Psychology and of Law are naturally complementary: The Law seeks to regulate human behavior; Psychology seeks to understand behavior. One of our major themes in this chapter is that psychology is uniquely suited to studying the assumptions about human behavior inherent in the law. On the other hand, the disciplines of Psychology and Law differ greatly in terms of perspective, method, language, and analogies (Goodman, Emery, et al., 1998; Haney, 1980; Ogloff & Finkelman, 1999). For example, one central difference is that psychology pursues truth—objective answers to specific questions under certain conditions. The law seeks justice—resolution of conflict through the provision of desired outcomes to parties involved in legal cases. Justice determinations involve complex weightings of issues such as the common good vs. individual rights (Wrightsman, Nietzel, & Fortune, 1998). These differences must be understood and accommodated if psychologists are to design studies that will have an impact on law and policy.

The basic methods or processes of law and psychology differ greatly. Whereas psychologists use the scientific method to seek knowledge with the least possible influence from values or opinion, courts apply law through the study of precedence (what has been reasoned previously by other courts in individual cases) and courts seek resolution in individual cases through adversarial confrontation of two parties, from which justice is supposed to emerge. Laws are also subject to the influence of societal values and norms (Monahan & Walker, 1998). Thus, the foci of scientific and legal methods are quite different: Courts make decisions about individual cases (an ideographic, or case study approach), whereas psychologists usually study group trends (a nomothetic, or group level approach). This difference often leads to frustration when the two disciplines intersect. For example, in a child sexual abuse case in which the main evidence of a defendant’s guilt is a child’s testimony, a court may seek a specific opinion from an expert psychological witness about the accuracy and suggestibility of the particular child witness in that case. Yet the ethical research psychologist can offer only information about the accuracy of children tested in studies under circumstances approximating those in the case at hand. Although this fundamental difference will always exist to some degree, we believe the gulf can be narrowed. That is, for psychological research to be maximally useful for courts, psychologists must increase their attention to individual differences whenever possible. Researchers are beginning to do this in children’s eyewitness testimony research (e.g., Bottoms, Davis, Nysse, Haegerich, & Conway, 2000; Bruck, Ceci, & Melnyk, 1997; Quas, Qin, Schaaf, & Goodman, 1997) and in various other child/law domains, as noted in previous examples. This should increase courts’ receptiveness to psychological research.

Ensuring the Generalizability of Research

Another issue that researchers must address if they are to have maximal effect on law, policy, and practice is to make their research generalizable beyond the laboratory and often specialized samples. That is, psychologists must ensure that their methods are ecologically valid. Unfortunately, this is often quite difficult. To attain ecological validity, it is first necessary for researchers to understand the law that is the context for the research. Some in the field of Psychology and Law have called for researchers to obtain increased training in legal studies (e.g., law school course work, Master of Legal Studies degrees) while in graduate school or as post-doctoral scholars (Bersoff et al., 1997). Perhaps a more realistic alternative for most researchers is to cultivate close collaborative relationships with legal scholars and other professionals who understand the law relevant to the psychologist’s area of inquiry. As we have already noted, researchers must collaborate and communicate with legal professionals and policy makers. In fact, the current editor of Law and Human Behavior recently noted, “Psychologists interested in psychology and law need to have lawyers as collaborators so that we do not make errors in the
questions we ask or the methods we employ" (Weiner, 1999). A similar argument has been forcefully presented for practitioners (Goldstein, Freud, Solnit, & Goldstein, 1986).

Practical issues such as time and money, as well as ethical issues, may constrain even the best attempts at ecological validity. It takes a great deal of funding to obtain the best samples and employ the best methods. To understand these challenges, consider mock jury research, which is often the target of concern with regard to ecological validity. Specifically, researchers interested in jurors’ perceptions and decisions in cases involving child witnesses or juvenile offenders face the problem of not being allowed to study the deliberations of actual juries. Instead, they usually study mock jury decision making in the laboratory with undergraduate college students as jurors, a group of adults who are generally younger and more educated than many actual jurors. Moreover, mock jury studies cannot fully duplicate the experience of serving on a real jury (Diamond, 1997; Weiten & Diamond, 1979). The generalizability of some mock jury research is questioned not only because of the participants but also because it contains serious violations of realism (e.g., mock juries are given incorrect verdict choices, inadmissible evidence is included in stimulus trials, artificial deliberation times are imposed). Other research, however, has attained noteworthy realism by including jury-eligible community members as mock jurors, jury instructions that would be given in an actual case, transcripts from actual trials or realistic trial simulations based on real case details. Some researchers have gone to exceptional lengths to attain ecological validity, such as Goodman, Tobey, and colleagues (1998) in the previously discussed study investigating jurors’ reactions to courtroom accommodations of child testimony. In that study, children experienced an event, then were questioned individually about the event under direct- and cross-examination in an actual city courtroom. For each of more than 180 separate trial simulations, trained actors played key roles such as judge, attorneys, and bailiff, and over 1,200 jury-eligible community members filled the jury box. Closed-circuit television techniques were employed just as they might be in an actual case. Yet, even with generous funding for this research, ethical issues still necessarily limited this work: The "crime" in the case was a babysitter placing stickers on the children’s exposed stomach rather than an actual instance of child sexual abuse.

It is important to note that although realism is sacrificed in the laboratory, experimental control is gained. Even if researchers had access to jury rooms, it would be difficult to draw cause and effect conclusions from the study of idiosyncratic groups of people considering cases that vary on multiple dimensions. Even the most artificial mock jury research, using college students as participants and written transcripts as stimuli, are very useful first steps in programs of research examining the effects of particular isolated variables on jury decision making. Convenience samples and written scenario methodology allows for the experimental control necessary to draw cause and effect conclusions about specific variables of interest, before moving on to more elaborately staged research to pursue provocative patterns of results (Diamond, 1997). Further, a recent meta-analysis by Bornstein (1999) reveals few differences in the judgments of undergraduate and community member jurors (see also Cutler, Penrod, & Dexter, 1990), and some research reveals few differences between mock jurors’ decisions in studies using written scenarios versus more elaborate videotaped testimony (Goodman et al., 1987; Scheiner, 1988). Even so, such work is only the first step, and careful researchers need to replicate their findings with more elaborate, realistic studies to increase the probability that courts will take note of the findings.

Thus, laboratory studies have limitations, but excel in terms of experimental control. Ironically, one could argue that some areas of psychology and law research suffer from too much ecological validity and could benefit from some of the control gained through laboratory studies. That is, field studies are often confounded with a plethora of variables beyond the researcher’s control, they sometimes lack control groups, and they often are limited by the impossibility of random assignment to alternate conditions. The challenge is to find compromises that will allow for experimental control as well as generalizability. It is possible that new technologies being developed outside of our field will help us as we attempt to improve the ecological validity of our studies. For example, could laboratory simulations be enhanced with virtual reality technology? Would this help psychologists circumvent practical and ethical problems, or would it create new ones? Clearly, new partnerships with professionals in disciplines such as computer science are necessary to understand how new technologies might be useful.

As noted previously, generalizability is not only dependent upon whether or not procedures are realistic, but also on the researcher’s choice of subjects. Accessibility to the appropriate participant populations is often key to producing good research. For example, how generalizable are the findings from research wherein typical adolescent girls are asked to make decisions about hypothetical scenarios depicting themselves facing a decision about an unwanted pregnancy? Surely not as generalizable as research conducted with adolescents actually awaiting the results of their own pregnancy test in a clinic waiting room (Ambuel & Rappaport, 1992). Although we have been able to cite this and other examples of research that used appropriate samples (e.g., Crosby et al., 1995; Grisso, 1980),
there is a clear need to continue efforts to conduct ecologically valid research. Although it is often convenient to use a sample of undergraduate students, or to have white middle class youth as participants in the appropriate age range respond to hypothetical vignettes, psychologists must move to participants of diverse socioeconomic backgrounds and ethnicities to evaluate the populations in question.

Finally, diversity should also be evident in the field of Children, Psychology, and Law—both in our participant samples and among the ranks of our researchers. Currently, for example, girls are typically underrepresented and minorities are overrepresented in much juvenile offender research (Hoyt & Scherer, 1998). Studies should be designed examining within-minority-group differences as well as between-group differences. The field also needs to make active efforts to attract and train researchers who are diverse in terms of gender and ethnicity. In particular, as in most professions today, minorities are very poorly represented. This is a particularly striking omission because some of the populations of interest are dominated by minority groups (e.g., African Americans are overrepresented in the juvenile offender population and among the group of families likely to come to the attention of social service agencies).

Ensuring Statistical Sophistication

The challenge of training researchers in the latest design strategies and statistical techniques is huge. It might be said that the field was founded on basic statistical models and methods, such as analysis of variance and Pearson’s correlation coefficient. Today, however, researchers must be well versed in techniques such as structural equation modeling, meta-analysis, logistic regression, and cluster analysis in order to conduct complex experiments and quasi-experiments that improve the ecological validity of previous work. Particular attention needs to be paid to special statistical techniques such as logistic regression and logit analyses that can accommodate dichotomous independent and dependent variables, which exist in abundance in the real world (e.g., jury verdicts, presence or absence of victimization or criminal offense). Further, structural equation modeling could be very useful in examining complex relations between theoretical constructs (e.g., self-esteem, emotional regulation, and aggression in juvenile delinquents).

Ethics and Values

A discussion of methodological challenges would not be complete without special attention to the complex ethical issues that arise in research with children (see Thompson, 1992, for a general discussion of ethics issues in child research). Such a discussion is timely, following a year in which the government entity responsible for oversight of human subjects research, the National Institute of Health’s Office of Protection from Research Risks (OPRR), placed severe restrictions on research at a number of universities (e.g., Duke University, The University of Illinois at Chicago, Virginia Commonwealth University/Medical College of Virginia, the University of Colorado at Boulder Health Sciences Center), effectively shutting down all human subjects research for months while policies and procedures for ensuring protections to human subjects were improved. These actions sent other institutions nationwide scrambling to examine carefully their own Institutional Review Board activities. Issues of informed consent figured centrally in the violations that sparked the OPRR’s scrutiny of Institutional Review Board activity at major universities (Kaplan & Brownlee, 1999).

Issues of consent are central difficulties for child/law researchers. Gaining access to minors is quite different and more involved than working with adults. In most cases, parents must provide consent for their children to participate in a research project before the child is even informed of a study and asked to provide assent. It can be difficult, however, to contact some children’s parents, especially the parents of detained juveniles or children in the foster care system. It may even be unethical to do so, as in cases where youth who have gone to a clinic to be tested for a sexually transmitted disease and do not want their parents notified. Several strategies have been employed to collect data in an ethical manner. With a detained population, parental notification and in some cases the use of a participant advocate associated with the facility has been deemed an appropriate solution because of the difficulties of locating parents. Written parental consent is still necessary, however, when conducting research with non-detained minors except in circumstances where the state has strong general welfare interests (e.g., interests such as treating communicable diseases, which would be jeopardized if youth did not seek treatment because parental consent was required).

In general, children have been identified as a vulnerable research population (Thompson, 1992). Rather than viewing children as becoming less vulnerable over time, however, researchers should work to elucidate the areas of cognitive, social, and personality development that are particularly sensitive for children at different ages. Thompson warns that assuming the risks of participating in a research project decrease or its benefits increase linearly with age may overlook developmental sensitivities that can emerge in different domains for children throughout childhood. For example, research exploring issues of self-concept, social comparison, or sexual knowledge may be more stressful or embarrassing for older than younger children. Therefore, researchers working with
minors should adopt a framework that highlights these developmental sensitivities and considers the risks and benefits for child participants separately and independently for youth of different ages. Furthermore, it has been suggested that Institutional Review Boards’ periodic reevaluations of longitudinal research involving children should continually review the methods and measures used, considering the impact such procedures may have on the participants at one time point versus another.

The “Dilemma of Values” in Research

When embarking in areas of research that have the potential to influence important public policy issues such as juvenile detention procedures or custody determinations, psychologists must be diligent in maintaining objectivity when reporting research findings, including reporting findings that may not support the researchers’ working theories or values. Judge Bazel (1982), in an address to the American Psychological Association, urged psychologists to reveal the entire truth when publicly reporting their findings, primarily by disclosing the values underlying their work, and by acknowledging that there may be results that are contrary to their findings. He believes that the legal system needs empirical knowledge about human behavior. Empirical facts, however, should be entered along with their limitations into courtroom situations for public assimilation and action, rather than being entered as conclusive statements that may be based to some degree on values as well as data. Bazel strongly advocates that the public (e.g., the jury) be left to integrate “the facts” with other information.

A case study of the role values can play in child/law research comes from the domain of child testimony research. In child abuse cases, two goals are paramount: guarding against false accusations of innocent adults, and detecting actual abuse and prosecuting offenders so that children can be protected from future risk. Modern child witness research has been framed in controversy, largely emanating from researchers’ different degrees of attention to these goals as a function of different personal values about their importance (Davis, 1998). Today, however, a growing body of empirical evidence is beginning to bring consensus about factors that influence children’s accuracy and suggestibility, and with consensus, the realization that these goals are compatible.

DISSEMINATING PSYCHOLOGICAL RESEARCH RELEVANT TO POLICY AND LAW

Active dissemination of research findings is crucial to the future success of the field of Children, Psychology, and Law. As noted by Goodman, Levine, and Melton (1992), “Psychology bears a social responsibility to provide the best available evidence on important questions of legal policy whenever it can do so (APA, 1991, Principle F). It should proceed with caution, but it should not be disabled by a requirement for perfect evidence” (p. 249). Psychological research can effectively influence social programs, policy, or law only to the extent that it comes to the attention of professionals “in the trenches”: social workers, attorneys, judges, legislators, the public, and others (Grasso & Melton, 1987). No matter how good the research is, it can have an impact only if it is actively disseminated. When psychological knowledge reaches a stage where it indicates relatively specific directives for law or policy, psychologists have a duty to disseminate it to the professionals who can affect change (Reppucci, 1985). We now turn to a discussion of various opportunities psychologists have for disseminating their research, and the challenges sometimes encountered in the process. More than a decade ago, Grasso and Melton (1987) identified many avenues for and challenges to dissemination of psychological research. Most of their observations remain accurate today, and we refer the readers to chapters in that volume for more detail than we provide here.

Reaching Legal Professionals and Practice Audiences

Some particularly promising dissemination routes include writing amicus briefs (Roesch, Golding, Hans, & Reppucci, 1991), publishing in venues likely to reach applied audiences (Grasso & Melton, 1987; Saunders & Reppucci, 1977), speaking about research at informal and formal gatherings of legal and social service professionals (Reppucci, 1985), providing expert testimony or consultation in legal cases (Loftus & Monahan, 1980; Reppucci, 1985), and educating professionals in the disciplines we hope to reach about psychological research.

Amicus briefs are excellent vehicles for psychologists to educate legal professionals, particularly trial court judges (Roesch et al., 1991). Amicus briefs are pointed research summaries written to influence pending court decisions. Although some amicus briefs are ignored or misinterpreted by courts (e.g., in Williams v. Florida, 1970, see Saks, 1977), others have been successful in carrying child research directly to lawmakers (e.g., in Brown v. Board of Education, 1954, and Maryland v. Craig, 1990). To capitalize on briefs as an opportunity to influence legal decision making, psychologists must overcome several challenges. First, psychologists must be aware of pending court rulings where psychological research could be particularly influential. At present, at least two newsletter columns alert psychologists to such cases: the “Judicial Notebook” column in the APA’s Monitor
(sponsored by the Society for the Psychological Study of Social Issues) and the "Case Notes" column in the newsletter of the Child Maltreatment Section of APA's Division 37. To identify cases of relevance to psychology, the authors of these columns often take advantage of United States Law Week, a publication reporting all cases granted a hearing (certiori) by the U.S. Supreme Court. Second, psychologists must find the time to write briefs when the opportunity presents itself. This is not always easy, because academics must squeeze such efforts into schedules already packed with normal research, teaching, and service responsibilities. Third, many psychologists are challenged by their lack of legal knowledge, thus they must involve legal scholars as co-authors on amicus briefs to address legal issues in cases correctly (Weiner, 1999).

Psychologists can also reach applied audiences by publishing articles about their research in discipline-relevant publications such as law reviews, state bar association and other professional newsletters, and various federal and state publications. For example, the official newsletter of the American Professional Society on the Abuse of Children, The Advisor, reaches hundreds of legal, mental health, and social service professionals who work within the field of child maltreatment. An article in The Advisor that describes research-based child interview techniques could reach many professionals who conduct child forensic interviews, and in turn, have a great impact on practice. An article published in the Juvenile and Family Court Journal is likely to reach an audience of juvenile justice professionals (Grisso & Melton, 1987). The potential impact of books may also be significant, as long as the books are marketed and indexed in manners that maximize the potential for reaching the intended audience.

Challenges for psychologists taking this approach, however, can be daunting. Psychologists who are employed at colleges and universities are generally rewarded for publications that appear in a rather narrowly defined set of outlets. That is, when promotion and tenure review committees examine faculty records, they usually look for peer-reviewed publications in top journals of the researcher's discipline such as American Journal of Community Psychology, Child Development, Journal of Personality and Social Psychology, and Psychological Bulletin, not law reviews or professional newsletters. Thus, researchers who wish to reach applied audiences face a difficult situation: articles in these journals will not reach applied audiences; but non peer-reviewed publications will not garner the researcher professional longevity. An obvious solution may be for academics to publish in both places, and Grisso and Melton (1987) give some concrete advice for such a strategy. In addition, outlets such as Law and Human Behavior, a well-respected journal for both applied and conceptual research, has a readership that includes both psychological and legal professionals. New cross-disciplinary journals that follow both law review and psychology journal formats are also providing prestigious peer-reviewed publication outlets. For example, Psychology, Public Policy and Law is published by the APA and is an accepted outlet for academic psychologists, but is also accessible to legal scholars because it is indexed in data bases used by both groups.

Oral presentations, lectures, seminars, and workshops allow psychologists to reach a large number of professionals in a relatively short period of time. For example, psychologists who attend the annual meeting of the American Professional Society on the Abuse of Children can disseminate research findings to and educate a wide variety of child protection professionals in a matter of days. Presentations at state and local meetings of prosecutors, judges, juvenile court and correctional personnel reach audiences who can use research, but who may use such conferences as their primary means for gaining new information (Saunders & Reppucci, 1977). These venues also facilitate professional networking, which may lead to future opportunities to influence programs, policies, and practices. There are a few obstacles to such a dissemination approach, but they are not formidable. Researchers must identify the appropriate meetings and develop the professional relationships that will lead to the necessary invitations to speak. Once a researcher has the opportunity to present research to an applied audience, the work must be described in a clear and understandable manner, free from psychological jargon, and free from assumptions that the audience has had training in social science methodology or statistics.

Expert testimony offers psychologists another means to disseminate research where it can have significant impact (Loftus & Monahan, 1980). The U.S. Supreme Court's ruling in Daubert v. Merrell Dow Pharmaceuticals (1993) stipulates that psychologists can offer expert testimony if the content of their testimony will assist the trier of fact and is relevant to the issue at bar (Faigman, Kaye, Saks, & Sanders, 1997). By offering expert testimony, psychologists can debunk common misconceptions jurors may harbor (e.g., that there is an identifiable pattern of symptoms that accurately indicates whether or not a child has suffered abuse, that youthful offenders always have an adult-like understanding of Miranda warnings), and by so doing, improve the outcomes of specific trials and educate presiding judges. Expert witnesses must, however, be careful to offer summaries of only solid, relevant psychological findings in a fair manner that does not arbitrarily favor the party who retained them. Value-influenced testimony and overstated opinions should be avoided, as well as ultimate issue testimony (e.g., whether a person is guilty or innocent), which may usurp the role of the jury (Bazelon, 1982).
Finally, the discipline of psychology should explore ways to reach applied audiences (e.g., future attorneys, judges, and practitioners) early in their careers. Many universities and colleges already offer courses in Psychology and Law that are gaining in popularity (Bersoff et al., 1997). Psychologists should make sure that such courses cover children's issues and that they are open to undergraduates from a wide range of majors. Psychologists should also explore opportunities to guest lecture in regular courses in various disciplines, or to teach or co-teach courses on social science methods and findings in law schools, and in social work, criminology, and criminal justice programs.

Reaching Society at Large

Although reaching professionals in the trenches is perhaps the first dissemination issue that comes to mind, reaching society at large may be even more critical, inasmuch as many policies and laws are reflections of voter sentiments. The public obtains largely biased information about psychology via the media—popular press books, television, and movies. Unfortunately, the image of psychology and psychological research is largely distorted in these sources (Bottoms & Davis, 1996), a situation illustrated by a simple trip to the local bookstore. There one sees a "psychology" section filled with pop psychology—unscientific self-help books for every common malady from low self-esteem to relationship problems. If there is a Psychology and Law section, it is likely to be a collection of true crime stories or books about profiling serial killers. Psychologists should make efforts to build respect for research, for the science of psychology generally, and for the role psychology can play in advising the legal system. As noted, psychologists can begin educating the public by offering relevant undergraduate law and psychology courses, and including sections on children, psychology, and law in existing courses (e.g., introductory, developmental, community, and social psychology) or as independent courses (two of the authors, Reppucci and Bottoms, have taught a Children, Families, and Law course—Reppucci for the past two decades, and many of his former students now teach similar courses at their own universities). Also, psychologists can address community audiences when opportunities arise. For example, media interviews and university-sponsored lectures provide avenues for educating the general public about the role of psychology in law. Moreover, psychologists should make the effort to work with their institutions' public relations offices to arrange interviews with newspaper reporters about issues of relevance to children and law.

Reaching Colleagues Within Our Own Discipline

Finally, some of our dissemination efforts need to begin at home; that is, they should be aimed at the subdiscipline of Psychology and Law and the field of psychology generally. Journals such as Law and Human Behavior, Criminal Justice and Behavior and other psychology journals with developmental or applied emphases, or broadly defined audiences (e.g., Child Development, Journal of Applied Psychology, Applied Developmental Science, American Psychologist) could be lobbied to publish special issues devoted to children and law. Two such volumes appeared in Law & Human Behavior in 1993 and 1996, and another is underway. In 1984, Reppucci, Weithorn, Mulvey, and Monahan published the first edited book reviewing certain aspects of the field and such books continue to be important outlets (e.g., Bottoms, Kovera, & McAuliff, in press). Such efforts should increase as the field continues to grow. Finally, child/law researchers should maintain a high profile by arranging and participating in symposia and presenting papers at key conferences such as the American Psychological Association's national and regional meetings and the biennial meetings of the American Psychology-Law Society, the Society for Research in Child Development, the Society for Research on Adolescence, the Society for Community Research and Action, and the Society for the Psychological Study of Social Issues.

CAUTIONARY NOTES AND CONCLUSIONS

We are optimistic about the potential for psychological knowledge to expand quickly in the new century, providing empirically derived information to difficult questions that arise when children, law, and social policy collide. Even so, we must acknowledge potential socio-political, legal, and professional obstacles that may hinder our progress. Although one of our ultimate goals is to influence law and policy, we must realize that the socio-political context may hinder our efforts. For example, more votes obviously exist in the general population than among psychological researchers. Consequently, societal opinion, not scientific evidence, usually drives legislative policy decisions. At times, policy makers may act in a manner that appears to be illogical and unscientific. For instance, Congress declares that researchers cannot survey adolescents about sexual behavior, unless in a treatment setting, yet they legislate regulations controlling it (Code of Federal Regulations, 1991). Further, although courts are less skeptical of social science evidence today than in the past,
psychologists have a long way to go before they are offered a fully opened door to the courtroom. Some of this skepticism is a logical reaction to dubious experts who are too willing to parade unfounded opinions before the courts. Another source is legal professionals’ failure to appreciate the scientific method, a fact that makes relevant law school courses particularly important. Finally, academics in traditional psychology departments may face obstacles within their own discipline. Although there have been great advancements in the recognition of the virtues of applied psychological research, some departments still value basic psychological research to a greater degree than theoretically driven, applied research. This can be an obstacle to junior scholars becoming involved in this research, which, by its very nature, is exceptionally time consuming when done right.

In closing, we have tried to underscore the fact that although research on some issues related to children and law (e.g., children’s eyewitness testimony, child abuse and neglect, juvenile justice) has fortunately burgeoned over the last decade, there is still important work to be done in these areas, and many other pressing issues such as children’s rights and adoption policies have not received as much attention as they deserve (Melton, Goodman, Kalichman, Levine, Saywitz, & Koocher, 1998; Schmidt & Reppucci, in press; Small & Limber, in press). We hope that our chapter has raised consciousness about a wide-ranging set of issues in great need of theoretical, empirical, and legislative attention, and that in turn, it will stimulate future scholarly activity on legally relevant issues currently faced by children and society at large. Importantly, we hope it will stimulate research yielding products applicable to society’s struggle to accommodate children’s concerns within our laws and policies.

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