

Children: As Witnesses

Introduction

Each year, thousands of children participate as witnesses in the legal system. Although they may bear witness to many types of crimes, in the criminal courts, they are most often involved as alleged victims of child sexual abuse (CSA). In fact, despite constituting just under 10% of the 3.3 million annual reports of child maltreatment to child protective services, CSA cases account for the majority of criminal trials in which children testify. Child victim testimony is often the main evidence in CSA cases. Thus, child witness accuracy is of great concern to psychologists, lawyers, judges, and society as a whole. As is true for eyewitness testimony generally, inaccurate accounts by children can lead to false convictions. Yet, if accurate accounts are disregarded merely because of a child's young age, guilty perpetrators could be free to commit future crimes. Of course, both undiscovered cases of actual abuse and convictions based on false accusations are serious injustices. It is therefore important to understand, from a scientific perspective, the accuracy of child eyewitness testimony.

Research on Children's Testimony

Research conducted at the beginning of the twentieth century led to the conclusion that children were particularly unreliable, highly suggestible witnesses. However, much of the early research lacked ecological validity and was arguably not fully applicable to actual legal cases involving children. Eighty years later, with an increase in CSA reports (including high profile convictions of day care providers who were accused by preschoolers of ritualistic sexual abuse but later exonerated), psychological interest in children's eyewitness accuracy and suggestibility drastically increased (*see Children: Suggestibility of*). Some researchers were most concerned about the need to obtain reports of child abuse from actual child victims who needed protection but were reluctant to disclose abuse, whereas other researchers were most concerned about controversial cases resting on possibly false accusations fanned by forensic interviewers' suggestive and widely criticized interview

techniques. Scientific research on children's eyewitness testimony has clarified many of the issues of concern surrounding children's memory and suggestibility, although some topics remain subject to scientific debate. Important recent research that is more directly applicable to cases involving child witnesses can help ensure the integrity of forensic interviews, and in turn, that accurate testimony is provided in true cases as well as false cases of child abuse.

Modern researchers have discovered a host of factors that influence child witness accuracy, including child age and individual differences, social circumstances, interview characteristics, and so forth. An important goal is to understand these factors, and use this understanding to aid the legal system by, for example, developing interview techniques that encourage accurate eyewitness reports from children.

Researchers have examined children's eyewitness testimony abilities by questioning children about documented traumatic and nontraumatic events. Studies reveal that younger children, especially preschoolers, are typically more suggestible than older children and adults; that is, on average, younger children are more likely to incorporate into their own reports incorrect information contained in an interviewer's questions.

Eyewitness memory can be affected by children's level of stress at the time of the event or at the time of recall. Children are particularly prone to error, for example, when they are young (e.g., 3 to 4 years old); exposed to misleading questions asked by a biased, coercive, or intimidating interviewer; positively reinforced for incorrect responses; asked to identify strangers from target-absent photo lineups; and asked about peripheral details of events or about events that happened in the distant past. An issue of scientific and applied interest is whether false suggestions actually change children's memory or simply their reports of an event (i.e., social compliance). Both might be possible. In documented controversial multivictim CSA cases that were arguably false, anecdotal evidence reveals that some alleged victims recanted their claims years later, recalling that they were pressured to make accusations and lied rather than having false memories, but others maintained their allegations. Experimental research has shown that when questioned in extremely suggestive ways, some children appear to incorporate the misleading and inaccurate information into their memory, although many do not (e.g., when confronted with the truth about an event).

2 Children: As Witnesses

Child Forensic Interviews

Researchers have been successful in translating research findings into useful methods for interviewing suspected child abuse victims. In particular, research has led to the creation of developmentally appropriate, research-based forensic interview protocols. The acceptance of such protocols by social service and law enforcement agencies has made highly suggestive interviews the exception, not the norm, in actual forensic investigations of child abuse. Forensic interviews, often one of the earliest interactions between the alleged abuse victim and the legal system, are used to determine whether the child has been abused and to gather information about the circumstances surrounding the abuse. Information gained from forensic interviews is critically important in determining case disposition, from taking no action in unsubstantiated cases, to removing children from possible harm in the home and/or pursuing a case to trial in substantiated cases. There are a number of forensic interview protocols, including the Step-Wise Interview, the National Institute of Child Health and Human Development (NICHD) child interview protocol, and the Finding Words protocol, which is also known as CornerHouse's RATAC (Report, Anatomy Identification, Touch Inquiry, Abuse, and Closure). Although these protocols may differ somewhat, all share basic elements such as recommending that children be questioned with developmentally appropriate language and with open-ended, nonleading questions to the extent possible. Many use a phased approach, starting with introductory phases – such as introduction and rapport building, a developmental assessment (including learning the child's names for different body parts), a discussion of interview guidelines of truth versus lie – before moving to open-ended prompting designed to obtain a child's narrative description of the events under investigation, and then more specific or cued recall follow-up questions, if necessary. The use of props during the interview, such as anatomically detailed dolls, anatomical drawings and diagrams, dollhouses, and puppets, is usually discouraged altogether or at least until the end of an interview that has not yet yielded a disclosure. Even then, their use is recommended in conjunction with nonleading questions.

Generally, child forensic interviewers are trained to remain objective and use open-ended questions to improve child witness accuracy. For example,

forensic investigators allow children to recall information freely in response to open-ended, nonleading questions (e.g., “What happened while you were in the house?”); then follow up with more specific or focused questions about the details children mentioned. Forensic interviewers use socially supportive interviewing techniques, which include building rapport with the child and providing emotional warmth and support throughout the interview while remaining neutral. Research demonstrates that children questioned in a socially supportive manner are more resistant to misleading questions than to those questioned in an intimidating way. This is a particularly useful finding to the field of forensic interviewing, because unlike a child's age, cognitive development, or temperament, the interviewer's social support is easily controlled. The latest research on socially supportive child forensic interviewing reveals that supportive interviewing has the potential to counteract the negative influence of pre-existing individual differences among children, as discussed later.

Some interview techniques are controversial; for example, multiple interviews of children over time rather than once. In actual cases, however, children sometimes disclose after several interviews. Research illustrates that multiple, highly misleading, and coercive interviews can erode children's accuracy over time, although multiple interviews do not necessarily do so. Multiple interviews conducted in a recommended manner can result in increased accuracy.

Accommodating Children's Testimony in the Forensic Context and Courtroom

Child advocacy centers (CACs) can aid children who find themselves involved in the legal context. CACs are “one-stop shops” where children who are victims of alleged maltreatment and nonoffending family members can often receive services from social workers, police officers, prosecutors, therapists, and physicians all at one location. Having an array of services and resources in one location can be beneficial for numerous reasons. In the past, victims often would need to visit numerous agencies to initiate legal action and begin the investigation and treatment processes. Thus, victims most likely would need to retell their story multiple times to different strangers. Previous research has shown that finding the necessary resources and services can be a stressful, challenging, and tiring process especially for victims of child

maltreatment. CACs were designed to accommodate victims and nonoffending family members in the most effective way. Forensic interviews are conducted at these locations by trained interviewers, and the interview is observed by authorities (e.g., police and prosecutors) from behind a one-way mirror to ensure that all necessary questions are asked. These interviews are conducted in a comfortable child-friendly space in hopes of creating a welcoming environment for the child. In some jurisdictions, interviews are videotaped, and these tapes can be used under certain circumstances at preliminary hearings or trials. CACs potentially decrease the number of times children need to be formally interviewed. By centralizing the resources and investigation, CACs aim to reduce child stress and provide necessary services as fast as possible. Research shows that there is a high level of satisfaction in the services provided by these types of centers.

Many legal cases involving children are resolved through confessions, settlements, and plea bargains. For the relatively small percentage of cases that go to trial, a number of hearings will be held, some of which may involve the children testifying. Testifying in court can be stressful for adults, not to mention for vulnerable children. Facing the accused perpetrator, experiencing harsh and confusing cross-examination designed to discredit their accounts, and having to provide testimony about personal and possibly embarrassing events in open court are just some of the factors contributing to children's fears and anxiety about the courtroom. Studies have shown that testifying multiple times is associated with emotional distress in both the short and long term, especially in severe intrafamilial CSA cases. Furthermore, although testifying can be helpful for some children, for others it may cause a delay in emotional recovery. There is also concern about how the stress caused by courtroom testimony will affect children's memory reports and accuracy.

Several procedural reforms have been studied as potential ways to make testifying less stressful for children while bolstering the accuracy of their memory reports, with the additional goal of promoting fair trials for defendants. For example, one way to reduce many children's fears and anxiety is to allow them to have a "support person" throughout the process of a child maltreatment case. In 2010, the federal Child Abuse Prevention and Treatment Act was re-signed for another 5 years. Part of this act delineates that

any state that has federal funding allocated for prevention of child maltreatment should use such funds to provide a support person for children involved in child maltreatment cases. Another way to alleviate children's stress is to allow them to present testimony in a manner that does not require them to face the defendant. Several methods to avoid or reduce the amount of face-to-face confrontation have been studied, such as allowing adults to recount a child's out-of-court statements to testify in place of an alleged child victim. In light of *Crawford v. Washington*, however, the child must also be available for cross-examination at trial. Such testimony is considered hearsay. Videotaped forensic interviews of children are also considered hearsay evidence. Presenting the videotape at trial can reduce anxiety in children by preventing them from having to testify in open court. However, at least in the United States, in light of the *Crawford v. Washington* decision, if the hearsay statements are made to an "authority," they are deemed "testimonial" and cannot be entered as evidence in criminal court trials unless the child also appears. In contrast, in many other countries, such hearsay is regularly admitted without the need for children to take the stand.

Child testimony via closed-circuit television (CCTV) has also been proposed to protect children from seeing the defendant face-to-face. This technique can reduce children's anxiety as well as increase their memory report accuracy. The US Supreme Court ruled that this method can be used at trial after a case-by-case determination by the judge, at least in certain CSA cases. Using CCTV for children is quite limited in the United States, although it is more common in several other countries (e.g., the United Kingdom).

Jurors' Reactions to Child Witnesses

From a legal perspective, even if children's memory reports are sometimes flawed, as long as fact finders (e.g., jurors) can reach the truth, justice is served. From the initial police investigation and forensic interview to the courtroom, adults must decide whether children's reports are accurate. Research shows that many adults have a difficult time making this judgment. This is not surprising, because adults are often poor detectors of lies and truth, accuracy and inaccuracy. Researchers have studied factors

4 Children: As Witnesses

aside from actual accuracy that influence adults' perceptions of children's credibility, with the goal of understanding how jurors make decisions in cases involving child witnesses. This research reveals that victim, juror, and case characteristics all influence jurors' judgments. For example, in CSA cases, jurors in mock trial studies often perceive younger children and children with mild intellectual disabilities as more credible than older children and children without disabilities, because young and disabled children are believed to be particularly honest, sexually naïve, and lacking in the cognitive abilities thought to be necessary for fabricating false charges. If highly suggestive interviewing of young children is demonstrated, however, younger children's credibility may fall below that of older children. Research has found that educating jurors about the quality of the interview influences how they view the child witness. Juror characteristics, such as gender, also influence perceptions of children's accuracy. Compared to men, women on average have more empathy for child victims, react more negatively to CSA, and believe children's reports more often. In turn, women tend to be more punitive in their case judgments than men. Furthermore, when made known to fact finders, certain defendant characteristics, such as having a record of past offenses, can also increase the likelihood of convictions.

Courtroom factors also influence jurors' judgments. For example, courtroom innovations such as allowing children to testify via CCTV rather than in open court can lower jurors' belief in children's testimony. Children may appear more distant or perhaps more relaxed when testifying in this alternative manner, in the latter case, violating jurors' expectations that actual child victims will be upset during testimony. Expert testimony from psychologists can be useful in educating jurors about such issues.

Future Directions in Child Witness Research

The newest research directions include work focused on understanding individual differences in children's eyewitness memory and their responsiveness to various forensic interview techniques. For example, research has shown that some children may benefit more from socially supportive interviewing techniques than from others. Most likely to benefit are

children who have a low level of social support from friends and family, are insecurely attached to their caregiver, have low working memory capacity (akin to short attention spans), and are highly reactive physiologically to stressful situations. Research has also begun to use sophisticated neuroscience methods to understand the physiology of memory and suggestibility. In addition, researchers are currently addressing controversies regarding the ways in which children initially disclose CSA, and whether children delay and recant accusations. That is, although the media often focus on false reports of child abuse, a larger problem likely is that most abused children never disclose that they were sexually abused. Evidence of nondisclosure comes, for example, from research on nondisclosure in cases where there is incontrovertible evidence of abuse, such as the child having a sexually transmitted disease. Owing to lack of disclosure, most cases of CSA are never investigated by authorities. Children fail to disclose, for example, because they are embarrassed, afraid of losing their family, afraid of retribution, or because they do not even understand that the abuse is wrong. Further, some children who disclose may later recant, especially children who are younger, who have experienced intrafamilial abuse, and who have unsupportive caregivers.

Because individual differences exist across children in disclosure and memory, it is essential that the legal system is flexible in providing a supportive environment in which children can testify fully and accurately, on the basis of children's abilities and needs. The court must carefully guard these young witnesses while still protecting the rights of those accused.

References

- [1] Bennett, K.J. (2003). Legal and social issues surrounding closed-circuit television testimony of child victims and witnesses, *Journal of Aggression, Maltreatment, & Trauma* 8(3), 233–271. DOI: 10.1300/J146v08n03_02.
- [2] Bonach, K., Mabry, J. & Potts-Henry, C. (2010). Exploring non-offending caregiver satisfaction with a children's advocacy center, *Journal of Child Sexual Abuse: Research, Treatment, & Program Innovations For Victims, Survivors, & Offenders* 19(6), 687–708. DOI: 10.1080/10538712.2010.522495.
- [3] Bottoms, B.L., Kovera, M.B. & McAuliff, B.M. (eds) (2002). *Children, Social Science, and the Law*, Cambridge, New York.

- [4] Bruck, M., Ceci, S.J. & Principe, G. (2006). The child and the law, in child psychology in practice, in *Handbook of Child Psychology*, 6th Edition, K.A., Renninger, I.E., Sigel, W., Damon & R., Lerner, eds, John Wiley & Sons, New York, pp. 776–816.
- [5] Buck, J.A., London, K. & Wright, D.B. (2011). Expert testimony regarding child witnesses: Does it sensitize jurors to forensic interview quality? *Law and Human Behavior* **35**(2), 152–164. DOI: 10.1007/s10979-010-9228-2.
- [6] Chae, Y., Goodman, G.S., Bederian-Gardner, D. & Lindsay, A. (2011). Methodological issues and practical strategies in research on child maltreatment victims' abilities and experiences as witnesses, *Child Abuse & Neglect* **35**(4), 240–248.
- [7] Eisen, M., Quas, J.A. & Goodman, G.S. (eds) (2002). *Memory and Suggestibility in the Forensic Interview*, Erlbaum, Mahwah, NY.
- [8] Goodman, G.S., Taub, E.P., Jones, D.P., England, P., Port, L.K., Rudy, L. & Prado, L. (1992). Testifying in criminal court, *Monographs of the Society for Research in Child Development* **57**(229), 1–152.
- [9] Henry, L.L., Ridley, A.A., Perry, J.J. & Crane, L.L. (2011). Perceived credibility and eyewitness testimony of children with intellectual disabilities, *Journal of Intellectual Disability Research* **55**(4), 385–391. DOI: 10.1111/j.1365-2788.2011.01383.x.
- [10] Lamb, M.E., Hershkowitz, I., Orbach, Y. & Esplin, P.W. (2008). *Tell Me What Happened: Structured Investigative Interviews of Child Victims and Witnesses*, John Wiley & Sons, New York.
- [11] Landström, S. & Granhag, P. (2010). In-court versus out-of-court testimonies: Children's experiences and adults' assessments, *Applied Cognitive Psychology* **24**(7), 941–955. DOI: 10.1002/acp.1606.
- [12] Lyon, T.D., Carrick, N. & Quas, J.A. (2010). Young children's competency to take the oath: effects of task, maltreatment, and age, *Law and Human Behavior* **34**(2), 141–149. DOI: 10.1007/s10979-009-9177-9.
- [13] McAuliff, B.D., Nicholson, E., Amarilio, D. & Ravan-shenas, D. (2012). Supporting children in U.S. legal proceedings: descriptive and attitudinal data from a national survey of victim/witness assistants, *Psychology, Public Policy and Law*. DOI: 10.1037/a002789.
- [14] Myers, J.E.B. (1997). *Evidence in Child Abuse and Neglect Cases*, 3rd Edition, John Wiley & Sons, New York.
- [15] Pipe, M.E., Lamb, M.E., Orbach, Y. & Cederborg, A.C. (2007). *Child Sexual Abuse: Disclosure, Delay, and Denial*, Erlbaum, Mahwah, NJ.
- [16] Quas, J.A. & Goodman, G.S. (2011). Consequences of criminal court involvement for child victims, *Psychology, Public Policy, and Law* **18**(3), 392–414. DOI: 10.1037/a0026146.
- [17] Tavkar, P. & Hansen, D.J. (2011). Interventions for families victimized by child sexual abuse: clinical issues and approaches for child advocacy center-based services, *Aggression and Violent Behavior* **16**(3), 188–199. DOI: 10.1016/j.avb.2011.02.005.

¹SYLVIA PERRY, ¹HILLHOUSE AVE,

²CATHERINE YORK, ³STEPHANIE D. BLOCK,

³HANNAH M. JOHNSON, AND ⁴BETTE L. BOTTOMS

FIRST PAGE PROOFS

Please note that an abstract and keywords are required for the online presentation of this book which will be published on Wiley online Library (www.onlinelibrary.wiley.com). If the abstract and keywords are not present below, please take this opportunity to add them now.

The abstract should be of short paragraph up to 100 words in length and keywords between 5 to 10 words.

Abstract: Child witness accuracy is of great concern to psychologists, legal and social service authorities, attorneys, judges, and society as a whole. In this article, we summarize scientific research on children's eyewitness testimony, including child factors, social circumstances, and interview characteristics that affect children's memory and suggestibility; interview techniques that encourage accurate eyewitness reports; courtroom accommodations to reduce stress and increase accuracy for child witnesses; jurors' reactions to children's testimony; and future directions in child witness research.

Keywords: child witness; child eyewitness testimony; child eyewitness memory; child abuse; child victim; forensic interviews; child advocacy center; jurors; jury; disclosure

Author Contact Address:

¹Yale University, New Haven, CT, USA

²University of Illinois, Chicago, IL, USA

³University of Massachusetts Lowell, Lowell, MA, USA

⁴University of Illinois, Chicago, IL, USA

FIRST PAGE PROOFS