The Reliability of the Child as a Witness

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A ny discussion of children as witnesses has to consider several areas. These include the competence of a child and the degree of stress which may result to the child from being a witness in court. In recent years a body of literature has been developed on children's memory and some of this can be applied to children as witnesses. In the meantime, more research is needed to identify which age groups of children can be regularly regarded as being good witnesses and which younger age groups may be less reliable. If it could be shown that children below a certain age were not good witnesses then these children could be spared the stress of court appearances. Similarly if it could be shown that children above a certain age are just as reliable as adult witnesses, then this knowledge would help counteract some of the current prejudice that children may not be reliable witnesses. Hand in hand with this search for more knowledge should be a careful evaluation of finding more effective ways of children being able to give evidence and the development within the legal profession of skills in talking with children.

The Credibility of Children as Witnesses

In 1983 Yarmey and Jones published a study where they asked several groups of people to judge the reliability of a hypothetical eight-year-old's testimony. These groups included law students, legal professionals, citizens who were potential jurors and psychologists interested in research into eyewitness identification and testimony. They were asked how they thought a child of about eight years of age would answer questions by police or in court. Less than 50 per cent in any of the groups felt that the child would respond accurately. Sixty-nine per cent of the potential jurors believed that the child would either respond the way the questioner wished, while 82 per cent of the psychologists, whose area of expertise was supposed to be eyewitness identification, said that the child would respond according to the interviewer's desires.

Other researchers have shown similar results. A study in Britain (Sheehy & Chapman 1982) of adults' and children's accounts of road accidents concluded that there is a widespread belief that the comparative immaturity of children severely limits their competence and responsibility. This study found that, given the option of choosing between
the testimony of an adult and that of a child, most people would probably favour the testimony of the adult. A study from Denver (Goodman, Golding & Haith 1984) also looked at testimony about traffic offences and found that children aged between six and ten years were viewed as less critical witnesses than adults. This prejudice can even extend to judges - 'it is well known that women in particular and small boys are liable to be untruthful and invent stories' (Mr Justice Sutcliffe, Old Bailey, 8 April 1976).

For a child to be a good witness the child must have the mental capacity to observe and register the event accurately, sufficient memory to retain an independent recollection of that event and the ability to communicate this memory.

Memory in Children

There has been considerable research carried out on children's memory. As would be expected children's visual attention, which is closely linked to memory, improves with age (Enns & Cameron 1987). This concept is supported by Pezdek (1987) who argued from a theory of schematic processing and showed that younger children, not having the necessary schema on which to link memory, do not record in memory as much detail of a given stimulus as do older subjects. This appears to be one of the differences in memory between younger children and older children and adults.

However, while less detail is recalled, accuracy of recall seems to be less of a problem (List 1987). Young children from six to eight years appear to be just as accurate as older subjects in recall, but report significantly less information (Goodman & Read 1987). This means that if a free recall technique is employed in obtaining information from children, the age difference tends to relate not to accuracy but to the completeness of the account. It is the experience of adults who talk to children that children often say little in response to questioning. As it has been shown that children often remember more details than they choose to report (Flavell 1970), more systematic interview techniques such as prompting or questioning may be required. This technique raises its own problems. A recent Australian study of court transcripts in child sexual abuse cases (Brennan & Brennan 1988) has shown that children become quickly confused under cross-examination. This is partly because of the language used in the court situation and also because of the way in which some questions are multi-faceted - making a 'yes' or 'no' answer difficult. This study of transcripts also showed that questions would move quickly from one time frame to another, requiring rapid responses and an adult perception of time and events. This approach puts children at considerable disadvantage in a witness situation (Rowe 1974; Benedeck & Schetky 1986). The resulting confusion to the child by this type of questioning tends to confirm, to those observing, the impression that the child is not a reliable witness.

There is also a popular feeling that children tend to confuse imagined and real events. However Johnson and Foley (1984) have shown that children as young as six years are no more likely than adults to confuse the real event with an imagined one as long as the event has been one which the child has been able to understand (Loftus & Davies 1984). One area where research would be useful and where no data is yet available, is whether a child's memory for events is better in the environment in which the event took place, with the environment acting as a memory cue.

A problem with the majority of studies on children's memory is that they record memory for events which were shown to the children on slides, in films or told to them as stories. In these studies the child is not actively involved in the events but is merely a neutral bystander. An exception is a study by Goodman and Helgeson (1985) where three-year-olds, six-year-olds and adults interacted with an unfamiliar man for five minutes and then had their memories of this event tested four or five days later. It was found that 93 per cent of the six-year-olds and 75 per cent of the adults could accurately identify the man in a photo line-up but only 38 per cent of three-year-olds could give very accurate eyewitness accounts. Jones and Krugman (1986) report an episode of a three-year-old child who was abducted from the front yard of a neighbour's home. Three days later she was found in the
cesspit of a deserted mountain outhouse, crying, bruised and suffering from exposure. Fourteen days after her abduction the police showed her a photo line-up of twelve people which included the suspect. The girl accurately and quickly identified the suspect as her abductor.

It seems that children’s ability to recount events can be very accurate, particularly if free recall and simple direct questions are used. Using these techniques, the accuracy of recall of children six years of age and over is probably as good as that of adults, with some children under six also being quite accurate.

Stress

A court appearance can be an upsetting time for a child. The court appearance may be the culmination of a number of repeated interviews of the child carried out by police, social workers, doctors, welfare workers and other professionals. These interviews are often held at different times and conducted by different people, finally ending in the child being cross-examined in a courtroom situation. Those who are interested in how quickly children can become confused in court are strongly recommended to read *Strange Language*, (Brennan & Brennan 1988) an analysis of court transcripts of children under cross-examination.

As well as the strangeness of the situation, young children find it frightening to see the accused in court. Some children are concerned that the accused, who in sexual assault cases has often threatened the child with violence or death if the child tells anybody about the incident, may attack them in the courtroom. Children who are the victims of incest and who have to incriminate their own parent in court are often afraid that their parent will always hold this against them. Yates (1987) has reported that one five-year-old thought that the judge would put her in gaol for being ‘bad’ because she was not able to answer all of the questions.

A recent Australian study (Oates & Tong 1987) asked twenty-one non-offending parents whose children's cases of sexual assault had been to court, to rate how their child felt after the court hearing on a scale from 0-5, ranging from 'not upset at all' to 'extremely upset'. Eighteen of the twenty-one parents gave a rating of between four and five indicating that their child was very upset immediately after the hearing. When these parents were asked to rate how their child was at an average of two and a half years later, twelve of the parents still rated their child as being extremely upset about the court hearing. When the parents rated their own degree of satisfaction about the outcome of the court hearing, sixteen (76 per cent) rated themselves as being completely dissatisfied.

Some Suggestions

A number of suggestions have recently been made as to how to reduce the stress on children giving evidence. One particularly important way seems to be to improve the education of the legal profession. It is time for a specialty in child law to be developed where those undertaking this specialty can have some training in developmental psychology, child development, and experience in interviewing children. It has been suggested that in some cases children could be interviewed in judges' chambers to avoid the necessity of them appearing in court. While this suggestion has merit it will only be effective if those interviewing the children have developed skills in talking with children. Legal professionals who are not trained in child development, through no fault of their own, may ask questions which are too sophisticated or complex, thus confusing the child. Many young children, when they are bewildered, will answer questions as best they can without checking on the actual meaning, sometimes saying 'no' when they mean 'yes', especially in response to a double negative. To be understood, questions asked of children must be simple, brief and reasonably concrete. Younger children may recall more accurately with the use of props and may recall an incident more effectively if the question is asked in the original location
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where the incident occurred. Courtroom surroundings need to be relaxed and informal when children are involved. If the parents are supportive and cooperative it may be helpful, depending on the legal aspects of the case, if the parents remain with the child during the interview.

A number of American states now allow children to be examined in a separate chamber with the judge and opposing counsel, while the accused views the proceedings on a video monitor or through a one-way screen. Other states in the USA have allowed video recordings to be used where the child is interviewed by a skilled therapist, this interview being used as evidence in court. In the United Kingdom closed-circuit television (by 'video link') has been approved by the Home Office to admit video recordings as evidence in trials.

Another way of reducing distress would be for children who have to testify in court to be prepared for this in advance by visiting the courtroom, by having the procedures and some of the language explained and perhaps even, for older children becoming involved in a role play prior to the hearing (although, of course, care would have to be taken to be assured that any of these interventions would not influence the child's attitude or testimony).

There is good evidence that children from as young as six years make reliable witnesses. The data about younger children are not as clear and more work needs to be done in this area, particularly looking at incidents in which the child was actually involved rather than merely a passive observer. At the same time more work needs to be done in finding effective ways of eliciting information from young children, ways of making court proceedings less intimidating and stressful to children and particularly ways of helping appropriate members of the legal profession to develop skills and understanding in child development and in talking with children.

References