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THE  
Child  
AN ENCYCLOPEDIC COMPANION

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While the contributors whose work appears in this volume are distinguished experts in their fields, their contributions are in no way intended to provide guidance for any medical, psychological, or legal circumstances of specific individuals. The information contained herein is general, based on cumulative data from large populations. It cannot substitute for a personal and specific analysis of a given child. For that, readers must consult trained professionals. Our hope is that the *Companion* will enable readers to contextualize what they learn from professionals and make more informed use of their services. —The Editors

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**WITNESSES, CHILDREN AS LEGAL.** Child witnesses present challenges for both law and psychology. The question is how to elicit statements from children without sacrificing the truth, the rights of those against whom the child is testifying, and the welfare of the child.

#### **THE LAW**

Limits on the receipt of children's testimony in countries with adversarial trial procedures have been in place in one form or another for more than 300 years. In 18th-century England, children younger than 14 were presumptively barred from testifying because of the assumption that they did not understand the nature of the oath, which was then believed to be the best guarantor of truth at trial. Young children's out-of-court complaints (i.e., hearsay) were nevertheless routinely heard in court, particularly in child rape cases. Hearsay was considered inferior evidence, however, and rape convictions could not be predicated on hearsay alone. Judges sympathetic to the need for children's testimony attempted various approaches, such as qualifying younger children and allowing young children to testify unsworn, but these innovations remained controversial.

In the late 18th century, both England and the United States shifted focus to the availability of cross-examination as the primary guarantor of truth. In the United States, the framers of the Bill of Rights included a Sixth Amendment confrontation right, which guarantees criminal defendants a right to confront the witnesses against them. Courts became more skeptical of hearsay evidence, presumptively excluding hearsay unless increasingly narrow hearsay exceptions applied. Young children were allowed to testify, but they were subjected to competency inquiries in which their capacities were tested, including their understanding of the oath. Courts also adopted special rules limiting the evidentiary value of children's testimony, requiring that it be corroborated and that judges warn jurors about the unreliability of children.

In the latter half of the 20th century, a number of legal reforms emerged in response to calls for greater prosecution of crimes involving children, particularly sexual abuse. Corroboration requirements and special instructions were eliminated. Moreover, steps were taken to change the rules regarding children's competency to testify and the receipt of hearsay and to bring about changes in the courtroom to facilitate children's comfort when testifying.

In many countries, requirements that children demonstrate various competencies before being allowed to testify have been relaxed. Nevertheless, most states in the United States require all witnesses to take some form of the oath. In turn, courts will routinely inquire into children's understanding of the meaning and importance of telling the truth in order to establish their competency to take the oath. In many other countries, courts have abandoned inquiries into children's competency or have allowed children to testify unsworn.

A number of jurisdictions adopted special hearsay exceptions for children's complaints of abuse, which allowed hearsay if the trial court found that the children's reports appeared reliable. Courts adopted expansive interpretations of hearsay exceptions in order to allow children's abuse reports. Procedures were adopted in many countries to systematically videotape interviews with children, which could then be shown at trial. Recent U.S. Supreme Court cases, however, have cut back on expansive interpretation of hearsay exceptions and have limited the extent to which hearsay statements may substitute for children's testimony in court.

Some countries have created special procedures for making testimony less stressful for children. Live-link procedures allow the child to testify from a different room, so that he or she does not have to face the accused or the judge and jury. Again, the United States has taken a somewhat restrictive view of this option, since it conflicts with the defendant's Sixth Amendment right to confront witnesses. Less controversial are court education programs that acclimate children to the courtroom or support persons who can sit with the child during testimony.

Cross-examination is usually the most difficult experience for child witnesses, who may falter in the face of deliberately leading and difficult questioning. Most trial courts have discretion to limit questioning that has little probative value and harasses the witness, and this could conceivably include cross-examination that is age inappropriate. However, in practice, trial judges typically defer to a criminal defendant's right to present a defense and often have little knowledge of children's developmental limitations.

Debates over child witnesses have predominated in adversarial criminal trials, which emphasize the importance of testimony at trial. In countries with inquisitorial judicial procedures, such as most countries in Continental Europe, children are much less likely to be called to testify at a trial, and rules against hearsay are unknown. Furthermore, all countries tend to take a more liberal approach in civil cases—disputes between private parties—than in criminal cases, in which deference to the rights of the defendant make accommodations of child witnesses more difficult. In all legal systems, however, there is continuing concern over the most reliable approach to eliciting children's statements, however those statements are ultimately received by the courts.

#### THE PSYCHOLOGY

Psychologists have something to say about virtually every legal procedure concerning child witnesses. Developmental psychology emerged as a specialized form of inquiry late in the 19th century, and psychologists soon became interested in the reliability of children's reports of their experiences. Early pioneers of psychological research on inaccuracies in testimony criticized the law for emphasizing the likelihood of deliberate errors in testimony, such as lying. Indeed, more recent research has documented that younger children are less likely to lie or to lie effectively than are older children. They are less capable of monitoring the internal consistency of a false story and less aware of inferences that enable one to deduce that a story is false. Preschool children have a strong preference for accuracy, unless there are clear external cues that an adult is pretending or fantasizing.

At the same time, young children have greater difficulty demonstrating their understanding of truth and lies, as required by competency examinations in court. They are less adept at explaining or articulating concepts, resist negative hypotheticals (e.g., "What would happen if you lied in court?"), and will deny ever having told a lie. Hence, the competency inquiry is unlikely to successfully discriminate between honest and dishonest children. On the other hand, a promise to tell the truth has exhibited some benefit in experimental work, supporting the movement in some countries to eliminate the competency inquiry but maintain a form of the oath for child witnesses.

Psychologists have placed more emphasis on nondeliberate inaccuracies, such as errors in memory and suggest-

ibility. Although early psychoanalytic theorizing posited that young children had sexual fantasies that made them unreliable when reporting sexual abuse, these ideas are currently disfavored. The emphasis has shifted to concerns about the influence of adults, particularly those who question children.

The early research on suggestibility emphasized the importance of question type and the fact that younger children are more suggestible. Questions asking for free recall (e.g., "Tell me everything that happened") elicit the most accurate responses, whereas recognition questions (e.g., "Did you go to his house?") and more leading questions (e.g., "You went to his house, didn't you?") reduce accuracy. The most inaccuracies are attributed to suppositional questions that presuppose facts (e.g., "When did you go to his house?").

High-profile child care allegations of bizarre forms of sexual abuse in the 1980s led to a resurgence of interest among experimental psychologists in suggestibility. The research, which predominantly focused on preschool children, examined interviewing influences that went beyond leading questions, including selective reinforcement of desired responses; reference to other sources of information (e.g., the child's parents and peers); stereotype induction, in which the interviewer creates in the child's mind the view that an individual is the "kind of person" who would commit certain kinds of acts; and encouragement to imagine or enact how the event could have occurred. Although children were generally more resistant to suggestions about negative experiences involving their own bodies, some studies produced large percentages of false claims about acts that could be construed as abusive.

Psychologists have begun to better understand the mechanisms underlying suggestibility and the reason that children, particularly preschool children, are more vulnerable to suggestive influences. Young children are deferential to adults and assume that adults are knowledgeable. They forget more quickly, and a weak memory is more susceptible. They are less adept at source monitoring, in which one identifies the source of one's memories. This makes them more susceptible to confusing what they have been told or what they have imagined with what they actually remember. Fear and stress tend to increase suggestibility, such that testifying in an open courtroom makes children more vulnerable to leading questions.

Young children's limited linguistic and cognitive abilities also lead to other difficulties in answering questions in court. Most obvious are children's limited understanding of legal terms and the convoluted syntax of much courtroom questioning. Young children are especially vulnerable, because they are less likely to indicate that they are confused by a question (and, indeed, less likely to recognize that they are confused) and more likely to venture a guess. Linguistic difficulties are often quite subtle. For example,

children initially have limited understanding of indirect questions, in which one embeds a question within a polite request (e.g., "Do you remember if . . ."). Children tend to give brief, one-word responses, which are susceptible to misinterpretation.

Particularly difficult topics include questions about number and time. Children learn to count objects long before they are capable of enumerating recurrent experienced events, because the latter requires inferences about frequency and knowledge of conventional temporal concepts. Similar problems occur with respect to temporal judgments, which require both inferential judgments and conventional knowledge about time (e.g., "It must have been in October because we had a jack-o'-lantern").

Psychologists have developed interviewing techniques designed to minimize suggestibility and to maximize the amount of information that children can produce. The most-researched technique is a structured interview protocol developed by researchers at the National Institute of Child Health and Development. Interview instructions inform children about the unique dynamics of an interview during which the questioner hopes to learn from the child, rather than teach the child. The most effective instructions rehearse the acceptability of responses reflecting incomprehension, disagreement with the interviewer, and uncertainty or ignorance. In narrative practice, the interviewer asks the child about favorite activities and uses open-ended invitations (e.g., "You said X; tell me more about X") to increase the amount of information spontaneously produced by the child. The topic of concern is introduced with an open-ended question, "Tell me why you are here today," which elicits reports of abuse in about half of children who have previously disclosed abuse. Follow-up questions maintain an emphasis on maximizing the amount of information produced by recall rather than by recognition questions.

Despite advances in questioning children who are forthcoming about their experiences, psychologists have yet to learn how to overcome nondisclosure. Experimental research has demonstrated that children will cover up transgressions, particularly if encouraged to do so by an influential adult. Recognition questions sometimes elicit details unobtainable through recall, but, as noted, they also risk increasing false reports. Surveys of those victimized by child abuse reveal that a number of barriers exist to disclosure, particularly when the perpetrator is a member of the household or the child's family, including fear, loyalty, embarrassment, and shame. Moreover, children's abuse allegations against family members are often inconsistent and subject to recantation.

From a psychological perspective, videotaped structured interviews conducted as soon as possible after the event provide the most reliable means of eliciting statements from children. Videotaping preserves both the exact wording of the questions and all details produced by the child,

neither of which are adequately captured by interviewers' subsequent recall or note taking. However, the legal rights of criminal defendants often dictate a different approach by the legal system. Moreover, prosecutors will often insist on live testimony, believing that jurors are more likely persuaded by seeing a child in court. One compromise is to capture children's statements before trial, present both the videotape and the child at trial, and allow defense questioning at or before trial. Child witnesses can best be fairly and fully heard through the reconciliation of legal precepts of due process and psychological insights into the abilities of children.

*Thomas D. Lyon*