Psychological analysis of child witness testimony

Análise psicológica do testemunho de crianças

Análisis psicológico del testimonio de testigo infantil

DOI: 10.34117/bjdv10n4-051

Submitted: Mar 22nd, 2024
Approved: Apr 12th, 2024

Yueyue Ai
Master in Psychology
Institution: National University of Malaysia
Address: Kuala Lumpur, Malaysia
E-mail: ai.yueyuee@gmail.com

Rozmi Bin Ismail
PhD in Psychology
Institution: National University of Malaysia
Address: Kuala Lumpur, Malaysia
E-mail: rozmi@ukm.edu.my

ABSTRACT

Purpose of the study: Because children's own perception, memory and expressive powers differ significantly from those of adults, resulting in a difference between child and adult witnesses, the debate on the competence of the child as a witness has shifted to a judgement on the reliability of the child's testimony in the context of the development of psycho-cognitive science. Methodology: The physiological and psychological characteristics of child witnesses determine their deficiencies in the encoding, storage and extraction of memory information, and therefore the reliability of child testimonies is a key and difficult issue. For this reason, this paper uses documentary analysis to further analyse child witness testimony as the focus of the study. Main Findings: A psychological analysis of the multiple factors that affect the reliability of children's testimony. Two conclusions are drawn: 1. Children are in principle competent to testify. The development of children's testimonial competence leads to the conclusion that even very young children can remember events that happened long ago, especially if they already have prior knowledge about them. 2. Practical guidance for improving the truthfulness of the content of child witness statements improves the reliability of child witness testimony. Children can be influenced in a variety of ways to recount detailed and complete accounts of events that did not occur, such that professionals are unable to distinguish between false and truthful accounts. Perhaps the next step is to improve "questioning techniques". Novelty of the study: Correct and reliable witness testimony is key to the investigation and trial process. The importance of child witness testimony has become increasingly apparent in recent years as the number of cases involving children has increased. This issue has previously only been the focus of jurists, and this study analyses it from a psychological perspective, laying the groundwork for subsequent research in law and psychology.

Keywords: child witness, witness testimony, psychology.
RESUMO
Objetivo do estudo: Como a percepção, a memória e os poderes de expressão das crianças diferem significativamente dos adultos, resultando em uma diferença entre testemunhas crianças e adultos, o debate sobre a competência da criança como testemunha mudou para um julgamento sobre a confiabilidade do testemunho da criança no contexto do desenvolvimento da ciência psicocognitiva. Metodologia: As características fisiológicas e psicológicas das crianças testemunhas determinam suas deficiências na codificação, armazenamento e extração de informações da memória e, portanto, a confiabilidade dos depoimentos de crianças é uma questão fundamental e difícil. Por esse motivo, este artigo usa a análise documental para analisar mais detalhadamente o depoimento de crianças testemunhas como o foco do estudo. Principais conclusões: Uma análise psicológica dos vários fatores que afetam a confiabilidade do depoimento de crianças. Duas conclusões são tiradas: 1. As crianças são, em princípio, competentes para testemunhar. O desenvolvimento da competência testemunhal das crianças leva à conclusão de que mesmo crianças muito pequenas podem se lembrar de eventos que aconteceram há muito tempo, especialmente se já tiverem conhecimento prévio sobre eles. 2. A orientação prática para melhorar a veracidade do conteúdo dos depoimentos de crianças testemunhas melhora a confiabilidade do depoimento de crianças testemunhas. As crianças podem ser influenciadas de várias maneiras para contar relatos detalhados e completos de eventos que não ocorreram, de modo que os profissionais não consigam distinguir entre relatos falsos e verdadeiros. Talvez o próximo passo seja aprimorar as “técnicas de questionamento”. Novidade do estudo: O depoimento correto e confiável de testemunhas é fundamental para o processo de investigação e julgamento. A importância do depoimento de testemunhas infantis tem se tornado cada vez mais evidente nos últimos anos, à medida que o número de casos envolvendo crianças tem aumentado. Anteriormente, essa questão era apenas o foco dos juristas, e este estudo a analisa a partir de uma perspectiva psicológica, estabelecendo a base para pesquisas posteriores em direito e psicologia.

Palavras-chave: criança testemunha, depoimento de testemunha, psicologia.

RESUMEN
Objetivo del estudio: Debido a que la percepción, la memoria y las facultades expresivas propias de los niños difieren significativamente de las de los adultos, lo que se traduce en una diferencia entre los testigos infantiles y los adultos, el debate sobre la competencia del niño como testigo se ha desplazado hacia un juicio sobre la fiabilidad del testimonio infantil en el contexto del desarrollo de la ciencia psicocognitiva. Metodología: Las características fisiológicas y psicológicas de los niños testigos determinan sus deficiencias en la codificación, almacenamiento y extracción de información de la memoria, por lo que la fiabilidad de los testimonios infantiles es una cuestión clave y difícil. Por este motivo, este trabajo utiliza el análisis documental para profundizar en el análisis de los testimonios de niños testigos como objeto de estudio. Principales conclusiones: Un análisis psicológico de los múltiples factores que afectan a la fiabilidad del testimonio de los niños. Se extraen dos conclusiones: 1. Los niños son, en principio, competentes para testificar. El desarrollo de la competencia testimonial de los niños lleva a la conclusión de que incluso los niños muy pequeños pueden recordar hechos ocurridos hace mucho tiempo, especialmente si ya tienen conocimientos previos sobre ellos. 2. La orientación práctica para mejorar la veracidad del contenido de las declaraciones de los niños testigos mejora la fiabilidad del testimonio de éstos. Los niños pueden verse influídos de diversas maneras para relatar de forma detallada y completa hechos que no
ocurrieron, de modo que los profesionales no pueden distinguir entre relatos falsos y veraces. Quizás el siguiente paso sea mejorar las "técnicas de interrogatorio". Novedad del estudio: El testimonio correcto y fiable de los testigos es clave en el proceso de investigación y juicio. La importancia del testimonio de los testigos menores de edad se ha hecho cada vez más evidente en los últimos años, a medida que ha aumentado el número de casos en los que están implicados niños. Hasta ahora, esta cuestión sólo había sido objeto de atención por parte de los juristas, y este estudio la analiza desde una perspectiva psicológica, sentando las bases para posteriores investigaciones en derecho y psicología.

Palabras clave: testigo infantil, testimonio de testigos, psicología.

1 INTRODUCTION

Witness testimony is a statement made by a witness to the investigating, prosecuting and trial officials about the facts of the case as they directly or indirectly perceive them, and is a very important type of evidence (Sun Hu, 2021). However, due to a variety of subjective and objective factors, witness testimony is not completely reliable, even when it is given by innocent children. Unlike adult witnesses, children's testimony has a higher error rate than that of adults, mainly because: firstly, children's cognitive abilities are not sufficiently developed and their thinking and memory skills are poorer than those of adults; secondly, children are usually unable to distinguish between truth and falsehood and may fabricate facts and intentionally lie, so children's testimony cannot all be reliable; thirdly, children are easily abetted and their testimony may be misled by questioning and opinions. Therefore, the study of children's testimony is different from that of adult testimony. However, due to the irreplaceable nature of testimony, especially in cases where children are eyewitnesses, we cannot rule out the testimony of child witnesses. Therefore, we consider the special characteristics of children themselves from a psychological perspective, discover the subjective and objective factors that affect their statements, and use psychological theory as an analytical tool to conduct a preliminary exploration of the issue of children's testimony.
2 THE CONCEPT OF A CHILD WITNESS AND ITS DIFFERENCES WITH ADULT

According to the definition of a child witness in the UN Convention on the Rights of the Child, a child witness is a "child or young person under the age of 18 years", which is in line with the age range of minors under Chinese law (Zheng Jingfang, 2018). The differences between child witnesses and adult witnesses are: firstly, children have immature cognitive development and are far less capable of thinking and remembering than adults; secondly, children have problems distinguishing between truth and falsehood and can easily fabricate facts and may intentionally lie, thus making their testimony less reliable; thirdly, children are more likely to be abetted, especially in their testimony, and are easily subject to questioning or misguided opinions of misdirection.

3 ANALYSIS OF THE COMPETENCE OF CHILDREN AS WITNESSES

The debate as to whether children are qualified as witnesses has been ongoing in judicial circles. The reason for this debate can be explained from a psychological perspective. According to Piaget's theory of intellectual development (Huang Biling, 2017), the development of a child's cognitive abilities can be divided into three stages as follows.

3.1 PRESCHOOLERS IN THE PREOPERATIONAL STAGE (3-6 YEARS)

Children in this period tend to focus on only one aspect of a stimulus scene and are generally unable to make causal interpretations of various phenomena. This suggests that the preschooler's level of cognitive development is one-sided and intuitive, but does not exclude the fact that some individuals have a comprehensive and rational understanding of certain scenes and phenomena due to their faster mental development and particular life experiences, thus reinforcing the depth of their memory storage.
3.2 EARLY SCHOOL-AGE CHILDREN IN THE CONCRETE-OPERATING STAGE (6-12 YEARS)

While children in the preoperational stage respond to things primarily by perception and representation, children in the concrete operational stage already have conceptual thinking. Their perception and representation of things is no longer limited to the representations they present, and thinking that embodies logical rules allows them to perceive and remember things more deeply.

3.3 CHILDREN ABOVE MIDDLE SCHOOL IN THE FORMAL ARITHMETIC STAGE (12+ YEARS)

This is the period of transition from childhood to adulthood. Children's thinking is approaching the level of adult thinking, assuming that deductive reasoning and propositional thinking skills are greatly developed and that the depth and breadth of their thinking is more mature than before.

According to Piaget's theory, it is the special physical and psychological characteristics of children that have led to judicial controversy over the qualifications of child witnesses, mainly because of doubts about the quality of their testimony. However, with the advances in psychological research in recent decades, more and more countries are also making greater reference to psychological criteria in the development of their justice systems. For children, age is not a decisive factor in determining the capacity of a witness. Children of any age can testify as long as they have the ability to perceive, remember and express themselves. It should be determined whether the minor has sufficient intelligence to observe, recall and recount the facts and has a sense of responsibility to tell the truth. If he possesses these conditions, he should be allowed to testify.

4 STUDY OF PSYCHOLOGICAL FACTORS INFLUENCING THE RELIABILITY OF CHILD WITNESS TESTIMONY

There are various factors that affect the reliability of children's testimony. From the perspective of psychological research, the main ones are as follows.
4.1 INTERNAL FACTORS

4.1.1 Memory capacity factors

Corresponding to Piaget’s three stages of children's intellectual ability, each stage of children's memory capacity differs, as does the magnitude of the effect of memory factors on the reliability of their testimony. Preschool children's poor memory durability effects are mainly related to situational memory. As they grow into early school age, children's brains are more developed and they can effectively master memory, and as a result, their memory capacity improves significantly and their persistence increases. During the middle school years, memory capacity has matured and is essentially the same as that of adults. Therefore, the impact of memory capacity is mainly focused on preschoolers. Using the Ebbinghaus forgetting curve as the focus of the study, it was found that a longer time interval between the testimony and the crime would have a direct effect on the children's memory. In addition, the time between the crime and the time of the testimony also had an impact on children's memory of the veracity of the case, which had a negative impact on the credibility of their testimony.

4.1.2 Language comprehension and expressive ability factors

The preferred influence on the extraction of information from children's witnesses is the child's level of verbal development, which has a significant impact on memory when children encode incidental information and recall information for extraction. The ability to report information from memory in a narrative form increases accordingly with age. Sentence comprehension precedes sentence production in language development, and children aged 4 and 5 can already talk freely with adults, but are not yet able to understand complex sentences such as passive voice and double negatives well. Children do not understand passive voice sentences well until the age of 6 and double negatives until the age of 7. As they get older, they become more proficient in their own grammar and their vocabulary grows, thus improving their ability to use language. In this context, the child's ability to express memorised information accurately and to understand the questions posed by the questioner also increases significantly. The level of development of children's verbal skills also affects their ability to understand the vocabulary or grammar of the questioner. Children may not realise that they do not understand complex
questioning and therefore do not speak out about such incomprehension, and children often try to answer all questions, even those they do not understand.

Brennan's 1988 study of Australian court files on child sexual abuse found that children were quickly confused on cross-examination, partly because of the language used in court, but also because the questions asked were multifaceted, making it difficult to answer in the affirmative or negative. The questions asked by the inquirer always jumped from one time period to another and demanded quick answers, reflecting exactly the adult's idea of time and events. This method puts the child at a distinct disadvantage, which leads to confusion and creates the impression that the child's testimony is unreliable.

4.1.3 Susceptibility to suggestibility factors

The suggestibility of child witnesses also influences the extraction of information, with children aged 3--4 years consistently showing high levels of suggestibility. The Bonn Test of Suggestibility Statement (BTSS), a standardised test specifically designed to assess children's suggestibility, is now commonly used in Western countries.

The cognitive factors that give rise to individual differences in cue perception primarily involve an individual's ability to identify the source of memory, called source monitoring. There are multiple sources of memory for events, and if children are unable to distinguish between these sources of memory information, they are more likely to receive false or cued information and may mistake information received from other sources for their own personal experience (Angela D. Moore, 2016). Pre-school children, have problems in this area, and while school-age children are able to distinguish between what they say and what others say, and between what they do and what others do, these children are less able than adults to distinguish between personally experienced events and imagined ones. This is due to the fact that the cortical differentiation process in young children's brains is not yet fully developed and many scenarios are not clearly distinguishable. Combined with little experience and few connections, what is remembered in their minds is often fragmented and they tend to confuse what is real with what is imagined and supplement the fragmented parts with their own fiction. However, as long as children know what is happening, even at the age of six they are no more likely to confuse imagination and reality than adults.
Children's own cognitive abilities and memory are never fully developed and if they have difficulty differentiating effectively between sources of memory information, they can easily accept inaccurate information, resulting in information from other sources being falsely presented as personal experience. Preschool children in particular are able to distinguish effectively between personal accounts and those of others, but they should not be easily trusted because of the incomplete cortical differentiation process and lack of experience at this stage of development.

4.2 EXTERNAL FACTORS

4.2.1 External instigation and guidance

Because of their limited ability to judge right and wrong, children are more likely to be instigated to testify against interested parties such as parents, siblings, etc. in a way that is inconsistent with the facts.

4.2.2 Questioning style and technique factors

Many factors, such as questioning techniques and the context of the questioning, can affect the accuracy and completeness of the child's statement, with questioning style being the most direct and effective factor in influencing the child's testimony.

Because children have not yet reached a level of discernment comparable to that of adults, children tend to show a tendency to conform to adults. And because of the suggestibility of the child witness, it is easy for the questioner, when not teaching questioning techniques, to induce the child witness to express statements that match the bias of the questioner. On top of this, if the questioning is repetitive, it can also affect the child's recollection of the events and eventually lead to problems with different statements.

Western researchers have investigated ways to improve the quality of children's testimony, for example by improving the effectiveness of children's extraction of information from memory and changing interrogator behaviour to minimise bias. the quality of testimony of school-age children.

The questioner herself is also an important factor in determining the success of the questioning. It is well known that children show submissiveness to their interviewers.
An important way in which the interviewer influences the quality of the child's testimony is the degree of bias they hold. An interrogator who is convinced of what they believe happened will lead the child to give an account that is consistent with this perception, even if it is false. According to Bruck et al. 1998, biased interviewers may influence children's testimony in a number of ways, including not seeking alternative interpretations of the child's testimony, choosing to pay attention to and reinforce responses that are consistent with their perceptions, not probing further into the child's inconsistent or odd testimony, overusing specific or leading questions designed to confirm their assumptions, presenting information about the suspect, inappropriate use of anatomically characterised rag dolls or props, inappropriate use of leading imagery or recollections.

In the absence of suggestive or misleading questions, repeated questioning can have both positive and negative effects on memory. Positive effects include sometimes enabling children to recall previously unrecollected information and, in some cases, preventing forgetting; Peterson's 1999 study of memory in children with accidental injuries showed that the effects of repetitive questioning were significant when the information to be remembered was relatively difficult to remember. Other studies have shown that repetition does not simply require repetition, and Poole & White in 1995 showed that the timing and number of repetitions were important factors in determining the effectiveness of repetition. Questioning immediately after an incident is much more effective in retaining memory, especially when it involves consolidating the content of the incident, than questioning after a period of time has elapsed.

In contrast to the positive effect, as the number of repeated questions increases, mistakes made on an earlier occasion are likely to be repeated in subsequent questions, and guesses made earlier may be dissolved into memory in subsequent questions. Angela D. further found in 2016 that asking children to think only about whether something right or wrong had ever happened also showed an increase in blame for non-events in suggestive questioning, and, that children's accounts of false events became increasingly specific and comprehensive over time. Genuinely believed that they had experienced these events, i.e. the false statements had become part of the memory and others were unable to convince the children that these events had not occurred. These phenomena also occur in judicial practice.
4.2.3 Other factors

The scene context, such as the light, sound and spatial distance of the crime scene, can have an impact on the child's perceptions. The environment in which the child is testifying can also affect his or her recollection of events. Children's testimonies are more reliable if they are recalling statements in an environment they are familiar with; if they are testifying in an unfamiliar environment and are not accompanied by a guardian, their nervousness and fear may affect their recollection and statements, resulting in less reliable testimonies.

5 CONCLUSIONS BASED ON PSYCHOLOGICAL ANALYSIS

5.1 CHILDREN ARE IN PRINCIPLE COMPETENT TO TESTIFY

The development of children's competence to testify leads to the conclusion that even very young children can remember events that happened long ago, especially if they already have prior knowledge of them. When questioned in a non-suggestive, non-inducing manner and without exposure to misleading information, children over the age of three are able to provide a reasonably accurate and relatively complete account of events. There were significant differences in the ability to provide eyewitness testimony, most likely reflecting developmental changes in cognitive as well as metacognitive functioning. In general, children in the learning years provide more accurate information, perform more consistently and require less specific guidance than preschoolers. Moreover, older children are less susceptible to misinformation. With the development of psychological cognitive science and the entry of natural scientific and technological knowledge into the social scientific and technological knowledge system, the consideration of a child's competence to testify is no longer based on simple generalities such as young age and the ability to distinguish between right and wrong. The question of whether a particular child is competent to testify is a matter for the jury or judge to determine in the courtroom.
5.2 PRACTICAL GUIDANCE FOR IMPROVING THE TRUTHFULNESS OF THE CONTENT OF CHILDREN'S WITNESS STATEMENTS

Children can be influenced in various ways to give detailed and complete accounts of events that did not occur, so that professionals are unable to distinguish between false and true accounts, and many children truly believe that these false events are facts that did occur. Perhaps the next step is to improve 'questioning techniques' such as designing procedurally structured questioning, as is used in child psychopathology. Although procedurally structured questioning has many shortcomings, this method of questioning allows for the systematic integration of questions to allow for the exploration of different interpretations of the child's statements, and the accuracy of the information obtained with procedural questioning can be compared to other methods.

(i) The number of interviews should be kept to a minimum in order to avoid the stress caused to child witnesses by repeated or multiple interviews, and to avoid misinformation. In cases involving child witnesses, all interviewers, including the police, lawyers on both sides, prosecutors, etc., should join together and either interview the child at once or videotape the interview of the child so that it can be viewed by other interviewers.

(ii) Try to process cases involving children as quickly as possible to avoid forgetting or distorting the child's memory information or creating false memories as a result of long intervals.

(iii) In order to reduce the stress caused to children in court, children may be allowed to testify without being present in court, and video recordings of previous questioning may be used directly as evidence or in special children's interview rooms, which can be viewed by the courtroom staff through closed-circuit television systems. This is considered in some countries to be one of the safeguards for vulnerable witnesses, for example, under the UK's Juvenile Justice and Criminal Evidence Act 1999, child witnesses can be shielded from giving evidence, or can give evidence via a live internet connection. The use of video can also ensure the quality of a child's testimony by analysing whether the interviewer has conducted suggestive questioning, biased questioning and whether hypnotic or visual imagery techniques that create false memories have been used.
(iv) Requirements for questioners. Firstly, the questioner should be dressed in civilian clothes. For example, the UK Juvenile Justice and Criminal Evidence Act 1999 provides that the court may make a special measures order to remove the wig and vestments while the witness is giving evidence, giving the judge this discretionary power in court by way of legislation, which was often used by the court in previous judicial practice in the UK in cases involving child witnesses. The second requirement is for the interviewer to have expertise in psychology; the staff dealing with the child should be educated in child development psychology or at least have an expert in child development psychology involved in the interview process, and the interviewer should have the skills to communicate with the child, ask questions in language appropriate to the child's age, and be able to use appropriate prompts without any to improve the quality of the child's recall. Alternatively, the role of the psychology professional as an expert witness in the child witness interview should be emphasized.
REFERENCES


