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The effect of age and reminders on witnesses' responses to cross-examination-style questioning[☆]



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ABSTRACT

Witnesses of all ages struggle with cross-examination questions, often changing their testimony as a result. In the laboratory, cross-examination-style questioning decreases both children's and adults' accuracy. We examined the extent to which this effect varies with age. We interviewed children, adolescents, and adults ($N = 128$) about a film clip after a short delay. Eight months later we cross-examined participants on their original responses to some questions, and simply repeated other questions. Participants of all ages were more likely to change their answers when cross-examined than when asked the same question again. Cross-examination negatively affected accuracy, although this effect decreased as age increased. Listening to an audio-recording of their original responses before the second interview reduced the number of changes participants made in response to repeated questions, but not cross-examination questions. These data give cause for concern about the effect cross-examination has on the accuracy of child and adolescent witnesses.

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Under an adversarial legal system, every witness's evidence is subject to cross-examination. The purpose of cross-examination is to test the credibility of the witness and help to establish the truth (Bouvier, 1856). It is a fundamental step in the legal process because it fulfils the absolute right of defendants to have witnesses against them examined (Spencer, 2012). Some legal scholars have argued, however, that the primary aim of many cross-examining lawyers is to discredit the witness, with no regard for the truth (Plotnikoff & Woolfson, 2012; Spencer, 2012). They argue that the current model of cross-examination is not an appropriate or effective method for testing the evidence of vulnerable witnesses, such as children (see also Pigot et al., 1989), because cross-examination usually occurs after a long delay, and often involves questions that are leading, confusing, or credibility-challenging (Zajac & Cannan, 2009; Zajac, Gross, & Hayne, 2003). Because each of these factors can reduce the reliability of eyewitness reports (Bruck & Ceci, 1999; Carter, Bottoms, & Levine, 1996; Read & Connolly, 2007; Zajac & Cannan,

2009), we must question the extent to which cross-examination achieves its goal of uncovering the truth.

During cross-examination, child sexual abuse complainants often comply with leading and closed questions and frequently misunderstand questions, with the majority making at least one change to their testimony (Plotnikoff & Woolfson, 2009; Zajac et al., 2003). These data are concerning, but they cannot inform us about accuracy. To address this issue, Zajac et al. have conducted laboratory research in which children experience a unique event and are then interviewed with analogues of direct examination and cross-examination (O'Neill & Zajac, 2013a, 2013b; Righarts, O'Neill, & Zajac, 2013; Zajac & Hayne, 2003, 2006; Zajac, Jury, & O'Neill, 2009). Across four experiments and a range of manipulations, cross-examination-style questioning dramatically reduced children's accuracy.

Like children, adolescent and adult witnesses struggle with cross-examination in the courtroom, often resulting in inconsistent testimony (Jack, Cannan, & Zajac, 2009; Plotnikoff & Woolfson, 2009; Zajac & Cannan, 2009). Few empirical studies, however, have examined the effects of cross-examination in these older witnesses. The results of four experiments that did include adults suggest that their accuracy is compromised by cross-examination-style questioning (Brimacombe, Jung, Garrioch, & Allison, 2003; Brimacombe, Quinton, Nance, & Garrioch, 1997; Turtle & Wells, 1988; Valentine & Maras, 2011), although methodological issues make it difficult to draw firm conclusions. These issues include the absence of a non-cross-examination control condition (Valentine & Maras, 2011),

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and the ecological validity of the questioning procedures and delays utilised (Brimacombe et al., 1997, 2003; Turtle & Wells, 1988). Using a standardised, ecologically valid paradigm with children, adolescents, and adults, our primary goal was to establish whether the effect of cross-examination-style questioning on accuracy varies with age.

Our secondary aim was to examine the effect of a reminder on cross-examination performance. Depending on jurisdiction, some witnesses are shown the video-recording of a previous interview or asked to read over their prior statements before testifying (Pipe & Henaghan, 1996; Read & Connolly, 2007). Exposure to stimuli that encapsulate aspects of the original event can facilitate recall (Tulving & Thomson, 1973). Although a body of literature demonstrates the facilitative effect of such reminders, most of this research focuses on young children, and involves non-verbal recall and/or non-verbal reminders (e.g., Hudson & Sheffield, 1999; Morgan & Hayne, 2007; Priestley, Roberts, & Pipe, 1999). It is therefore important to establish what effect reminders exert on witnesses' cross-examination performance, and whether this differs as a function of age.

Our third aim was to examine additional factors that might predict cross-examination performance. Zajac et al. (2009) found that children's performance under cross-examination was positively related to their self-esteem, self-confidence, and assertiveness. We examined whether cross-examination performance is related to cognitive factors, such as participants' general memory and intellectual functioning, or their free recall accounts of the event. We also examined whether metacognitive skills might play a role; specifically, are witnesses less likely to change answers that they can support with contextual detail? Finally, some researchers have found that when asked cross-examination-style questions, children are no less likely to change responses that were initially correct than those that were initially incorrect (O'Neill & Zajac, 2013b; Valentine & Maras, 2011; Zajac & Hayne, 2003; but see Zajac & Hayne, 2006; Zajac et al., 2009). We investigated age-related trends in this tendency.

1. Method

1.1. Participants

We recruited community members via newspaper advertisements, invitations distributed to schools, a database of participants from unrelated studies, and word of mouth. At the time of the first interview, the sample comprised 48 children (9–11 years), 48 adolescents (14–16 years), and 48 adults (25–60 years). At the time of the second interview, 16 participants could not be contacted or were unable to take part. The final sample comprised 45 children ($M = 10.7$ years, $SD = 0.9$ at first interview; 23 females), 41 adolescents ($M = 15.4$ years, $SD = 0.8$; 23 females), and 42 adults ($M = 44.4$ years, $SD = 0.8$; 20 females). All participants (and a caregiver of each participant aged under 16 years) gave written informed consent. Participants received \$15.00 at the end of each interview.

1.2. Memory event and first interview

One of two female experimenters saw each participant. First, the participant watched a brief film clip depicting a simulated non-violent crime. The experimenter then administered the Wechsler Abbreviated Scale of Intelligence (WASI; Wechsler, 1999) and the Wide Range Assessment of Memory and Learning (WRAML; Sheslow & Adams, 2003). Approximately 45 min after the film clip, the experimenter interviewed the participant about it, following the protocol that is used by the New Zealand Police for their level 1 witness interviews. This procedure incorporates core aspects of the

cognitive interview, such as report everything, transfer of control, context reinstatement, and focused retrieval (Fisher & Schreiber, 2007; Milne & Bull, 1999). The interview comprised free recall, followed by open-ended prompts. Finally, the experimenter asked 8 yes–no questions: four about true details and four about false details. The questions addressed both central details (e.g., 'Was the person a man?') and peripheral details (e.g., 'Did you see a red car parked on the street?'). Interviews were audio-recorded. Additional details about this session are available elsewhere (Jack, Leov, & Zajac, 2013).

1.3. Second interview

Approximately 8 months after the first interview ($M = 8.0$ months, $SD = 1.2$), participants were re-interviewed by one of three unfamiliar female experimenters. Immediately beforehand, approximately half of each age group (21 randomly selected children, 19 adolescents, and 18 adults) heard the audio-recording of their first interview. All participants then gave a new free-recall account, and were then questioned on the same 8 items as in the first interview. For four of the items, participants were simply asked the same questions again (control questions). For the remaining four items, participants were challenged on their original responses (cross-examination questions; see below). The eight items were counterbalanced, such that each appeared equally often in the cross-examination and control conditions.

We adapted Zajac and Hayne's (2003) cross-examination paradigm. The aim of these questions was to challenge participants' original yes–no responses, irrespective of accuracy. A sample set of questions is provided in the Appendix. For each of the four items, the interviewer began by re-stating the participant's initial answer (e.g., 'Last time you said that the person you saw in the clip was a man'). This was followed by a 'metamemory' question designed to assess participants' ability to support their initial response with relevant contextual detail (e.g., 'How did you know that?'). The next three questions were leading, complex, ambiguous, or irrelevant. Finally, the interviewer provided a reason for disbelieving the participant's original response (e.g., 'Most of the people who saw this clip said that the person was a woman, and I think they might be right about that, mightn't they?'). If the participant agreed that this version of events was possible, the interviewer followed up with the stronger suggestion, 'I think they are right about that, aren't they?' Four different reasons for disbelief were used (see Appendix). The assignment of these reasons to items, and their order of presentation, were counterbalanced across participants. Cross-examination questions were interspersed with control questions; the order of these was also counterbalanced. Interviews were audio-recorded and transcribed verbatim.

1.4. Scoring

Free recall. To quantify participants' free-recall accounts, the number of unique details was tallied; each detail was further coded as correct, incorrect, or possible/subjective (for more detail, see Jack et al., 2013).

Yes–No/control questions. For the yes–no questions at both interviews, correct responses were given positive scores; incorrect responses were given negative scores. Participants scored 2 or –2 for an unambiguous 'yes' or 'no' response, 1 or –1 for a hesitant 'yes' or 'no' response (e.g., 'I think so'), or 0 for a 'don't know' response.

Metamemory questions. These were scored dichotomously. Participants received credit if they provided relevant contextual detail consistent with their initial response (e.g., 'I knew it was a man because of his body shape').

Cross-examination questions. With the exception of the metamemory responses (see above), only participants' responses

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