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Research article

Judges' delivery of ground rules to child witnesses in Australian courts

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ABSTRACT

Ground rules directions are given to children in forensic interviews to explain what is expected of them, and to reduce their tendency to acquiesce to erroneous or incomprehensible questions. Ground rules may also be necessary when children provide testimony in court. Drawing on research conducted for the Australian Royal Commission into Institutional Responses to Child Sexual Abuse, the present study examined the use of ground rules directions delivered in court in 52 trials by 24 presiding judges in three jurisdictions to 57 child complainants (aged 7–17.5 years). Eleven categories of rules were identified. The number of words spoken to deliver each rule was counted, and grade-level readability scores were calculated as a proxy for the complexity of the ground rules. When judges asked comprehension or practice questions, the question types were coded. More than one third of the children (35%) received no ground rules directions from the judge; the remaining 65% received directions on an average of 3.5 types of ground rules out of a maximum of 11 types. While comprehension questions were common, practice questions were rare. Comprehension questions were most often presented in a yes/no format that implied the expected response, although this form of question is unlikely to provide an effective assessment of a child's comprehension. Neither the number of rules delivered nor the number of words used was related to children's age. Implications for children's court testimony are discussed.

1. Introduction

Ground rules are conversational directions to child witnesses that are intended to prepare them for questions that may request unknown or forgotten information, contain errors, or use language and syntax beyond the child's developmental level. Common directions included in many forensic interviewing protocols include giving children permission to say "I don't know," and "I don't understand," encouraging them to correct interviewers when mistakes have occurred, and reminding them that interviewers are naïve about the children's experiences (e.g., Lamb, Orbach, Hershkowitz, Esplin & Horowitz, 2007; Lyon, 2005; Ministry of Justice, 2011; Saywitz & Comparo, 2014).

Ground rules directions are thought to be necessary because the conversational rules in forensic interviews and in court depart from those of usual conversational interactions between children and adults. That is, children are accustomed to being questioned by

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knowledgeable adults who know the answers to the questions they ask. In investigations, on the other hand, the interviewer is naïve and the child is the expert. Children know that adults expect answers to their questions, so they may attempt to provide a response regardless of their ability to do so (Ceci, Kulkofsky, Klemfuss, Sweeney, & Bruck, 2007; Warren & McGough, 1996). Ground rules are believed to reduce the pressure to respond by making children aware that they should indicate when they don't know, don't remember, or don't understand (see Brubacher, Poole, & Dickinson, 2015 for review).

In addition to preparing children for difficult or ambiguous questions, ground rules can reduce the authority imbalance between the interviewer and child by empowering the child, and may thereby reduce suggestibility (Mulder & Vrij, 1996). Clear child-centred instructions can also help orient and settle the child in the interview setting. They assist in tailoring the interview to the child's developmental level, which can lower anxiety (Lamb & Brown, 2006), and may have a positive effect on accuracy (Almerigogna, Ost, Bull & Akehurst, 2007).

In advance of a criminal trial in which a child witness will give evidence, judges are advised to convene a ground rules hearing with legal counsel to discuss special measures, and the treatment of and directions to be given to a child witness, including suitable forms of questioning (Cooper, Backen & Marchant, 2015; Wheatcroft, 2017). Yet little is known about the use of ground rules directions at trial.

1.1. The effectiveness of ground rules

The effects of ground rules directions on children's memory reports have been studied in laboratory settings, although the body of research is relatively small. Importantly, only the *Don't Know* ground rule has received significant research attention. The research findings concerning the efficacy of ground rules instructions are somewhat mixed (see Brubacher et al., 2015, for a review). Generally, studies with children up to age 13 show that the rules tend not to be effective unless the child was given an opportunity to practice them before responding to questions about the substantive topic. Practice in applying the ground rules may be essential to their effectiveness because it enhances understanding, and because practice may ensure that children pay attention to the rules.

The *Don't Know* rule appears to be the easiest for children to understand from a young age (Dickinson, Brubacher, & Poole, 2015). A simple practice example with feedback (e.g., "If I asked you, what's my dog's name, what would you say?") is sufficient to increase children's appropriate don't know responses. Children given this rule with practice and feedback do appropriately say, "I don't know," even after a 15-min intervening interview (Danby, Brubacher, Sharman & Powell, 2015), although instructions to answer a question "if you *do* know the answer" may be needed to prevent unnecessary don't know responses (Gee, Gregory & Pipe, 1999). On the other hand, children aged 9 years and under may need relatively extensive practice to benefit from the Don't Understand and Correct Me rules (Danby et al., 2015; Peters & Nunez, 1999; Saywitz, Snyder & Nathanson, 1999). Danby and colleagues found that a practice example such as, "If I said your sweater was green, what would you say?" (when the sweater is yellow) was not sufficient to change children's behaviours with regards to these two rules.

1.2. Question type

One factor that has been speculated to influence the effectiveness of the ground rules is the question format used for comprehension and practice questions (Dickinson et al., 2015). According to the instructions outlined in forensic interview protocols, the ground rules themselves are often presented as statements (e.g., "If I make a mistake, you should tell me"). They may also include a comprehension question (e.g., "So if I make a mistake, what will you say?" or "Will you tell me when you don't understand?"). The former comprehension question is recall-based (i.e., requires the child to generate a response) whereas the latter is a yes/no question that relies on recognition. Recall questions allow a better assessment than yes/no questions of whether children have understood (or at least, attended to) ground rules because they require production of a response. When presented with questions or statements that can simply be answered by nodding or choosing an option, children have a tendency to do so without giving the question much thought (Waterman, Blades, & Spencer, 2000). This is especially true for tag questions that imply what response is expected (e.g., "If you need a break you'll tell me, won't you?"). Thus, ground rules comprehension questions that merely require children to choose an option or agree with a statement are unlikely to be helpful in predicting their performance.

Ground rules *practice* questions are distinguished from comprehension questions because the former do not simply ask children to confirm their understanding or compliance with a rule, but instead give them an explicit example with an opportunity to practice using the rule. Practice questions commonly take a hypothetical "If I said X, what would you say?" format. Again, however, some practice examples are recall-based (e.g., "What's my dog's name?") while others rely on recognition (e.g., "Is my dog's name Ralph?").

Given that children are least likely to provide a don't know/don't understand response when the questions are narrower (Waterman, Blades, & Spencer, 2004), if forced choice or yes/no practice questions are asked, children are likely to choose an option whether they know the answer or not. Therefore, it is predictable that children (especially younger children) will benefit more from practicing the ground rule in response to recognition questions. In other words, the best way to test whether children understand a ground rule is to pose a question that would typically evoke more pressure to guess (i.e., forced choice or yes/no questions). Because recall questions require generation of a response, children are more likely to signal problems in response to recall than recognition questions, even without being instructed to do so (Waterman et al., 2000, 2004).

The prediction for ground rules practice questions is the opposite of that for comprehension questions. For comprehension checks, recall-based questions may be more informative than recognition questions because children will acquiesce to the latter rather than indicate that they do not understand the rule (e.g., "What will you say to me when something doesn't make sense?" versus "Will you

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