

Assessing Children's Competence to Take the Oath:
Research and Recommendations

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With all of the attention paid to children's performances as witnesses once on the stand, their ability to qualify to take the stand has been relatively neglected. Most courts require that in order to testify, a witness must first take the oath. In its most simple form, an oath is a promise to tell the truth. Taking the oath presupposes that one understands what it means to tell the truth, and that one appreciates one's obligation to tell the truth when promising to do so. If a young child does not understand the difference between the truth and lies, or fails to appreciate his or her obligation to tell the truth, he or she may be found incompetent, and not allowed to testify. In some jurisdictions, a finding of testimonial incompetence may even render inadmissible the child's out-of-court statements, which might otherwise be admitted under an exception to the rule against hearsay (e.g. *Oldsen v. Colorado*, 1987).

The importance of young children's understanding of the oath has often been underestimated. Legal commentators frequently note that many states have relaxed their competence requirements and allow anyone to testify. The requirements about which these commentators are speaking, however, typically concern the ability to accurately perceive, remember, and report events, but not the understanding of the oath. For example, the Federal Rules of Evidence, which have served as a model for many states' codes of evidence, state that any person may testify, but maintain the requirement that any person who testifies must take the oath (Federal Rules of Evidence, Rules 601, 603). Judges routinely allow voir dire of child witnesses in order to ensure that they understand what the oath entails.

Psychological commentators have criticized the practice of asking children about their understanding of the oath on the grounds that there is no relation between understanding and truth-telling. These commentators may be asking more of the competence evaluation than it was

intended to deliver. The competence questions are not designed to assess the likelihood that the child is suggestible or prone to lie. Rather, they determine whether the child is qualified to promise to tell the truth.

What the law does assume is that a promise to tell the truth has an effect on the witness. Although psychologists have been surprisingly uninterested in testing whether promising to tell the truth increases the likelihood that one will tell the truth, Some research has found that children will steadfastly keep their promises not to reveal the truth, suggesting that they view promising as a solemn commitment (Peters, 1990). Anecdotally, “but you promised” appears to be well-understood by young children as a compelling argument for compliance.

The requirement that a child understands the difference between the truth and lies and the obligation to tell the truth therefore continue to be important for those involved in preparing young children to testify. Since the child’s testimony tends to be a pivotal element of most sexual abuse cases, a failure to qualify the child may have devastating consequences. Questions asked of the child should be as sensitive to true understanding as possible, without exaggerating the competence of the child.

Our research

Karen J. Saywitz and I have spent the past year investigating the best means by which to assess young children’s understanding of the oath. Our goals are both to prescribe guidelines for questioning children, and to describe the likelihood that children at various ages (of various backgrounds) will exhibit competence. Previous research has suggested that at about four years of age, children understand the basic difference between the truth and lies (that truth corresponds to reality, whereas lies do not), and are aware that it is immoral (i.e. “bad”) to lie (Bussey, 1992).

However, such research has neglected the issue of how children's understanding is assessed, which limits the practical value of such research for practitioners who want to know how to question children about their understanding. Furthermore, such research has not examined the competence of children actually appearing in court, which limits the utility of such research for policy-makers who want to know how likely it is that children of different ages are competent to testify. Our research has addressed these limitations in that we have explicitly compared different means by which competence can be evaluated, and have done so with samples of abused and neglected children appearing in child dependency proceedings. The purpose of this paper is to acquaint the reader with some of our research findings, in the hopes that the practice of questioning young children might be improved.

The difference between the truth and lies

The first requirement in qualifying as competent to take the oath is that the child understand the difference between telling the truth and telling a lie. It is sufficient that the child understands that truth-telling consists of telling "what really happened." Distinctions between lies and other types of statements, such as jokes (requiring consideration of the speaker's intent) or mistakes (requiring consideration of the speaker's knowledge), are unnecessary, because the witness' obligation is to speak the truth, and to avoid lies, jokes, and mistakes.

There are a number of different means by which one could assess a child's understanding of the difference between the truth and lies. First, one could ask the child to explain the difference between the truth and lies. Second, one could ask the child to explain what it means to tell the truth or to tell a lie. Third, one could ask the child to identify statements as either the truth or lies. All of these approaches have appeared in the case reports as having been used in

actual competence evaluations, and all have been recommended by legal commentators advising attorneys on how to qualify children (Toth & Whalen, 1986; Whitcomb, 1992). However, relative difficulty of each approach is usually ignored.

Based on the proposition that children probably understand more than they can explain, we predicted that asking children to identify truthful statements and lies as such (the identification task) would be more sensitive to understanding than asking them to define the words "truth" and "lie" (the definition task) or to explain the difference between the concepts (the difference task). We gave versions of each task to 96 4- to 7-year-old children who were appearing in dependency proceedings in Los Angeles County.

The participants were a group of children who have not traditionally been tested by developmental psychologists. Most of the children had been removed from the custody of their parents within the past seventy-two hours, and were awaiting their first court appearance. The rest of the children had been in court before, and many had been in several different placements while under the jurisdiction of the court. Allegations of sexual abuse had been made in seven percent of the cases, there were physical abuse allegations in approximately one-third, and allegations of a failure to provide (e.g. lack of food, shelter, clothing) in almost ninety percent. The vast majority of cases included evidence of parental substance abuse. The ethnicities of the participants was chosen to approximate that of the entire population of dependent children under the jurisdiction of the Los Angeles County dependency court: almost half were African-American, approximately a quarter were Caucasian and a quarter were Latino. In order to evaluate the children's verbal skills, we administered the PPVT-R, a test of receptive vocabulary that is highly correlated with tests of verbal intelligence. Almost half of the children scored

below 70 (scaled score), which would put them in the retarded range. The average child in our sample was a year and a half behind the nationwide norm.

Despite our participants' verbal delays and stressful life situations, they performed extremely well on the identification task, in which they identified truthful statements and lies as such. The 5-year-olds answered over 80% of the questions correctly, whereas the 6-year-olds and the 7-year-olds each answered over 90% correctly. We gave children four trials, so that there would be only a 6% chance that a child would answer four of four identification trials correctly. Over half of the 5-year-olds answered four of four correctly, and over 80% of the 6- and 7-year-olds did so. Clearly, a majority of our sample showed a good understanding of the difference between the truth and lies by 5 years of age. The performance of the 4-year-olds, however, was less impressive, and is discussed below.

As we predicted, participants appeared much less competent if judged by their performance on the definition and difference tasks. We were very liberal in scoring children's definition task performance--giving them full credit if they could define either "truth" or "lie." Nevertheless, it was not until 7 years of age that a majority of children could do so (and then only slightly more than half). On the difference task, in which children were asked to explain the difference between the truth and lies, not even a majority of 7-year-olds performed well. We found that the youngest children in our study (4-year-olds) had difficulty in even identifying objects as "different" or "the same," which would obviously impair their ability to explain the "difference" between two concepts.

The way in which the competence questions are asked has a substantial effect on a child's apparent understanding. 5- and 6-year-olds appeared incompetent when asked to define or

explain the difference between the truth and lies, but competent when asked to merely identify truthful statements and lies as such. Overall, of those children who were proficient at identification (answering four of four questions correctly), 70% were unable to explain the difference between truth and lies, and 60% were unable to define either "truth" or "lie." If something akin to the identification task is not used, then it is likely that a significant number of children will be found incompetent to testify who are well aware of what it means to tell a lie.

Although the 4-year-olds showed a similar pattern of finding the identification task the easiest, even their performance on that task was uneven. 30% answered four of four identification trials correctly, and thus showed a good understanding of the difference between truth and lies. However, as a group, the 4-year-olds exhibited a curious (and unpredicted) pattern of results: they were extremely good at identifying truthful statements as such, but were no better than chance at identifying lies as lies. 4-year-olds appeared to be avoiding calling statements made by the experimenter "lies." This result seemed analogous to another curious finding: of those children who responded that they knew the definition of one word but not the other (truth or lie), virtually all claimed to know the meaning of "truth" but not the meaning of "lie." We suspected that children might understand what it means to tell a truth and tell a lie, but be reluctant to talk about lies (or even to identify statements as lies), because of their awareness of the negative consequences of lying. Ironically, children's fear of lying might make them appear less competent than they really are.

In a second study (with 96 4- and 5-year-old abused and neglected children), we followed up on some of the findings of the first study, and refined a technique for testing children's ability to identify truthful statements and lies as such. In the new task, in which two story children

make true and false statements about an object, we hoped to reduce the motivational difficulties faced by children when asked about truth-telling and lying. One of the story characters lies, and the child merely has to identify which story character does so. The participant therefore need not identify the experimenter as a liar, and denying that a lie has been told at all is not an option. Moreover, the task allowed us to visually depict truth-telling and lying, through the use of talk bubbles, which reduces the memory demands of the task.

We found that the 4-year-olds no longer had greater difficulty in identifying lies than in identifying truthful statements, and as a group, they performed above chance on the new identification task. However, only a third answered six of six identification trials correctly. 70% of the 5-year-olds did so, leading us to conclude that 5-year-olds as a group show good understanding of the meaning of truth and lies.

Not surprisingly, children with less chaotic backgrounds and with more advanced verbal skills exhibit even earlier understanding on this task; we tested a group of 3- and 4-year-olds from a university preschool who averaged in the 80th percentile of receptive vocabulary, and found that 3-year-olds performed well above chance, and most 4-year-olds answered every trial correctly.

The obligation to tell the truth

The courts have typically testing children's understanding of their obligation to tell the truth by assessing their understanding that lying is immoral. It is unnecessary to demonstrate an understanding of the potential for prosecution for perjury (which in the case of child witnesses is virtually nil), but sufficient if the child understands that it is wrong to lie and that punishment may follow (Myers, 1992).

As noted above, research on samples of nonabused children has found a good understanding of the wrongfulness of lying by four years of age (Bussey, 1992). In the two studies just described, we assessed young abused and neglected children's understanding, using procedures that we believed would be most sensitive to competence. In the first study we told stories to the participants in which story children either lied or told the truth to different authority figures (a judge, a doctor, a social worker, the character's grandmother), and we asked children to evaluate whether it was "good" or "bad," or whether the authorities' reaction would be either "happy" or "mad." Note that children were not asked to explain the immorality of lying or the reactions of authority figures, but merely had to identify immorality or the accurate reaction. Hence, this task was analogous to an identification task. In the second study, we told children stories in which pairs of story children spoke to authority figures, one told a lie and one told the truth, and we asked participants to identify which story characters were "good" or "bad," or which characters would "get in trouble."

Across the two studies, children performed above chance by 4 years of age, and near-ceiling by 5 years of age. By 5 years of age, a majority of children were answering every trial correctly, thus exhibiting good understanding that it is wrong to tell a lie, whether wrongfulness is defined as a general evaluative reaction (good or bad), in terms of consequences to the liar (getting in trouble), or in terms of the reaction of the authority figure to whom the child lies (happy or mad). In our nonabused university preschool sample, an understanding of the wrongfulness of lying was evident among even the 3-year-olds, with a majority of the 4-year-olds answering every trial correctly.

We were able to compare children's understanding of the meaning of truth and lies with their understanding of the immorality of lying, and we found evidence in both studies that among abused and neglected children, the immorality of lying is understood better (and perhaps earlier) than the meaning of lying. This may help to explain the youngest children's difficulty in discussing lying: they are unsure what it means to lie, but they know that it is wrong to lie, and that lying can get them in trouble.

Conclusion and recommendations

By 5 years of age, even abused and neglected children with serious delays in verbal ability have a good understanding of the meaning and morality of truth-telling and lying. This understanding is apparent, however, only if sufficiently sensitive procedures are used; specifically, if children are asked to identify the truth and lies as such, they are most likely to appear competent. Most of the children we tested would not have appeared competent had they been asked only to define or to explain the difference between the truth and lies.

Our results thus help to establish norms for what to expect of children at different ages, and to provide guidelines for how individual children should be evaluated. A presumption that 5-year-olds are competent to take the oath is clearly indicated by our research, and likely to be an underestimation of children's abilities, given the characteristics of our sample. Indeed, our results probably underestimate the competence of child witnesses in dependency court, since the children with the most severe verbal delays would lack the communicative competence to serve as witnesses. The majority of children were involved in cases alleging neglect, which (in my experience) do not require the testimony of young children. The excellent performance by 3-

year-olds in our above-average university preschool sample makes clear that five is a fair age at which to presume that children are capable of taking the oath.

Even more importantly than establishing age norms, our procedures can be used by professionals in and out of the courtroom as a means of assessing young children's competence to take the oath. At the very least, professionals should avoid asking children to define or explain the difference between the truth and lies. It is also probably unwise to ask a child to give an example of a lie (although we did not directly test this approach), both because the child is forced to generate information and because the question may be perceived as a request that the child tell a lie. If an identification question is asked, the professional should be aware that saying things like "if I said..." or "if you said" might trigger motivations in the child to simply deny that a lie was told. In our study, we asked "if somebody said," and our 4-year-olds were nevertheless reluctant to acknowledge lies as such. A forced choice between characters, one who lies and one who tells the truth, appears to be the most sensitive means of assessing understanding.

The oath is likely to remain an important component of trial procedure. As long as the oath exists, competence evaluations will continue, making it necessary for professionals interested in qualifying children to understand the best means by which children's competence can be evaluated. In addition to the advice offered here, we would be happy to share our testing materials with interested professionals, in the hopes that children's competence can be assessed most accurately.

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