Juries and Children's Testimony

Cynthia J. Najdowski  
*University at Albany, State University of New York*, cnajdowski@albany.edu

Bette L. Bottoms  
*The University of Illinois at Chicago*

The University at Albany community has made this article openly available.  
Please share how this access benefits you.

Follow this and additional works at: [https://scholarsarchive.library.albany.edu/psychology_fac_scholar](https://scholarsarchive.library.albany.edu/psychology_fac_scholar)

Part of the [Civil Law Commons], [Criminal Law Commons], and the [Juvenile Law Commons]

**Recommended Citation**

Najdowski, Cynthia J. and Bottoms, Bette L., "Juries and Children's Testimony" (2007). *Psychology Faculty Scholarship*. 51.  
[https://scholarsarchive.library.albany.edu/psychology_fac_scholar/51](https://scholarsarchive.library.albany.edu/psychology_fac_scholar/51)

**Rights Statement**

This Encyclopedia Entry is brought to you for free and open access by the Psychology at Scholars Archive. It has been accepted for inclusion in Psychology Faculty Scholarship by an authorized administrator of Scholars Archive. Please see Terms of Use. For more information, please contact scholarsarchive@albany.edu.
This paper is not the copy of record and may not exactly replicate the final, authoritative version of the article.
Jurors and Children’s Testimony

Cynthia J. Najdowski and Bette L. Bottoms

University of Illinois at Chicago
Jurors and Children’s Testimony

When children are involved in trials as witnesses, victims, or defendants, jurors must decide whether they are credible and how to weigh their testimony in reaching a verdict. Thus, although much psychological research focuses on the *actual* accuracy of children’s eyewitness testimony, it is also important to consider their *perceived* accuracy. Research reveals that jurors consider many factors when making decisions about children’s testimony. In this article, we review what is known about jurors’ perceptions of testimony given by children and adolescents who are bystander witnesses, alleged child abuse victim/witnesses, and juvenile defendants.

Can jurors determine whether child witnesses are accurate or inaccurate, telling the truth or lying? Some research reveals that adults are not very accurate in discerning children’s actual accuracies from inaccuracies or in detecting lies from truth, although adults can detect children’s (especially older children’s) lies with slightly greater than chance accuracy. Consistent with findings from the adult eyewitness literature, part of the problem is that jurors appear to overuse the dubious marker of child confidence in judging child accuracy, which is misleading because the relation between child confidence and child accuracy is not always strong. More research is needed to ensure that these results hold true in situations when children give incorrect or false testimony about events of great personal significance, which has not been the case in most research on this topic. Even so, existing research is converging on the conclusion that adults cannot detect children’s actual accuracy well. A growing body of research has thus focused on identifying factors aside from actual accuracy that affect jurors’ perceptions of children’s eyewitness testimony.
Perceptions of Bystander Witnesses

Gail Goodman and her colleagues conducted the first studies of jurors’ perceptions of child witnesses. They evaluated jurors’ reactions to bystander testimony given in the context of vehicular homicide and murder cases. Although all jurors read the same testimony, some were told that the key prosecution witness was an adult and others were told that the witness was a child. Individual jurors perceived child witnesses to be less credible than adult witnesses, an effect that was not tempered by jury deliberation. This research provided the first evidence that jurors – and juries – are skeptical of children’s ability to provide accurate testimony, presumably because jurors doubt young children’s cognitive abilities to encode and retrieve details of events accurately. Even so, witness age did not directly affect jurors’ ratings of the defendant’s guilt. Instead, jurors based their verdicts primarily on witness testimony only when the witness was an adult. When the witness was a child, jurors gave greater consideration to other case evidence. Thus, although jurors often report that they consider corroborating evidence when making decisions, this is especially true when the primary source of evidence is child testimony. In fact, later research showed that jurors perceive individual child witnesses more positively when their testimony is corroborated by other credible child witnesses.

Perceptions of Alleged Victims of Child Maltreatment

After the first studies of jurors’ perceptions of child bystander witnesses, research quickly turned to jurors’ perceptions of child victim-witnesses, specifically, alleged child sexual abuse victims. This shift reflected increased societal attention in the 1980s to child sexual abuse as well as the fact that child sexual abuse is usually perpetrated in secret with little corroborating evidence, making child victim testimony key to its prosecution. This research has revealed that jurors’ decisions are influenced by many factors. For example, jurors generally find child sexual
abuse victims who are younger than about 13 years old more believable than older children.

Why? Jurors’ belief that younger children are less cognitively competent than older children (which hurts the perceived credibility of child bystander witnesses) actually works to the advantage of child sexual abuse victims. That is, compared to older children, younger children are perceived as sexually naïve and therefore less cognitively capable of fabricating allegations of sexual abuse that did not actually occur. Younger children are also seen as more honest, and therefore less likely to lie about such matters. In fact, for the same reasons, jurors perceive intellectually disabled (i.e., mentally retarded) teenaged sexual abuse victims to be more credible than children of average intelligence. In fact, intellectually disabled children are sexually victimized more often than non-disabled children, and prosecutors might hesitate to prosecute such cases, fearing that jurors will not believe disabled witnesses.

A number of other factors also influence jurors’ perceptions of child sexual abuse victims, including victim and defendant factors such as gender and race, case factors such as whether the child’s disclosure of abuse was portrayed as delayed or repressed, and juror individual difference factors such as gender and attitudes. For example, one of the most robust findings in this field is that compared to men jurors, women are on average more likely to convict defendants and to perceive children as credible witnesses. This may be driven by the fact that compared to men, women empathize more with child victims and have somewhat more pro-child and anti-child-abuse attitudes.

Recently, attention has begun to turn to adults’ reactions to children who are alleged victims of other forms of child maltreatment. For example, studies in which adults consider brief vignettes about maltreatment situations indicate that neglect is perceived to be more severe when a victim is younger rather than older, perhaps reflecting people's awareness that, compared to
older children, younger children are less able to care for themselves and may experience more adverse consequences from neglect. In contrast, people perceive psychological abuse to be more severe when the victim is older rather than younger, perhaps reflecting a belief that older children are more likely to experience damage to their self-concept. Perceptions of physical abuse severity are not influenced by age, suggesting that people disapprove of physically abusing any aged child. Although not yet tested within a mock trial paradigm, jurors may be similarly influenced by these variables in trials involving these forms of child maltreatment.

Psychologists are sometimes allowed to testify as expert witnesses in trials about issues of psychological relevance that jurors do not intuitively understand. Scholars disagree about the conditions under which expert psychological testimony about children’s actual eyewitness abilities should be allowed. Surveys reveal that some portion of the jury pool is knowledgeable about children’s actual memory, suggestibility, and tendency to disclose sexual abuse, but others are not. Most jurors have a poor understanding of clinical symptoms exhibited by abused and non-abused children, forensic interview techniques that increase the risk of false allegations versus those that promote true disclosures of abuse, and whether children are prone to confabulate and internalize false memories of abuse. (Women and more highly educated jurors are more accurate about such issues than other jurors.) Some argue that expert testimony would be a valuable tool for countering jurors’ ignorance, while others fear that expert testimony will increase unfounded skepticism about children’s abilities. Research by Margaret Kovera and her colleagues has shown that expert testimony is useful in educating jurors about at least one particular issue: the hazards of basing credibility judgments on child witnesses’ non-verbal cues and countenance. That is, jurors expect abused children to be emotionally upset when testifying about their sexual victimization, and when this expectation is not met, jurors doubt the veracity
of abuse allegations. Expert testimony can inform jurors that most child victims have repeated their stories so many times before appearing in court that some no longer appear emotionally distraught. Such testimony can reduce jurors’ otherwise negative bias against child sexual abuse victim-witnesses resulting from incorrect assumptions about the relation between emotion and accuracy.

Regardless of appearance, testifying in court can be a traumatic experience for some child witnesses. To protect children from this potential trauma, the U.S. Supreme Court declared it constitutionally permissible under some conditions for children to testify using innovative techniques that shield them from the defendant. For example, rather than testifying in an open courtroom in front of the defendant, child victim-witnesses may testify elsewhere in the courthouse while their testimony is transmitted to the courtroom via closed-circuit television (CCTV). Or child witnesses can give their testimony in court with their view of the defendant blocked by a screen. How do such accommodations affect jurors’ perceptions of child testimony? Although defense attorneys fear that jurors will infer a defendant’s guilt from the use of accommodations and give undue weight to testimony presented under such circumstances, ironically, mock trial research suggests that jurors perceive child witnesses to be less credible when testimony is presented via CCTV compared to when children testify live in court. This may result from accommodated children appearing less stressed than live testifiers, which may signal the need for psychological expert testimony for reasons discussed previously.

Perceptions of Child Defendants

Recent research has begun to consider jurors’ perceptions of children who are accused of committing crimes. This has become increasingly important because more and more teenagers are being tried in adult criminal court instead of juvenile or family court, and their cases are
being decided by jurors rather than by juvenile court judges. Unfortunately, research suggests that trying a juvenile in adult criminal court is inherently prejudicial. For example, jurors infer that juveniles tried in adult criminal court have been convicted of past crimes, and this inference increases the likelihood of conviction. In reality, most felony juvenile offenders (i.e., juveniles whose cases are most likely to go to trial in adult criminal court) have never been arrested before. Jurors’ judgments are also influenced by crime severity (jurors perceive juveniles as more competent and render more severe sentences when the crime and its outcome are more severe) and by inferences regarding a juvenile’s intent to commit a crime, understanding of wrongfulness, and recidivism potential. Many psychologists are concerned that jurors might not understand juveniles’ actual capabilities in these regards and that jurors are insensitive to the fact that juveniles are less cognitively competent and mature than adults. Research on this issue is mixed. Although some jurors appear to set lower standards of proof for juveniles than for adults tried in adult criminal court, jurors are less likely to convict younger as compared to older juveniles, perhaps because they believe that younger juveniles are less competent to stand trial. Under some conditions, however, jurors perceive younger and older juveniles to be equally competent. Meanwhile, other research has identified juror and case characteristics that influence jurors’ perceptions of child and adolescent offenders. For example, as in child sexual abuse cases, women jurors appear to have more positive perceptions of juvenile offenders than men do. Also, situational trial factors can influence trial outcomes: Attorneys’ pleas for jurors to empathize with a juvenile offender lead jurors to be more sensitive to mitigating factors, perceive the juvenile as less responsible for the crime, and render more lenient judgments relative to jurors who are not asked to empathize.
Conclusion

Future research will provide an even better understanding of the factors that influence juror’s perceptions of children in the courtroom and, importantly, the processes by which those perceptions influence jurors’ verdicts. Psychologists hope that such knowledge can be used to inform legal policy that ensures justice for all parties involved in trials.
Cynthia J. Najdowski, BA, and Bette L. Bottoms, PhD
University of Illinois at Chicago

See also Child Abuse and Neglect, Child Sexual Abuse, Children’s Testimony, Juvenile Offenders, Juries and Eyewitnesses, and Juries and Hearsay Testimony

Further Readings and References


