

# APSAC ADVISOR

AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN



## LAW

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

—Thomas D. Lyon

The spotlight on children's performances as witnesses once on the stand has obscured the issue of whether they are able to qualify to take the stand. Most courts require that a witness must first take the oath in order to testify. In its simplest 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 the 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, allowing anyone to testify. These requirements, however, typically concern the ability to accurately perceive, remember, and report events, not the ability to understand 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 questioning of child witnesses to ensure that they understand what the oath entails.

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## NEWS

### APSAC Launches New Membership Drive: 10,000 Members by the Year 2000

—by Theresa Reid

APSAC has launched a drive to achieve its founders' dream: to build an organization of 10,000 members by the end of the century. In the first eight years of APSAC's existence, we have attracted 5,200 members. Led by Membership Committee Chair and President Elect Deborah Daro, DSW, APSAC has made a commitment to realize the founders' dreams by doubling that number in the next four years.

Those working in this field need an increasingly powerful professional organization to address concerns about poor professional practice, the dismantling of CAPTA, the backlash, and the impact of managed care. Yet the vast majority of professionals in child maltreatment have never heard of APSAC or, having heard, have not been persuaded to join.

Every member of APSAC plays a role in building the organization. Indeed, if every

member of APSAC renewed his or her own membership and persuaded just one friend to join this year, we would reach our goal of 10,000 members in 1996! More than 50% of APSAC's members are recruited by word of mouth. As a member of the organization who is committed to its work, *you* can be uncommonly persuasive.

Why should professionals in the field of child abuse and neglect join APSAC? The single most important reason to join is that professionals in this field have a moral obligation to be familiar with the latest knowledge available to guide practice. APSAC is the most direct, least expensive, and most reliable source of that knowledge. Through the *APSAC Advisor*, the new journal *Child Maltreatment*, guidelines for practice, fact sheets, position papers, the *APSAC Handbook*, *APSAC Study Guides*, referrals,

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# Assessing Children's Competence to Take the Oath

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Some psychologists have criticized the practice of asking children about their understanding of the oath on the grounds that there is no relationship between understanding and truth-telling; however, they 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 a child is suggestible or prone to lie. Rather, they determine whether the child is *qualified* to promise to tell the truth; that is, that he or she knows the difference between truth and lies and appreciates his or her obligation to tell the truth.

The law does assume that a promise to tell the truth has an effect on the witness. Psychologists have been surprisingly uninterested in determining whether promising to tell the truth increases the likelihood that children will do so. However, some research has found that children will steadfastly keep their promises to conceal the truth, suggesting that they view a promise as a solemn commitment (Peters, 1990). Anecdotally, "but you promised" appears to be well understood by young children as a compelling argument for compliance.

This requirement—that a child must understand the difference between truth and lies as well as the obligation to tell the truth—thus continues to be important for those preparing young children to testify. Since a child's testimony tends to be a pivotal element of most sexual abuse cases, a failure to qualify the child to testify may have devastating consequences. Questions asked of the child should be as cognizant of the child's 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, while lies do not), and are aware that it is immoral (i.e., "bad") to lie (Bussey, 1992). Such research has neglected the issue of how children's understanding is assessed, however. This oversight limits the practical value of such research for practitioners who want to know how to question children about their understanding. Further, 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 by explicitly comparing different means by which competence can be evaluated with samples of abused and neglected children appearing in child dependency proceedings. The purpose of this article is to acquaint readers 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 difference between the truth and lies

The first requirement in qualifying a child as competent to take the oath is that the child must 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 a witness's obligation is to speak the truth, and to avoid lies, jokes, and mistakes.

A number of different means can be used to assess a child's understanding of the difference between the truth and lies: The child can be asked to explain the difference between the truth and lies (the difference task);

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to explain what it means to tell the truth or to tell a lie (the definition task); or to identify statements as either the truth or lies (the identification task). All of these approaches have 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, the relative difficulty of each approach is usually ignored.

Based on the proposition that children probably understand more than they can explain, we predicted that the identification task would be more attuned to their understanding than the definition task or the difference task. We gave versions of each task to 96 four- to seven-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 72 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 7% of the cases, physical abuse allegations in approximately one-third, and allegations of a failure to provide (e.g., lack of food, shelter, clothing) in almost 90%. The vast majority of cases included evidence of parental substance abuse. The ethnicities of the participants were chosen to approximate those 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. To evaluate the children's verbal skills, we administered the PPVT-R, a test of receptive vocabulary 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 five-year-olds answered over 80% of the questions correctly, and the six- and seven-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. More than half of the five-year-olds answered four of four correctly, and over 80% of the six- and seven-year-olds did so. Clearly, a majority of our sample showed a good understanding of the difference between the truth and lies by five years of age. The performance of the four-year-olds, however, was less impressive, and is discussed below.

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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 seven 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 seven-year-olds performed well. We found that the youngest children in our study (four-year-olds) had difficulty even in 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. Five- and six-year-olds appeared incompetent when

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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, a significant number of children may be found incompetent to testify who are well aware of what it means to tell a lie.

Although the four-year-olds showed a similar pattern of finding the identification task the easiest, their performance even on that task was uneven. Thirty percent answered four of four identification trials correctly, thus showing a good understanding of the difference between truth and lies. As a group, however, the four-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. Four-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 four- and five-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 fictional child characters 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 fictional characters lies, and the child merely has to identify which character does so. A 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 reduced the memory demands of the task.

We found that the four-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. Seventy percent of the five-year-olds did so, leading us to conclude that five-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 three-

and four-year-olds from a university preschool who averaged in the 80th percentile of receptive vocabulary, and found that three-year-olds performed well above chance, and most four-year-olds answered every trial correctly.

## The obligation to tell the truth

The courts have typically tested children's understanding of their obligation to tell the truth by assessing their understanding that lying is immoral. A child does not have to demonstrate an understanding of the potential for prosecution for perjury (which

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in the case of child witnesses is virtually nil if the child understands that it is wrong to lie and that punishment might follow (Myers, 1992).

As noted earlier, research on samples of nonabused children has found that they have 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 fictional children either lied or told the truth to different authority figures (e.g., a judge, a doctor, a social worker, the character's grandmother). We then asked children to evaluate whether the characters who lied were "good" or "bad" and 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 fictional children spoke to authority figures—one telling a lie and one telling the truth—and we asked participants to identify which characters were good or bad, or which characters would "get in trouble."

Across the two studies, children performed above chance by four years of age, and near-ceiling by five years of age. By five 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 university preschool sample (unabused children), an understanding of the wrongfulness of lying was evident even among the three-year-olds, with a majority of

the four-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. 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 five 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 five-year-olds are competent to take the oath is clearly indicated by our research. Further, this may 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, because the children with the most severe verbal delays would lack the communicative competence to serve as witnesses. The majority of children questioned in these studies were involved in cases alleging neglect, which (in my experience) do not require the testimony of young children. The excellent performance by three-year-olds in our university preschool

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sample (above-average abilities) makes clear that five is a fair age at which to presume that children are capable of taking the oath.

Even more important than their use to establish 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 such phrases as "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 four-year-olds were nevertheless reluctant to acknowledge lies as such. A forced choice between fictional 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 to understand the best means by which children's competence to testify can be evaluated. In addition to the advice offered here, we would be happy to share our testing materials with interested professionals, in the hope that children's competence can be assessed most accurately.

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## CHILD PROTECTIVE SERVICE

### Caseworkers, Computers, and Risk Assessment: A Promising Partnership

—David A. Sheets

Just as child protective services (CPS) professionals at long last are beginning to accept computers as useful tools that can support their work with clients, a new, more challenging vision is emerging. Reinoehl (1990) suggests that we view computers in human services as "moving beyond being a tool, to becoming intellectual partners in learning and thinking" (p. 167). "Partnership" is a term currently used to characterize the relationship caseworkers have with families they serve or the relationship two or more agencies have with one another. It is not how we commonly think of computers... yet. The current revolution in the scope and power of computer applications creates unprecedented opportunities for adapting current as well as new technologies to help CPS caseworkers make the difficult decisions they face every day.

To capitalize on these opportunities requires that we incorporate the concept of partnership into future development of CPS decision-support technologies such as risk

assessment instruments (RAIs). A comprehensive approach to this effort will consider: 1) the decision technology (the risk assessment instrument itself); 2) the decision environment (aspects of the caseworker's job); and 3) the decision maker (the nature of human information processing and decision making).

### The decision technology

It might be thought that after 15 years of collective national experience in developing, researching, and implementing risk assessment models, many of the fundamental problems and issues related to these models would be resolved. Yet even now caseworkers still struggle to establish a relationship with the technology of risk assessment instruments as they apply these instruments in their practice and documentation systems. Hornby and Wells (1989) report the reaction of one worker to implementation: "The introduction of risk assessment has produced considerable resentment among many staff, most notably

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