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Young witnesses' well-being During Forensic Interviewing



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Definitions

Well-being is a multidimensional construct (e.g., Diener 2009; Dodge et al. 2012) which mainly describes the quality of one's life and involves one's ability to exhibit optimal psychological functioning (Deci and Ryan 2006). According to the Government Office for Science Foresight Report on Mental Capital and Well-being (2008), well-being is a dynamic concept which involves an individual's ability to fulfill their personal and social goals and achieve a sense of contributing to society (Statham and Chase 2010). This definition implies that well-being is subjective, suggesting that each individual can evaluate for her/himself the degree to which their experiences involve a sense of wellness or not (Deci and Ryan 2006). Research on the definition of well-being has traditionally been linked with two theoretical views. The eudaimonic view posits that well-being involves quality of life and satisfaction with one's life (Deci and Ryan 2006). According to the hedonistic view, well-being involves happiness, which is defined as the presence of positive affect and the absence of negative affect (Dodge et al. 2012).

Looking at well-being from children's perspectives, one needs to consider two dimensions: a developmental dimension and a child's rights dimension (Pollard and Lee 2003). The first comprises aspects which involve poverty, neglect, and physical illness (Statham and Chase 2010). The second encompasses factors which involve maintaining children's quality of life in the present as well as the future and finding ways to support their aspirations and goals (Statham and Chase 2010). In this chapter, children's well-being will center around this second domain, and more specifically, safeguarding their psychological well-being during legal processes and creating the best possible environment for them to feel safe and secure in order to be able to provide accurate testimonies.

Introduction

Around the world, an increasing number of children are required to participate in the legal system every year for the prosecution of various criminal acts (Quas and Goodman 2012). Children may be asked to testify as victims (e.g., in cases of sexual abuse), or as witnesses of crimes against other individuals, such as domestic or community abuse, thefts, and/or various types of attacks. As a result, children may be required to interact with various forensic and legal officials as well as testify in court,

either during trial or preliminary and/or sentence hearings (Quas and Goodman 2012).

Children's experiences when they enter the legal system may vary, with some having to participate in a few interviews and others having to appear in court on multiple occasions (Quas and Goodman 2012). Participation in the legal system depends on a number of factors, such as the type of crime children experienced/witnessed, the presenting evidence, and the area the crime took place and is prosecuted in (see Walsh et al. 2010). In cases where the child is the sole witness (e.g., sexual abuse, domestic violence) and her/his testimony constitutes the only available evidence, the pressure for accurate and detailed testimony can be severe (Quas and Godman 2012), affecting the child's wellbeing.

It has been shown empirically that if children have experienced/witnessed a crime, they will most probably already be at risk of experiencing some kind of trauma which can have a negative impact on various domains, such as their mental health, attachment style, and their school performance (see Quas and Goodman 2012). Participation in the criminal justice system can threaten their well-being further; thus, special measures need to be taken by adults, to protect children from re-experiencing trauma. Overall, this chapter will offer a general overview of the special measures that have been put in place in various jurisdictions to enhance children's well-being during legal processes. Within this chapter, the term young eyewitness will refer to children who are expected to give testimonies for crimes they have experienced themselves or were bystanders to (Klemfuss and Ceci 2012). Promoting measures which enable their participation in the legal system will ensure that children have access to justice in a developmentally appropriate manner, which is in line with United Nations' vision (2019) to create responsible institutions at all levels, and particularly Sustainable Development Goals (SDGs) 3 and 16, which involve promoting inclusive societies which prevent violence against children and ensuring well-being. For such actions to be successful, initially, an understanding is required regarding how the criminal justice system views young eyewitness.

Vulnerable Witnesses

Giving one's testimony in court can be a very a distressing and upsetting experience, especially when legal officials such as judges, prosecutors, and defendants are in close proximity (Spruin et al. 2016). Testifying particularly about abuse can re-traumatize witnesses and hence lead to secondary victimization (Spruin and Mozova 2018), which can in turn have a negative impact on their well-being. According to Green (2016), the treatment by the judicial system of those who are weak is an indication of the moral standards set in our society. Within the legal system, all individuals have a right to justice, and consequently those who are considered vulnerable should receive the same kind of treatment as non-vulnerable individuals (Cooper et al. 2018). Nonetheless, "around the world, there is no generally agreed definition of the world 'vulnerable', as it applies to witnesses in the investigative setting" (Bull 2010, p. 15). Equally, there is not a universally accepted definition of the term *vulnerable witness* within the legal system (Cooper et al. 2018).

In England and Wales, the term "vulnerable witness" first appeared in the Speaking Up for Justice report (Home Office 1998) which then gave way to the Youth Justice and Criminal Evidence Act 1999 (Cooper and Wurtzel 2014). This Act comprised a series of measures for witnesses and defendants who were vulnerable and intimidated by the court process (Cooper et al. 2018). Accordingly, a set of guidelines were devised in favor of vulnerable witnesses, called the Achieving Best Evidence (ABE) guidelines (Ministry of Justice 2011). In line with these guidelines, a vulnerable witness is any person who is under 18 years old at the time of the hearing, individuals with physical disability or a mental disorder which may affect the quality of their reports, and those who have significant impairments relevant to their intelligence and social functioning. Consequently, if children are required to testify in court, they should do so in accordance with these guidelines.

Interview Protocols

Children's participation in the legal system may involve initial interviews with the police and offering testimonies in court. When children enter the legal system, they are expected to talk to unknown individuals about events which may be traumatic and highly upsetting. It goes without saying that when children are asked to offer testimonies, it is important they understand what this process entails. Nonetheless, children's understanding of the judicial system and the role of various forensic officials in it (e.g., judge, prosecutor, etc.) is mostly vague and on many occasions completely imprecise (Crawford and Bull 2006; Quas and McAuliff 2009). This can have a negative effect on their well-being by increasing the level of their distress (see Quas and McAuliff 2009). One approach to tackle this issue is to create appropriate conditions which help reduce children's stress levels during legal processes. Research has addressed this matter by developing and empirically testing specific interview protocols which follow explicit evidence-based steps throughout the interview (Saywitz et al. 2017). Such practices ensure that interviewers' questions are posed appropriately, and statements that are too vague or can lead to suggestibility and contamination of children's reports are avoided. Currently, two empirically tested interview protocols which are widely used by forensic officials are the National Institute of Child Health and Human Development (NICHD) protocol (Brown et al. 2013), which is used with child eyewitnesses in Israel, and the Cognitive Interview (CI, Fisher and Geiselman 1992), which is proposed by ABE guidelines as the appropriate interview method for use with vulnerable witnesses.

An important aspect of these protocols is that they place emphasis on rapport building between interviewer and child prior to the commencement of the interview. In forensic contexts, rapport involves the relationship created between interviewer and child, which should be built on the basis of respect, empathy towards the witness, and trust and should further be maintained throughout the course of the relationship (Evans et al. 2010; Kelly et al. 2013). Rapport is important not only

because it can protect children's well-being during the legal process but also because it can enhance the quantity and accuracy of information. In the absence of rapport, both accuracy and amount of information provided by witnesses decrease (Roberts et al. 2004; Teoh and Lamb 2010). Thus, building rapport with children and ascertaining they feel comfortable during the interview can benefit both the witness and those whose role is to restore justice.

Child Witnesses in Different Jurisdictions

Testifying in court can become even more fearful and daunting if children are obligated to face the accused (Dezwirek-Sas 1992; Goodman et al. 1992). One way to deal with this problem in judicial settings is to utilize alternative modes of evidence which center around the psychological safety of the child. Various jurisdictions have come up with numerous schemes, programs, and procedures which take children's needs into account and simplify the process of forensic interviewing to ensure that testimonies are accurate and complete (Hanna et al. 2010).

As an example, in New Zealand, children have the right to be informed about the legal process and their participation in it through a specialized program entitled the Ministry of Justice's Court Education for Young Witnesses program (Hanna et al. 2010). A pilot of this program clarified misconceptions regarding the legal process and confirmed that indeed children experienced reduced stress and worry over the trial and felt less vulnerable and more assertive about their role in the legal system (Davies et al. 2003). Similar findings have been shown in other jurisdictions as well (Cashmore and Trimboli 2005; Hamlyn et al. 2004; Plotnikoff and Woolfson 2004), indicating that such methods are indeed promising.

Further, in New Zealand, young witnesses have the right to be interviewed by professionals who are proficient and skilled in interviewing children in legal settings (Hanna et al. 2010). The interviews can be video-recorded, and the recordings can be used as evidence during the trial. In addition, children are offered the option

to be cross-examined behind a screen or through close-circuit television. The use of screens can help decrease anxiety related to confrontation, whereas offering testimony through CCTV and video targets stress related to both confrontation and the courtroom procedure. An argument for utilizing CCTV is that it facilitates all children's eyewitness testimony, makes the interview process more effective (e.g., video recording evidence offered through CCTV in order to make use of it in subsequent trials), and ensures consistency in the interview process across the country. Further, providing children with the opportunity to offer testimonies outside of the courtroom through live audiovisual means could have similar stress-relief effects to CCTV (Hanna et al. 2010).

Another method of assisting children in New Zealand is the presence of a loved individual who supports the child throughout the judicial process (New Zealand Law Commission 1996). Needless to say, this person needs to be a person the child trusts and feels safe with, and understandably, not the person who committed the offence. This practice has been supported by empirical findings showing that when children were offered the opportunity to testify with a person they trusted, they were less intimidated by the defendant and more accurate with respect to the information they provided (Goodman et al. 1992).

While numerous studies have shown that such provisions indeed enhance children's well-being in legal contexts (e.g., Davies et al. 1995; Goodman et al. 1998), it is probable that stress reduction is actually the result of offering children the choice to select for themselves their proffered mode of testimony (Cashmore and De Haas 1992). This suggests that allowing children to play an active role in the judicial system gives them a sense of control and minimizes their distress in regard to the situation. Nonetheless, for the correct choice to be made, both children and their caregivers need to be given adequate information about what the process of testifying entails (Hanna et al. 2010). Good knowledge of such practices well before the trial can be a proactive measure for the promotion of justice.

England, Israel, South Africa, France, Western Australia, and Norway have also come up with alternative modes of interviewing children within the legal system (Hanna et al. 2010). The most promising mode involves intermediaries and prerecordings of children's testimonies. Intermediaries are individuals who communicate the counsel's questions to the young eyewitness in an age-appropriate manner and similarly feedback to the counsel the child's answer. In England and Wales, the use of intermediaries is a recent approach to children's eyewitness testimony, following a promising pilot in 2001, and intermediaries may also be present in the initial interviews with the police, if this is deemed necessary. Indeed, this practice has helped reduce children's anxiety (Plotnikoff and Woolfson 2007). An important contribution of intermediaries is that they help forensic official understand children's needs within the legal system and what interviewing practices are best for them. Indeed, when intermediaries are involved in legal processes, forensic officials seem to try to take children's needs into account, and interviews with the police may become more friendly and at times more flexible (Plotnikoff and Woolfson 2007; Stern 2010). Intermediaries are also used in Norway, where they conduct interviews with children, while the judge and counsel observe the interview from another room, either through videolink or a one-way glass (Hanna et al. 2010). Similarly, South Africa uses intermediaries very successfully. Their role involves prioritizing the welfare of each child, particularly those children whose testimony involves abuse (Muller and Hollely 2009). South Africa's intermediaries are qualified individuals (e.g., social workers, psychiatrists, psychologists, teachers, family counselors, etc., Hanna et al. 2010), and children's testimonies are offered via one-way CCTV in a designated room in the courthouse, and occasionally, in a room outside of the court (Muller and Hollely 2009).

Contrary to the above jurisdictions, in Norway, Israel, and Western Australia, the common way of interviewing children involves prerecordings (Hanna et al. 2010). Specifically, Norway makes

use of a combination of prerecordings and intermediaries and Western Australia uses prerecordings, which have been found to reduce children's anxiety about the trial and have further contributed in the reduction of the number of trials. These recordings are then played in the courtroom. When it comes to cross-examinations and re-examination however, a prerecording hearing takes place via CCTV in the presence of the judge, counsel, and the defendant (Henderson et al. 2012). Prerecordings are a very successful mode of forensic interviewing in Australia, because they provide children with the opportunity of early interviews, which minimizes the possibility of memory contamination (Hanna et al. 2010). Further, they allow children to offer testimonies by avoiding the trial and terminating their participation in the legal system as early as possible. Children in England are also allowed to testify via video recorded interview and offer additional evidence via live link (Pelekanos 2015). Nonetheless, video-recorded cross-examination is not in full operation (Pelekanos 2015).

In Scotland, one of the main initiatives of the government in 2017 to ascertain high quality testimonies was to reduce court attendance for vulnerable witnesses, including children, to the minimum (Scottish Government 2017a). The Government's aims were explained in the "Justice in Scotland: Vision and Priorities," which prioritized the provision of justice partners whose main responsibility would be to investigate novel procedures (e.g., prerecordings of evidence before the trial) in order to care for the needs of children and other vulnerable witnesses (Scottish Government 2017b). This plan received considerable support, with overall general agreement that prerecordings could potentially minimize anxiety relevant to court attendance (Scottish Government 2018) and hence support children's well-being during forensic interviewing.

Israel follows a different approach to prerecordings which seems to benefit children to a great extent. Here, youth interrogators who specialize in forensic interviews with children are appointed by the legal system to facilitate

children's testimonies (Hanna et al. 2010). The system is very child-friendly, with these stakeholders having authority to prevent children from testifying, if they consider this necessary, and presenting the evidence in court themselves rather than the child. This practice prevents children from being traumatized, especially in cases where the person who has committed the offence is a family member, the process of cross-examination is expected to be lengthy and strict, and disclosure of alleged abuse if avoided from fear of facing the judicial system (Sternberg et al. 1996). This procedure provides an outstanding example of protecting children from the upsetting experience of the legal process, as all interviews are child centered and are also conducted via the empirically tested NICHD protocol (Brown et al. 2013; Hanna et al. 2010).

Finally, in France children only offer testimonies to neutral individuals who specialize in child interviews (Hanna et al. 2010). If children have to appear in court, there is no aggressive cross-examination. However, here investigations which take place before the trial can be prolonged, and there may be long delays until the trial takes place; nonetheless, this serves the purpose of ascertaining the quantity and quality of testimonies as well as justice being restored (Delmas-Marty and Spencer 2005).

Children's Well-Being During Cross-Examination

Although some alternative practices during cross-examinations have already been presented, this legal procedure requires further attention given its aggressive nature. The United Nations Convention on the Rights of the Child argues that all states are obliged to acknowledge young victims' needs during legal processes (see Pelekanos 2015) and to safeguard their rights (Williams 2007). Nevertheless, these recommendations may be overridden during the process of cross-examination. Cross-examination involves a lawyer interviewing an opposing witness and can be a very distressing and traumatic experience for children, with many of them ending up weeping,

being yelled at by lawyers, and/or being accused of lying (Cashmore and Trimboli 2005; Dezwirek-Sas 1992; Eastwood and Patton 2002; Hamlyn et al. 2004). Such tactics can potentially lead to contradictions in children's reports which are then used by forensic officials as evidence that the child's testimony is inaccurate and includes lies (Hanna et al. 2010). Accusations of lying, in particular, is a common method used during cross-examination, with a great number of children being accused of lying about serious crimes, such as sexual abuse (Davies et al. 1997; Hanna et al. 2012; Plotnikoff and Woolfson 2009). Understandably, such actions can be traumatic and pose a threat to children's well-being. This has been supported by research on lawyers' (and intermediaries') effectiveness of communication with children during forensic interviews and cross-examination, which showed that while both groups recognized the importance of securing a child's well-being, lawyers had higher expectations of the children regarding their abilities to testify, which were not on par with their developmental stage (Krähenbühl 2011). This suggests that lawyers may require training in order to conduct developmentally appropriate interviews with children (Krähenbühl 2011).

Given such empirical findings, the Strasburg case law takes children's (both witnesses and victims) well-being very seriously during cross-examination (Pelekanos 2015; Spencer 2012). To prioritize children's needs in legal settings, all Member states are expected to take special measures which take into account their psychological and developmental needs. Such measures are similar to those involved in trials and include preventing delays, providing support by trained individuals, and allowing interviews to take place by audio/video or TV link (Council of Europe 2011).

In light of these recommendations, a number of jurisdictions introduced measures which involved cross-examination taking place via CCTV, to reduce the stress caused by coming face to face with the defendant (Bussey 2009; Hoyano and Keenan 2007; Malloy et al. 2007; Spencer 2012). Initially, this idea was not well received, as it was argued that CCTV would not allow jurors to spot liars from those who told the truth,

and children might give false testimonies if they do not face the defendants (Orcutt et al. 2001). Nonetheless, research showed that young children who testified via CCTC gave more accurate testimonies and experienced lower levels of stress than those who were interviewed live, and there was no difference in jurors' ability to detect more truthful testimonies in court than through CCTV (Eastwood and Patton 2002; Goodman et al. 1998; Orcutt et al. 2001). Such findings show that the use of technology when cross-examining children shields them against the highly distressing and at times aggressive nature of this procedure and thus guards their well-being.

Limitations of Special Measures

While all the aforementioned measures aim to secure children's well-being, children who testify have to endure numerous difficulties, including long delays, short breaks during the legal process, and poor technological support (Plotnikoff and Woolfson 2009). Overall, delays can have adverse effects on children's well-being in numerous ways. First, children's as well as their family's functioning while they wait for the trial to take place can be affected, as the awaiting period can be extremely stressful, compromising further children's mental health (Runyan et al. 1988). Other negative effects of the way the legal system operates during this period include social exclusion by peers and negative effects within the family as well as on school attendance (Davies 1998; Eastwood and Patton 2002) which again pose a threat to a child's well-being.

Such limitations, particularly delays, can be rectified by revising the way cases involving children are handled and prioritizing them (Hanna et al. 2010). Additionally, stakeholders could consider increasing resources spent on such trials for the benefit of children. In New Zealand for example, this has been achieved by using a courtroom for the purpose of solely dealing with trials involving children, which lead to reduction in delays in processing such cases (Hanna et al. 2010). Such measures can safeguard the welfare of children during legal processes and enhance their well-being.

Dogs in Court

A novel approach to comfort young eyewitness in the criminal justice system is the use of support animals in the courtroom. In recent years, an increasing number of courts allow children to appear in court in the presence of specially trained dogs which can offer support and help children deal with the stress caused by attending this environment (Spruin et al. 2016). More specifically, courtroom dogs may accompany witnesses in the initial forensic interview or they may be present with them during the trial (Crenshaw and Stella 2015; Kaiser 2015). They have been used with a range of individuals, including vulnerable adult victims and children (Ullman 2007; Parish-Plass 2008; Spruin et al. 2016).

Historically, dogs have been employed by the legal system for many years and in numerous capacities, from assisting with drug detections (Lorenzo et al. 2003) and explosives detection (Gazit and Terkel 2003), to finding suspects and missing persons (Browne et al. 2006). Recently, dogs have been used extensively in legal settings to comfort witnesses (Spruin and Mozova 2018). Such pioneering job has been conducted largely in the USA by the Courthouse Dog Foundation, a nonprofit organization whose aim is to promote the use of specially trained dogs in support of vulnerable people who are expected to appear in the Criminal Justice system (Courthouse Dogs Foundation 2018). Trained dogs could also be used to minimize the possibility of re-victimization, again by offering comfort to the witness during testimony (e.g., Jordon 2013).

One of the first examples of a dog accompanying a witness in court goes back to 1992 in Mississippi, where a seven-year-old child who was a victim of abuse had to testify in a trial (Spruin et al. 2016). By the time of the trial, the child had attended several therapy sessions with the dog and thus requested to testify in court with the dog standing by her side. The judge gave permission, and as a result, forensic officials in other states started considering the benefits of courtroom dogs in trials involving children (Spruin et al. 2016). Specifically, it was argued

that courtroom dogs had a supportive and soothing effect on children, both victims and witnesses (Dellinger 2009). Consequently, courtroom dogs are now widely used across America in several capacities in the judicial system, such as spending time with people before they enter the courtroom, to minimizing distress relevant to offering testimony (O'Neill-Stephens 2011).

The majority of empirical support regarding the benefits of courtroom dogs on children's well-being is mainly based on observational studies (Holder 2013), which suggest that dogs can help victims relax and feel calmer, especially when they are expected to re-tell their story, which can lead to re-traumatization and hence feelings of distress (Gerkey 2016). Research has showed that acts like holding the dog's leash or stroking the dog while testifying can enhance one's psychological well-being by reducing anxiety and lowering heart rate and can also enhance memory (Copeland 2010; Sandoval 2010; Spruin et al. 2016).

Nonetheless, there are various issues that should be addressed with respect to the use of dogs in legal settings. One of the main arguments against their use is the possibility of impacting negatively on jurors' perception of the witness (Spruin et al. 2016). More specifically, the presence of a dog in a specific case may lead to that case becoming more prominent in a jury's memory relevant to other cases where testimony is offered without a dog present (Justice 2007). In addition, the presence of a dog supporting the witness may influence a juror's opinion of the defendant, by resulting in sympathy for the first and bias towards the latter (Bowers 2013; Strutin 2014). Nevertheless, given the several research findings showing that dogs can have a positive impact on children's well-being in the criminal justice system, more empirical work could elucidate this further, for the benefit of young eyewitnesses.

Conclusions and Steps Forward

In the past three decades, there has been a positive shift in the way young eyewitnesses, both

bystanders and victims, are treated within the criminal justice system (Pelekanos 2015). This suggests that forensic officials have the ability to adapt to and accommodate children's needs. In various jurisdictions around the world, special measures have been taken to create a less intimidating atmosphere in forensic settings, ensure that children understand what is expected of them, and safeguard their well-being. Such measures can have a positive impact on the accuracy of children's testimonies, which is imperative for the pursuit of justice (Pelekanos 2015).

To be able to ensure that children are interviewed under the best possible circumstances, all measures put in place should be empirically sound and utilized by all those involved in criminal cases involving children. Psychologists (researchers, practitioners, and expert witnesses) can play a very important role here, either by assisting children through the legal process or informing the judicial officials involved about the child's developmental stage and needs (Quas and Goodman 2012). In addition, they can help forensic officials understand and take into account children's individual differences. Each child is unique and therefore their needs in each criminal case will differ from those of another child. Accordingly, recommendation about the interaction of each child with the legal system should be made on the basis of each child's personality, the characteristics of each case, and the availability or lack of special measures in each area (Quas and Goodman 2012).

Overall, the common goal of all involved in legal cases concerning children should be to create a child-friendly environment and minimize the possibility of children being traumatized and re-traumatized by their participation in the criminal justice system. Ascertaining that all children are treated with care, respect, and empathy can benefit both their well-being as well as the pursuit of justice.

Cross-References

- ▶ [Health and Well-Being of Climate Migrants in Slum Areas of Dhaka](#)

- ▶ [HIV/AIDS \(Child\) and Sustainable Development](#)
- ▶ [Holistic Well-Being: Mental, Physical, and Spiritual](#)
- ▶ [Hope and Well-Being in Sustainable Development](#)

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