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When children's testimonies are used as evidence: how children's accounts may impact child custodial decisions

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ABSTRACT

In child custody cases, children oftentimes provide allegations of experienced trauma against one of their parents. Such allegations can happen before any investigative interviews (e.g., by the police or child protective services) have taken place. A central theme here concerns how to appraise such allegations and make certain that children's accounts are taken seriously. In the current special issue, the focus is on new work on the functioning of children's memory and its relation to trauma or work on children's suggestibility and memory when they are traumatized. Specifically, key experts in the field of children's memory provided contributions on: (1) the impact of interviewer support and rapport building on children's testimonies, (2) the role of parental alienation in children's testimonial accuracy, and (3) different types of false memories in children's memory reports.

KEYWORDS

Child custody; children; memory; child interviews; false memory; parental alienation; rapport; support

In the year 2019, the Convention on the Rights of the Child has existed for 30 years. In this convention, basic rights for children have been proposed, including the right to live in a safe environment and the right to be protected against abuse. Although almost all countries in the world have adhered to this convention, children continue to be victims of different forms of abuse, such as physical and sexual abuse. A significant problem when children are victimized is that many of them do not disclose the trauma or they delay disclosure for a long time (e.g., Morrison, Bruce, & Wilson, 2018). When children do come forward with what happened to them, their accounts might substantially affect decisions in custody and legal settings. For example, a father might not receive the custody of his child because the child might report having been abused by the father. This

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indicates that considerable weight is being placed upon children's accounts of what they might have experienced. However, children's accounts are not always error free. That is, when children (or even adults) report on their traumatic experiences, these reports are about an individual's recollection of an *alleged* event. Such recollections are reconstructions of the past and such reconstructions can contain errors that occur automatically, unbeknownst to the rememberer, or as the result of external suggestive pressure. These errors, or so-called false memories, can lead to miscarriages of justice (see reviews, Howe, Knott, & Conway, 2018; Otgaar, Howe, Muris, & Merckelbach, 2018).

Hence, it is critical that professionals who, for example, make decisions concerning child custody, have an adequate comprehension of the scientific literature concerning children's testimonies and memory performance. This special issue will just do that. In this special issue, we have gathered together some of the latest work from key experts in the field of children's testimonial performance and their impact on child custodial and legal decisions. This issue is spread across three important research pillars that have lately become important themes in discussions of the impact of children's testimonies in different settings (e.g., child custody). Specifically, articles in this special issue revolve around: (1) the role of interviewer support and rapport building in children's testimonies, (2) the role of parental alienation in children's testimonial accuracy, and (3) different types of false memories in children's memory reports.

Support and rapport

In the 1980s, several legal child sexual abuse cases across the world occurred with a similar signature. These were so-called daycare abuse cases in which many children may have falsely reported having been (sexually) abused by the same perpetrator(s). Notable examples of these cases are the McMartin Preschool case or the Wee Care Nursery case (Bruck & Ceci, 1995; Garven, Wood, Malpass, & Shaw, 1998). What became evident in these cases is that children were exposed to various suggestive interviewing techniques which may have led to false reports of having been abused. Cases like these have led to a budding research line on best practices when interviewing children (Brubacher, Peterson, La Rooy, Dickinson, & Poole, 2019; see also Cheit, 2014).

A wealth of research has now shown that the type of questions posed to children can have an impact on the accuracy with which children retrieve memories of past events. The main recommendation is that the accuracy of children's statements is maximized when open-ended prompts are used ("Tell me what happened"). These recommendations to interview children

have been merged in empirically-based interview protocols such as the National Institute for Child Health and Human Development Interview protocol (Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007; see also American Professional Society on the Abuse of Children, 2012).

In addition to the use of open-ended prompts in child interviews, building rapport with children and employing interviewer support has been proposed as an effective way to overcome children who are reluctant to report their abusive experiences. Strikingly, however, research in this area is scarce (Blasbalg, Hershkowitz, & Karni-Visel, in press). Indeed, Saywitz, Larson, Hobbs, and Wells (2015) recently reviewed the available evidence on experimental research on the effects of rapport building on the reliability of children's testimonies. They concluded that "the overall scientific base is weak regarding even basic issues such as how to best define rapport and the efficacy of common rapport-building techniques" (p. 372).

In this special issue, we have included two articles with the aim to fill the gap concerning the effects of rapport building and interviewer support on children's testimonies. Sauerland, Brackmann, and Otgaar (2019, this issue) report one of the few experimental studies into the impact of rapport building on children's reports. Specifically, they report on an experiment in which they tested the effects of different levels of rapport building (none, minimal, extensive) on the accuracy and quantity of children's, adolescents' and adults' memory. Klemfuss, Olaguez, Castro, Cleveland, and Quas (2019, this issue) review the literature on interviewer support on children's memory completeness and accuracy. Furthermore, they provide preliminary evidence suggesting that certain types of interview utterances (i.e., implicit encouragement) can increase the amount of detail given by children.

Parental alienation, Suggestibility, and false memories

Professionals who are tasked with child custodial decisions are faced with a challenging mission in that they have to realize that children's reports might be inaccurate, or that they also may be accurate but not substantiated by others. This is especially relevant in contested child custody cases in which parental alienation is alleged. Parental alienation refers to the intentional disengagement of one parent by the other with the goal to make the child feel, for example, unfriendly towards the other parent (e.g., Faller, 1998). In these cases, it is important to know whether a child might have been falsely suggested by one parent that the other parent has a negative nature. Priolo-Filho, Goldfarb, Shestowsky, Sampana, Williams, and Goodman (2019, this issue) examine this highly important issue in which family court professionals had to rate young children's testimonial accuracy (e.g., suggestibility, honesty), and also had to read several custody scenarios concerning

allegations of parental hostility or child sexual abuse. The authors show the difficulty that professionals have when evaluating whether custody cases involve parental alienation when parental hostility or sexual abuse is alleged.

An assumption that many legal professionals and memory researchers often-times have when children's reports are seen as inaccurate is that children may accept external suggestion and form false memories (Otgaar, Howe Brackmann, & Smeets, 2016). The consequence is that children are frequently seen as inferior witnesses and that their testimonies are often discredited in cases. However, recently, scientific research has shown that under certain circumstances, children are less likely to form false memories (Otgaar et al., 2016) and even less likely to incorporate false suggestions into their memory reports (Otgaar et al., 2018). This phenomenon is called developmental reversal and it implies that there exist different types of false memories, each with different developmental trajectories. In this special issue, Calado, Otgaar, and Muris (2019, this issue) describe a study in which children and adolescents are involved in methods that elicit different types of false memories (i.e., spontaneous and suggestion-induced false memories). They reveal that children are least likely to form spontaneous false memories, but more likely to create suggestion-induced false memories. Furthermore, they demonstrate that the two types of false memories are unrelated to each other. Taken together, their findings counter the often-held assumption that children are especially prone to form false memories.

Concluding remarks

The articles in this special issue were selected with the aim to assist practitioners and researchers in the field of child custody. That is, the current body of articles provides novel information on how professionals have to talk to children in custody cases. More precisely, the current special issue can inform them of the potential benefits of interviewer support and rapport building in child interviews. Furthermore, this issue provides new evidence on which factors might play a role when parental alienation is assumed. Finally, this special issue can assist professionals with new findings showing that children are not necessarily inferior witnesses. Collectively, although children's rights for being protected against abuse are not always secured, the articles in this special issue can help practitioners and researchers when dealing with children with a suspected abuse history to accurately talk about their experiences, something that might lead to more judicious outcomes in child custody cases.

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