

Magdalena Kornak, PhD

Attorney, Higher School of Law in Wrocław, Faculty of Law

Suggestion and its impact on the credibility of the statements of the minor witness

Summary

The article addresses the issue of hearing a minor witness, with particular emphasis on the possible impact of the suggestion on the content of the children's reports. The main scope of this publication will be to indicate what a suggestion and assessment are and whether minors are in fact, according to the common belief, more susceptible to suggestions than adults. Moreover, the issue of verifying the possible impact of the suggestion on the content of children's statements will be addressed, which will involve determining whether minors are equally susceptible to suggestion in all age groups. Finally, an attempt will be made to identify procedural and forensic guidelines that will allow interviewers to avoid the risk of more or less suggestive influence on the minor witness, enabling a credible child's report to be delivered. All the considerations will be supported by references to literature and research, mainly U.S. – based, on the psychology of testimony, as this knowledge is essential for the effective and suggestion free hearing of a minor witness.

Key words: interview, minors, suggestion, credibility, testimony

Introduction

The hearing of a minor witness in a criminal trial, especially if he or she was a victim of acts constituting the focus of interest of the trial, is one of the most difficult procedural and forensic activities. This difficulty boils down to the necessity for the interviewer not only to have knowledge concerning the scope of a given case, but also concerning the psychophysical characteristics of a child at various stages of his or her development. Therefore, in order to effectively interrogate a minor, the interviewer must be aware of the child's perceptual, linguistic and intellectual abilities. This in turn requires that the procedural and forensic knowledge of the interviewer be supplemented by acquiring relevant knowledge in the field of pedagogy or child psychology. It is of particular importance for the proper conduct of activities involving interrogating a minor that the interviewer obtains information concerning the minor's susceptibility to suggestion and its possible impact on the content of statements obtained from the child. Obtaining a reliable report from a minor witness shall only be possible if the procedures governing the classic hearing of an adult witness are modified in accordance with the age, development and needs of the child, excluding exerting any suggestive effect on the minor. Therefore, if the reliability of the interview

and the evidential value of the minor's statements depend on conducting these activities without any suggestive influence, the questions arise what exactly the suggestion is, what may be its impact on the statements of the minor witness, and, consequently, whether and to what extent the statements made by the child during the interview reflect the events experienced or observed, and to what extent they are the result of intended or unintended influence exerted on the minor by adult persons, including the interrogator. It also needs to be clarified whether minor witnesses are in fact more susceptible to suggestion than adults and, if so, what factors will determine their greater or lesser susceptibility to suggestion. Finally, it is necessary to verify whether the choice of a particular form of an interview may affect the value of the testimony obtained from the minor witness. Obtaining answers to the above mentioned questions will be the scope of considerations carried out throughout this publication.

Definition of suggestion and suggestibility

A strictly linguistic understanding of suggestion implies that it is a form of interaction between one person and another that is more or less intentionally persuasive. In a similar way this term is explained in psychological literature, where it is considered to be either a process

of verbal or other communication, which consists in directly inducing (without using arguments, instructions or coercion) in one or more persons (without any critical attitude on their part) a certain behavior or acceptance of a given belief, opinion or action plan, allowing to achieve the desired effect even in a way that is invisible to the person under its influence (Szewczuk, 1979), or an incentive that induces the person to a certain kind of behavior. When suggestion is considered as a process, the occurrence of a specific phenomenon and its course are decisive, while the factor causing the specific reaction of the interlocutor is of lesser importance. Thus, the suggestion understood in this way depends on many different factors, and the reaction to it is an individual feature, shaped depending on the beliefs, attitudes of a given individual, his/her previous experience, authority of the person making the suggestion, the context in which the suggestion is made, or the sanctions behind it, i.e. fear of punishment (Augustynek, 1999). In the light of considerations in this article, one of the main factors influencing the effectiveness of the suggestion is the authority of the interviewer and the emotional maturity of the minor.

A suggestion can also be understood as an impulsive influence exerted by a given individual on other persons, including direct verbal and non-verbal messages, e.g. specific gestures, facial expressions or voice intonation, which may also be crucial in the context of interrogating a minor witness.

Awareness of what a suggestion is is essential for the conduct of the interview of the minor, in particular for the attitude of the interviewer conducting the activity, on the grounds that it is precisely up to him/her to obtain a credible report from the minor witness. Therefore, if, during the interrogation, the interviewer seeks to find confirmation of his or her own vision of the event, formed on the basis of previously obtained information on the case in the child's report, he or she, as a consequence, aims to validate his or her own presumptions in a more or less conscious manner. This in turn may result in influencing the witness in order to obtain testimony that meets the expectations and objectives of the interviewer, but does not constitute a minor's own report, delivered based on the witness's memory traces engraved in his/her memory.

The influence exerted by the interviewer is closely related to the susceptibility to suggestion of the interviewed person. This susceptibility, otherwise known as suggestibility, is an individual trait consisting in an increased susceptibility to influence by another person or persons. The essence of this concept in the context of children's susceptibility to suggestion was expressed by S.J. Ceci and M. Bruck (1993), who assumed that this term, in a narrower sense, refers to the degree to which a person, especially a child, accepts and includes information provided after the event has occurred in the memories of that event and, in a broader sense, to

the degree to which various social and psychological factors have a suggestive effect on the child's memory, storage, retrieval and recreation of the information obtained (Ceci, Bruck, 1993). In general terms, it can therefore be said that susceptibility to suggestion is the extent to which the information or misinformation suggested to a person influences the way in which he or she remembers and/or describes events (Reed, 1996).

Minors and their susceptibility to suggestion

The awareness of what a suggestion is and what the mechanism of vulnerability thereto is based on, in the context of these considerations, raises the fundamental question of whether children are more susceptible to suggestion than adults, and thus whether a minor witness is in fact more susceptible to suggestion by an interviewer than an adult witness.

The answer to such a question should be sought in psychological literature, where it is assumed that succumbing to suggestions and other forms of memory distortion are characteristic of all forms of human memory, regardless of a person's age (Lotus, Davies, 1984, as cited in Warren, McGough, 1996, p. 269). However, such an unequivocal statement raises concerns among the legal community, especially representatives of law enforcement and judiciary authorities, whose opinion is that the participation of a minor in an interview should be carefully considered because of the fact that the child's report may be distorted as a result of greater susceptibility to suggestions than in the case of an adult. It has even become a common belief that children are exceptionally susceptible to all external influences and therefore more suggestive.

The persistence of such a conviction has induced both scientists and practitioners who interact with children on a daily basis to seek scientific evidence which would confirm or contradict such a thesis. However, positions in this respect among representatives of psychological sciences themselves turned out to be divergent, which indicates that it is difficult to make categorical judgments. The psychological community therefore represents two extreme opinions: some believe that children are extremely resistant to suggestion, highly truthful and credible, including as witnesses, while others claim that they have considerable difficulty in distinguishing between fiction and reality, are easily influenced by an adult who is an authority for the child and therefore less credible than adult witnesses. Against this background, the results of research into children's suggestibility are interesting (Ceci, Bruck, 1993, p. 403). They have shown that children are capable of achieving a high level of accuracy in the description of a specific event, provided that adults do not distort their reports.

The latter view corresponds to the conclusions of the research on the relationship between age and susceptibility to suggestions conducted at the beginning of the last century by the precursors of the issue discussed herein – European psychologists A. Binet and W. Stern.

They showed that age is in fact related to suggestibility, but this does not lead to the simple conclusion that children are more susceptible to suggestion than adults (Stern, 1910). In the authors' opinion, obtaining false information from a child is the result of the incompetent questioning or even deliberately influencing the child's answer by constructing questions deliberately misleading the child, which results in obtaining more information inconsistent with factual memories.

Conclusions from the research carried out by A. Binet and W. Stern (Stern, 1910) are confirmed by numerous contemporary studies on children's suggestibility¹, whose conclusions also indicate that it would be a mistake to adopt a general assumption that children, regardless of age, are always and under all conditions more susceptible to suggestion than adults, and therefore that they are exceptionally suggestible. It turns out again that suggestibility is a variable feature, dependent on a wide variety of factors, which under certain conditions make every person, regardless of age, more or less susceptible to third party influence, while under others this person may be completely resistant to suggestion. Therefore, if we assume that every person is an individuality and that susceptibility to suggestion is a resultant of many variables, it may happen under certain circumstances that a child will show resistance to suggestion while an adult will succumb to it, and vice versa. The assessment of the susceptibility of underage witnesses to suggestion will depend on the context of the interview, the nature of the questions asked or the clarity of the memorial record of specific events.

Therefore, although there is no clear, direct link between the age of the minor and his or her susceptibility to suggestion, it should be noted that under certain conditions, in particular when interrogated inappropriately or incorrectly, especially younger children – either pre-school or early school-age – may be more susceptible to suggestion than older children and adults. Theoretically, the group of 3–4 year old minors is the most susceptible to suggestions, because these children are more inclined to be influenced by misleading questions, they select false information as the true one and incorporate the incorrect information provided to them as part of the question in an answer to the open question asked to them (more on this subject: Gobbo et al., 2002, p. 503 et seq.). However, interestingly enough, even in this age group, despite their greater susceptibility to suggestion, 3–4-year-olds can remarkably well remember the extremely stressful events that occurred to them personally, and thus answer truthfully, resisting the suggestions, even in the form of repeatedly asked questions. At the same

time, it should be stressed that in the context of Polish investigative practice, possible concerns about the evidential value of testimonies of underage witnesses within this age group are of little importance, since cases involving their hearings constitute a margin of procedural activities conducted with the participation of children.

An important conclusion stemming from the research on children's suggestibility is that the tendency to succumb to suggestion decreases with age, reaching the level of equal to that of adults around 10–11 years of age. This decline in suggestibility over age can be explained by progressive development, cognitive, memory and language skills acquired by minors, and an increase in knowledge and confidence in the authenticity of own memories. This observation is relevant to investigative practice, as testimonies of witnesses who are 10 years old and older represent a significant proportion of cases involving minors.

In view of the above, it should be pointed out that although children are generally not more susceptible to suggestion than adults, in certain specific situations, influenced by misphrased questions, indications and information provided externally, mainly by interrogators, children – especially at a younger age – are easier to mislead than older children and adults.

Reasons for and counteracting increased susceptibility of younger children to suggestion

As can be seen from the above considerations, the concern about susceptibility to suggestion may relate to pre-school and early-school children, so that conducting interviews with these minors requires the investigators to be aware of the factors that may determine a possible increased susceptibility of children at that age to suggestion.

M. King and J. Yuille (1997, pp. 24–35) attempted to explain the cause of the increased suggestibility of younger children based on the theory of memory traces. They concluded that age-related differences in suggestibility appear because younger children less efficiently encode the memory traces of particular events than older children, which makes them more susceptible to suggestion.

Similar results were obtained by L. Howe, who indicated that younger children may be more susceptible to suggestion because they encode primary memory traces less frequently than older children, and/or because primary memory trace fades more rapidly (Young et al., 2003, pp. 31–49). In turn, S.J. Ceci and M. Bruck (1993, pp. 403–439) noted that age-related discrepancies in this area may be the result of differences in the ability to understand and actively participate in the event, the impact of interviewer's questions, the effectiveness of the way in which information is obtained from the child, his/her self-confidence and the impact of various social factors.

¹ Results of the above mentioned research can be found, among others, in: Goodman et al., 1991, pp. 69–99; Cassel, Bjorklund, 1995, pp. 507–531; Ceci, Ross, Toglia, 1987, pp. 38–49; McCloskey, Zaragoza, 1985, pp. 381–387.

The awareness of the above mentioned regularities allows the formulation of certain assumptions, helpful in conducting an interview of a minor free from any influence of suggestions. It should be stated that children are vulnerable to suggestions when they:

- 1) do not understand what is expected of them,
- 2) have a vague memory of specific events,
- 3) their primary memories are distorted as a result of the inflow of new information after a certain event, which distorts the encoded primary memory traces,
- 4) perceive the interviewer as authoritarian, hostile and unfriendly,
- 5) are convinced that the interviewer knows everything or almost everything about a given event,
- 6) they are to answer the question that had previously been put to them, which has been repeated in an unchanged form.

The necessity of giving testimony and acting as a witness in the trial constitutes a new situation for a child, far different from any other events or experiences, and in particular from his/her everyday routine. This, in turn, combined with little knowledge and life experience, may confuse the child and cause him/her not to understand what is expected of him/her. Without the guidance and assistance of adults close to him/her, a minor witness who is forced to cooperate with the interrogator, being a new person and a stranger, will not only have to deal with the new situation on his/her own, but also to interpret the expectations placed on him/her. Consequently, it may turn out that he or she will try to answer the questions put to him or her in the way that he or she thinks the interviewer will be satisfied with, guessing or inventing answers when he or she does not know or remember them, especially if he or she is encouraged to do so.

For these reasons, the role of the interviewer should be to make the child aware of both the importance of reporting events truthfully and to assure the minor that he or she has the right to say that he or she does not remember or know something, instead of guessing or making up answers.

The lack of clear memories of past events, even if a child has witnessed them, may be another problem with obtaining reliable accounts from youngest witnesses. Still developing memory skills of younger children cause that although they are often able to remember a specific event accurately and in numerous details, a significant lapse of time between the moment of encoding specific events in the memory and their reconstruction may lead to weakening and blurring even the clearest memory trace. This in turn may cause that children in this age range will be subject to greater susceptibility to suggestions. This fact is confirmed, among others, by a study conducted by D.A. Poole and S.D. Lindsay (1998, pp. 1–26), who showed that the memories of a specific event of 6-year-old children remained unchanged after three weeks, while

the memories of 3-year-old children show a loss of accuracy after just one week.

The character of the event to be remembered and its context also have a considerable influence on the clarity of memories. T.A. Marche and M.L. Howe (1995, pp. 557–567) proved that children can remember more information about a specific event when they have experienced it many times than when it happened only once, regardless of the number of misleading information provided to them. Furthermore, depending on whether children actively participated in an event, or only observed it, their ability to reproduce and reconstruct from memory the content of this event may differ. Children who participated in the event will provide more complete and comprehensive information than those who only observed the event (Murachver et al., 1997, pp. 3029–3044). This should be explained by the fact that the direct experience of certain events allows the formation of a stronger memory trace and, consequently, more precise reconstruction and more accurate memory of details. In addition, it turns out that already 2–4 year olds better recall events that are more interesting for them than those that are not very interesting (Reed, 1996, p. 111).

In the case of testimonies given by children, especially at pre-school age, it is also very important for the interviewer to determine whether the information given by the child is the result of his or her own experience, adopting someone else's statements or memories, or the product of a child's imagination. It may turn out that the original memories will be distorted as a result of the inflow of new information obtained after the event, distorting the encoded primary memory traces. In order to effectively resist suggestions, children must be able to properly identify the source of their knowledge, which in psychology is called "source control". This kind of control means the degree to which an individual can distinguish his or her memories of events that he or she has actually experienced from those imagined or suggested (Memon et al., 2003, p. 246).

Research has shown that younger children may have greater difficulties than adults and older children in clearly differentiating between the origins of their memories, especially when they are based on similar sources. D.A. Poole and S.D. Lindsay (1998) found evidence that misidentification of the source leads to false accounts in children aged 3 to 8 years. This was confirmed by means of an experiment called "Mr. Science". Within the framework of this experiment, each child participated individually in a session consisting of four presentations concerning a person called "Mr. Science". After each of the presentations, one of the organizers of the experiment had a conversation with the child, asking open questions devoid of any suggestions, e.g. "Could you please tell me what happened in the room?". In the initial interviews, the children, regardless of age, performed exceptionally well, as they provided a significant number of correct

and a relatively small number of false information. Before one of the subsequent interviews, which took place after a certain period of time, the parents of the participating children received written stories from the examiners that they were to read to their children. These stories related to the events from the first presentation, but they additionally included the content that the children did not experience during the first experiment. When the parents read the story three times, each child was interrogated by a different woman once again. This time, the interviewer first asked the children an open question, followed by guiding questions and, finally, by questions about source control – that is, whether the children experienced the events themselves or learned about them from the story. As it turned out, many children claimed that the events they had heard only from the story their parents had read to them, they have actually experienced themselves. In the final interview, only questions concerning the source of information were used, e.g. whether the child actually remembers that a particular event had occurred or whether he or she knew it from the story. In the case of older children, the number of erroneous and false answers was close to zero, while younger children included erroneous information in response to questions about their own knowledge of the event.

Obtaining reliable testimony from a minor witness is also determined by the atmosphere of the interview it, and in particular by the qualities of the person conducting the activity. The child's perception of the interrogating person as authoritarian, hostile and unfriendly has a significant impact on the content of the child's report, leading to its distortion. It turns out that conducting an interrogation of a minor in an hostile atmosphere, using intimidation methods, increases the child's susceptibility to suggestion (Memon et al., 2003, p. 244). Minors, wishing to gain satisfaction, favor and sympathy of the interrogator, will aim to confirm even false information contained in the questions of the interrogator.

It is also a mistake for an interrogator to lead a minor to believe that the interrogator knows everything or almost everything about a specific event. It should be remembered that children, especially younger ones, perceive adults as a reliable and competent source of information. They even consider adults to be omniscient, which makes them believe more in any statements made by adults than by their peers, and they often believe them implicitly.

In the context of an interview, the conviction of a minor that the adult interviewing him/her knows everything or almost everything, may lead him/her to believe that his/her role is limited only to confirming the questions asked to him/her. Establishing such a conviction in a witness at preschool age exposes him/her to exceptional susceptibility to any suggestions contained in questions addressed to him/her. Even if the child's knowledge about the particular event differs

from the information provided by the interviewer, the child will be convinced that this information should not be corrected in any way. In the child's opinion, if the information comes from an adult, it is true and should only be confirmed.

Moreover, it should be remembered that for a young child, every adult is an authority, a person experienced and knowledgeable in every field. This will lead the child to assume that each question formulated by an adult has a specific purpose and sense, so it should be answered, which, in turn, will cause a minor to answer even the most nonsensical and incomprehensible questions.

It must not be forgotten that increased criticism of adult attitudes develops only with age in line with the development of the ability to think logically. Therefore, the interviewer should be aware of the risks associated with questioning a preschool-age child and, above all, should strive to formulate his/her questions carefully and wisely. It would also be advisable to assure the child at the beginning of the interview that the purpose of the meeting and conversation is to obtain knowledge from the child about a given event, because the interviewer does not know what was the course of this event and needs the child's help in determining it.

Finally, the lack of credibility of a child's report may occur when he or she is asked to answer the question that had already been asked before, especially if it has an identical content. Again, the need to repeat the information about the original events and the knowledge thereof will make it more likely that younger children will provide answers based on what they consider to have been the intention of the interviewer rather than reflecting their factual knowledge. When minors hear the same question once again, they will make a mistaken assumption that the interviewer is repeating the question because he or she did not like the previous answer or the answer given did not correspond to the interviewer's expectations. On the basis of such a misleading premise, a minor witness will attempt to change his or her previous statement and give a different answer to the satisfaction of the interviewer.

In order to avoid this kind of risk, the interviewer should assure the minor at the beginning of the interview that he or she will sometimes be forced to ask the child a specific question more than once, e.g. when he or she needs to recall the content of the child's testimony which he or she has forgotten, but this will not mean at all that the previous statement given by the minor was wrong or inappropriate. The child, being aware that raising the same question again is not aimed at undermining his or her testimony, will be less likely to succumb to suggestion, which will contribute to providing an answer that is in line with its previous content.

Conclusion

The considerations undertaken in this article indicate that children are as credible witnesses as adults. Like adults, they may succumb to suggestions during

suggestive interrogation, as a result of which the interviewer will obtain testimony based on information inspired by the content of the questions asked to the minor instead of a report based on truth. The awareness of the mechanisms governing the suggestion and the knowledge of how to avoid more or less conscious use of the suggestion during the interrogation will ensure that the minor witness will base his or her testimony exclusively on encoded memory traces, thus avoiding mistakes which may result in undermining the credibility of the report received from the minor. However, in order to make this possible, the procedural and forensic knowledge of investigators must be accompanied by the awareness of what a suggestion is from a psychological point of view and how to avoid it when carrying out investigative activities involving minors.

Bibliography

1. Augustynek, A. (1999). Sugestia (Suggestion), *Wiedza i Życie (Knowledge and Life)*, 8(66).
2. Cassel, W., Bjorklund, D. (1995). Developmental patterns of eyewitness responses to repeated and increasingly suggestive questions. *Law and Human Behavior*, 19.
3. Ceci S.J., Bruck, M. (1993). Suggestibility of the child witness: A historical review and synthesis. *Psychological Bulletin*, 113.
4. Ceci, S.J., Ross, D.F., Toglia, M.P. (1987). Age differences in suggestibility: Psychological implications. *Journal of Experimental Psychology*, 117.
5. Ceci, S.J., Toglia, M.P., Ross, D.F. (ed.). (1997). *Children's Eyewitness Memory*. New York: Springer-Verlag.
6. Gobbo, C., Mega, C., Pipe, M.E. (2002). Does the nature of the experience influence suggestibility? A study of children's event memory. *Journal of Experimental Child Psychology*, 81(4).
7. Goodman, G.S., Bottoms, B.L., Schwartz-Kenney, B.M., Rudy, L. (1991). Children's testimony for a stressful event: Improving children's reports. *Journal of Narrative and Life History*, 1.
8. King, M., Yuille, J. (1997). Suggestibility and the child witness. W: S.J. Ceci, M.P. Toglia, D.F. Ross (ed.). *Children's Eyewitness Memory*. New York: Springer-Verlag.
9. Lotus, E., Davies, G. (1984). Distortions in the memory of children. *Journal of Social Issues*, 40.
10. Marche, T.A., Howe, M.L. (1995). Preschoolers report misinformation despite accurate memory. *Developmental Psychology*, 31.
11. McCloskey, M., Zaragoza, M. (1985). Misleading post event information and memory for events: Arguments and evidence against the memory impairment hypothesis. *Journal of Experimental Psychology: General*, 114.
12. Memon, A., Vrij, A., Bull, R. (2003). *Prawo i psychologia. Law and Psychology. Wiarygodność zeznań i materiału dowodowego (Reliability of Testimony and Evidence)*. Gdansk: Gdańskie Wydawnictwo Psychologiczne (Gdansk Psychological Publishing House).
13. Murachver, T., Pipe, M.E., Gordon, R., Owens, J.L., Fivush, R. (1997). Do, show and tell: Children's event memories acquired through direct experience, observation, and stories. *Child Development*, 67.
14. Poole, D.A., Lindsay, S.D. (1998). Assessing the accuracy of young children's reports: Lessons from the investigation of child sexual abuse. *Applied & Preventive Psychology*, 7.
15. Reed, L.D. (1996). Findings from research on children's suggestibility and implications for conducting child interviews. *Child Maltreatment*, 1(2).
16. Stern, W. (1910). Abstracts of lectures on the psychology of testimony and on the study of individuality. *American Journal of Psychology*, 21(2), https://www.jstor.org/stable/1413003?seq=1#metadata_info_tab_contents (accessed on 17.11.2019).
17. Szewczuk, W. (ed.). (1979). *Słownik psychologiczny (Psychological Dictionary)*. Warsaw: Wiedza Powszechna Publishing House.
18. Warren, A., McGough, L. (1996). Research on children's suggestibility. Implications for the investigative interview. *Criminal Justice and Behavior*, 23(2).
19. Young, K., Powell, M.B., Dudgeon P. (2003). Individual differences in children's suggestibility: A comparison between intellectually disabled and mainstream samples. *Personality and Individual Differences*, 35.

Translation Rafał Wierchośławski