

Child Witness Institute

# ■ The implications of child development for evidence in child sexual abuse cases

# PSYCHOLOGY AND LAW

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1995 Judge Ebrahim in S v S 1995(1) SACR 50 (ZS) held at 60B that a rational decision as to the credibility of a witness (especially a child witness) can only be arrived at after a proper analysis of the evidence

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In order to reach an intelligent conclusion, the court held that it was necessary to apply a certain amount of psychology and to be aware of recent advances in this field

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It was accepted that this would mean an increase in a judicial officer's workload, but "it is the price to be paid for professionally administering justice in an increasingly complex society" (60C)



# LEGAL DILEMMA

- Dilemma experienced by the law is difficulty reconciling image of children as victims ("vulnerable, uninformed, dependent creatures in need of protection") v accurate, reliable child witness
- Dilemma explained as follows by King and Piper (1995:67):
- “In countries which operate an adversary, day-in-court trial system of criminal law this image of children as unreliable is clearly at variance with the need to bring children into the courtroom to give evidence and face cross-examination just like any other witness.”

# RECONSTRUCTION OF CHILD'S IMAGE

- Image of children as witnesses must be reconstructed
- Reconstruction must aim at enhancing perceived reliability of evidence of children, removing assumption that children are unreliable and suggestible as witnesses
- Achieved by re-evaluating rules of evidence, procedures applicable to children in court and training legal professionals with regards to scientific findings of children as witnesses

# RECONSTRUCTION OF CHILDREN'S IMAGE

Adults assume children are miniature adults

Evaluate them as though they are adults

Interpret their behaviour as we do adults

Speak to them as adults and interpret responses in same way

Highlights why we have had such difficulty understanding and communicating with children

One of main reasons we have failed children in court

# RECONSTRUCTION OF CHILD'S IMAGE

- Evidence of children viewed with suspicion
- Courts have emphasised that evidence of children should be scrutinised with great care
- According to courts, risks involved in child's evidence:
  - memories unreliable
  - egocentric
  - highly suggestible
  - difficulty distinguishing fact from fantasy
  - false allegations (particularly of sexual assault)
  - don't understand the duty to tell the truth

# SPECIALISATION OF SERVICES

`specialised' refers to those areas where focus of work conducted in particular courts is limited to a pre-determined range of issues

Rationale for provision of these services is to ensure that people deemed to have the appropriate skills and attitudes could be employed in courts that have definitive social policy objectives, such as providing access to justice for vulnerable groups, the transformation of labour relations, or the rehabilitation of drug offenders

# MEANING OF SPECIALISATION

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General agreement internationally that specialisation means more than introducing technology to assist complainants and designating special courtrooms

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Also includes key systemic changes which must produce cultural change within the courtroom

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Key feature found to bring about this cultural change is specialisation of personnel, namely prosecutors and judges, who have undergone specialist training

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Basis of concept of specialised services is philosophy of providing a holistic response to a particular social policy objective, which extends beyond the courtroom and which is presupposed upon specialised knowledge

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# WHY IS SPECIALISATION NECESSARY FOR CHILD WITNESSES?

# SPECIALISATION REQUIRES KNOWLEDGE OF

**COGNITIVE  
DEVELOPMENT**

**MEMORY**

**LANGUAGE  
DEVELOPMENT**

**MORAL  
DEVELOPMENT**

**DISCLOSURE**

**TRAUMA**

**GROOMING**

# IN ORDER TO ACCESS INFORMATION FROM CHILDREN

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Must have knowledge of different developmental abilities

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Children change physically, emotionally, intellectually

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Child development is progression through key milestones

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Knowledge of milestones key to understanding children

# COGNITIVE EGOCENTRISM

Children view world from own personal perspective

They are unable to separate own perspective from others

They cannot place themselves mentally in another's position

They are primarily concerned with their own actions

They have poor referential communication skills

This has implications for communicating

They have difficulty with questions about how others feel i.e was he angry? Did he like that? Why do you think he did that?

A 5 year old will not spontaneously offer information because they believe you already know (egocentric), so you have to lead the conversation and ask many questions:


I: What happened?

C: He hurt me?

I: What did he do?

C: He did stuff?

I: What stuff did he do?

C:  The stuff with his hand.

I: Remember I wasn't there, so I'm not sure I understand. Tell me more about the stuff he does with his hand.

C: He takes his hand and he puts it there.

I: Where does he put his hand?

# COGNITIVE EGOCENTRISM

# COGNITIVE EGOCENTRISM

Only ask young children about what they were doing or feeling. They will be able to tell you about who else was present and what they were doing, but you cannot rely on their accuracy if you ask them questions about what the other person was feeling or thinking.

I: What did you do?

C: I sat on the bed.

I: Who was there?

C: Tam.

I: Where was Tam?

C: She was by the door.

I: What were you feeling?

C: I was scared.

I: What was Tam feeling? [INAPPROPRIATE QUESTION]

C: She was scared. [CAN'T BE SURE CHILD ISN'T TRANSPOSING HER OWN FEELINGS ONTO THE OTHER]

I: Did she see what he did to you? [INAPPROPRIATE QUESTION BECAUSE SHE WILL ASSUME OTHER CHILD SAW BECAUSE SHE HERSELF DID]



# CONCRETE

An 8 year old will be very concrete and will not be able to understand questions that are abstract, hypothetical or evaluative:

I: Tell me what happened.

C: I was standing at the wall and he kept calling me to come over.

I: Why do you think he did that? [INAPPROPRIATE EVALUATIVE QUESTION]

C: I don't know.

I: What made him call you?

C: He wanted me to go to the shop.

# RELATIONSHIPS

Outcome of reversibility - child, until at least 7 (or even older), has difficulty understanding relationships

Can identify people by name, but not biological relationship – knows who sister is but not biological bond

Example from court case - child is 7 years old:

- Prosecutor: Does your mother have other children?
- Child: I don't know.
- Prosecutor: Do you have brothers and sisters?
- Child: Yes, I have two sisters.

So, when talking to children under 7 or 8, it is best to ask the child to identify people by name rather than relationship.



# TIME

No concept of time, but they will try to answer questions which leads to inaccurate evidence

Extract from a court transcript of an 8 year old child:

Defence: Can you tell this court or estimate the time that you spent at the gate, outside the house?[IT IS IMPOSSIBLE FOR AN 8 YEAR OLD TO ESTIMATE TIME -DEVELOPMENTALLY INAPPROPRIATE]

Child: A little time, your Worship.

Defence: What do you mean by a little time? [ASKING THE CHILD TO EVALUATE – IMPOSSIBLE AT 8]

Child: Not so long.

# LANGUAGE DEVELOPMENT

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Learning a new language

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Language development occurs through stages

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Child does not have same capacity as adult

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Impacted by cognitive ability

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Results in miscommunication

“Do you remember telling mommy that daddy hurt your pee pee in the shower?” [NO]

Do you remember?

Did you tell?

Did you tell mommy?

Was it daddy?

Did he hurt your pee pee?

Was it in the shower?

COMPLICATED PROCESS



## DEVELOPMENTALLY INAPPROPRIATE VOCABULARY

15 year old raped by 3 acquaintances

P: Now before this evening did you in any manner ever have intercourse with an adult male or a boy? ..... No.

So I assume, am I correct that you were a virgin? .... How do you mean?

C: Does she know what a virgin is Mr Prosecutor?"

P: It appears that she ....do you know what a virgin is? Yes.

Were you a virgin? .... No.

How come? . .... (No response)

C: Let's just clarify first, Mr Prosecutor. Do you know what it means when the prosecutor asks what a virgin is? .... Yes.

What does it mean? .... When you are old.

When you are old? How old? ....Oh no, I don't know.

# IDIOSYNCRATIC INTERPRETATION

Children give different meaning to words

Check that the word used has same meaning for interviewer

Examples: jury, judge, naked, clothes

# UNDER- EXTENSION

Difference in meaning  
between child and adult

E.g. the word `chase`

- “D: When you say Louis chased you away, what do you mean, what did he do? .... He said, go to Themba’s place.”



## SPECIFICITY OF LANGUAGE

Becomes a context of words which defeats the truth

Now when you got to the house, the shack, how did you get inside?  
Did you walk in yourself? .....I didn't walk. They dragged me.

Did they drag you? .... Yes.

Now can you explain to us how they pulled you? What did Mabuti do? What did Kuki do and what did Nunku do to drag you? Who dragged you in other words .... Nunku and Kuki held my hands, my arms. Mabuti was holding my legs.

So in other words they carried you? ... Yes.

Would you agree with me that to say that someone dragged you and someone carried you, there is a difference? ... Yes.

Now why are you testifying that they dragged you, but now you say they carried you? .... They dragged me.



# CONCEPTS OF SIZE AND MEASUREMENTS

Difficulty with relational terms is highlighted in the following extract from the evidence of an 8 year old girl:

Defence: Jenny, can you describe to the court maybe how big this mattress is where you were lying with your sister ?

Child: It's a little bit bigger.

The child does not have the developmental capacity to describe sizes



# WHEN CHILDREN DON'T UNDERSTAND

They don't say they don't understand until 10

They will:

- say 'I don't know'
- say 'yes'
- keep silent

# SYNTAX

Pronouns

Negatives

Tag questions

Multiple questions

Embeddings

# QUESTIONS

3 years: Who, What questions

4 years: Who, What, and some Where questions

5-6 years: Who, What and Where and some When questions but not time related

7-10 years: Who, What, Where, some When and some How questions

11-12 years: Who, What, Where, When , Why and Circumstances questions

# COMMUNICATING WITH CHILDREN

Ask	Only ask one question at a time
Keep	Keep questions as simple as possible
Use	Use simple words
Avoid	Avoid legal language and technical terms
Make	Make sure that you understand the meaning of the word the child uses by asking questions
Make	Make sure the child understands the meaning of the word you are using by asking questions
Avoid	Avoid complicated grammar
Ask	Ask until you understand
Be	Be kind and sensitive!

To understand children as witnesses and make sense of their evidence, it is necessary to have knowledge of all the aspects of child development as well as the dynamics of abuse

# ▼ CHILDREN AS WITNESSES

# CHILD WITNESSES

A rational decision as to the credibility of a witness (especially a child witness) can only be arrived at after a proper analysis of the evidence. In order to reach an intelligent conclusion, it is necessary to apply a certain amount of psychology and to be aware of recent advances in this field. This will mean an increase in a judicial officer's workload, but "it is the price to be paid for professionally administering justice in an increasingly complex society"

