




# Beliefs About Young Children as Witnesses: a Survey of Experienced Defense Lawyers and Psychological Expert Witnesses in Norway

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## Abstract

Defense lawyers ( $n = 51$ ) and psychologists ( $n = 49$ ) with experience in court cases involving child witnesses were surveyed on their beliefs about young child witnesses, defined as children in the age range of 3–6 years. The survey included 13 questions probing the reliability of testimony of young child witnesses and eight questions regarding factors influencing professional judgments of young child witnesses' credibility. Results indicated that both professional groups had fairly balanced opinions of child witnesses, with their opinions in general agreement with current research literature, although defense lawyers were somewhat more skeptical than psychologists were. However, considerable intra-sample variation existed on most items, with a minority of participants expressing opinions that were somewhat at odds with current child witness research. Results are discussed in the context of child maltreatment, the rule of law, and children's rights to safety and security.

**Keywords** Child witnesses · Beliefs · Reliability · Credibility · Defense lawyers · Psychological expert witnesses

Many young children in western societies are victims of physical and sexual abuse. When abuse is disclosed and investigated, and a suspect is apprehended and brought to trial, the testimony of children is frequently the principal evidence that a criminal act has taken place. Thus, the perceived credibility and reliability of child victim/witness testimony is critical to the outcome of the trial, which in turn may depend upon the beliefs and opinions about child witnesses held by key actors in the court. In our study,

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we asked if those beliefs are in harmony with current research on child witnesses. This is a vital question in the context of child maltreatment and the rule of law (Saywitz et al. 2017). High-profile cases in several countries suggest that erroneous beliefs held about child witness memory (Dodier and Tomas 2018; Merkelbach and Patihis 2018) have resulted in the conviction of likely innocent persons (Goodman et al. 2007; Laney and Loftus 2016). It is likely that erroneous beliefs about child witnesses have resulted in the exoneration of actual perpetrators as well (Goldfarb et al. 2019). Ignorance of knowledge may threaten children's rights to personal security and safety.

There is a large international research literature on beliefs about factors associated with the credibility and reliability of adult witnesses. Surveys of jury members and persons qualified for jury duty (Desmarais and Read 2011; Magnussen et al. 2010), psychologists and psychological expert witnesses (Dodier et al. 2019; Magnussen and Melinder 2012; Melinder and Magnussen 2015; Miranda et al. 2013), lawyers and police officers (Granhag et al. 2005; Jiang and Luo 2016; Kask 2011; Magnussen et al. 2013; Wise et al. 2009, 2011), and judges (Houston et al. 2013; Jiang and Luo 2016; Kask 2011; Magnussen et al. 2008; Wise et al. 2010; Wise and Safer 2004) suggest that the beliefs held by lay persons and professionals alike are not always consistent with the research literature. Thus, both expert witnesses and the court are at risk of basing their conclusions on psychological folklore without support from relevant psychology-and-law research (Melinder and Magnussen 2015). However, little is known about the beliefs held by key actors in the court about the reliability and credibility of young child witnesses, and about young children's demeanor when disclosing abuse. This is the focus of the present study.

In one of the first surveys of beliefs about child witnesses, Melinder et al. (2004) found that Norwegian psychologists, defense lawyers, court judges, and police investigators believed children to be generally credible witnesses and as reliable as adults. Verbal expressions were believed to be more reliable indicators of credibility than non-verbal expressions; moreover, legal professionals judged strong emotional expression as a more reliable sign of child witness credibility than calm behavior. Defense lawyers were slightly more skeptical towards the reliability of child witness testimony than the other professionals surveyed. However, in general, the beliefs held about child witnesses among these groups of professionals did not contradict science. A Swedish survey showed that court judges, lay judges, and police officers believed that emotional factors were more important when evaluating child witnesses' reports of abuse than were cognitive factors (Leander et al. 2007). A more recent US study indicated that lawyers and persons who qualified for jury duty had little knowledge about child witnesses and about the "proper" interviewing strategies for child witnesses (Buck et al. 2014). A survey of fairly small samples of Swedish police investigators, prosecutors, and defense lawyers (Knutsson and Allwood 2014) showed that these professional groups believed child witnesses aged 7–11 years to be less reliable and more suggestible than adult witnesses but also that the spontaneous testimonies, and the free accounts of the children were as reliable as those of adult witnesses. A follow-up study by these authors (Knutsson and Allwood 2015), where opinions were tested indirectly through judgments of actual cases, found that the same professional groups judged child witnesses to be equally capable as adult witnesses. In all these studies considerable within-sample disagreement was observed.

A number of studies have investigated the beliefs about child witnesses indirectly via experimental evaluations of factors that may affect the perceived reliability and credibility of child witnesses. Several studies have shown that judgments of the credibility of child witnesses are associated with the children's demeanor when disclosing abuse. In a series of studies from our laboratory (Melinder et al. 2016; Wessel et al. 2013, 2016), jury eligible lay participants and Child Protection Service employees viewed a video recording of a "police interview" with a female child (mock) victim giving her testimony with different emotional expressions. The results showed that the emotional expression strongly influenced the perceived credibility of the child, with angry or relaxed positive emotions resulting in the lowest scores on the credibility scale in both participant samples and the sad expression resulting in the highest credibility scores—the emotional witness effect (Ask and Landström 2010). This effect was independent of the presentation mode of the testimony; the same pattern of results was found comparing video and audio recordings with written transcripts that noted the child's emotional reaction (Melinder et al. 2016). Landström et al. (2015) confirmed the child emotional witness effect in two experiments with video recordings of the children's testimony whereas Bederian-Gardner et al. (2017) failed to observe a direct effect of emotional display on child victim believability with (less informative) still pictures of the witnesses. Castelli and Goodman (2014) reported that US prosecutors were more likely to file charges when the child's behavior during disclosure was rated as emotional than when it was rated as neutral. Such findings are concerning in view how child witnesses actually disclose abuse, which frequently is with an unemotional, neutral demeanor (Sayfan et al. 2008).

Even when adolescents are excluded, the concept of a child witness covers a wide age range—typically from 3 to 12 years—a period during which remarkable cognitive changes take place. The distinction between young (preschool) children and older (elementary school) children captures the well-documented fact that age is the most robust predictor of the memory performance of child witnesses. In countless studies, older children perform better both in terms of the amount of details recalled (Goodman et al. 2014a; Lamb et al. 2015) and in the resistance to external pressure and suggestion (Goodman and Melinder 2007a, b; Goodman et al. 2014b; Pipe and Salomon 2002). The suggestibility of young children about child maltreatment, however, may be overrated (Goodman et al. 2017).

There is a large volume of research on child witnesses published during the last few decades (Bauer and Fivush 2014; Lamb et al. 2015). Therefore, we know quite a bit about the memory performance and disclosure demeanor of child witnesses. Is this knowledge shared by the psychological and legal actors in court? Previous studies and surveys on beliefs and knowledge about children as witnesses have considered a fairly wide age range. In the present study, we focused on the youngest and most vulnerable age group, the preschool-aged children. Recently the Norwegian authorities opened the courtroom doors to the presentation of video interviews of very young children, as young as 3 years of age. Of course, the child must prove understanding of language and further show expressive language. For the present study, we took notice of this legislative imperative, and thus we asked the participants, in responding to our questionnaire, to think of a child in the age range of 3–6 years.

We surveyed defense lawyers and psychological expert witnesses, all experienced with respect to cases involving child witnesses, on their beliefs about

the reliability and credibility of the young child witness. Previous studies of defense lawyers in the US and Italy suggest that these professional groups are more knowledgeable of general eyewitness issues than other legal professions, as a consequence of their more critical and skeptical attitude towards eyewitnesses associated with their professional role in legal proceedings (Magnussen et al. 2013; Wise et al. 2009). Does this skepticism transfer to their knowledge about child witnesses? In Norway, psychological expert witnesses serve in both civil and criminal cases, they are appointed by the court rather than by the prosecution or the defense, and court-appointed expert witnesses are given a specified mandate to provide the court with a scientifically valid evaluation of the issues addressed in the mandate. The reports submitted by the expert witnesses are, with few exceptions, accepted by the court and incorporated in the verdict. It is therefore of uttermost importance that psychological expert witnesses are up-to-date about the latest, relevant psychological science.

## Method

### Participants

Participants were recruited with the assistance of the Defense Lawyer Group of the Norwegian Association of Lawyers ( $n = 280$ ) and the Norwegian Psychological Association's register of psychologists who serve as expert witnesses in court ( $n = 400$ ). The survey, distributed electronically, specifically mentioned our interest in defense lawyers with experience in cases involving child witnesses and psychologists who had served as expert witnesses in such cases. The response rates were 19% ( $n = 52$ , 37% female) and 16% ( $n = 62$ , 55% female), respectively, which should be considered an acceptable response rate given that the targeted group for this study is only the smaller, albeit unknown, proportion of these populations that have been involved in child witness cases. Fourteen respondents were excluded from further analyses, as they indicated no such experience, leaving 49 psychologists and 51 defense lawyers.

Table 1 shows participant demographics. The gender distribution did not significantly differ between the two groups,  $\chi^2 = 2.52$ ,  $df = 1$ ,  $p = .11$ . We clustered age into decades for participants to tick off (e.g., 20–29 years of age and so on). As can be seen from Table 1, participants' ages in these intervals are similar across the two professions but with more psychologists than defense attorneys in the older age groups,  $\chi^2 = 21.45$ ,  $df = 5$ , and  $p < .001$ . The number of child witness cases that respondents had experienced did not significantly differ between the psychologists and defense lawyers,  $F(1,98) = 3.46$ ,  $p = .68$ , and  $p^2 = .03$ . Moreover, participants age did not significantly correlate with number of cases,  $r = -.009$ ,  $p = .93$ , implying that professionals with a potential long time in practice (e.g., higher age) had not necessarily handled more such cases than those with fewer years of practice. Of note, however, 60% of the lawyer sample reported more than 20 cases compared with 29% among the psychologists.

**Table 1** Sample demographics

		Psychologists	Defense lawyer
Gender	Female	25	18
	Male	24	33
Age	20–29	0	3
	30–39	3	14
	40–49	11	20
	50–59	16	10
	60–69	15	4
	70+	4	0

## Questionnaire and Procedure

The questionnaire (English version, Appendix 1) comprised a total of 25 items, of which 4 items dealt with background information of the respondents (gender, age, profession, professional experience); 7 items probed beliefs about the reliability of child witness accounts that could be evaluated in the context of current scientific knowledge and assigned a reasonable correct–incorrect score (items 1, 3–8); 6 items probed child reliability issues, the correct answers of which we judged as less straightforward according to the current scientific knowledge (items 2, 9–13); and 8 items probed beliefs about indicators of credibility of young child witnesses (Items 14–21). Participants were instructed to think of a 3- to 6-year-old child in answering the questions, unless the question implied otherwise.

The questionnaire was distributed electronically via the member lists of the Norwegian Association of Lawyers and the Norwegian Psychological Association, with a single reminder after 2 weeks. Participants could use as much time responding, as they needed.

## Results

The results are summarized in Table 2 with items grouped as mentioned above. For items 3 to 16, the extreme categories strongly agree/strongly disagree were rarely ticked off and for simplicity of presentation, the responses were collapsed into a 3-point scale of agree—don't know—disagree categories. In the table's horizontal heading, "Agree" indicates the respondent agreed with the item as stated. The term "Disagree" means the respondent disagreed with the item as stated (for some items, disagreeing was the correct response). An asterisk indicates the response we coded as correct. For the last section of Table 2, we employed a 7-point scale and collapsed the responses to three main groups; credible as indicated by response 7, N/A as indicated by response 2, 3, 4, 5, and 6, and finally not credible as indicated as response 1.

**Table 2** Distribution of the responses of psychologists ( $n = 49$ ) and lawyers ( $n = 51$ ) to statements regarding child witness (numbers indicate % per professional group)

Topic	Psych. lawyer		Psych. lawyer		Psych. lawyer	
	Agree		Neither		Disagree	
<b>Scientific knowledge</b>						
1. Age when remember	96*	69	--	--	4	31
3. Tell the truth	57*	47	35	47	8	5
4. More details	6	0	47	25	47*	75
5. Suggestible	84*	92	10	6	6	2
6. Less correct	14	45	37	39	49*	16
7. Influenced by authorities	10	10	12	4	77*	86
8. Preverbal	31	18	28	45	41*	37
<b>Less documented</b>						
2. Spontan. disclosure	^ 90*	55*	--	--	--	--
9. Rich statement	43	20	41	33	16*	47
10. Traumatic events	18	27	35	47	47*	25
11. Repression	22	33	37	37	41*	29
12. Understand as adult	88*	80	10	18	2	2
13. True telling	14	20	63	41	22*	39
<b>Credibility issues</b>						
14. Verbal skills	37	55	22	18	41*	27
15. Detect lies	10	14	39	37	51*	49
16. Body language	24	27	41	37	35*	35
		Psych. lawyer		Psych. lawyer		Psych. lawyer
		Credible		N/A		Not credible
<b>Emotion and credibility</b>						
17. Talking calmly	20	29	67	63	12	8
18. Crying	69	57	29	43	2	0
19. Smiling	20	14	59	53	20	33
20. Angry	59	45	31	47	10	8
21. No emotional signs	31	20	53	65	16	15

“Correct” answer is indicated by \*. ^ Both response age 3–4 and age 3–5 were judged correct and are collapsed. *Psych.* psychologists, *Lawyer* defense lawyers, *Spontan.* spontaneous

### Beliefs About the Reliability of Child Witnesses Consistent with Scientific Knowledge

It is well documented that children in the age range of 3–5 years are able to remember and recount autobiographical experiences—depending upon their linguistic competence—albeit in a more abbreviated version than older children (Goodman et al. 2014a, b), and depending on the quality of the interview (Saywitz et al. 2015). Regarding the respondents’ answers to item 1, the question about children’s age at which they are able to remember and tell about an abuse incident, a majority of both

samples agreed on the age range of 3–5 years (96% of the psychologists and 69% of the attorneys indicated a “correct” response), but around 30% of the defense lawyers indicated a higher age range. Thus, the beliefs of the majority of the psychologists agree fairly well with current scientific knowledge, but the defense lawyers are somewhat more skeptical of the reliability of young children’s testimony. This pattern was generally true across the first grouping of questions (e.g., those regarding scientific knowledge) and also for item 2 (which appears under the heading “less documented” in Table 2) about the age at which a child’s spontaneous disclosure is reliable and corresponds to historical truth. For this latter item, a majority of the psychologists again voted for 3–4 years, whereas many defense lawyers voted for higher age groups.

Regarding the subset of these questions that we could score for agreement with current research, on the question of the memory of translation of preverbal experiences to language (item 8), the “don’t know” answer is fairly numerous among the defense lawyers and the psychologists, but the “disagree” alternatives have more supporters than the “agree” alternatives among the psychologists. Much, but not all, of the current evidence suggests that most preverbal experiences are generally not accessible to verbal recall at a later time when the child has learned to talk (Bauer 2014; Jack et al. 2012; Simcock and Hayne 2002); that said, the study findings remain rather mixed (Morris and Baker-Ward 2007; see also Bauer et al. 2019), and this may explain the high “don’t know” response in both samples.

Item 3 stated that children usually tell the truth about criminal and abusive acts they have experienced as victims or witnesses. Note again the high “don’t know” frequency in both samples, and the unison agreement that this statement is correct, which is also consistent with the bulk of current eyewitness research; the spontaneous memory reports of children are likely to be correct (Goodman et al. 2014a).

Two items probed beliefs about the reliability of young child witness reports compared with those of adults, asking whether children’s memory for events are less correct than the memory of adult witnesses (item 6), and whether children remember more details than do adults (item 4). As indicated above, children remember fewer details but the details remembered are generally correct. Again we notice the relatively high “don’t know” category in both samples, but among the respondents who expressed a belief it was a general consensus that young children remembered fewer details than adults. A majority of the psychologists also believed that children’s autobiographical memory for specific incidents was as correct as the memory of adults (item 6)—the details they reported are correct as that of adults—whereas a majority of the defense lawyers believed it was worse.

Two items (items 5 and 7) probed the vulnerability of child witnesses to suggestion in general and to the influence of authorities compared with that of adults: Are children more or less vulnerable? On these items the samples of respondents were in agreement with the research literature: overall, in general terms, children are more vulnerable to suggestion than are adults (Goodman and Melinder 2007a, b; Goodman et al. 2014b). However, laboratory experiments based on the DRM paradigm have shown a developmental reversal due to the higher associative capacity in older as compared to younger children (Metzger et al. 2008).

The distributions of correct answers to these seven questions (Items 1, 3–8) are shown in Fig. 1. When the total number of correct responses was computed (ranged 0–7 correct answers), psychologists ( $M = 4.51$ ,  $SD = 1.08$ ) did not significantly differ

from defense attorneys ( $M = 4.21$ ,  $SD = 1.33$ ) in terms of total correct responses,  $F(1,98) = 1.47$ ,  $p = .23$ , and  $\eta_p^2 = .02$ . It is noteworthy, however, that the scores for both samples describe a normal distribution rather than a strongly skewed upward distribution as we might expect, at least for the psychologists.

### **Beliefs About the Reliability Child Witnesses Relying on Less Documented Scientific Knowledge**

Some of the questions that probed beliefs about the reliability of children's memory have somewhat more uncertain scientific support, as we judge it (Table 2). An interesting divergence between the two professional groups was observed in relation to item 9 regarding whether a child's statement that is detailed and rich, implies more correct memory. Whereas about half of the lawyers tended to disagree, only a minority (16%) of the psychologists did so. There is to our knowledge no evidence that a rich and detailed testimony is associated with correct memory, and it is not a criterion in the content-based criterion analysis (CBCA) of child testimonies (Hauch et al. 2017). Item 13 focused on child versus adult witnesses true telling. In general, the available research shows that young children, when interviewed according to recommended practice, report previously experienced events correctly. They may report fewer details than adolescents and adults, but they are equally correct, relatively (e.g. Jack et al. 2014). The lawyers, who expressed more disagreement than agreement, could be said to have performed closer to current knowledge. Based on the above review of the current empirical literature, we coded "disagree" as the correct response, but it is possible that the question was somewhat unclear (does disagreement imply that children and adults are equally incorrect or that children are more incorrect?), which could explain why psychologists expressed a larger proportion of "Don't know" responses.

Three related items probed memory of traumatic events, do young children remember such events less correctly than adults (item 10), and do children shut off such memories from consciousness and later have problems remembering them (item 11)? It is well established that children, like adults, remember traumatic events better than mundane events, at least with more subjective clarity (Peterson 2011; Terr 1983), and even if the number of details provided by young children are sparse compared with that of older children and adults, there is good evidence that young children also may provide important correct information (Newlin et al. 2015). The available evidence further suggests that repression or dissociation of such memories from consciousness is still debatable and difficult to prove or disprove (Alexander et al. 2005; Goodman et al. 2003; Otgaar et al. 2019). Both samples of participants again produced a notable high frequency of "don't know" responses on these items, and again, we noticed the more skeptical view of young child witnesses among the defense lawyers. Of interest, a majority of the psychologists who expressed an opinion disagreed with the idea of repression of such memories, whereas a comparable majority of the defense lawyers agreed with the idea of repression. Finally, both groups of professionals agreed to the question (item 12) that a child who was victim of an assault and did not understand what happened at the time, may later, as an adult, come to understand what happened as an assault.

## Beliefs About the Credibility of Young Child Witnesses

Beliefs about the credibility of child witnesses were probed by 8 items, and the results are shown in the lower section of Table 2. First, as we discussed, participants mostly agreed to the fact that children usually tell the truth about criminal and abusive acts they have experienced as victims or witnesses. But the evidence also suggests that children are able to deceive people from the age of four (Lee 2013). Are we able to distinguish truthful from not truthful testimonies? The answers to item 15—note again the high “don’t know” category—show that both samples agree that it is not easier to detect lies by children than lies by adults, in agreement with much of the available research (Lee 2013; Vrij 2008; but see Block et al. 2012). Furthermore, a majority of both samples of participants agreed that the content of the child’s testimony was more important than non-verbal signs (items 14 and 16), again in agreement with the available research (Vrij 2008).

## Emotion and Credibility of Young Child Witnesses

On most items probing the impact of emotional behavior on perceived credibility (items 17–21), a majority of the respondents answered that emotional behavior generally did not influence credibility, except that “crying” and “angry” expressions were believed to be signs of credibility in a majority or a sizable minority in both samples of respondents. This compares with the views of US prosecutors (Castelli and Goodman 2014) and experimental studies of judgments of child credibility (Landström et al. 2015; Melinder et al. 2016; Wessel et al. 2013, 2016). Courts are warned not to put too much emphasis on the children’s emotional reactions, as child witnesses may disclose abuse in a neutral, non-emotional manner (Sayfan et al. 2008).

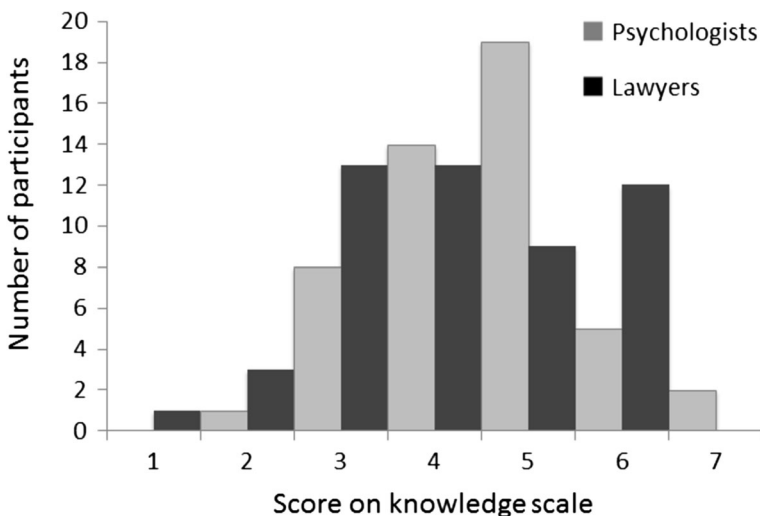


Fig. 1 Distribution of scores on the knowledge scale for the psychologist and lawyer samples

## Discussion

The results of the present survey suggest that attorneys and psychologists, experienced with child witness cases in court, as a group have restrained views on the reliability of young child witnesses and on signs of witness credibility. On most if not all items probing child witness reliability, the responses of the majority of the respondents who volunteered an opinion, generally appear to agree with current scientific knowledge in both samples. It is interesting, however, that on most of these items the number of responses implying a “don’t know” or “uncertain” opinion is quite high, suggesting, perhaps, that many attorneys and psychologists have an open view on these matters and are inclined to conclude based on the evidence presented in the individual court trials. Also, on the positive side, the respondents did not put strong emphasis on the emotional expression of the child witness. Demanding signs of tears as evidence for credibility might in fact be misleading as most children tell their stories with a variety of emotional signs (Sayfan et al. 2008).

The results also suggest that defense lawyers are slightly more reluctant than the psychologists, in the sense that they are more skeptical towards the very young child witnesses than are psychological expert witnesses. Previous studies of defense lawyers’ beliefs about eyewitness memory found that they are more knowledgeable than other legal professions, which may be associated with the role of defense lawyers in court (Magnussen et al. 2013; Wise et al. 2009). However, the difference in the beliefs of psychologist expert witnesses and defense lawyers were not that great. Thus, both psychologists and defense lawyers believe young children can be reliable.

The results of the present study agree with the results of a recent Scandinavian survey (Knutsson and Allwood 2014) of police personnel, prosecutors, and attorneys. These professions all appear to be aware that children are as able as adults to give reliable free recalls of experienced events, albeit less complete, that their accuracy of the reported event in free recall is fairly accurate, but that children are somewhat more suggestible than adults. The results of the present survey further show that, in Norway, little has changed during the last 15 years. Still, defense lawyers are somewhat more skeptical towards child witnesses compared with psychologists, and the judged age of a reliable child witness was a couple of years higher than judged by psychologists, as observed 15 years ago (Melinder et al. 2004), but as then the differences observed are not great.

There are of course individual differences: We noticed that a sizable minority of respondents in both samples disagreed with the response alternatives we consider to be correct according to current scientific knowledge on the items that probed child witness reliability issues. The scores on the knowledge scale (Fig. 1) show that many of the respondents in both samples scored correct on only three of the seven items where we consider the scientific knowledge to be relatively solid. In child cases, as in adult cases (Melinder and Magnussen 2015), there is a chance that the courts might receive recommendations not sufficiently grounded in current science from psychological expert witnesses. In the wake of considerable public media attention in Norway of false memories, a memory illusion well known in the international literature from both laboratory studies and real-life cases (e.g., Goodman et al. 2007; Otgaar et al. 2019), there is a widespread belief that young children’s testimony is inherently unreliable. Informal evidence suggests that this idea has gained increased popularity among less-

experienced Norwegian defense attorneys in child abuse cases, some of whom base their defense of the alleged perpetrator on the less supported idea that young children spontaneously develop false memories. There is to our knowledge no evidence that false memories in children of experiencing child abuse develop in the absence of long-term suggestive or coercive influence. In the context of prosecuting cases of child maltreatment, the sober opinions of experienced professionals are therefore reassuring. However, on the whole, the message from the Scandinavian surveys of legal and psychological professionals suggests that, at least in this corner of the western world, even young children are viewed as fairly competent and reliable witnesses. This is a positive sign for the most vulnerable of our child victims.

## Compliance with Ethical Standards

**Conflict of Interest** On behalf of all authors, the corresponding author states that there is no conflict of interest.

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