


**22nd International Summit on
Violence, Abuse & Trauma:
Building Peace by Linking Policy,
Practice, Research & Advocacy to
End Violence**


Institute on Violence, Abuse and Trauma
San Diego, CA
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PREPARING CHILDREN FOR COURT

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Russell Consulting Specialists, LLC

- Russell Consulting Specialists, LLC provides:
 - Training and technical assistance for professionals responding to child maltreatment
 - Expert testimony in criminal and civil child maltreatment cases
 - Prevention programming for community members
 - Forensic interview peer review

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Preparation for Court ...

... begins at first contact and continues through trial ...

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Children in Court

- A child's ability to successfully testify in court is impacted by many factors:
 - Response of professionals to initial outcry
 - The method of communication in the forensic interview
 - The method and extent of the investigation
 - Support of the non-offending caregiver / family
 - Availability of therapeutic and advocacy services
 - Court preparation with the attorney / advocate
 - Accommodations made for the child in court
 - Courtroom experience

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PROFESSIONALS' RESPONSE TO OUTCRY

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The Professional Response

- Our response has a “crucial impact” on the well-being of victims
- Negative effects of victimization exacerbated when victim reports were minimized or disbelieved
 - Failure to follow-through w/ report / prosecution
 - Recantation by victim
 - Mental health & medical issues
 - Re-victimization


(Denov, 2003)

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Female Sex Offenders: Why Don't We Believe?

- Considered “more acceptable” than abuse by males (consider teacher-student abuse)
- Sexual acts committed between women and boys perceived as sexual experimentation
- Rather than viewed as abusive, the sexual involvement of a boy with a woman may be perceived as “status-enhancing”


(Dollar et al, 2004; Fisher & Pina, 2013; Levine, 2006; Tsopelas et al, 2011, 2012)

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Female Sex Offenders: Highly Underreported Crime

- Sexual identity and sexual confusion for both male and female victims
- Male adolescent victim
 - Too “humiliated” to report
 - May believe they are supposed to value experiences with older women and view “relationship” as “learning experience”
- Intense concern & fear they won't be believed
 - 86% of child victims initially not believed

(Dollar et al, 2004; Durham, 2003; Elliott, 1993; Fisher & Pina, 2013; Tsopelas et al, 2011, 2012)

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Perceptions of Male Victims by Professionals

- Some law-enforcement officers and rape-crisis counselors believe that boys are infrequently sexually abused
 - Perception that boy victims are weak and effeminate, secretly enjoying the assault
- Among men and women police officers and social workers, registration and incarceration of sex offenders were rated as more appropriate for male perpetrators than for female perpetrators

(Donnelly & Kenyon, 1996; Hetherington and Beardsall, 1998)

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Getting out of our own way ...

- Obtain appropriate training
 - Role of first responder
 - Medical evidence
- Recognize personal biases / expectations
 - Belief in a just world: "Never an innocent victim"
 - Who offends
- Understand dynamics of sexual victimization
- Work with a multidisciplinary team
- Recognize vicarious trauma and burnout

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THE INVESTIGATION AND THE FORENSIC INTERVIEW

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Nondisclosure in CSA Interviews

- Is it the child or the interviewer?
- Interviewer behavior may vary based on children’s reluctance to provide information
 - Nondisclosing children were uncooperative from initial stages of interview
 - Nondisclosing children provided less informative responses than those disclosing abuse
 - Interviewers adhered less closely to the protocol with nondisclosing children
 - Interviewers utilized less free recall prompts and supportive comments during incident reporting stage of interview


(Hershkovitz et al., 2006)

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Delayed Disclosures

“[M]ore than half of the children who participate in investigative interviews do not disclose the alleged abuse, even when there is strong evidence indicating a high probability that abuse has occurred.”

(Katz, 2014)

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Barriers to Disclosure

- Threats made by the perpetrator
- Fears of the child
- Lack of opportunity
- Lack of understanding
- Relationship with the perpetrator

(Schaeffer, Leventhal & Asnes, 2011)

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Explaining Disclosure Patterns

- Questions to ask (if not reported with open-ended questioning):
 - How did adults come to know about this?
 - Who was the first person you told about ____?
 - What made it okay to tell ____?
 - Was there something that kept you from telling? Tell me about that....
 - What did you tell ____?
 - What did ____ say to you when you told him/her?
 - Did you think about telling someone, but didn't tell? Tell me about that....

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Failure to Explore Alternative Hypotheses

- Prior to and during forensic interview, consider and explore:
 - Deliberate falsehood
 - Misinterpretation of innocent contacts
 - Coaching
 - Contamination
 - Source-monitoring error / familiar event
 - Alternative perpetrator
 - Additional (or prior) perpetrators
 - Can child distinguish between abuse experiences?

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The Importance of Corroborating Evidence


- Cases most likely to have charges filed have:
 - strong victim disclosure
 - physical evidence
 - an offender confession
 - an additional report against the offender (i.e., additional victims)
- When strong evidence is lacking, cases with a corroborating witness were nearly twice as likely to be charged

(Walsh, Jones, Cross & Lippert, 2008)

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Corroborate the Interview

- Find 8 – 10 elements of corroboration
 - Not limited to direct evidence / DNA
 - Child’s Behaviors & Emotions
 - Crime Scene
 - Suspect / Witness Interviews
 - Physical Evidence
 - Medical Evidence




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(Vieth, 1999 & 2010; Lippert et al., 2010)



SUPPORT FOR THE CHILD


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Why is Maternal Support so Important?

“A non-offending caregiver’s reactions (or the [child’s] anticipation of a particular reaction) may affect whether a disclosure occurs at all, the timing of the initial disclosure, who the child discloses to, and/or the child’s willingness to maintain the disclosure over the course of intervention.”


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(Malloy & Lyon, 2006)


Factors Influencing Support

- Fear of losing custody of the child
- Fear of losing the financial provider for the family
- Anxiety about their child having to testify in court
- Concern that they will be ostracized by their family/family of abuser

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Factors Influencing Support

- Concern that their child will be further traumatized by the investigative process
- Fear of prosecution/prosecution of the abuse
- Fear of physical retribution by the alleged perpetrator
- Lack of trust in agency providers

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Historical Trauma

- Cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma (Brave Heart, 2001)
 - “It happens to everyone – just get over it”
 - “It happened to me, and I am fine”
 - Distrust of intervention / investigative agencies

(Alvarez et al., 2004) 


**Cooperating with Non-Offending
Caregivers**

- Maintain a respectful non-judgmental attitude with caregivers
- Remain an objective fact-finder who seeks to find the truth
- Educate them about the legal process and what they can do to help the child
- Answer their questions and inform them of what they can/cannot do

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**Cooperating with Non-Offending
Caregivers**


- Reinforce that the caregiver is still important in the decisions for the child
- Listen to them; allow them to voice concerns for themselves and their child
- Refer the NOC and child for individual and family therapy
- Empower them to rebuild a safe, stable home

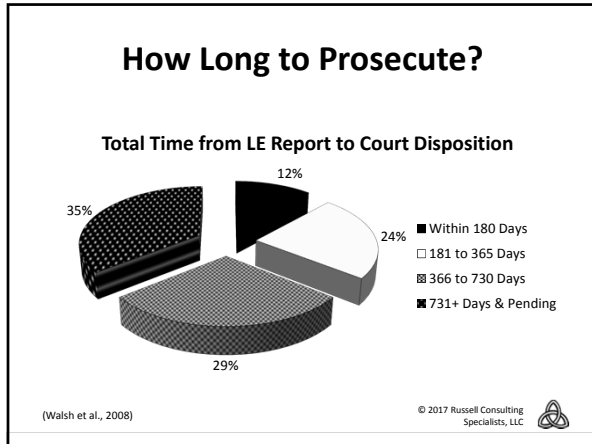
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Prepare the Non-Offending Caregiver

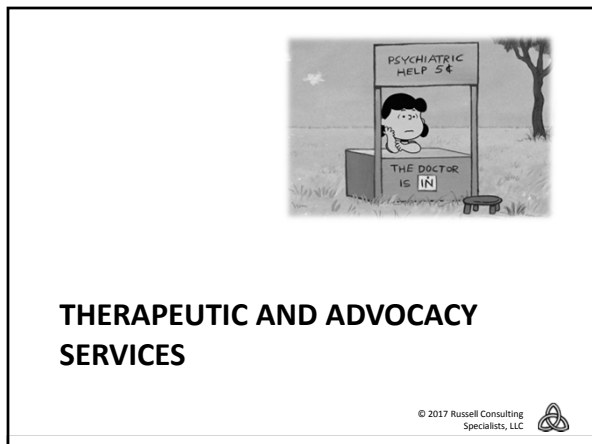
- Explain the court system and players
- Inform them exactly where to go
- Keep your own anxiety under control – try to display calmness and confidence
- Advise them of possible continuances to proceedings

(Phillips & Walters, 2013)

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- ### How Caregivers Can Help Their Child
- Encourage children to dress as though they were going out to a nice location
 - Discourage teens from wearing jeans, shirts or tops that show skin or cleavage
 - Arrive to court at least 30 minutes before scheduled testimony
 - Check in with the court clerk or victim/witness coordinator
 - Locate a place to wait where the child will not have to encounter the accused
 - Bring simple activities that the child can do (coloring, handheld video game (with sound off), music/videos with headphone, books etc.)
 - Bring something to drink and a non-messy snack
 - Prepare the child for the possibility that he/she might testify at the very end of the day
 - Give the child regular bathroom breaks
- Canadian Society for the Investigation of Child Abuse at <http://www.childcourtprep.com/parents/> © 2017 Russell Consulting Specialists, LLC



Stressors for Children in Court

- Delays in cases coming to court
- Extent of wait times at court
- Lack of availability of pre-trial preparation and support
- Facilities at court buildings
- Facing alleged perpetrator
- Treatment of young people during cross-examination by defense lawyers

- “I had to leave school. .. and move with my family. I am scared all the time ... not sure that my teenage years should be so frightening ... Can’t sleep well, I am also taking anti-depressants ...” (13 YO victim of violent offense)


(Hayes & Bunting, 2013)

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Memory & Anxiety in the Courtroom

- Eighty-one 8-10 YO’s – staged event re: bodily touch; interviews 2 wks later – ½ in courtroom, ½ in private room
- Results:
 - Children in courtroom interview recalled half as many pieces of info as private room interview
 - More children in courtroom interview failed to recall the past event **at all** in response to free-recall prompts
 - Girls’ memory more affected by courtroom than boys
 - Courtroom interviews resulted in significantly greater heart rate variability than private room interviews

(Nathanson & Saywitz, 2003)

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Recantation

- Retraction/recantation occurs in some, but not all, cases
 - 4-50% (Lyon, 2002)
 - 4-27% (London et al., 2008)
- Non-supportive mothers appear more likely to have children who recant initial disclosure (Malloy, Lyon & Quas, 2007)

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Recantation

- Consequences for victim
 - Tragic damage to self-esteem
 - Potential for repeated victimization
 - Significantly more post-traumatic stress symptomatology than children who fully disclosed without recanting
 - Compromises child’s credibility
- Caregivers’ and professionals’ responses have the power to assist victims with recovery or further traumatize them

(Katz, 2014)

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Evaluate the Children’s Statements

- Dynamics between interviewers and children
- Initial interviews:
 - All children, regardless of age, understood and answered open-ended prompts
 - Children provided basic, forensically relevant information about the suspect’s identity, and suspect’s actions during abusive incidents
 - Provided rich, detailed testimony
- Second interviews:
 - Children spoke with stock phrases
 - Usually did not elaborate on their statements
 - Displayed reluctance in talking


(Katz, 2014)

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Evaluate the Circumstances

- Two main issues:
 - Children lacked support people
 - Blamed for consequences to offender
 - Removed from home
 - Witnessed arrest of parent abuser
 - Cultural pressures
 - Rejected by conservative community
 - Dishonored family/community by reporting

(Katz, 2014)

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Assess & Prevent Recantation Risks

- Child's relationship to offender
 - Trusted and loved by the child's family
- Family's response to disclosure
- Child's placement after disclosure
- Child's culture or religious background
- Evidence of direct pressure to recant
- Evidence of negative reaction to dependency/criminal justice system
- Media coverage

(Katz, 2014; Marx, 1999)

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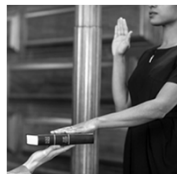
Establishing Competency

We have to evaluate each child individually

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Child Friendly Oath Assessing Truth & Lie

- Competency [to testify] is an issue for court
 - A child is presumed to be competent [to testify]




18 U.S.C. §3509(c)(2)

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Child Friendly Oath – Support for a “Promise”

- Designed to test children’s conceptual knowledge of lying and its relation to their actual behaviors: Implications for court competence examinations
- Series of studies were conducted on 3-7 YO children
- Results: Children were much more likely to be truthful when they “promised” to tell the truth


(Talwar, Lee, Bala & Lindsey, 2002)

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Promise to Tell the Truth


- Soliciting a promise to tell the truth from the child MAY promote truth-telling
 - Age-appropriate and time-effective
 - “Do you promise that you will tell the truth today?”
 - NOT: “Promise me to tell the truth.”

(Lyon & Dorado, 2008; Talwar et al., 2004; Talwar & Crossman, 2012)

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Children’s Competency

- Even young children can be credible and reliable reporters
- “Far too often, children are kept off the stand not because of their incompetency but because of the limited competency of their interrogator.” (Lyon, 2008)


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Children's Understanding of Truth and Lie

- "Children reliably reject false statements before they are capable of identifying false statements...."
- "Children are capable of telling the truth before they are capable of correctly applying the word 'truth.'"
- "[S]uperior performance on 'truth' compared to 'lie' suggests that when competency is tested, children should only be asked questions about the 'truth.'"
- "[T]he scenarios presented to children to test their understanding should not incorporate information regarding the intent of the speakers...."


(Lyon et al, 2012, p. 16)

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Revised Truth vs. Lie Task


- Accept/reject T/F statements (most successful, 2-5 yo):
 - This child looks at the X and says it is a X/Y.
 - Is this a X/Y?
- Label T/F statements as truth/lie (less successful, 2-5):
 - This child looks at the X and says it is a X/Y.
 - Did the child tell the truth? / Did the child tell a lie?



Lyon, T.D., Carrick, N., & Quas, J.A. (2012). Right and righteous: Children's incipient understanding of true and false statements. Journal of Cognition and Development.


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COURT PREPARATION

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What Children and Adolescents Understand About Court

- Interviews of 85 children (7-10 yo) in dependency court
 - Maltreatment type equally split between sexual abuse, physical abuse and neglect
- Findings:
 - Younger children know less about the legal system; older children have significant misunderstanding about the people and processes
 - Better attitude towards the process when children participated in cases
 - Greater adverse *emotional* effect on younger children in court; More profound adverse *attitudinal* effect on older youth
 - Greater negative attitude towards the processes for children with cases in both criminal and dependency court
 - 37% did not believe they were listened to in the courtroom
 - 77% felt positive towards seeing offending parent(s) in courtroom
 - 71% wanted to go home, but some expressed need for corrective action by parent(s) (stop abusing them, get off of drugs, etc.)


(Block et al., 2010)

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Attitudes about Appearing in Court

- Survey of 85 children in OHP in dependency court; 52 children in criminal court
- Findings:
 - Children who experienced more severe abuse and older children expressed more negativity about answering questions in the courtroom
 - Children in criminal court expressed more negativity about seeing the defendant in the courtroom

(Hobbs et al., 2014)

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Preparation for the Child


- Provide court-school programs
 - At minimum, show child courtroom, where key players will be and inform child of their roles
 - See Super Hero Island by Canadian Society for the Investigation of Child Abuse at http://www.childcourtprep.com/children/super_hero_island/
 - See also Children's Assessment Center in Houston <http://www.cachouston.org/videos/preparing-children-testify-court/> <http://www.cachouston.org/videos/courtroom-tour/>

(Phillips & Walters, 2013)

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Preparation for the Child

- Prepare child for possible harsh cross-examination, when appropriate
- Inform the child of his/her rights



(Phillips & Walters, 2013) © 2017 Russell Consulting Specialists, LLC

A Child's Rights in Court

- The right to:
 - Be informed and present at judicial proceedings
 - Be heard at sentencing and parole proceedings
 - Fairness, dignity and privacy
 - Reasonable and timely restitution
 - Be reasonably protected from the accused
 - Confer with the attorney for the Government in the case
 - Proceedings free from unreasonable delay (Speedy trial – 18 U.S.C. §3509(j))

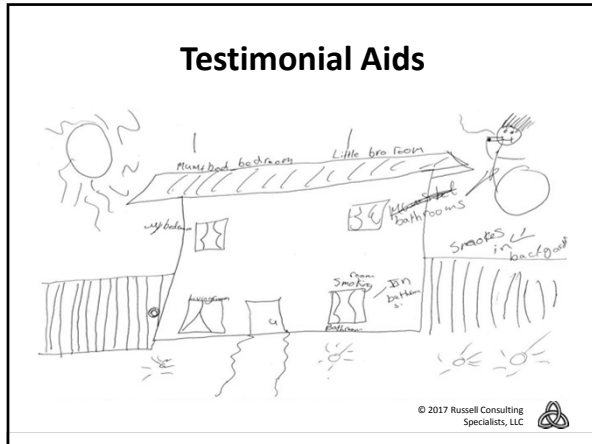
18 U.S.C. § 3771 – Crime Victims' Rights

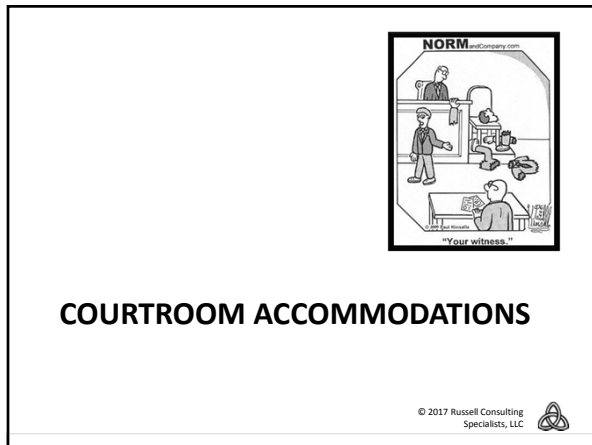
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Court Preparation

- Pre-trial motions
 - [18 U.S.C. §3509 – Child victims' and child witnesses' rights]
 - Use of support person for child witnesses
 - 18 U.S.C. §3509(i)
 - See also *Stranger v. State*, 545 N.E.2d 1105 (Ind. Ct. App. 1989); *State v. Hoyt*, 806 P.2d 204 (Utah Ct. App. 1991); *Boatwright v. State*, 385 S.E.2d 298 (Ga. Ct. App. 1989); *State v. Pallard*, 719 S.W.2d 38 (Mo. Ct. App. 1986); *Mosby v. State*, 703 S.W.2d 714 (Tex Ct. App. 1985)
 - Use of comfort item for child
 - www.ndaa.org/pdf/Comfort_Items_11_7_2014.pdf
 - Use of animal advocates
 - Use of testimonial aids
 - 18 U.S.C. §3509(i)

(See also APRI, 2004; Phillips & Walters, 2013; Vieth, 2008) © 2017 Russell Consulting Specialists, LLC





Courtroom Accommodations

- Pre-trial motions
 - Alter the courtroom layout or use CCTV
 - *Maryland v Craig*, 497 US 836 (1990) & 18 U.S.C. §3509(b); cf *Crawford v. Washington*, 541 U.S. 36 (2004)
 - Some configurations require demonstration of traumatic impact on child
 - Closed courtrooms
 - *Globe Newspaper Co. vs. Superior Court*, 457 U.S. 596, 615 (1982)
 - Use an age-appropriate, child-friendly oath...


(See also APRI, 2004; Phillips & Walters, 2013; Vieth, 2008)

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Courtroom Accommodations

- Pre-trial motions
 - Use appropriate tone of voice for objections (calm, silent)
 - Control courtroom behavior
 - Prohibition on intimidating questions
 - Use developmentally appropriate language in court
 - 18 U.S.C. §3509(c)(8)
 - For persuasive authority, cite Myers, Goodman, & Saywitz, 1996


(APRI, 2004; Phillips & Walters, 2013; Vieth, 2008)

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Understand Child Development and Linguistics


- Avoid incomprehensible words
 - “Identify the assailant” vs. “Point to the person who hurt you.”
 - Jury = necklace or trip
 - Charges = credit card
 - Denied = when the sun goes down
 - Evidence = the place where God lives
 - Testify = taking a test

(Saywitz, et al., 1990)

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COURTROOM EXPERIENCE

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Use of Interview Instructions and Rapport with Child Witnesses in Court

- Improving child witness performance
 - Administer don't know and don't understand instructions with feedback
 - Designed to increase accuracy and reduce confusion
 - Engage in rapport-building with invitations, cued invitations, and what/how dynamic questions
 - Narrative practice rapport building is designed to make children comfortable answering questions and to enable the trier of fact to hear children in their own words

(Ahern, Stolzenberg & Lyon, 2015)

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Attorney Questions

- Declarative questions and suggestive questions yield less informative answers
- Open-ended prompts yield answers with
 - Greater accuracy
 - More forensically important information
 - Fewer inconsistencies
 - More organized and coherent responses
- Children ages 3-4 chronologically & developmentally respond better to WH- prompts

(Brown & Lamb, 2015; Klemfuss et al., 2014)

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How Attorneys Question Children


- Prosecutors more likely to ask about children's prior conversations with suspects than defense attorneys
 - focused on the immediate abuse rather than on "grooming" behavior or attempts to silence the victim
- Prosecutors more likely to ask about children's motives for disclosing or for failing to disclose
 - in most cases, failed to ask
- Both types of attorney asked children about prior disclosures
 - defense attorneys more likely to ask children to recall specific content in particular disclosures
- Attorneys exhibited little sensitivity to the age of the child in selecting their questions
 - "[N]either prosecutors nor defense attorneys question children in developmentally appropriate ways"

(Stolzenberg & Lyon, 2013; See also Andrews, Lamb & Lyon, 2015)

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Cross-Examination

- Purposes:
 - Elicit favorable facts from the witness
 - Impeach the credibility of the testifying witness to lessen the weight of unfavorable testimony
 - Test the credibility of statements made during direct examination
 - Impeach the evidence (other than testimony)
- Leading questions may be asked
 - Scope limited to subjects addressed in direct exam

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Cross-Examination

- Recent research finds XXN not effective as truth-finding technique
 - XXN hinders children’s testimony
- Misleading and confusing questions may result in significant changes in detail from original true reports
- Assertions appear are more difficult to maintain than denials, regardless of veracity
- Reports appear inconsistent
 - Inconsistencies vs. discrepancies

(Crossman et al., 2009; Righarts et al., 2015; Saykaly et al., 2016; Zajac & Hayne, 2006; Zajac & Hayne, 2003; Zajac et al., 2012) © 2017 Russell Consulting Specialists, LLC 

Examples of cross-examination questions posed to children


Credibility Challenges	
Poor Eyewitness Ability	It would have been pretty dark, was it? It would have been hard to see his face? And you're sure that this isn't just an accident; that maybe once when he's held your hand you've accidentally touched his penis? Have any of those people helped you remember what [accused] did?
Dishonesty	When you were at [mother's friend's] house and the dirty movie was on, why didn't you tell [mother's friend] that night what happened? He's going to say that he has never put your hand on his penis; that he wouldn't do that sort of thing to you. Now, wouldn't he be telling the truth? He didn't really touch your private parts at the camp, did he?
Leading/Suggestive Questions	You never got into the front seat at any stage, did you? Have Mum and Dad been telling you how bad [accused] is? And you kids yelled at him, do you remember that?

(Zajac et al., 2012) © 2017 Russell Consulting Specialists, LLC 

Examples of cross-examination questions posed to children


Complex Questions	
Complex Grammar/Jargon	Is that the lady who you told about [accused] touching you? And if you say that you didn't say these things, would you be telling the truth? You've suggested in relation to the incident in May that you were bringing [accused] a cup of tea?
Ambiguity/Sense	So neither of your brothers weren't there? That night after you told Mum about [accused] and before you made the videotape at the police station, do you remember whether you went to school the next day? So he could have just about seen you where you were across the road through the window when he backed in?
Specificity/Measurement	How long after [accused] waking you up did the police arrive, do you remember, can you estimate the time? What kind of day was it? How cold? If I suggested to you that you were there for about an hour, would that be right do you think?

(Zajac et al., 2012)

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The Jury



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Juror Expectations

- Juries may rely on psychological folklore when assessing credibility of a child's statements
 - Perceived credibility varies with emotional display
 - Sad or neutral expression more credible than angry
 - Judged probability of guilt related to credibility
 - Women more likely to offer guilty verdict than men

Wessel et al (in press).

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Child Witness Credibility

- Examined how child-witnesses were presented, judicial instructions, and defendant credibility.
- Simulated court case with 11YO victim abused by father. Three different types of testimony were examined: 1) In courtroom, 2) Video deposition, and 3) Closed-circuit television (CCTV)
- Higher overall child-witness credibility when the testimony was given in court or done by video deposition rather than CCTV
- Defendant's guilt was significantly more definite with court testimony by child rather than video deposition or CCTV

(Eaton, Ball & O'Callaghan, 2001)

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"Big Girls Don't Cry"

- 133 undergraduate students served as a mock jury
- They read a trial summary and were shown "courtroom drawings" of the "victim"
- In the pictures the child was portrayed as either calm, teary, or crying hysterically
- The students believed the "teary" victim more often than the calm or hysterical one.

(Golding, Fryman, Marsil & Yozwiak, 2003)

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Victim Impact Statements & Sentencing

- Opportunity for input
 - Personal contact with criminal justice representatives serves as an additional method to assess the effect of crime
- Child may want to participate
 - Provides victims a voice
 - CJ system satisfaction
- Provide closure




(Crime Victims' Institute, ND; Kunst et al., 2014)

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Victim Impact Statements

- Therapeutic benefits?
 - Survivors who deliver VIS typically more angry/anxious
 - The mere expression of emotions has no direct therapeutic effect
 - Feelings of anger/anxiety are significantly stable
 - “Single-shot” expression of emotions do not contribute to diminishing trauma complaints
 - Survivors w/ feelings of control over recovery less likely to develop MH problems
 - Increased procedural justice = less anger & anxiety

(Lens et al., 2015) © 2017 Russell Consulting Specialists, LLC 

“When the lives and the rights of children are at stake, there must be no silent witnesses.”

~ Carol Bellamy

QUESTIONS OR COMMENTS?

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