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TRIAL CONSIDERATIONS
IN THE
INVESTIGATION AND PROSECUTION
OF
CHILD SEXUAL ABUSE CASES

**Part I: Interviewing and Preparing Young Children
In Sexual Abuse Cases**

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Interviewing and Preparing Young Children

In Sexual Abuse Cases

INTRODUCTION

In 1987, the total number of reported cases of child abuse and neglect in the United States was almost 2.2 million, with 371,000 reports occurring in California alone¹. Taking California as an example, since 1982, the rate of reported cases has risen by more than 151 per cent. This has placed a burden on the entire criminal justice system and a special burden on police and prosecutors. Increased reporting has meant increased pressure to do what is right and to file appropriate charges.

Deciding what charges to seek in a child sexual abuse case is a challenge. With too many charges to prove, the young child may get confused when trying to describe what happened. If too few, the defendant's sentence, if convicted, may not reflect the magnitude of the crime or crimes. If commission of the crimes occurred over long periods, the case becomes more difficult to evaluate. As most experienced police and prosecutors know, young children cannot pinpoint dates and times with specificity². All

¹ American Association for Protecting Children. (1989). Highlights of Official Child Neglect and Abuse Reporting 1987. Denver.

² Faricy, L. (1985). Children As Witnesses In Sexual Abuse Cases: Problems and Proposed Reforms. Michael Shea & Associates. Minneapolis.

of this points to the necessity for an effective interview and charging policy.

There has been much research into the causes of child sexual abuse and its impact on the victim and society. This research has sometimes focused on optimal methods for interviewing and treating abused children. Although research is invaluable to mental health professionals, it doesn't always provide insight to the practical problems associated with presenting evidence at the criminal trial of a defendant charged with child abuse.

It is the purpose of this report to analyze the trial consequences of the various activities associated with interviewing and preparing child abuse victims for testimony. Trial-tested and research-consistent suggestions that minimize unfortunate and unexpected results will also be presented.

These suggestions are based upon two sources. First is the author's experience as an attorney, prosecutor and municipal court judge, including five years devoted solely to prosecuting child abuse cases. Second is the author's research during 1987 and 1988 as a visiting fellow at the National Institute of Justice/U.S. Department of Justice.

During the visiting fellowship, the author contacted and interviewed police, prosecutors, child advocates, physicians and mental health professionals. Concurrently, utilizing the resources of the National Criminal Justice Research Service

(NCJRS), the National Library of Medicine and the Department of Justice Law Library, the author reviewed published scientific research studies made available through these resources.

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CHAPTER ONE

SUGGESTIBILITY

A frequent objection to child interviews is that the interviewer obtained unreliable or contaminated information from the child by using leading or suggestive questions. This stems from the view held by many psychologists that all persons are somewhat suggestible, and that a leading or suggestive question can change or alter memory of past events^{3,4}.

Typical experiments that support this view contain interviews of witnesses to staged events. In one study, misleading questions resulted in a large percentage of subjects giving incorrect answers, despite whether the subject originally knew the correct information⁵.

Some researchers believe that children's susceptibility to suggestion is greater than adults, and when a child is questioned by a person in a position of authority, the child's reality will

³ Christiaansen, R.E., Sweeney, J.D., & Ochalek, K., Influencing eyewitness descriptions. Law and Human Behavior, 1983, 7, 59-65.

⁴ Loftus, E.F., & Loftus, G.R. On the permanence of stored information in the human brain. American Psychologist, 1980, 35, 409-420.

⁵ Geiselman, R. Edward, Fisher, Ronald P., Cohen, Gina, Holland, Heidi, and Surtes, Laura. "Eyewitness Responses to Leading and Misleading Questions under the Cognitive Interview" Journal of Police Science and Administration. V. 14, no. 1, 1986. pp 31-39.

be permanently altered by a suggestive or leading question^{6,7}. Under this theory, no amount of proper questioning can rehabilitate the young witness. The truth of a child's statement is assured only if the original interview is totally spontaneous and contains no hint of suggestion in any questioning.

There is at least one study (Aman & Goodman, 1987)⁸ that contradicts this view. However, regardless of this study, you can be certain that interviews that contain leading or suggestive questions will be vigorously challenged.

The idea that leading questions can alter an individual's reality is intriguing, considering the fact that leading questions are an important tool in cross-examination. Indeed, many states, including California⁹, allow leading questions for

⁶ Cohen & Harnick. (1980). The Susceptibility of Child Witness to Suggestion. Law and Human Behavior, 4, 201.

⁷ Cici, S., Togliola, M., & Ross, D. (Ed.). (1987). Children's Eyewitness Memory

⁸ Aman, C. & Goodman, G. (1987). Children's Use of Anatomically Detailed Dolls: An Experimental Study. University of Denver, Department of Psychology.

⁹ See California Evidence Code §767(b):

"(a) Except under special circumstances where the interests of justice otherwise require: (1) A leading question may not be asked of a witness on direct or redirect examination. (2) A leading question may be asked of a witness on Cross-examination or recross-examination.

"(b) The court may in the interests of justice permit a leading question to be asked of a child under 10 years of age in a case involving prosecution [of child abuse sections]."

direct examination of small children. There appears to be a fundamental conflict between what the law considers effective truth-gathering questions and what the child abuse research community believes.

This makes Aman and Goodman study (supra.) all the more important for law enforcement professionals. The study examined whether children's answers could be influenced by leading and suggestive questions. The questions used were precisely the kinds of questions that are the most vigorously challenged.

An important aspect of the study was whether the use of dolls enhanced the accuracy of gathering of information from children. Of primary importance to all criminal practitioners is whether dolls permit more thorough questioning of children or whether the mere use of dolls (anatomical or otherwise) is suggestive of abuse¹⁰. The Aman & Goodman study squarely addresses this issue.

In this study, thirty 3-year-olds and thirty 5-year-olds were video-taped during a ten minute play session with an adult male. One week later the children were questioned regarding that play session. The later interview was also video taped. The answers the children gave were compared to the actual events

¹⁰ Phillipus, M. & Koch, G. (1986, October). How to Evaluate Sexuality in Children and to Avoid Using Anatomically Correct Dolls. Trial Talk, pp. 376-373

Misleading Abuse Questions

Asked 3 and 5 year old children

- “He kissed you, didn’t he?”
- “He took off your clothes, didn’t he?”
- “How many times did he spank you?”

Figure 1 - Aman & Goodman Questions

video-taped in the first session. The children were interviewed with and without dolls. Results using anatomical dolls were compared to non-anatomical dolls. Since no measurable differences existed between the two types, the remaining discussion of the study will refer only to doll and non-doll questioning.

The leading questions were both sexual and non-sexual in content. Figure 1 shows the sexual misleading questions. Figures 2 and 3 show the results of the study. Figure 2 is a chart showing the resistance to suggestive questions results 3-year-olds, while Figure 3 is a chart showing the resistance to suggestive question by 5-year-olds.

The results are striking. Five year old children were 100 per cent resistive to abuse suggestive questions when dolls were used in the questioning and 93 per cent resistive when dolls were not used. Three year old children were less resistive then the five year olds, but still 83 per cent resistive when anatomical dolls were used. Using dolls to question the children enhanced resistance to abuse-suggestive questions.

Discussion. This study appears to show that young children are highly resistive to leading and suggestive questions regarding possible sexual abuse. The study also appears to show that questioning children with dolls is more reliable than without dolls. The benefit of the dolls was stronger with three-

Resistance to Suggestive Questions Three Year Old Children (*N=30) *Randomly Assigned by Method

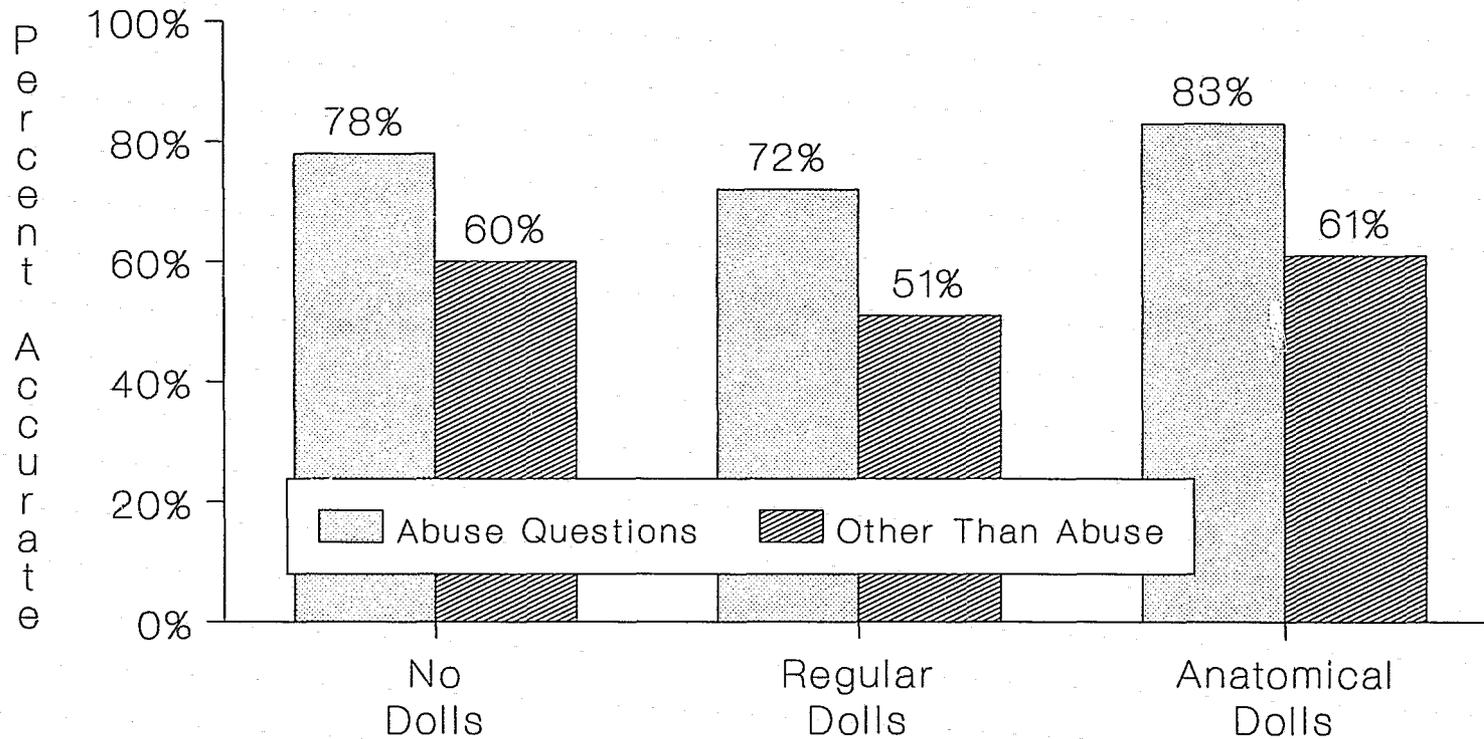


Figure 2
AMAN & GOODMAN RESULTS

Chart by K. Freeman

Resistance to Suggestive Questions Five Year Old Children (*N=30) *Randomly Assigned by Method

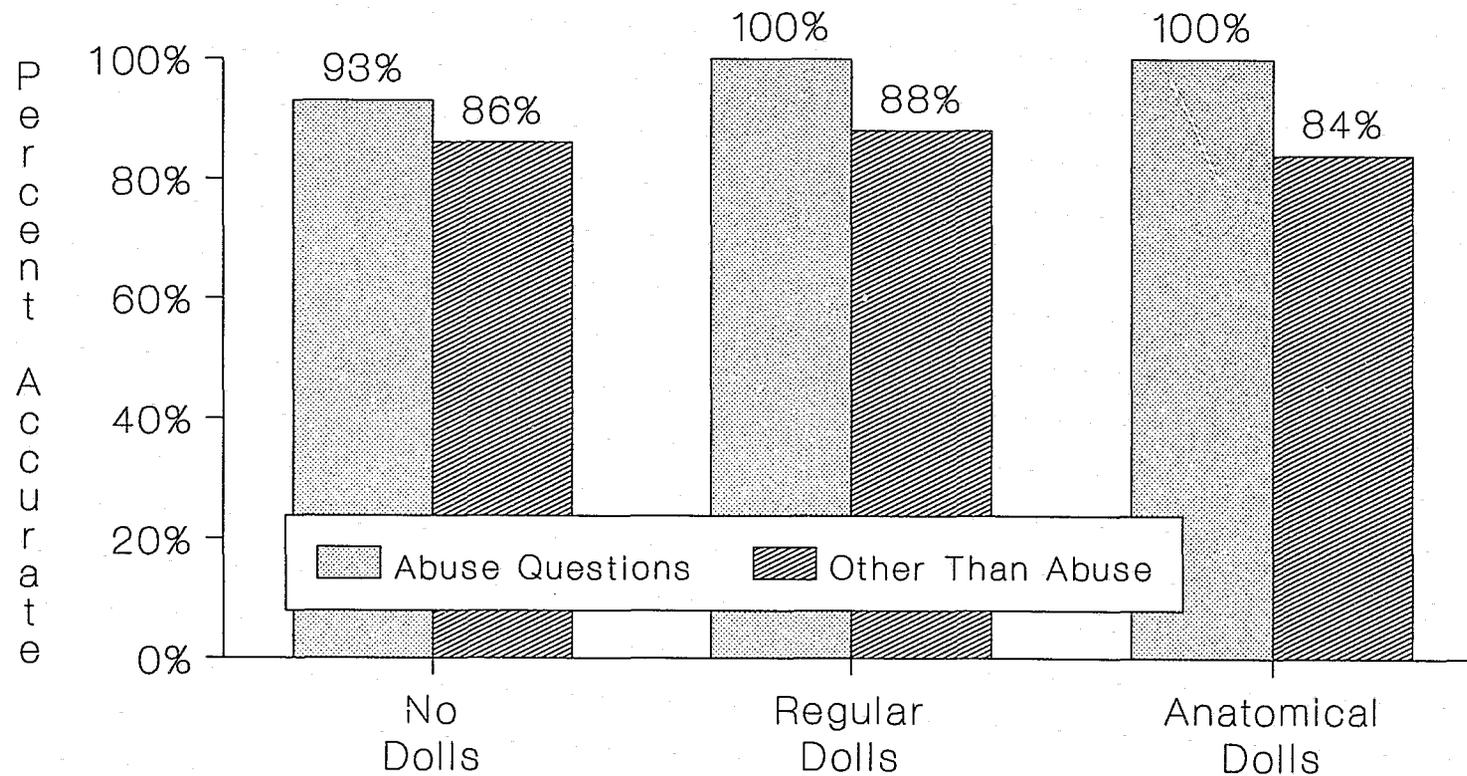


Figure 3
AMAN & GOODMAN RESULTS

Chart by K. Freeman

year-olds than with five-year-olds. A possible explanation as to why the doll questioning is more accurate than without dolls is that ambiguity caused by vocabulary misunderstanding is minimized when dolls are used.

What if an interview took place before the case was given to you for review? What if the interview clearly documents the use of leading or suggestive questions? Worse, what if the interview is on video or audio tape and the child appears badgered? If a problem interview has already taken place when the case has been presented to you, the filing decision and future strategy must consider this interview.

TIP: EVEN IF YOU ARE FACED WITH A PROBLEM INTERVIEW WITH LEADING AND SUGGESTIVE QUESTIONS, EVALUATION OF THE CHILD'S RESPONSE MAY SHOW THE CHILD WAS NOT SUGGESTIBLE.

According to Loftus¹¹, suggestibility levels vary from person to person. Some individuals may simply not be susceptible to suggestion. It's possible to learn a child's level of suggestibility by check the child's response to the leading or suggestive questions contained in the interview. Do the

¹¹ Loftus, E.F. & Davies, G.M. Distortions in the Memory of Children. Journal of Social Issues. V.40, No. 2 (1984).

responses of the child show that the child agreed to suggestion within all the questions? If not, this is evidence that this particular child is not suggestible¹².

If previous interviews are not a problem then the hints that follow may help you to avoid making your interview a problem for yourself or someone else.

¹² An example of the type of question-answer exchange that would indicate a non-suggestible child:

Q: Did he touch you inside your leg?

A: He touched me on the outside of my pants.

Q: But he did kiss you on your mouth, didn't he?

A: No! I told you, he kissed me on my chin below my mouth. It was awful!

CHAPTER TWO

CHARGE SELECTION

The primary purpose of a pre-filing interview of an alleged child victim is to decide what charges, if any, to seek. The interview must be thorough and technically correct. As discussed previously, improper interviews are often the basis for criticism of the prosecution case. Bad interviews antagonize parents and traumatize victims.

Interviewing children for charge selection is not easy. Many avoid such interviews whenever given the opportunity. If a filing decision occurs without the interview, you won't know how accurate and complete the preliminary police reports are, and you won't know what kind of witness the victim is likely to be. You won't have a first-hand knowledge of the credibility of the victim, and you won't have an accurate understanding of the dates the offenses occurred.

You won't understand all the pressures the victim is subjected to from interested caretakers, and you won't have a complete understanding of any medical examination that may have occurred. All of this means that cases may be filed that can't be proven or that are incorrect. In other instances, cases will be rejected that would have been filed if only the prosecutor knew facts easily learned through the interview process.

In summary, the purpose for a child interview before charges

are filed is to make the decision to initiate prosecution and to decide what charges, if any, are appropriate and over what period. Beyond this, the interview must gather and preserve testimonial evidence and alert the prosecutor to case problems. Competency, credibility and completeness of the case must be assessed. Often investigators fail to ask if pictures or video tapes were involved in the crime. If so, search warrants must be executed by the investigating officer to secure this evidence. Another common area overlooked by investigators is whether the victim was molested before or after the instant case by persons other than the suspect. If so, the details of these molestations must be explored. Are other charges appropriate? Is it probable that the defense will raise the issue of prior false complaints? Do prior molestations explain the presence or lack of medical evidence?

How to handle resident molester problems. A common case presented to the crime charging prosecutor is the resident or long-term molestation. Often these occur over a period of years. In these situations, the abuse may have happened daily and with such frequency that the victim is unable to distinguish one event from another. Bear in mind that whatever you file must be proven. If the case depends primarily upon the testimony of a child, you must be aware of what detail to which a child can testify.

Be careful about filing too many counts in a complaint. More than ten to twelve counts per victim needlessly complicate a case, are impossible for the child victim to remember and distinguish, and typically will have little impact on sentencing. Cases with large numbers of counts can be a nightmare to manage.

Although police officers must always interview victims, it is not always necessary for the prosecutor to re-interview before filing a complaint. Sometimes cases are brought to the prosecutor that contain strong physical evidence, eye witness accounts by competent witnesses, confessions, or even photographic and video recordation of the crimes. Most cases do not fall into this category, and therefore require thorough interviews by the prosecutor who initially reviews a case.

The interviewer needs to be aware of the special problems created by other persons close to the victim. Are the non-offending caretakers supportive of the victim? Are there motives for fabrication? Is this a child who will later recant because of pressure from interested caretakers? Is this a delayed disclosure case? Are there other suspects who participated in the molestation? Are there other victims such as siblings, classmates or friends? The age of the victim also can create special problems. The most significant of these problems involves the interview itself and the prosecutor's ability to establish rapport with the child victim.

CHAPTER 3

THE INTERVIEW

The method of interviewing and establishing rapport depends upon the age of the child. Generally, you will be effective if you are interested in the child as a person. The interview should be conducted in private, with another person, preferably the investigating officer, present. Before conducting the interview, you should meet with the child and his or her caretaker. If you have talked to the caretaker first, you can have this person introduce you to the child. This conveys to the child that you are a friend.

It is extremely important to be warm, to be relaxed, to smile, and to avoid patronizing the child¹³ (Hint: consistent with local policy, some interviewers have found that when they wear casual clothing, some of the stress of the interview is reduced for the child). It is suggested that you sit on the same side of the desk or table as the child. If you're not comfortable with this, it's all right to sit opposite the child. Some interviewers have found sitting on the floor effective with three to five year old children. Have the receptionist hold all calls and have visitors wait while the interview is being

¹³ For an interesting discussion regarding subconscious rapport building, see Rhoads, S.A. and Solomon, R. (1987, April). Subconscious Rapport Building: Another Approach to Interviewing. The Police Chief, pp. 39-41.

conducted.

TIP: INTERVIEWS CAN BE VERY EFFECTIVE IF PART OF A HOME VISIT.

When possible and consistent with local agency policy, home visits can be beneficial¹⁴. A child will always be more comfortable in his or her home surroundings. Even a foster home is a more comfortable place than a prosecutor's office. If it's the child's regular home, the interviewer can often learn important information. For example, if the suspect is a family member, are there prominent photographs of the suspect still in the home? Did the crime occur at the home? If so, the interviewer can get a better understanding of the scene of the crime and a better knowledge of what is being described by the victim. If it is possible without distressing the victim, he or she can point out specifically where the crime occurred. When appropriate, a photographer should be sent to the location.

TIP: PUZZLES, COLORING BOOKS, CRAYONS, FELT TIP MARKERS AND PAPER CAN HELP YOU ESTABLISH RAPPORT AND RELAX THE CHILD.

¹⁴ Vanella, F. (1984, Fall). Home Visits in Child Molest Cases. Prosecutor's Brief.

With children under eleven, puzzles, crayons, coloring books, and felt tip (water soluble) markers are helpful. An effective way to build rapport with children between four and eleven is to sit next to them and allow them to color or draw pictures during the interview¹⁵. (Hint: coloring books and puzzles can be a good way to establish the child's competency. Can they identify colors? If you told them the crayon was a different color would they know whether that would be the truth or a lie?) An age-appropriate puzzle is a good way to break the ice if you are nervous and uncomfortable with small children. Sit beside the child and help them with the puzzle. After the puzzle is completed, go to the crayons and allow the child to draw pictures of his or her house, their dog, etc.

Learn the child's sexual vocabulary. After the child is comfortable, it will be necessary to establish the child's vocabulary for parts of the body. One way to do this is for you to draw an outline of a person and ask questions about it, drawing parts as you ask the questions. Example:

Q: I'm not very good at drawing people. Not like the nice pictures you've just drawn. Look at my drawing. Do you see what I'm drawing (as you draw the eyes)?

A: Eyes.

¹⁵ Farley, R.H. (1987, April). Drawing Interviews: An Alternative Technique. The Police Chief, pp. 37-38

Q: Good. Yes those are the person's eyes. What other things are missing from the face? What is it that everyone has that we smell with?

A: I know! Nose.

Q: Right! (Drawing the nose). What else is missing from the face?

In this way you can go over all the nonsexual parts of the body. Children are used to this kind of exercise and will do well (it also allows you to evaluate the intelligence and competency of the child). As you are going over things like hair, start to distinguish male from female and children from adults by asking the child to draw little girl's hair (often long instead of short) or a male adult's whiskers. Then, without drawing, point to the breast area of your illustration and ask what is it that women have (where you are pointing) that men do not, to get the child's word for breasts. Continue in this manner until you have the child's vocabulary for penis, vagina, etc. If the child is not aware of the clinical name for the sexual part, be certain not to teach it to them. It diminishes the impact of the victim's testimony when they use terms they didn't know before your interview. In addition, if the jury hears that clinical terms were taught the child by the interviewer, it might give credence to the argument that you coached the child. If during the interview, the child is unable

to say anything aloud, and if the child is old enough, ask the child to write down the word or words. The same procedure can be applied using the child's dolls instead of drawings or by using anatomical dolls.

Avoid telling the child any information others have told you. Be careful to explain to the victim that though you may have talked to other children or adults about what happened to the victim, you are not going to tell the victim anything that others have told you. Be careful to use terms used by the child (e.g., "pee-pee", etc.) and to ask open-ended questions when possible. Ask what happened. If the victim cannot tell you aloud, then if possible, have the victim write it down or draw what occurred, and save the statement. These drawings and writings become evidence and can be a valuable part of the case.

Find out dates and times using events in the child's life. It is unlikely that a small child can remember specific dates. Children, depending upon their age and developmental level, do not have the same time sense as adults. Children are event oriented. They remember Christmas, their birthday, Easter, etc. They remember what grade they're in and who their teacher is. If they lived at a series of different locations, they remember that something happened while they lived at that location, but may not remember when they lived there or in what order they lived at one location in relation to another. Of course, if the child can say

it happened on his or her fifth birthday, or last Christmas, you have the exact date. Usually, the child will say that it happened the day when he or she "was sick and stayed home," when he or she "was in the third grade." In a circumstance like this, it is necessary to charge extended time periods, to be sure that the count in question occurred within the time charged.

Depending on the jurisdiction, time periods of up to a year and even longer have been sanctioned. A child can often tell you what grade they were in or what teacher they had at these times. Many will be able to tell you if school was in session or if it was during Christmas or Easter vacation. Knowing this, you can choose a period that covers what is described, ranging from a two week Christmas period to an entire school year when the child had a particular teacher.

Sometimes you can figure out time by finding out the previous addresses of a child. If there have been frequent moves, the child probably can't detail each address, but will usually be able to describe the house and area where the family lived or remember the name of a neighbor. Hint: Consider getting a subpoena issued for school records, including attendance and health records. This can help you pinpoint who a child's teacher was for a given time, can often help you find specific addresses where the child lived, and can help you locate specific days when the child was ill and stayed home. Sometimes, teachers put

information in the school records that may be useful to you at trial for other reasons as well.

Learn what happened using child-oriented questioning.

Throughout the questioning process, the interviewer must always be aware that, young children take things very literally and cannot infer facts in the same manner as adults. For example, if the abuse occurred in a truck, and the child is asked if it occurred in a car, they will answer no. If the suspect had the victim orally copulate him, the child might answer no if the question is did she put her mouth on the suspect's penis, as compared to yes, if asked if the suspect put his penis in her mouth. Very small children don't understand cause and effect¹⁶. For example if it thunders and their dog barks, they may think it thundered because their dog barked.

Avoid either-or, yes-no, and compound questions. Children may not listen to the entire question you ask or may guess at an answer to a question they don't understand. For this reason, compound questions should be avoided, since the child may answer the first part only. Also, either-or questions might be answered by picking one of the alternatives if the child doesn't understand the question. The same holds true for questions

¹⁶ Saywitz, K.J. The Child Witness: Experimental and Clinical Considerations. In A. La Grecca (Ed.), Childhood Assessment: Through the Eyes of the Child. Allyn & Bacon (in press).

calling for yes or no answers. If in doubt about an answer, check it out with the child by asking it in a different way. If you think the child doesn't comprehend a particular word, ask if they know what the word means; if they say yes, ask them what it means in their words.

TIP: IF A CHILD STARTS TO CRY, WON'T ANSWER A QUESTION, OR OTHERWISE "FREEZES," CHANGE THE SUBJECT TO NONSEXUAL THINGS, TRY TO GET THE CHILD TO SMILE, AND ONLY THEN, CONTINUE.

How to handle the distraught child. A frustrating part of an interview is when the victim becomes distraught while describing what happened and stops answering questions. It does absolutely no good to say "don't be nervous", "don't be shy, I talk to little children a lot and I'm used to hearing these things", "you want to get the bad man (or woman), don't you" or to ask the question repeatedly. It's also useless to attempt to "wait out" the answer, since this only creates pressure and causes more stress in the victim. The reason that these approaches fail is that it's impossible for the interviewer to gauge precisely what is upsetting the victim and causing sudden shyness. Possible reasons could be (1) a belief that it's the fault of the child (no matter how many times you say it's not),

(2) response to the interviewer's body language, (3) inadvertent insensitivity to something the victim said, (4) response to a comment or movement of a parent or someone else present in the room, or (5) guilt, shame, humiliation regarding something that happened during the molestation, etc.

One approach that is extremely effective with children under eleven (the younger, the more effective the approach) is to distract the child. Children have short attention spans. Maybe the interview session has gone on too long and the victim is restless and needs a break. Because of this short attention span, children are very easy to distract and can go from crying one minute to laughing at the next minute. Whenever the victim is too distraught, consider saying "Let's take a break. Do you have any pets? What kind? What are their names? Ever go for a walk with your pet goldfish??"

Once the child is laughing again, the distraction may be complete. After a while, return to the questioning. If you still are unable to proceed, consider ending the questioning session for the day and scheduling another interview for another day. As with everything involving children, the interviewer must be observant and sensitive to how the victim is responding. It is also important that the interviewer reassure the child at intervals throughout the interview. "You're doing great. I know this is hard." Or "What a great memory you have!" Or "You're so

brave to tell me these things."

**TIP: AVOID DISCUSSING THE SUBJECT OF PUNISHMENT OF THE
SUSPECT.**

Major problems can be introduced into the case if the subject of punishment is not handled properly when talking to victims and their parents. This usually comes up with older victims and may be the result of discussions they have had with siblings or caretakers. The best way to treat the subject if you are asked is to say that what happens to the offender is up to the judge who hears the case. It is not up to the victim, not up to any parent, grandparent or friend of the offender. Explain that when the case is over, the judge will listen to what everyone has to say about the offender, that a doctor will talk to the offender and will write a report, and that the judge will decide what should happen after hearing everything and reading the doctor's report. Tell the child that the judge will do whatever is right. If that means treatment, the judge will do that. If that means sending the offender to jail, the judge will do that. Above all, tell the victim that it is not the victim's responsibility what happens to the offender.

If this approach is followed, it has the effect of reducing pressure on the child victim and making them less vulnerable to

efforts by anyone to make the victim recant.

CHAPTER FOUR
ANATOMICAL DOLLS

Dolls are one of the many tools available to the child abuse police and prosecutors. In light of the work of Aman & Goodman (supra.), dolls should be given serious consideration. However, other methods will work often better with a given child. For example, crayons, pencils, coloring books, and drawings can be very effective. Sometimes nothing more than talking to the child is appropriate. Dolls must be used carefully. This chapter examines the possible advantages and disadvantages of using anatomical dolls, discusses when and where they may best be used, and looks at techniques that may avoid the charge that dolls were misused during the interview.

Background. Anatomical dolls have been referred to in various ways by mental health professionals. They have been called anatomically correct dolls, sexually anatomically correct dolls, or simply SAC dolls¹⁷. The dolls that have been described in this way differ from ordinary dolls. They have certain parts that are supposed to represent genitalia and resemble some orifices of the human body. It's best not to call

¹⁷ White, S., Stom, G., Santilli, G., Halpin, B.M. (1984). Interviewing Young Sexual Abuse Victims with Anatomically Correct Dolls. Child Abuse & Neglect, 10, 519-529

these dolls anatomically correct dolls. They are not anatomically complete and are not anatomically to scale.

Dolls have been used for years by police, therapists and other professionals in dealing with child abuse. Before the advent of the anatomical doll, ordinary dolls such as Barbie and Ken were used. Today, anatomical doll manufacturing has become a thriving industry with multiple manufacturers, and with books and articles on how best to use dolls. Available as male, female, adult, child, they come in various skin tones.

Increasingly, prosecutors are using dolls as an aid to interviewing children. Indeed, some states have statutes that give a prosecutor the unconditional right to allow child witnesses to show what happened by using dolls.

Psychological researchers have developed standard interview methods or protocols to be used in interviewing children¹⁸. A review of these methods emphasizes that anatomical dolls are not a crutch, and they cannot be substituted for sound interviewing techniques.

Reasons for using dolls. Child abuse professionals have found that, despite criticism, proper use of anatomical dolls reduces stress and aids in establishing rapport, helps establish

¹⁸ White, S., Strom, G.A., Santilli, G. (1985). Clinical Protocol For Interviewing Preschoolers with Sexually Anatomically Correct Dolls. Case Western Reserve University, School of Medicine, Cleveland Metropolitan General Hospital.

competency, reduces vocabulary problems, and allows children to show what may be difficult to say.

Dolls establish rapport and reduce stress. The more stressed and nervous a child is during an interview, the more difficult the interview becomes, and the higher the anxiety level of the interviewer. Most children relate well to dolls. Dolls often have a calming effect on them. This translates into a more relaxed atmosphere with less strain on everyone. Also, because it's easier to show what happened with dolls than to tell what happened, more information is gathered in less time and with fewer tears. This reduces the pressure on the interviewer to ask the right questions. If dolls are visible as the child enters the room, they can create a softening effect, giving the area a child-oriented appearance.

Dolls aid in establishing competency. During the get-acquainted period, the interviewer can show the dolls and ask the child about his or her dolls (or for boys, action models) at home. The interviewer can ask questions regarding colors, non-sexual body parts, etc. In this way, the dolls function as a bridge, permitting questions to be asked about something the child feels comfortable with as opposed to something as dry and routine as the standard competency questions. This has the advantage of appearing more natural to both the child and to anyone who later scrutinizes the interview. Competency is thus

integrated into the entire interview and is a less fruitful subject for cross-examination.

Dolls reduce vocabulary problems. Dolls can avoid the errors that sometimes occur when interviewer and child have a different understanding of what question is being asked. They provide a way to discuss sexual things with children when the interviewer doesn't know the child's sexual vocabulary. If a child has his or her sexual parts vocabulary, dolls permit that child to show you what is meant by his or her words.

Dolls allow showing what may be difficult to say. With young children the interview can be an overwhelming experience. Even when they know the words, they may be too embarrassed to say them aloud to a stranger. With dolls, these children can point out and show things that are either difficult or even impossible for them to say. Dolls work because children find it easier to tell what happened by using something that is age-appropriate and familiar to them.

Common criticisms of interviews using dolls. Prosecutors have been accused of interviewing in a way that encourages suggestion and fantasy and of not following accepted techniques for using dolls. Critics have said that dolls have no place in the child sexual abuse interviews. They believe that dolls suggest fantasy to children, and exaggerated doll genitalia suggest sexual impropriety.

Dolls are suggestive of abuse. Because most children's dolls normally do not have sexual parts, some commentators have complained that by showing these dolls to children, a suggestion of sexual impropriety occurs¹⁹. In addition, critics may say that children testifying in court are not testifying from their experience but from what they saw demonstrated with dolls during early interviews.

Dolls were used contrary to suggested protocol. Another common criticism is that the dolls were used contrary to the manufacturer's intentions. Anatomical dolls often are shipped with complete instruction manuals²⁰. It's possible the defense might ask the court to introduce these manuals into evidence and argue that since the interviewer didn't follow the instructions, the results are invalid. As an alternate defense approach, an expert might testify that standard techniques for the utilization of dolls exist²¹ and the prosecutor didn't follow them.

Dolls may sometimes appear bizarre. Dolls from different

¹⁹ Phillipus, M.J., & Koch, G.V. (1986, October). How to Evaluate Sexuality in Children and to Avoid Using Anatomically Correct Dolls. Trial Talk, pp. 372-373.

²⁰ For example, Friedman, V.M. & Morgan, M.K. (1985). Interviewing Sexual Abuse Victims Using Anatomical Dolls. Oregon: Miginma Designs, Inc.

²¹ Boat, B.W. & Everson, M.D. (1986) Using Anatomical Dolls: Guidelines for Interviewing Young Children in Sexual Abuse Investigations. University of North Carolina, Department of Psychiatry.

manufacturers may look much different from each other. Some dolls have a look children find friendly, while others may appear as menacing. Some dolls are completely out of scale, with disproportionately large sexual parts. This is also true with respect to the child-to-adult size ratio. Some dolls are so bizarre looking that their use may unintentionally add humor to the case.

Pre-interview considerations. To decide what interview method is best, the interview should be planned, considering such things as the age of the child, whether there have been earlier interviews, and if so, the results of those interviews. If dolls are to be used, the interviewer should inspect the dolls, read any enclosed manuals and be certain that dolls are appropriate in looks and scale.

What is the child's age? There is no set age range for use of dolls for interviewing. Usually, children 3-1/2 to 10 years old are the most comfortable with them. Teenagers, although embarrassed to talk about what happened to them, will say they don't want to show what happened using dolls, especially if they hear that little children like using dolls.

A good guideline is to introduce young children to the dolls during the get-acquainted part of the interview meeting, using the dolls to aid in competency questions and identifying body parts. Later, when ready to discuss the facts, the interviewer

should give the child the choice of describing things in the most comfortable way.

Were there earlier interviews? Always learn whether any earlier interviews have been conducted using dolls. If so, it may be necessary to conduct the interview differently. If dolls have been used earlier by either police or therapists, there is a risk that things were done that may encourage allegations that the earlier interview was done improperly. If you discover that there has been a previous interview, examine, if possible, the dolls that were used to see if there is anything peculiar or suggestive about them. Talk to the previous interviewer to find out the techniques used and the manner in which the questions were asked. Do not use dolls repeatedly since multiple interviews of this kind provide cross examination opportunities, permitting asking the child how the dolls were shown to them the first time, how were they shown the second time, etc.

A therapist's opinion may not be admissible. If dolls were used in a therapist interview, check to see if the therapist's opinion regarding abuse was based upon what the child said or based upon the child's interaction with the dolls. If the therapist's opinion reflects child interaction with the dolls instead of the child describing what happened using dolls, that opinion may not be admissible. A current and problematic trend in diagnosis is observation of children playing with anatomical

dolls and psychological analysis of the child's interaction²². In this way, the therapist can diagnose whether the child has been sexually abused. This approach often is used with pre-verbal children or with those children too traumatized to describe what happened.

According to In re Amber B., 191 Cal.App.3d 682 (1987) and In re Christine C., 191 Cal.App.3d 676 (1987), this form of diagnosis is inadmissible in California unless the technique can be shown to be generally accepted as reliable in the scientific community in which it was developed (Kelly-Frye rule). People v. Kelly, 17 Cal.3d 24 (1976) and Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

Techniques for using anatomical dolls. Having weighed the pros and cons of dolls, prosecutors who decide to use them should follow these techniques.

When presented the dolls should be fully clothed. Put them on the table where the interview is to be conducted so they are visible as the child comes into the room. This makes the dolls less threatening.

As always, begin by introducing yourself. Establish rapport using the techniques presented earlier in this chapter. For

²² Gabriel, R. (1985). Anatomically Correct Dolls in the Diagnosis of Sexual Abuse of Children. The Journal of the Melanie Klein Society, 3, (2), 40-51

conversation, ask the child about school, pets, and any dolls or action models they have at home. This gives children an opportunity to talk about themselves and allows measuring how articulate and intelligent the children are. From here, ask competency questions using the dolls to show that the children understand concepts such as color and size.

TIP: ALWAYS HAVE A WITNESS PRESENT WHEN INTERVIEWING A CHILD USING ANATOMICAL DOLLS

As with all prosecutor interviews, there is always the possibility that the defense may claim that you coached or put words into the mouth of your child witness. Dolls can be vulnerable to the coaching defense. Because of this, whoever first uses the dolls may be accused of coaching the child. It may be argued that the dolls were put in a suggestive position and the child then asked, "did that happen?"

To resolve this problem, a witness must always be present during the interview. This permits the claim of coaching to be rebutted by calling that witness. The jury then has the benefit of hearing what the child said from another witness. The claim of coaching has therefore made relevant what would otherwise be inadmissible hearsay.

If you're comfortable with audio-taping or video-taping your

interview, the charge of coaching can be rebutted and the jury permitted to see what may be a powerful video or audio tape of the child tearfully describing what happened. No amount of testimony can describe the emotion of an interview as clearly as viewing a video tape of early disclosure. When considering taping options, however, be aware that many experienced prosecutors strongly oppose the use of tape recordings in child abuse cases.

The technique of having a witness present forces the defense to choose between giving up the coaching defense or permitting what may be powerful hearsay to be presented to the jury.

Find out the child's sexual vocabulary. After deciding the child is competent, find out what the child's words are for sexual parts. As will be discussed later, the interviewer should avoid pointing to or touching the doll's sexual parts when the child is telling what happened. Still, pointing and touching of the dolls is appropriate when learning the child's sexual vocabulary. You might say:

"Okay, you're really good on colors. Do you know about parts of the body? [Picking up doll and pointing to hair] What's this?"

Continue in this way going to easy, non-sexual things . . . hands, arms, feet. Then:

"Why don't we take off the shirt and see what's there.

[Taking off the doll's shirt and pointing to belly button] What's this? [Taking off pants and pointing to genitals] What's this?" And important, "Ever hear it called anything else? What? Who did you hear call it that?"

This last question illustrates how you can move from sexual part identification to the facts of the case in a non-leading, non-traumatic way. Often the offender will use and teach the child slang words and the child may not realize that these words are inappropriate. You also can make the transition when discussing the child doll's genitals and before showing the adult doll. Ask if the child knows how little children's sexual parts differ from adults. Before showing the adult dolls to the children, ask if they have ever seen an adult's sexual parts, and if so, whose?

Learn the case facts. Before going over what happened, ask the child if it would be easier to tell what happened or to show what happened using dolls. If the child wants to use dolls, then questions should be asked in an open-ended, non-leading manner:

Q: "Mary, do you know why you are here?"

A: "Uh-huh (affirmative)."

Q: "Why?"

A: "Frank [the offender] did bad things to me."

Q: "Can you tell me what he did?"

A: [Silence, looking down to floor, eyes tearing]
Q: "Would it be easier for you to show me with the dolls?"
A: [nodding, taking dolls] "I was here and he was here [placing adult doll on top of child doll.]
Q: "Where were you when this happened, Mary?"
A: "In the bedroom."

TIP: WHEN INTRODUCING THE DOLLS DO NOT USE TERMINOLOGY THAT SUGGESTS FANTASY.

Because children normally use dolls in play, and because this play often involves fantasy, some may claim that what the children tell you, using the dolls, is the product of fantasy encouraged by you, the interviewer. This can be a particular problem if you use terminology that makes it look like you're encouraging fantasy. It is therefore unwise to say to the child, "let's pretend that this girl-doll is you and this man-doll is Frank [name of suspect]." Other words or phrases to avoid: "imagine," "make believe," "playact," "game," or "let's imagine that."

**TIP: THE INTERVIEWER SHOULD AVOID POSITIONING THE DOLLS
AND AVOID POINTING TO OR TOUCHING THE DOLL'S
SEXUAL PARTS WHEN DISCUSSING WHAT HAPPENED.**

All pointing, touching, positioning, and describing of sexual acts must be done exclusively by the child. If the interviewer does any of these things, there is danger of being accused of suggesting answers to the child. Even if the purpose of the pointing or touching is to confirm that which was mentioned first by the child, this danger exists, because it may be impossible for the jury to understand the order of the touching. This conduct is very difficult to clarify for the jury since the question "Did the interviewer put the dolls in the described sexual position?" must be answered in the affirmative.

Anatomical dolls may not be effective with very young children or with those approaching teenage years. They may be used with other interviewing techniques such as having the child explaining through drawing, writing, etc. Dolls can be useful in reducing stress while establishing rapport, in determining competency, and in learning the child's sexual vocabulary. They make it easy for children to explain by showing instead of using words. On the other hand, using anatomical dolls may complicate the case, and prosecutors should carefully examine possible problems. If you decide to use anatomical dolls for your

interview, select appropriate ones, familiarize yourself with the accompanying manual, and plan the interview in advance.

Used properly, anatomical dolls can be an effective way of helping children explain what happened to them. Used improperly, dolls can block communication, inhibit you from making a proper case filing decision, and cause severe case problems.

CHAPTER 5

PREPARATION OF CHILDREN FOR TESTIMONY

Most civilian witnesses have difficulty testifying in court. Their recollection may be cloudy, and the way they are allowed to relate information is different from everyday experience.

Usually, they are not permitted to narrate their answer, cannot explain ambiguous answers, and are frequently interrupted by objections from the lawyers and by comments from the judge.

If the witness is a victim of a violent crime, testimony becomes much harder because there is strong emotion involved. Defense counsel may wish to discredit the witness by attacking character and this can make it especially arduous for the witness. When the witness is a small child, these problems are often compounded and aggravated, creating a highly unpredictable situation. Children do not have an adult understanding of the judicial system and often assume they are being questioned because they are in trouble²³.

In the worst case scenario, after the routine questions are asked, the prosecutor attempts to get to the substance of the charges and that is where the trouble begins. The child freezes, doesn't respond, and ultimately leaves the courtroom in tears, refusing to talk to the prosecutor and refusing to return to the

²³ Saywitz, K.J. (1988). Bullying Children Won't Work. Family Advocate, 10, (3), 16-20.

courtroom.

Effective cross-examination, the kind of cross-examination that compromises a witness is cross-examination that makes the child witness ashamed to tell the truth, makes them uncomfortable, uncertain, and causes them to hedge answers, or worse, guess. Careful child witness preparation can avoid these problems. Thorough preparation is the foundation of smooth direct examination. It reduces the possibility of incorrect answers created by confusing cross-examination questions.

In the beginning of this chapter, much has been said about the importance of early child interviews and the necessity of talking to the alleged victim before the case is filed. It is recognized that the trial deputy prosecutor may not be the person who filed the case. With today's crowded court docket it is possible that the first time you see the case is just before the trial. If this is the situation in your case, it is necessary that you meet with the alleged victim as soon as possible.

Prudent child witness preparation requires (1) meeting with the child before testimony, (2) establishing rapport and putting the child at ease, (3) learning what testimony to expect by establishing communication, and (5) identifying and alleviating problem areas.

(1) Meet with the child witness in advance. A meeting with a child witness far before trial is an important part of

thorough preparation²⁴. It permits you to discuss the case in a relaxed and nonpressure environment. It gives you a chance to tell the child what will happen and what can be expected. This relieves the anxiety caused by the unknown. Early meetings allow you to plan testimony and alert yourself to other problem areas in time to take action. At this meeting you will learn about appropriate records and witnesses to subpoena and whether supplementary investigation is necessary.

(2) Establish trust. Trust ensures that the child will go through the difficult trial process with you. It creates an environment where the witness likes you, believes you and is comfortable with you. Without this comfort and trust, the case could collapse at the first crisis. You establish trust by understanding that your witness is nervous and afraid, that he or she needs to trust you and to like you. You establish trust by being trustworthy.

Tell the child that it's ok to be nervous. It's common for persons who interview anxious child victims to tell the child not to be nervous and that there is no reason to be nervous or afraid. Sometimes an interviewer will mention there is no reason to be embarrassed because the interviewer has heard other

²⁴ Berliner, L., & Barbieri, M. (1984). The Testimony of the Child Victim of Sexual Assault. Journal of Social Issues, 40 (2), 125-137.

children tell similar things often. These statements show the anxious or frightened child that you don't really understand what they feel. Fear, anxiety, and embarrassment are emotions that cannot be minimized. Empathy and understanding can often be very effective and can sometimes work to put your troubled victim at ease. Tell the anxious, worried child that it's "OK" to be nervous and that you're there for them when they need you. Admit that sometimes even you get scared or nervous, too.

Always be truthful with a child witness, no matter how difficult. Never promise the impossible. If something's going to be difficult, tell the child it's going to be difficult. Lies, no matter how harmless or well-intentioned, never help you or the child confront difficult issues.

It is important to show the child victim that you are a person to be trusted and relied upon. If a promise is made that is not kept, or if the child victim thinks you are not truthful, you will have lost that child's trust. Not only will a loss of trust destroy any rapport you have with the victim, but it will make it impossible for you to guide the child through difficult court process.

(3) Learn what testimony to expect and establish communication. If you have never interviewed the child, your knowledge of what he or she will say is based upon the police report or other prior testimony. As you go over the facts of the

case, you will usually find that there is some difference between reports and what the child tells you. This is often the product of misunderstandings either by the report writer or by the child. By going over the facts with the child, you will learn inconsistencies and decide what areas need to be clarified. More importantly, you can find out the child's level of understanding, the words that the child is comfortable with, and ways to ask questions that are easiest for the child to understand²⁵.

TIP: PREPARE THE CHILD BY ASKING IN ADVANCE THE EXACT QUESTIONS YOU ARE GOING TO ASK IN COURT. IN COURT, ASK NO QUESTIONS ON DIRECT THAT YOU HAVEN'T ASKED IN YOUR PREPARATION SESSION.

It's a good idea to tell the child that you are going to ask the exact questions that you are planning to ask when the child is on the witness stand. Court testimony will never be an easy experience for a child. Yet, if someone is prepared for what they're going to face, they know what's going to happen, and they're less afraid and less nervous. The known is always less frightening than the unknown. It is important to reassure the

²⁵ Often, apparent inconsistencies are really caused by adult insensitivity to child development issues. See Saywitz, K.J. (1988). Credibility of Child Witnesses. Family Advocate, 10 (3), 38-41.

child that although the defendant will be in the courtroom, the child will be safe.

(4) Identify and alleviate problem areas. Another benefit of asking the child the questions that you are planning to ask in court is that you learn problem areas that you will encounter on direct and cross examination. Understanding these problems in advance and guarding against them can avoid much stress on you and the child. Although some problems will be unique to your particular victim, some problems continually recur. It might be helpful to discuss these common problems and look at possible solutions.

COMMON PROBLEM AREAS

Confusion in thinking that all inconsistencies are lies.

Children get confused because they believe that anything that isn't correct must be a lie. An example of this occurs when the child estimates one way when talking to the police (the suspect wore a tan shirt) and now estimates a different way (the suspect's shirt was brown). When asked if the old estimate was a lie, a child may say yes, though both estimates were stated in good faith.

Solution. Explain that statements are only a lie if the person who says them intends to say something

false in order to fool people, and that if the child makes a statement believing it to be true, the child is telling the truth even if the statement is not correct²⁶.

Blindly agreeing to a leading question because an adult asked it. This becomes a problem when children are asked a leading question that they don't understand or don't completely hear. If not forewarned they'll agree with a question with which they might otherwise have disagreed. Children often think that they must have the answer for every question, and that they must be obedient, compliant and not disagree with a stern adult²⁷.

²⁶ An example of cross-examination when the child understands this concept:

Q: Susan, you told the police that Frank's shirt was tan, didn't you?

A: Yes.

Q: The shirt was really brown, wasn't it?

A: Yes.

Q: You told a lie when you said it was tan, didn't you? [Or] It was a lie when you said that, wasn't it? [Or] You didn't exactly tell the truth when you said it was tan, did you?

A: No, because I thought it was tan when I told that to the police.

²⁷ Perry, N., & Teply, L. (1985) Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys. Creighton Law Review, 18, 1369-1426.

Solution. Explain that in the courtroom, all persons are equal and explain that he or she is very important and mustn't agree with the questioner unless the question is true. Discuss that some questions may be asked to mislead them and that they must be on guard and listen to all questions carefully. To show this, tell the child you are going to ask some trick questions and to see how alert they will be. Ask leading questions that are patently absurd such as, "You are a polar bear, aren't you?" The child will enjoy this exercise, and will remember it when testifying.

Tell the child that if, while testifying, he or she doesn't understand a question that's asked, the child should not be afraid to say: "I don't understand the question." Practice by deliberately asking a question the child doesn't understand such as: "Are you an obstreperous child?"

Guessing when the answer is unknown or question is misunderstood. This is part of the same problem discussed above. Because children think they are supposed to know the answer to all questions, they guess when they misunderstand a question or

don't otherwise know the answer, hoping the guessed answer is right. Often children will stubbornly stick to the guessed answer, even if it's impossible.

Solution. Tell the child that they don't need to have an answer to every question and that if they don't know or remember, they should say so when asked. Emphasize that guessing is never permitted in court. The *Rules of Court* approach discussed below is very helpful to remind a child not to guess.

Giving inconsistent answers to the same repeated question. This occurs when a child is asked the same question repeatedly. Thinking they must come up with a better answer each time, the child thinks that the answer given must have been wrong, or the question would not be asked again. The child then answers more fully, this time guessing part of the response. The results can be disastrous.

Solution. Tell the child that if the same question is asked over and over again, it's "ok" to give the same answer again and again. The *Rules of Court* (Figure 4) are helpful with this problem. Give

the child an example of this type of question by asking the same non-fact related question repeatedly, each time slightly rephrasing it.

Child says that he or she doesn't remember something just to stop the questioning. Often a child tries to foreclose cross examination by saying he or she doesn't remember when they in fact do remember. This happens during long tedious examination where the child will do anything to halt the questioning.

Solution. Explain that it's important to answer all questions fully and not to try to end the cross-examination this way. Warn the child that it will be difficult, but that you know the child can do it. Tell the child that it's ok to ask for a break when he or she gets tired.

Child misunderstands question and gives an inconsistent answer. Frequently, because of the developmental level of a child, a question is too complex for them to understand completely. This often occurs with compound questions where a child only listens to and answers the first part of the question and doesn't hear the second. If the question assumes facts, the child may not understand those facts or may not know how to deal

with the question.

Solution. Determine the developmental level of the child.

If appropriate, teach about compound leading and assumptive questions. Explain that with compound or assumptive questions, the answer must be a statement, not yes or no. When in court, object to the form of the questions, suggest to the court that they are questions beyond the developmental level of the child.

Preparation paradox problem. Many prosecutors fear that initial meetings are improper and that solely because of this meeting, it will be argued to the jury that the child was coached. Frequently, this position may be supported by skilled cross examination of the victim that carries the unavoidable (and embarrassing) implication that what the child is saying is the byproduct of your pre-testimonial meeting.

This creates a paradox: If you don't prepare the child, he or she won't be able to survive cross examination. If you do prepare the child, you'll be accused of coaching and the jury may not believe the victim's testimony.

RULES OF COURT APPROACH TO ALLEVIATE PROBLEMS

The above problems can be minimized by teaching the child rules that can be followed when testifying. For the most part, these suggested rules relate to how a child is to conduct himself or herself in court. They are standard guidelines that would be appropriate for any witness. The technique of teaching appropriate rules of conduct and behavior can be expanded to provide solutions to the specific problems discussed above.

Rules of Court For Children

- Tell the truth.
- If you don't remember, say you don't remember.
If you do remember don't say you don't remember.
- Don't guess. Don't be afraid to say you don't know or don't understand.
You don't have to know the answer to everything.
- If asked the same question over and over, it's ok to give the same answer over and over.
You don't have to give a better answer.
- When testifying, you don't have to agree with the lawyer asking questions just because the lawyer is an adult.

Figure 4 - RULES OF COURT

By labeling the guidelines for behavior and conduct as "rules of court", the prosecutor is taking advantage of small childrens' natural familiarity with concrete rules. Children are exposed to rules in school, church, and home and are comfortable with them. By teaching behavior in terms of rules, the prosecutor takes more of the uncertainty out of the courtroom experience. Children generally can remember these rules and if understood, can easily apply them to the courtroom experience. Rules of testifying are an acceptable subject for a prosecutor to be discussing with a witness. Because of this, there should be no negative result if the child discloses on cross examination that the prosecutor explained the rules of court at a meeting before court.

When teaching the rules, give clear examples to make certain the child understands. Use examples that have nothing to do with the facts of the case.

CONCLUSION

Guidelines have been given for interviewing and preparing children for testimony in child sexual abuse cases. These ideas for the most part are based upon the principle that with proper preparation, most of the everyday problems prosecutors encounter can be solved. The solution is based upon understanding a little about child development and the way a child thinks. An effort has been made to anticipate possible defenses and to insulate against bogus claims which might otherwise interfere with the proper presentation of testimony. It is hoped that some of the ideas presented will be helpful.

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