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## ***Statistically Speaking: Questioning the Child Witness: What is the Best Way to Get Information from Victims of Sexual Abuse?***

*By Lauren Rygg*

Each year, thousands of children are called upon to testify in the United States. They are called to testify as witnesses and victims. For children involved in litigation, the most stressful part of the process is the questioning, either in the courtroom or in the proceedings prior to the trial. Although there is the opportunity for both parties to stipulate to the child's testimony, when children are the subject of the litigation, particularly in child abuse cases, children must testify in order to provide credibility to the prosecution's case and fulfill the Sixth Amendment due process right of the defendant to face his accuser. Juries often need to see a complaining witness and hear their story. Further, in child abuse cases, sometimes the strongest evidence is the testimony of the child. This also means that children are subjected to the same level of questioning as adult witnesses. Litigation is often stressful and emotionally trying for adult witnesses, who are ostensibly better-equipped mentally and developmentally to handle the lines of questioning. The same cannot always be said for a child witness.

There have been numerous studies over the past twenty years that explore the benefits and the detriments to questioning children involved in litigation. Much of this surfaced as a result of an increase in reports of child abuse and neglect in the late eighties and early nineties. What concerned judges and attorneys at that time was the believability of a child's testimony. Studies at that time had shown that the age of a child witness had an adverse effect on the jury, leading the jury to find the testimony of younger children less believable than that of their older counterparts. This result was disturbing because pre-school and early elementary-aged children were more likely to be abused.

Unfortunately, not much has changed in today's courtrooms. Jurors still rely on visual cues from child witnesses, such as eye contact, facial expressions, and demeanor, in order to ascertain the believability of the child's testimony. Depending on the perceptions of the jurors, this could be outcome-determinative for a case.

What becomes crucial at this point, in order to persuade the jury and present the case in its entirety, is the line of questioning. A recent study from California completed by Stacia N. Stolzenberg and Thomas D. Lyon explored the effect that questioning had on the testimony of child witnesses. Specifically, this study focused on the best way to obtain information from a child witness in a sexual abuse case. This study examined how attorneys question child witnesses in sexual abuse cases about their prior conversations with suspects and the disclosure recipient, or to whom the child reported the abuse.

For a child sexual abuse prosecution, the child's testimony is normally the most important evidence. Very little research, however, has conducted in-depth analysis of the testimony in child sexual abuse cases. Typically, the research examines the types of questions used, with the results often concluding that the defense line of questioning is more confusing and more leading than the prosecutor's line of questioning. From an experienced trial attorney's perspective, these results would not be surprising because this is the norm for trial procedure and strategy: the prosecution asks open-ended questions of

their witness and the defense asks close-ended, leading questions meant to create doubt for the jury with respect to the credibility of the witness. The problem with this strategy is that children are more prone to suggestion and thus want to tell the questioner what the child believes the questioner wants to hear. Other countries, such as Australia and the United Kingdom, have done studies and created initiatives to bring awareness to and in hopes of avoiding this problem in order to protect and better utilize children as witnesses.

With respect to the efforts in the United States, the California study is the first to determine the veracity of sexual abuse allegations by examining how attorneys discuss children's prior conversations about sexual abuse at trial. What this could mean for child witnesses is a way to achieve credibility beyond that of the jury's perception of demeanor. Essentially, if the right questions are asked, a child would be able to better describe the events that occurred.

The goal of the prosecution's questioning is to help the jury to envision how abuse occurred. It is also often to combat the misperception that force is necessary in all sexual abuse cases. Additionally, prosecutors focus on why the abuse was kept secret, as a jury can perceive the abuse as being fabricated due to the delay in disclosure. Child victims may be more reluctant to disclose because of the complex nature of child abuse, and how it is achieved. The process of grooming by the perpetrator, typically by gradual build-up to abuse through conversations and time spent with the child, also accounts for delays in disclosure. The research from the California study suggests that a prosecutor can illicit more information by asking the child witness what the suspect had said rather than what the suspect did. By inquiring into the nature of the conversations, the prosecutor will be better prepared to explain to the jury why the child delayed in disclosing, making the child witness's testimony more credible and more effective.

Just as the prosecution has incentive to better question child witnesses, so does the defense. The defense's goal is to demonstrate that the child has been coached or influenced to give a false report. This coaching can be achieved by caregivers who are suspicious that the child is being abused and in their suspicions, they ask suggestive questions. There is also concern when the suspect is an ex-spouse or ex-partner of a concerned adult that the concerned adult may be the true source of the child's disclosure. Jurors may be aware that children are susceptible to suggestive questioning, but just how susceptible the child is may not be common knowledge.

The California study examined (1) the attorney question type and children's response type, (2) the suspect's conversations with children, specifically their commands during alleged abuse, seductive comments before alleged abuse, inducements to silence, threats to enforce secrecy, and children's resistance, and (3) the children's prior disclosure conversations, including questions about specific conversational partners, as well as attempts to coach children's reports.

The results showed that the defense attorneys asked more leading questions in court than prosecutors, which was consistent with other studies and trial practice in general. However, both the defense and prosecuting attorneys asked questions that simply asked for a yes or no answer. By doing this, the attorneys were responsible for creating the details of the interactions. The study also showed that when prosecutors did ask open-ended questions, questions that began with, who, what, where, and how, the child witness

was more likely to elaborate and provide details. Prosecutors were more likely to ask about suspect statements than defense attorneys were, however, prosecutors asked more questions about commands rather than seductive statements, which are statements made by the abuser meant to encourage the child to engage in the abuse. Most literature about the dynamics of sexual abuse focuses more on the seductive statements as being the coercive element in the abuse rather than the commands. However, in the cases involved in the study, the command aspect was explored more in questioning. With respect to the child's disclosure, both defense and prosecuting attorneys asked questions about disclosing, but the defense attorneys were more likely to ask about the details of specific disclosure events. In most of the cases examined, children were never directly asked if they had told the truth or lied. But prosecutors were more likely than defense to ask the child witnesses about why they disclosed or failed to disclose. In most cases though, neither attorney asked the child witnesses about their motives for disclosing or lack thereof.

There is still much to learn about the dynamics of child sexual abuse. But given these results, the study recommends that the best approach attorneys could take would be to use more of the "how" type questions to elicit information. In doing so, the child witness would provide elaborative responses that are not yes or no responses to the attorneys' questions and thus provide more credibility in their testimony.

This could be the first step in making the testifying process easier and more reliable for child witnesses. Though there is still a sensitivity aspect that attorneys need to take into consideration in child sexual abuse cases, following this line of questioning could be more beneficial overall to each side.

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