

" G "

Preparing the Child Witness

DISCUSSION GROUP E

Margaret Cunneen
Senior Principal Solicitor
Child Sexual Assault Unit
Office of the Solicitor of
Public Prosecutions
Sydney

A child witness in a criminal court is usually the principal witness - the victim of a personal assault. A child who has been abused invariably feels damaged and in many instances is treated differently by members of the family or community who may view the child with curiosity, hostility, pity or disgust. An almost universal response, in the child victim of sexual assault, is guilt. The response is multifaceted and arises from feelings of responsibility for the sexual activity, the disclosure of the 'secret' and the disruption to the lives of those involved and their families, particularly where the activity is incestuous. Victims of abuse frequently fear further abuse and retribution from offenders or their families and they are often depressed and sad that a trusted person hurt them and that other trusted people, for example a non-offending parent, failed to protect them from harm.

Child victims are usually extremely angry over what has taken place, even if their anger has been repressed to such a degree that it is not evident. Children who have been abused tend to have a low self-esteem, feeling that they must be of little worth to have been treated as they have. They are also likely to have difficulty trusting new people in their lives, this often being the result of broken promises by offenders for example 'I won't do this to you again'.

The initial approach to the prospective child witness must accommodate these feelings and, during the course of preparing the child, allowances need constantly be made. It should be borne in mind, however, that some of these responses, notably anger, can be utilised to great advantage in achieving the result of a strong, credible and fully prepared child witness.

Preparing the Child for Court

A professional preparing a child for court should concentrate on three key areas:

- informing the child;

Statements

There is no reason why a child should not have access to their police statement at any time prior to hearing. Some children are concerned that reading their statements shortly before court may be construed as a form of cheating. When questioned by the defence they look at support persons for guidance in deciding whether to admit that they looked over the statement shortly before court. Children should be prepared to state plainly: 'yes, I did look at my statement', and to give the reasons for example 'I had not forgotten the things in the statement - I was just reminding myself of the actual words I had used'.

Children should of course be informed that just because something is contained in their statements does not mean they do not have to mention it in their evidence. It is important that everything is described fully in court.

The court layout and personnel

The child victim will doubtlessly have never seen a courtroom before. In fact the child may never have heard of a court and the impressions the child receives from the professional will be their first impressions. (In this event the classic negative ideas about court are not present and need not be conveyed).

Ideally arrangements should be made for the child to see the court in which the proceedings will take place. If this is not possible, any other court will suffice, the layout tending to be uniform. Failing this a diagram can be drawn. The child should be shown that the judge or magistrate sits at the front of the court behind a raised bench. The jury (if it is a trial) sits usually along one side, the lawyers representing the prosecution and the defence sit at a table facing the judge or magistrate. The accused person sits either behind their counsel or in a dock area. There is a court constable or officer somewhere in the body of the court and a court reporter or monitor sits close to and in front of the judge or magistrate. The child should be permitted to sit in the witness box and given an indication of where their support person will be sitting and what direction to face so that the accused is out of their line of vision. The child can be reassured that there will be no 'audience' as it is usual that the court is closed if not for the entire proceedings, then at least for the duration of the child's evidence.

Instilling Confidence

Any witness of whatever age and whether civilian or expert is likely to be extremely apprehensive about the prospect of giving evidence in court. The younger the witness the more frightening the ordeal. Children frequently lack confidence when facing the ordeal of verbal confrontation with adults, a breed of person they have been brought up to respect and defer to. The child victim has the added stress of being at least the principal, and in most cases the only, witness. They are mindful of the fact that if they fail to come up to proof the prosecution will not succeed.

It is essential then that the child witness be given the court survival skills to fortify them for the experience of giving evidence.

The child victim is the most important person in court

In the majority of cases of assault upon children there is no corroborative eyewitness. This means that, in defended matters, only two people in the courtroom know what really happened during the incident in question and only one of these is prepared truthfully to relate the course of events. This of course is the child victim. The court wants and needs to know what this vital witness has to say.

The child victim is the most important person in court and should know it.

The child victim is the boss

The most important person in court also has the privilege of being 'the boss'. They can, during their evidence, ask for questions to be repeated, unfamiliar words or expressions to be explained or for counsel to slow down. They can ask to be excused if upset or in need of the toilet. They can pause to take a drink of water. They can write down any word or phrase they do not wish to verbalise.

Answering questions in court

The child should be advised, honestly that they will be asked hard and perhaps confusing questions in court. They should pause and think carefully about the questions and, if their meanings are clear, answer clearly and without going into unnecessary detail.

The child should be reminded that they should answer all questions honestly and cannot possibly get into any difficulty if this rule is observed.

The child's confidence should be boosted by reminding the child that whatever the defence counsel's attitude to their evidence (they may scoff, or doubt, or cut them short) the court really wants to know what they as 'most important witness' have to say.

Therefore it is important that the child knows they can give a detailed answer or an explanation even if the defence counsel attempts to confine them to a 'yes' or 'no'. They should be encouraged to be persistent in giving the answer they want to give and not just choosing between two answers suggested by the defence. The child can be told that, far from annoying anybody (except perhaps the defence,) the court will be impressed that they are taking the matter seriously enough to ensure that the correct answer is recorded.

The child should be reminded that they are there to tell the truth about what happened because they were there. The defence counsel was not. The judge, magistrate and jury were not. This will assist the child with the inevitable cross-examination questions designed to confuse or water down the evidence (for example 'What you really meant to say was, I suggest that happened on a school day and not in the holidays . . .').

Preparation should also address the invariable defence practice of suggesting to the witness that the evidence (or part of it) is a lie, story, fantasy or dream. This is always an intimidating experience for a child witness, who would not realise that all witnesses are put to their proof in this fashion. The child should be reassured that a question of this nature does not mean that they are in trouble or that anyone disbelieves them, it is merely the defence counsel doing a job which they have been paid to do.

The child should be told that if they are asked a question to which they do not know, or cannot remember, the answer, it is perfectly acceptable to say so rather than merely to agree with a suggested answer of which they are not sure. In such circumstances the truthful answer is 'I don't know' or 'I can't remember' and that is the response which should be given.

The corollary of this advice is that the child should be encouraged, if they are quite sure of something, or cannot remember something vividly, to say so. The child can be advised, in such a case, to answer a question such as 'But you're not sure of that?' With a firm, loud and confident 'Yes, I am' or 'I am certain of that'. The child, of course, was there, the defence counsel was not.

It is useful to remind the child that the defence counsel has no right to cut a witness' answers short and that even if the lawyer looks annoyed, they should

complete their answer. If the answer is going outside the court's interest, the judge will stop the witness.

The important thing is to build the child's confidence so that by reason of their superior knowledge of the evidence, they feel at least something of a match for the defence counsel and are sufficiently self-assured to answer questions confidently, consistently and persistently.

Giving the Child a Friend in Court

Most Australian jurisdictions have provision for an exception to be made to an order closing a court for certain evidence. The exception permits a person to be present to support a child victim of assault for the duration of the evidence.

Where the support person is seated is generally a matter for the discretion of the presiding officer but may be next to the child in the witness box or in the child's line of sight. This person's presence is often of fundamental importance to the child and can make the difference between a good witness and a mute one.

Better than one friend in court is, of course, two. The prosecuting officer should have taken the time to participate in the child's court preparation and to have built a rapport with the child. This is not only of great benefit to the child, but assists the prosecution to elucidate confusing matters arising from any idiosyncratic speech patterns which are common in children.

The child can be encouraged to look only at their friend(s) in court and not to make eye contact with the accused, something which could only result in them becoming more nervous and confused.

Conclusion

A child witness cannot be expected to be confident or self-assured if they do not have sufficient knowledge of the court process and the skills to employ while under cross-examination.

It is important for a professional involved in court preparation to endeavour to redress the imbalance between the victim's age, level of confidence and knowledge of 'The System' and the defence counsel's experience and maturity.

Although there is a school of thought which considers that it is counter-productive for children to endure the trauma of the court process, I am of the view that a well-prepared child witness derives therapeutic value from breaking down the secrecy involved in the assault and publicly stating how the accused has hurt them.

A child's age and frustration can be harnessed and alleviated by the experience and, even in cases where the accused is found not guilty, they did everything they could do in the interests of justice.

A well-prepared child is not only a better, more confident witness but is also more likely to find the experience of giving evidence in court a positive step towards regaining their control and self-esteem.

Summary

The group

■

■

■

Conclusion

It was conc
witness, but
and rewardi

Summary of Group Discussion

The group compiled the following guidelines for preparing the child witness:

- **How does a court preparer assist the child to overcome the power imbalance between the defence counsel and him/herself?**

Inform the child of the role of personnel, the court process, giving evidence (questions by judicial officers, examination in chief by prosecution, cross-examination by defence), the court layout and personnel.

Instil confidence by reminding the child that they are the most important witness and 'the boss' (for example they can ask for questions to be repeated, for a drink, or to go to the toilet). The child's confidence should be boosted by reminding the child that the court needs to know what they have to say and that they should be persistent, need not only answer just 'yes' or 'no' and should be warned that it will be put to them that they are lying or making up a story.

Give the child a friend in court, by telling them about the support person and where they will sit and by introducing the child to the prosecutor.

- **How can the number of times children have to be interviewed be cut down?**

Interagency Model in Queensland: police and a team form a pool and should interview the child together. This requires consensus, and barriers and rivalries to be broken down. However, one disadvantage is that cooperative interviewing may often lead to delay by having to arrange for several personnel to be present contemporaneously.

- **Is giving evidence counter-productive for the child or in fact a therapeutic experience?**

The possibility of assessing individual children as regards the benefits that may flow to them before they become 'caught up' in the system was suggested. At present the assessment as to whether to proceed is made on the power of the statement. Whereas police and prosecutors maintain that giving evidence is usually beneficial, social workers assert that they see long-term effects which, they say, are often deleterious. A successful prosecution should not be conveyed to the child as the only end. Other positive outcomes, such as saving other children from abuse should be emphasised.

Conclusion

It was concluded that a well-prepared child is not only a better, more confident witness, but is also more likely to find the experience of giving evidence beneficial and rewarding.