

# **Preparation of the Sexually Abused Child for Court Testimony**

HERBERT BAUER, MD

In the case of a sexually abused child, the main purpose of court intervention is not protection of the child but conviction and punishment of the offender. Trials are usually conducted in open, adult court, and the child's testimony is often a crucial part of the procedure. It has often been stated that the legal part of the whole drama, consisting of not only the court hearing but also the preceding interrogations by police, prosecuting attorney, defense attorney, and others, does more harm to the child than the actual sexual event.

On the other hand, virtually all of us acknowledge the fundamental right of the accused to face the accuser in open court; few, if any, would condone conviction on the basis of statements made by a "faceless" accuser. Attempts have been made in other countries to circumvent the use of children as witnesses in open court. In the United States, however, indirect testimony such as a taped or televised interview is largely unacceptable. The reason is obvious. The accusation is grave, such offenses are usually felonies, and punishment is severe, particularly if a young child is involved. Children are often incapable of resistance and also often incapable of distinguishing clearly between a demonstration of physical affection and sexual molestation. In view of these factors, every precaution must be taken to protect the rights of the defendant.

After pubescence, children are usually better able to judge propriety and impropriety of physical contact. Nevertheless, few of them are aware of the consequences of bringing a charge, particularly the role they will have to play in the legal proceedings. Furthermore, they often are distressed about the outcome, such as possible removal from home, breakup of family, and imprisonment of the offender.

As long as the present system prevails, it is safe to assume that children will continue to play an important role as witnesses in a trial that decides the guilt or innocence of a person who is usually well known to the child, frequently a close relative. Invariably, the trial adds procedural assault to the initial sexual assault, with the child carrying considerable responsibility for its outcome. Subsequent guilt feelings, distortions, and denials are frequently encountered; such psychiatric residuals require treatment and emotional support.

Rather than wait for such ill-fated consequences, there is one preventive step that is often helpful in forestalling what may be called posttrial disease, namely adequate preparation of the sexually abused child for testimony. Obviously, such preparation must be adjusted according to the level of

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Dr. Bauer is Clinical Professor, School of Medicine, University of California, Davis, California.

development of the involved child, from the prelogical toddler to the mature adolescent.

Reports of molestation of infants are infrequent, and usually no direct testimony is required; medical testimony is applicable only in cases where physical injuries are noticeable, and psychiatric support focuses on the family as a whole. Therefore, no special preparation of the child is needed.

In preschool children and those attending primary grades, a detailed description of courtroom procedures is helpful. Fear and avoidance of the unfamiliar setting can be averted by taking the child to the building in which the hearing is to be held. If possible, the child should meet in an informal atmosphere the persons who will do the questioning, although the subject to be discussed need not be mentioned on that first visit. The main purpose is to acquaint the child with the principal participants in the trial.

Many judges are willing to meet a child in chamber for a friendly chat, to demonstrate their black robe, and to assure the child of the protection of the court whenever needed. The judge also has the prerogative of interviewing the child alone rather than in open court, and the judge may certainly clear the courtroom of spectators and other persons not directly involved in the case. For this reason, it is of inestimable value for psychiatrists and other professional persons supporting the child to be personally acquainted with attorneys and judges involved in the case. None of them want to harm the child, and most of them will be glad to receive suggestions on behalf of the child as long as they do not interfere with the rules of the court and have no prejudicial implications.

Latency age children are much more frequently involved in "sex cases." With them, role playing in preparation for the court procedure is of great value. In posing the questions likely to come up during the hearing, either in court or an attorney's office, it is necessary to avoid any intimation, however subtle, about what the "right" answers might be. Any such intrusion on the part of the "helper" could be discovered later and might invalidate the child's statement.

During role play, both the child and the person assisting with preparation should change roles so the child has the opportunity to look at the situation "through the other person's eyes." Thus, the child should be asked to play the role of the alleged offender and of other persons, particularly family members whose action or lack of action may be significant for the child. Similarly, the person conducting the "mock trial" should assume the role of defense attorney as well as that of prosecuting attorney; this technique may avoid some of the confusion often resulting from the child being asked the same question in a different way in an effort to elicit different answers or descriptions of the alleged event.

Because matters of sexual content are to be discussed, it is important to use the child's own anatomical vocabulary; at the same time, it is helpful to mention "adult" synonyms that may be used during cross-examination. Children are reluctant to admit that they do not understand some expression and are likely to respond as though they understood what was said. There-

fore, it is helpful during role playing to interject occasionally the phrase "I don't understand what you mean, please explain it to me." If the child can be taught to use this inquiry whenever needed, and without fear, many a misunderstanding can be avoided.

Adolescent witnesses, although they are still legal minors, will be treated essentially like adult witnesses in court or during a deposition in an attorney's office. In preparation, it helps to explain that, for legal purposes, detailed questions will be asked and specific answers will be expected of them. They need to know that their statements may be challenged and that their truthfulness will be judged by their consistency. Role play might include a hypothetical dialogue with the defendant pleading good intentions and pointing out the dire consequences for all concerned if the jury renders a verdict of guilty.

Obviously, there may be serious objections to this recommended procedure. If the person preparing the child is a physician, a nurse, a psychologist, a social worker, or any other kind of child advocate, the legal objection might be that in an effort to protect the child from unpleasantness, such preparation tends to modify the child's original statements and may put the testimony into a different focus. For example, a young girl initially enraged over her father's sexual advances and willing to testify against him, might change her attitude after role playing during which she gains better insight into the motivation of his or her own behavior and might choose to modify her testimony accordingly. A young male victim of a homosexual attack may experience a change of sentiment when the interviewer, playing the role of the assailant, asks mockingly, "But we did have fun doing it, didn't we?"

Role playing by the victim does carry the risk of a change in attitude during the trial. Even if an attorney, aware of the legal pitfalls, were to undertake such preparation, there is a possibility that a child's testimony might be swayed.

What, then, is the proper course? Leave the child unprepared and allow the trial to proceed, regardless of consequences? Many would contend that this is the more desirable course because attorneys and judges will treat children with tact and understanding and will make every effort to avoid undue hardship; in any case, untainted testimony is paramount, and the child's emotional well-being, important as it is, has to be of secondary priority.

Or should we prepare the child in the manner outlined, giving emotional support before and after the court appearance, even at the risk of modifying the child's attitude and thereby tampering with a previously unbiased, or at least differently biased, testimony? I support this second approach and contend that interference with due process of law as a result of such preparation is exceedingly unlikely, as long as it is clear the knowledge imparted is informational only, and under no circumstances would the "right" answers be imputed. This procedure would safeguard the principle that should underlie any such event: Support of the child's best interests. □