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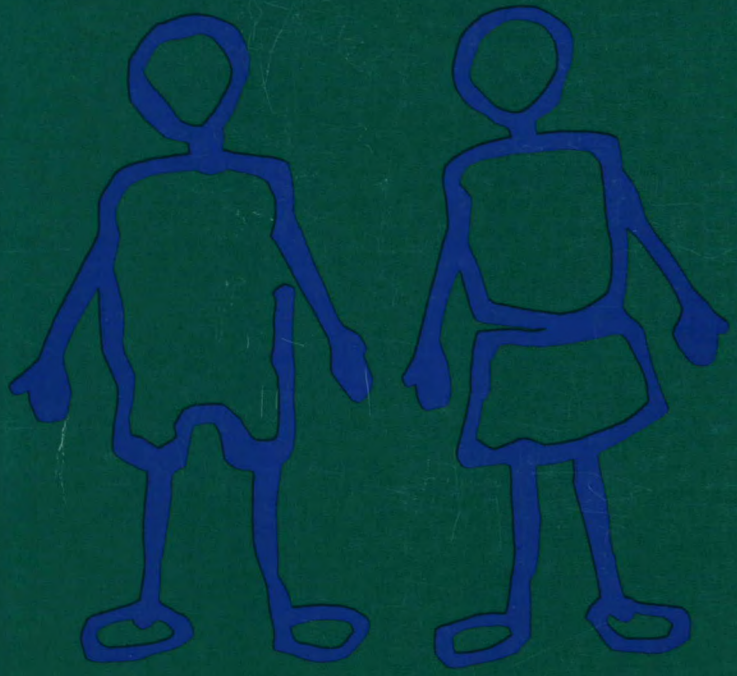
# CHILD VICTIMS AND WITNESSES: THE SOCIAL SCIENCE AND LEGAL LITERATURES

## Studies on the Sexual Abuse of Children in Canada



Canada

# CHILD VICTIMS AND WITNESSES:
# THE SOCIAL SCIENCE AND LEGAL LITERATURES

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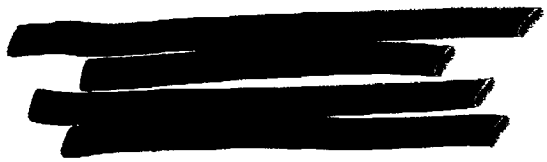

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## OVERVIEW

In 1986 the Department of Justice entered into a contract with Dr. Yuille to review and critically assess the literature published in the past 10 to 15 years in the social sciences and in jurisprudence concerning children as witnesses. The final report consists of two sections: Part I - Child Victims and Witnesses: An Annotated Bibliography; and Part II: Child Victims and Witnesses: The Social Science and Legal Literatures. As a result of sheer volume, Part I was not published. Copies may be obtained, however, by contacting the Research Section, Department of Justice Canada.

Part II is the subject of this report. In the first chapter, the report provides a critical overview of the social science literature, with the aim of highlighting the central issues characterizing the literature. Selected examples from the annotated social science bibliography are included here to represent the issues under discussion. The second chapter presents a critical examination of the legal literature, legislation and court precedents dealing with child witnesses. The third chapter examines the relationship between the legal and social science literatures. This last chapter also reviews the future research needs related to the role of children as witnesses in the criminal justice system.

# CHAPTER 1

# A CRITICAL OVERVIEW OF THE SOCIAL SCIENCE LITERATURE

The purpose of this chapter is to provide a critical review and analysis of the social science literature. The intent of the review is to identify the strengths and weaknesses of the literature concerning children in order to compare it with the criteria that have been adopted in jurisprudence. The review is organized into a series of sections, each dealing with a topic or issue relating to the testimony of children. In each instance, we examine the methods of investigation, the range of results, and the variety of conclusions. The review is not an exhaustive examination of the existing literature, which would be redundant, given the annotated bibliography. Rather, it is a selective examination of the published work, which clarifies and examines the issues concerning child witnesses. The published research that has been included in this review was selected because it typifies either a methodological or a conceptual issue in the field. The review begins with a brief history of this area of investigation and leads to a concluding section in which the witness abilities of children, based on the literature, are summarized.

## Historical Context

Skepticism about the ability of a child to provide useful testimony has characterized judicial attitudes for a very long time (Collin & Bond, 1953). Citations from such diverse sources as Chinese texts and early canon law place children within the group of untrustworthy sources of information. There are isolated cases in which children's testimony was believed, for example the Salem witch trial of 1692, but even these events seemed to support the general principle of skepticism. The negative views of children's evidence were not grounded in any systematic knowledge about the abilities of children, but reflected deeply entrenched prejudices which viewed the adult as a moral, rational being who had learned to control the foolish impulses of youth. By the seventeenth century, however, simple exclusion of children from British courts was replaced by procedures for the judge to determine the competence of the child to provide valid evidence (Rex v. Braddon and Speke, 1684). Rex v. Braiser (1779) set a precedent by requiring that the court determine whether the child understands the "danger and impiety of falsehood." Subsequently, understanding the oath, supplemented by an assessment of the child's competence to testify, became the criteria for the admissibility of a child's testimony. This practice reflected another unfounded assumption: that children will tell the truth if they

understand the punishment for lying (Terr, 1980). However, the practice was more a measure of the courts' difficulty in dealing with children than of the credibility of a child's testimony.

Although in the U.S.A. and in Commonwealth countries a child's capacity to understand the oath has remained a feature of court practice, the emphasis has shifted to the judge's evaluation of the child's mental capacity. The resulting competency tests have been imposed on the judiciary without a research or theoretical basis to justify their nature or usefulness.

## Early Research

Research addressing the issue of children's eyewitness abilities finally began to appear at the beginning of the twentieth century. The initial results provided confirmation of the centuries of negative attitudes. A review of the history of the early research on child witnesses is found in Goodman (1984). Binet, the French pioneer in the field of mental testing of children, did the first systematic research on child witnesses, which culminated in the publication of a book entitled La suggestibilité (1900). Binet showed children of various ages a series of common objects. He found that they would sometimes supply fictitious descriptions of the objects, and that leading questions would produce false descriptions. Binet was quick to point out the limitations of the procedures he used, and his conclusions were rather modest.

However, it was not this work that set the tone of subsequent research. Instead, it was the investigations of a Belgian psychologist, Varendonck (1911). He had been hired by a defence lawyer in a homicide case in which two children were the only witnesses. Varendonck was to find evidence to confirm the belief that the testimony of the children should be given credence. In one study, Varendonck asked a number of school age children about the identity of a man who supposedly met him in the school yard. Although no such individual existed, 17 of the 22 children who were interviewed responded by describing a person. Varendonck concluded that it is remarkably easy to mislead children. Before the court he concluded that: "...we cannot set the least value in their [the children's] declarations." This confirmed the long existing negative views about children as witnesses, and this study was the source cited repeatedly over the next six decades to reinforce the exclusion or special treatment of children's testimony. Systematic research on the psychology of witness accounts declined after this early flurry and remained relatively infrequent until the 1970s (Loh, 1981).

## Freud and The Seduction Theory

There was one other development at the turn of the century that demonstrates the prevailing skepticism about children's memory. During the 1890s, Freud was developing psychoanalysis based on the assumption that the experiences of childhood were the critical determinants of the psychological health of the adult. Freud examined a number of patients with neurotic symptoms and found repeatedly that they reported sexual abuse as children. At first Freud believed his patients and began to elaborate a theory that adult neurosis is caused by abuse in childhood, and he called this the Seduction Hypothesis. However, as he puzzled about this shocking, apparently widespread incidence of the sexual exploitation of children, Freud decided it could not possibly be factual. He rejected the Seduction Hypothesis and decided that his patients were remembering imagined fantasies of sexual experiences from their childhood, not real experiences. In effect, Freud judged that the inability of children to separate fantasy from reality was pervasive and continued to characterize the childhood memories of adults. With this one conclusion, Freud destroyed the credibility of adults disclosing sexual abuse and confirmed the unreliability of children (for a discussion of the consequences of Freud's rejection of the Seduction Hypothesis, see Masson, 1984). The fact that this aspect of Freud's subsequent theory was not challenged reflected the widespread agreement that children have trouble distinguishing reality from fantasy.

## A "New" Issue

Freud and Varendonck assisted in confirming that children's testimony should be treated with skepticism. However, in the past decade, several related factors have led to a re-emergence of a concern for child witnesses (Berliner, 1983). In a broad sense, the "new" issue of child witnesses is the inevitable culmination of a century of slow changes in society's views about children. The child advocacy movement has produced a progression of changes in child labour laws, compulsory government education, and a variety of improvements in children's rights. The consequence of these changes has been the special concern for the protection of children. As our society has become aware of the extent of child abuse, the need to protect abused children has become a growing preoccupation. This has dovetailed with the appearance in the last decade of research pertaining to victims of crime. Also, the women's movement has resulted in the creation of rape relief centers, and a concomitant awareness of the extent of sexual abuse

of women and children. All these factors have combined to re-open the debate about the credibility of child witnesses, especially in the context of sexual abuse.

## Crimes Children Witness

The emphasis of this report is on children as victims of sexual abuse, since this is the crime most likely to bring children in contact with the criminal justice system. However, there are a variety of other crimes that children witness, and these are given appropriate attention in this report. After sexual abuse, the most common crime a child will witness is that of domestic violence (a comprehensive review of domestic violence is found in Dutton, in press). Like sexual abuse, domestic violence has received increasing attention during the past decade, with a consequent increase in the reporting and prosecuting of such cases. Since children in the family may provide useful collaborative evidence in such cases, they are increasingly being called to testify. A special case of domestic violence is the uncommon but important case of parental homicide (Malmquist, 1983; Pynoos & Eth, 1984). Pynoos & Eth (1984) estimate that in the U.S.A. children witness 10% of all homicides. Children may be central witnesses in such cases, but the trauma of what they observe points to the need for special therapeutic support. The same point is raised in those dramatic instances in which children are the victims of a kidnapping by a stranger. Terr (1979) has reviewed the trauma of such an unusual incident and the problems it causes for police and prosecutors.

Children are the most frequent victims of road accidents (Davies, Flin & Baxter, 1986) and they may also be the most frequent witnesses (Sheehy & Chapman, 1982). There has been little research on this specific issue, but children may prove an untapped and valuable source of eyewitness information in accidents.

In summary, children are witnesses to a variety of criminal acts, most of which will affect them emotionally and that may result in trauma for the child.

## The Child Witness of Sexual Abuse

In the past decade the rate of reporting sexual abuse of children has risen dramatically. The problem of assessing the meaning of this rise is complex. First, there is the problem of

definition of sexual abuse. Fraser (1981) has discussed some of the difficulties in developing a legal definition of sexual abuse. In fact, the range of possible sexual activities between children and adults is very large. There is no unanimity concerning the division between the expression of genuine affection and the violation of the privacy of the child. Nor is there agreement about the degree of trauma to children involved in sexual activities. These problems are compounded by the fact that minors are more sexually active than they were decades ago. In many instances it may be the intent of the perpetrator that is the critical determinant of whether abuse has occurred, and intent is very difficult to determine. All these problems deal with the grey areas of the sexual abuse problem.

It is not the task of this report to find a consensus on the definition of sexual abuse. The problems associated with definition, however, exemplify the character of the climate within which clinical reports, research, legislative changes and so on, are being conducted. The sexual abuse of children is a very real and disturbing problem. The revelations of such abuse in the home, in schools, day care centers, and other contexts has created an atmosphere which makes a reasoned response to the problem difficult.

A second difficulty in determining the meaning of the rising rates of reported sexual abuse is that assessing the actual rate of abuse in our society is filled with problems. There is reticence on the part of the victims of abuse to report it. A report of sexual abuse can lead to the removal of children from the family, the loss of the perpetrator's job, and possible criminal charges. Further, the embarrassment and difficulties of serving as a witness in an abuse case may discourage victims from reporting. Yet, in spite of all the factors that militate against reporting abuse, the incidence of such reports has grown substantially in the past decade. One report from British Columbia (Van Dam, Halliday & Bates, 1985) found that 1% of the children in a small community were known to have been abused in a three-year period, and this seemed to be only the tip of the iceberg. Finkelhor (1979), in a survey of 796 U.S. college students, found that 19% of the women and 9% of the men reported being abused as children. A survey of over 3000 readers of a British teenage women's magazine indicated that over one-third of the women had been sexually abused as children (Baker, 1983).

The problems of definition and disclosure lead to the fact that we do not know with any precision the extent of abuse, although it is clearly widespread, affecting a significant minority of Canadians. Because the problem of sexual abuse has only recently been acknowledged, it is difficult to know whether the increased reports of abuse mean that the abuse rates themselves

are changing. One must depend on inference in making a judgment. Some factors suggest that the actual rate of abuse may not be on the rise.

There is little evidence that could provide an estimate of the sexual abuse rates of previous decades, but as noted earlier, the therapeutic work of Freud indicated that many of his patients reported being sexually abused. Also, the Victorian period was characterized by a widespread availability and interest in pornography, including that involving children (see, for example, Pearsall, 1969). Child prostitutes were continuously in demand. There is every reason to believe that the façade of nineteenth century society masked widespread sexual exploitation of children. The family context of the nineteenth century discouraged reporting sexual abuse, while today's society encourages such disclosures. The combination of different disclosure environments, different attitudes toward children, and different views about sexuality make it possible that the sexual abuse of children was at least as common one hundred years ago as it is today. Even if the sexual abuse of children is not an epidemic but an endemic characteristic of society, it is clear that the current environment, which encourages the disclosure of abuse, will frequently bring children into the criminal justice system.

## Changing Views of Children

In a variety of states in the U.S.A., the judicial traditions of the past century concerning children are being questioned. Minimum age limitations for witnesses are being discarded, as are the requirements for the corroboration of children's testimony. Also, testing the competency of children before allowing them to testify is no longer universal. Similar changes are being considered in the Canadian and British contexts. The fundamental question is the justification for the current direction of the pendulum swing. The special treatment of children in the courts in the past was based on untested assumptions about children; it was not based on any systematic evidence. Yet many of the current changes are being considered in ignorance or neglect of the existing literature about the witness abilities of children. The purpose of the remainder of this review is to determine the extent to which the published research findings concerning the specific eyewitness abilities of children and their general cognitive abilities justify and support changes in the treatment of children in the Canadian criminal justice system.

There are three varieties of professionals who contribute to the social science literature concerned with child witnesses: therapists, legal scholars, and research psychologists. Therapists, who include psychiatrists, social workers, and psychologists, generally report case

studies or synopses of their clinical experience. Legal writers typically examine existing and proposed legislative and procedural reforms. Research psychologists conduct empirical investigations of various abilities of children, and interpret their relevance to the criminal justice system.

Reflecting the orientations of these different professionals, the literature can be divided into two distinct aspects: clinical research and empirical research. The former includes the case study reports and recommendations of psychiatrists, psychologists and social workers who work with children who have witnessed or been victimized by crime. The primary focus of this work is the assistance and support of the children, and most of the reports deal with recognition of symptoms and therapeutic interventions. The empirical literature, which is mainly reports by psychologists on studies done in controlled settings, discusses the eyewitness abilities of children. This psychological literature also includes studies on the general cognitive, memory, linguistic and moral capacities of children.

## CLINICAL AND SOCIAL WORK LITERATURE

This section examines aspects of the social science literature that originate in clinical and social work practice. There are two basic ways of doing research in the social sciences: the ideographic and the nomothetic methods. Ideographic research concentrates on individuals, attempting to develop insights into human nature from case studies. The nomothetic approach studies groups of individuals, hoping to find general patterns that transcend the individual. The clinical literature on child testimony generally takes the ideographic perspective, reporting on individual cases in which children have witnessed or been the victims of a crime. Sometimes a therapist will summarize a number of similar cases and attempt to draw general conclusions.

### Major Contributions

The clinical and social work literature has provided much of what is currently understood about the dynamics of sexual abuse, the impact of disclosure, and the experience of the child witness in the criminal justice system. One theme from this literature is that sexual abuse has a typical pattern. It starts when the child is young (three to eight years old), involves an adult that the child knows, and usually continues for a long time, progressing from fondling of the child to more intrusive sexual contact. To maintain secrecy, the abuser uses bribes, coercion or

threats, and as a result, the child typically tells no one. The discovery of this pattern has been instrumental in dispelling the myth that abused children are seductive seekers of sexual interest, and it explains why there is often no physical evidence of abuse. The pattern also indicates, in part, why there is usually a delay before disclosure.

The clinical literature has also been valuable in understanding the consequences for children who admit to their abuse by an adult. The impact of disclosing abuse is profound. Discussing sexual matters is often difficult, and this is especially true for children. Frequently the child may not be believed, amplifying the guilt and confusion the child may feel. If the child is believed and the proper authorities informed, the child may be repeatedly interviewed by strangers. In cases of inter-familial abuse, the disclosure may lead to the removal of children from the home. The dynamics of the family may make the abuse more tolerable than the consequences of disclosure. There may be familial pressure to withdraw the accusations. Retractions are not uncommon. If disclosure occurs, the child will need some special support to deal with the combined trauma of the sexual abuse and the disclosure.

The clinical literature has been most valuable in alerting professionals to the problems of disclosure. While many professionals argue that children may be effective courtroom witnesses (see, for example, Berliner, 1983), it is frequently claimed that participation in the judicial process is stressful for children. For example, the term "legal process trauma" has been coined (Nurcombe, 1986). This has led the clinical and social work authors to be among the most active advocates for change in courtroom practices in order to protect the child. The clinical literature is characterized by its assertions that children who disclose sexual abuse are telling the truth, and that the criminal justice system must find the least traumatic method of obtaining the child's testimony.

## Limitations

Because of their role as therapists and child advocates, clinicians and social workers have adopted a perspective which colours their view of child witnesses: they believe that children do not lie about being abused or victimized. Clinicians do note the kind of memory distortions that trauma may bring, but the underlying assumption is that children do not expose themselves to the difficulties of disclosure unless they have been abused. This perspective has resulted in enormous therapeutic support for the children. But this approach deals with only part of the

problem arising from abuse. There is also a need for guidelines and techniques that will enable investigators to critically evaluate the veracity of an allegation of abuse.

## False Allegations

The most obvious bias in the clinical literature is the lack of attention to the possibility of false allegations. It seems to be a maxim that any allegation of abuse is truthful. Given society's long standing ignorance about the extent of sexual abuse, this uncritical acceptance of children's evidence is understandable, and it would be inappropriate to arouse unnecessary skepticism about such disclosures. However, it is clear that false allegations do occur and that the dynamics underlying such false disclosures are complex. The former director of the U.S. National Center on Child Abuse and Neglect has suggested that media campaigns concerning sexual abuse have increased the number of false reports (Besharov, 1985). Besharov stated that

> more than sixty-five percent of all reports of suspected child maltreatment - involving more than 750,000 children per year - turn out to be 'unfounded' ...the present level of overreporting is unreasonably high and is growing rapidly. There has been a steady increase in the number and percentage of 'unfounded' reports since 1976, when approximately only thirty-five percent of reports were 'unfounded' (p. 556).

There is increasing evidence that allegations of sexual abuse are becoming part of the fabric of custody disputes. Green (1986) reported that 36% of allegations of sexual abuse in custodial and visitation disputes were confirmed to be false.

From the criminal justice perspective, it is essential to determine both the rate and nature of false allegations by child witnesses, and to determine whether these allegations can be distinguished from statements that are factual. It appears that their rate is affected by legislative context. For example, in West Germany, where making a false allegation, even by a child, can lead to criminal prosecution, such allegations seem to be rare. The West German judicial system regularly employs psychologists to evaluate the truthfulness of the testimony of children (see the section below on Statement Reality Analysis). The use of these professionals, together with penalties for false disclosures, seems to keep such disclosures uncommon. Alternatively, in some U.S. jurisdictions the testimony of a child requires little corroboration. In Arizona, for example, where each charge of sexual abuse carries a mandatory sentence of 13

years, allegations of sexual abuse have become part of custody disputes between parents. There are indications that in such a context, false allegations may be relatively high.

There are only a handful of studies which have attempted to determine how common false allegations are (Benedek & Schetky, 1985; Goodwin, Sahd, Rada, & Rada, 1982; Jones, 1986). There are a variety of problems in these assessments. The principal one is the determination of the actual state of affairs, or the ground truth criterion. The only option is to determine guilt on the basis of confessions and convictions of the accused. This is useful but not always accurate. Innocence may be determined on the basis of retractions or acquittals, and these too are problematic.

Jones (1986) suggested that a dichotomy between true and false allegations is pointless, and that a more realistic alternative is to assess cases according to the degree of probability of abuse having occurred. Jones assessed 576 cases of children seen by the Denver Department of Social Services Sexual Abuse Team. He found that 54% of the cases were founded or reliable and 46% were unfounded. Of the unfounded cases, 22% were based on insufficient evidence and 17% had been initiated by investigators and had led to follow-ups. A total of 7.8% of the cases were thought to be fictitious. Of these, the majority (6.25% of the 7.8%) had been generated or prompted by an adult. An examination of the cases of false allegation suggested that, in some cases, there was evidence of psychiatric disorder, and in others the children were involved in bitter custody disputes. The need to detect false allegations is a very real one. The focus must be on the ability of interview procedures to determine the validity of a child's disclosure.

## Interview Procedures

Considering that the interview is the core of investigations of alleged abuse, the small number of articles dealing with the interview procedure is surprising. Existing articles focus on the interview as a clinical tool for helping the child to disclose and detail the abuse (see, for example, Burgess & Holmstrom, 1978). These articles concentrate on the particulars of the interview setting -- whether it should be institutional or playlike, in the presence or absence of support people -- and on the appropriate activities for the child, as well as other features which are assumed to facilitate rapport between the interviewer and the child.

Little attention has been given to met allegation, according to Goodwin et. al., 1982; Faller, 1984; Sgroi, Porter, & Blick, 1982. These authors have suggested that the factors indicative of abuse include medical or physical evidence, the child's statements during the interview, and a variety of indirect indicators, such as the child's interaction with dolls. While medical evidence of physical abuse is the most convincing corroborative evidence, it is rarely available. For example, Kerns (1981) estimated that such evidence is available in about 15% of the cases of sexual abuse.

Jones & McQuiston (1985) have argued that the child's statements should be the primary source for validating the truthfulness of an account of abuse. They list a number of features that can be useful indicators of a truthful allegation, for example, the inclusion of explicit details in the child's account of the abuse, the presence of idiosyncratic details, and evidence of a child's eye view of the abuse. The most problematic cases arise when the child is unable or unwilling to describe the abuse, or the investigator is faced with a fragmented or inconsistent disclosure. This situation is most common with very young children or with seriously disturbed or mentally deficient children. It has become commonplace to bolster assessments with observations of the child's interactions with anatomically detailed dolls, or evidence of sexual themes in the child's play or drawings.

## Anatomically Detailed Dolls

The anatomically detailed dolls are widely touted as a means of overcoming the restricted linguistic skills of some children and the reticence of many children to discuss sexual matters. These dolls come in sets with a typical combination of a "father" doll, "mother" doll, little boy doll and little girl doll. Each doll is clothed in removable clothing, and is anatomically detailed, including genitalia, pubic hair, and holes corresponding to the mouth, anus, and vagina. These dolls are most commonly called "anatomically correct", a misnomer, since only aspects of the anatomy are emphasized, at times in disproportionate size. As a consequence, the term "anatomically detailed" is used here to describe these dolls.

Many interviewers (see, for example, Clausen, 1985) believe the dolls are an unqualified benefit in assisting children to describe their abuse, and in some jurisdictions the use of the dolls has become mandatory (for example, in New Mexico). However, one problem with the widespread use of and dependence on these dolls is the lack of any guidelines about the

appropriate method for using them. Suppliers of the dolls provide only the simplest instructions regarding their use, and there are no standard training procedures for professionals who use these aids.

A more basic problem is the absence of any base-rate information about how non-abused children play with the dolls. It is simply assumed that the face validity of these dolls is sufficient to insure their effectiveness. To date there have been only two studies that have assessed the manner in which non-sexually abused children play with the dolls. In her Master's thesis at the University of British Columbia, Goranson (1986) recorded the doll interactions of non-abused children. She concluded that many of the tentative assumptions that distinguish between a child who has been sexually abused and a child who has not are unfounded. Examples of behaviours assumed to be indicators of sexual abuse are avoidance of the dolls and exploration of the body orifices. Goranson found that almost half the non-abused children demonstrated this type of behaviour with the dolls.

The second study by White, Strom, Santilli & Halpin (in press) compared the doll-play interactions of a group of abused children with a group of non-abused. They reported that there were observable differences in the doll play of the abused group. These results seem inconsistent with those of Goranson. Clearly more research is needed.

Given the suggestibility of children in interview situations, it is possible that instead of aiding full disclosure, the dolls may suggest sexual-like behaviour to children. Further, since children in some homes may be exposed to sexual behaviour through magazines, television, adult discussions and adult behaviour, there is the additional problem that demonstrating sexual knowledge with the dolls may not always reflect sexual experience (see, for example, Benedek & Schetky, 1985). The use of the anatomically detailed dolls may be necessary in instances in which the verbal abilities of the child preclude a regular interview. However, the use of the dolls should be circumscribed, and their results interpreted with caution until more research is conducted on the suggestibility of the dolls.

## Play Techniques

While the anatomically detailed dolls are the preferred interview aids, a variety of other play techniques have been explored. Having a child make drawings during the course of the

interview has been advocated (see, for example, Goodwin, 1982). The drawings a child produces may be indicators of anatomical knowledge suggestive of sexual experience, and hence a drawing may prove a useful piece of evidence. However, a few interviewers have argued for the use of drawings in court as evidence for the unconscious conflicts of the child resulting from abuse. As William James, the pioneer American psychologist, noted after hearing Freud give a lecture, the use of symbolism is a very dangerous business. Claims that the unconscious processes of a child reveal themselves in his or her drawings have no foundation. Drawings may be useful to facilitate communication between the child and the therapist, but they cannot responsibly be used as evidence in court.

The other form of play interview involves the use of a doll house. One form of this has been developed by Dr. Phil Esplin of St. Luke's Hospital, Phoenix, Arizona. The doll house consists of a few key rooms, with a variety of furniture that the child can use to furnish the house. The child is encouraged to create an arrangement of rooms and furniture corresponding to his/her house (or the place in which the abuse occurred). Small dolls (not anatomically detailed) are used to recreate the events of concern. If such play activity is required in lieu of a normal interview, care must be taken that the play is fully recorded on videotape. There has been no research on the use of this type of play, although it seems to have less suggestibility problems than the use of the anatomically detailed dolls.

## Check-Lists

Another tool used to evaluate an interview with a child is the check-list. A variety of lists of characteristics of sexually abused children and of adult sexual offenders has emerged in the past decade. The list of behavioural indicators includes nightmares, bed wetting, displays of sexual behaviour, withdrawal, regression to baby talk, shrinking from physical contact, insertion of objects in the rectum or vagina, and so on. Such lists are intended to alert parents, caretakers and professionals to the indirect manner in which children may manifest the stress resulting from sexual abuse. The validity and usefulness of these check-lists is unexplored. Melton (in press) has criticized the use of sexual abuse syndromes, because they are based on clinical intuitions and not hard evidence. No one knows the extent to which these behaviours are found in non-sexually abused children. Melton notes:

> Given the proportion of children in the general population... showing some of the behaviours often placed in the syndrome, a child who shows behaviour purportedly

indicative of sexual abuse is far more likely not to have been abused than the reverse.

The check-lists with characteristics of adult offenders stem from two sources. One is clinical practice, whose lists usually are more a reflection of the biases of the clinician than an indication of the actual characteristics of offenders. An example is the manual compiled by Halliday (1986) for police and other professionals, which summarizes her extensive experience with sexually abused children. While the report contains a variety of useful recommendations, it suffers from the fundamental flaw of this type of research: it uses a non-random sample of cases together with a non-systematic procedure of information gathering. The result is a series of inferences of questionable value. In fact, the appearance of more systematic research in the past several years has demonstrated that much of this clinically based research is simply wrong.

Recently, Finkelhor (1984) has made significant progress in introducing systematic research procedures in studying the incidence of abuse and the characteristics of abusers. Finkelhor has subjected his data to factor analytic techniques to tease out objectively the characteristics most commonly associated with adults who sexually abuse children. The following are the four preconditions associated with abuse: congruence between the adult's emotional needs and the child's characteristics, sexual arousal to children, blocking of adult relationships, and disinhibition of conventional inhibitions.

Using sophisticated statistical techniques, Finkelhor (1984) has isolated eight factors that place children at increased risk of sexual abuse: a step-father is present, child is living without the mother, child is emotionally distanced from the mother, mother never finished high school, mother is punitive (with respect to sexual issues), father displays no physical affection, family income is under $10,000, and child has two friends or less.

While check-lists of the characteristics of both abusers and victims are of value in alerting to the possibility of sexual abuse in a particular instance, they should always be used with caution. Each case of abuse is unique, and the search for general patterns and characteristics could obscure the facts of a particular case. Check-lists should be simply one tool of a variety used during the investigation of alleged abuse.

## Statement Reality Analysis

Two tasks face a professional called upon to investigate an allegation of sexual abuse, or any crime involving a child witness: to carefully interview the child and to evaluate the veracity of the child's statement. As noted earlier, the limited existing literature concentrates on the interview. The assumption that children never lie supports this preoccupation. As a consequence, information on how to validate a child's statement is minimal, and what has been published is vague. Interviewers are directed to seek corroboration through medical evidence, sexual play with dolls or drawings, statements of other individuals or through the child's consistency with a diagnostic category. Suggestions about how the interview itself could assist the process of validation are very sketchy (Jones & Mcquiston, 1985; Wells, 1983).

An investigative technique that integrates both the interview and an evaluative process is clearly needed. A model of such an integrated approach is beginning to receive attention in North America. It is called Statement Reality Analysis (SRA). This procedure has developed during the last four decades in East and West Germany and Scandinavia (Trankell, 1972; Undeutch, 1982). The countries in which SRA has developed employ an inquisitorial as opposed to an adversarial system of justice. In criminal and family dispute cases that hinge on the uncorroborated testimony of a child, the court in these countries is mandated to ask an expert in SRA to interview the child (or children), as well as any other witnesses, and to submit a report to the court on the truthfulness of the child's statement. Decades of experience in responding to this need of the courts has led a small group of European psychologists to claim the capacity to detect the truthfulness or falsity of child witness accounts. Such a claim clearly makes SRA a most promising technique, yet its application is hampered by the reticence of its practitioners to share the procedure. Their claim is that the procedure is an art, requiring a careful apprenticeship. It is argued that the procedure cannot be systematized, which mitigates its promise as a procedure for interviewing children.

A recent development has increased the potential value of SRA. An international group of researchers and clinicians, led by Dr. Max Steller, University of Keil, West Germany; Dr. David Raskin, University of Utah; and Dr. John Yuille, University of British Columbia, has systematized the SRA procedure. They have applied the technique to a variety of cases with a high rate of success in correctly classifying a child's disclosure as factual or fabricated. The technique consists of two components: an interview procedure and a system for the evaluation of the child's statement. The interview procedure comprises preparation, base-line interview, free

recall, guided questions and suggestibility check. In the preparation phase, the interviewer gathers as much information as possible in order to generate a number of alternative hypotheses about the alleged events. It is this hypothesis generation approach that distinguishes the procedure from other interview approaches. SRA emphasizes that the interviewer must entertain several alternative explanations for the events, and not approach the interview with only one interpretation in mind.

The interview, which is videotaped, begins with the interviewer asking the child about irrelevant information (how he/she came to the interview room, his/her school, etc.). This is to provide base-line information about the verbal, behavioural and cognitive skills of the child, which is later used to evaluate the behaviour of the child when he/she is describing the witnessed event(s). The next phase seeks a free account of the events from the child. Specific questions are avoided during this phase, and the child is allowed to describe in his/her own words, at a pace determined by the child, the details of the events. Specific questions, in a non-leading and non-suggestive form, are asked in the subsequent part of the interview. The nature of these questions is determined by the kind of information the child has provided in the free account. The interview concludes with a check of the extent to which the child is susceptible to suggestion. This is a way of finding out whether the child has been influenced during previous interviews.

The interview is subsequently reviewed using a variety of criteria to establish the truth or falsity of the child's statement. At the present time, 19 criteria are used in this evaluation process. General characteristics of the statement (for example, logical consistency, internal cohesion) are evaluated, as well as specific details (for example, the use of spontaneous self-correction and the display of inappropriate sexual knowledge). Each aspect of the evaluation leads to an indication of truth or falsity. All of the indications are combined to yield a general evaluation of the child's statement.

This is the first research-based attempt at producing a clinically based interview and evaluation procedure. While SRA holds considerable promise, and has been applied in forensic contexts for decades, its research support is weak at present. Such research is underway, and a book describing the procedure is in preparation. However, there simply has been insufficient time to systematically evaluate the technique.

## Preparing Children for Court

Because a court appearance can be traumatic for a child, a number of authors have concerned themselves with reducing the trauma. Some have proposed the radical procedure of keeping the child out of the courtroom, and having the child's evidence presented via closed circuit television, on videotape, or in the judge's chambers. These suggestions fly in the face of the fundamental rights of an accused to a fair trial. Also, there is insufficient research to substantiate the degree of trauma that a court experience inflicts on a child. Completing the investigative process by participating in the trial may even have a positive outcome for the child.

There are a variety of aids, such colouring books, films and pamphlets, which are intended to introduce the child to the court situation, the roles of the principals, the possible outcomes, and the child's role as a witness. Their value has not been investigated, but they appear to assist the child facing a court appearance.

Jaffe & Wilson (1986) have tested a mock court procedure that takes the child into a court and, with the use of actors in the major roles, introduces him/her to the full context and activity of the courtroom. They report that this procedure reduces the stress on the child and results in a more effective witness. However, it is unclear whether the costs of this procedure would justify its use over that of the other preparation aids.

# EMPIRICAL LITERATURE

## Introduction

As noted above, a brief flurry of research activity concerning child witnesses at the turn of the century was followed by decades of little or no research on this topic. While there has been a burst of research interest in the child witness in the past six or seven years, such empirical work has lagged considerably behind the burgeoning legal and therapeutic interest in the child victim and witness. In the absence of extensive literature on the child witness, the field of developmental psychology has frequently provided a source of information on the capabilities and characteristics of children. Developmental psychology is the branch of psychology that deals with human development from birth onward. The transposition of

literature from this field to the eyewitness arena is often done in an uncritical and decontextualized manner. The result is a collection of generalizations about children that are inaccurate or in need of qualification. The implications of these generalizations are surprisingly negative, given the general advocacy of and support for children's abilities in the clinical literature.

Two frequent generalizations of the developmental literature are that development occurs in a series of stages, and that young children (relative to older children in more advanced stages) are cognitively and emotionally deficient. For example, pre-school children, it is claimed, are concrete and egocentric (Whitcomb, Shapiro, Stellwagen, 1985), they memorize without comprehension, do not understand causality and cannot conceive of thoughts as an integrated whole (Berliner & Stevens, 1979). The authors of such statements fail to note the arguable nature of their assertions.

The reality or even the usefulness of describing development from a stage perspective is hotly debated (see, for example, Flavell, 1983). The problem with the stage concept is that it views mental development as a series of relatively fixed steps, each step overcoming some limitation that the previous one imposed on the child. Many researchers prefer to view development as a gradual acquisition of skills and knowledge of the world. At any point in development, a child will show a mixture of abilities that cannot be characterized as reflecting a single stage of development. There is also widespread acknowledgement that adherence to stage models has resulted in an underestimation of the abilities of very young children (Gelman, 1979). Many abilities deemed beyond the reach of pre-schoolers are evident when assessed in a supportive and non-confusing manner.

In short, it is incorrect to claim that children's abilities can be uniformly characterized at any particular age or stage. A child's ability to testify about his/her sexual victimization or any other criminal act will be affected by a number of variables: the child's attitudes and motivation, his/her degree of knowledge and exposure to the crime, the complexities of the experience itself, the types of interview techniques, recall measures and so forth.

The purpose of this section on the empirical literature is to critically review the findings of the empirical research on the child witness. Included in this review are references to the noteworthy findings of the cognitive, linguistic and moral development literature on children.

## Methodologies

While much of the clinical literature is flawed by the lack of a systematic approach in the generation of information, the empirical research is generally well controlled and systematically carried out. This positive character of the empirical literature is offset, however, by its questionable ecological validity. The typical study presents groups of schoolchildren with a recorded or staged event, and then asks them a series of questions about the event. The relationship of this procedure to the type of situation in which children typically serve as eyewitnesses is tenuous at best. In the case of the recorded event (see, for example, Cohen & Harnick, 1980; Dale, Loftus, & Rathbun, 1978; List, 1986; Parker, Haverfield, & Baker Thomas, 1986; Sheehy, 1981), the children will see a slide show or a film. The only link between this situation and a crime is that the recorded event may depict a crime.

An extreme example of the ecological validity problem is represented by a study of Saywitz (1985). In this experiment, children were presented with stories of crimes, and then their memories were tested. The author interpreted the results in terms of their implications for real-life child witnesses. This type of generalization is unwarranted. What this type of study assesses is children's memory for stories or films or slides, not eyewitness memory. It is possible, of course, that remembering a film and remembering an actual crime may involve common memory components. One study (King, 1984) compared the memories of a group of children for both a slide sequence and a staged event involving an actor. There were a number of major differences in the quality and quantity of memory for the two types of events. These results suggest that studies using recorded events may be of limited value in the study of child witnesses.

When live staged events are used (see, for example, Goetze, 1980; King & Yuille, in press; Marin, Holmes, Guth & Kovac, 1979; Moston, 1985; Yuille, Cutshall & King, 1986), some problems still remain in linking the results to actual crime situations. First, while some attempt is made to make the event personally involving (for example, Marin et. al. had subjects witness a loud argument between two adults, and King (1984) and Goodman & Reed (in press) had a stranger interact with the child while he/she was alone), how stressful these events are to the children is never evaluated. Indeed, these staged events are usually benign, so that trauma plays no role in determining eyewitness behaviour. The need to determine the effect of trauma is central. Recently, some investigators have taken advantage of naturally occurring events to

study the effects of trauma. Goodman et. al. (in press) examined children's memories after they had given a blood sample at a medical office. Similarly, Peters (in press) looked at children's recollections of a visit to a dentist. Neither of these situations is as traumatic as witnessing or being the victim of a crime, but they demonstrate that researchers are becoming aware of the need to find different arenas in which to assess the memory abilities of children.

Leaving aside the issue of ecological validity, the experimental studies on child witnesses can also be criticized in terms of the interview procedures they used. A frequently overlooked consideration in these studies is whether or not the interviewer is present when the child witnesses an event (King, 1984). In the most often quoted study in this field (Marin et. al., 1979), for example, the subjects were asked to recall an argument that took place between the interviewer and a stranger. The weakness here was that the children were puzzled by the fact that an adult was asking them questions about something the adult had personally experienced. Such a situation makes children hesitant about offering information, and the younger the child, the more this is true. Bullock (1982) has shown that children provide more information when the interviewer seems naive about the event.

Another problem with the experimental interviews is their use of standard questions instead of open dialogue. The specific questions are developed beforehand and probe for knowledge of specific features of the event. While interviews using standard questions result in better experimental control, they are unlike real-life interviews of children. Typically, the interviewer may have only sketchy knowledge of the event. The reliance of experimenters on standard questions limits the applicability of their findings.

## Measures

The types of memory measures used in research include the responses of witnesses to open-ended questions, specific questions and multiple choice questions. Suggestibility of the subjects is often assessed through the use of leading questions. Identification accuracy is measured using photospreads. As is outlined below, it is essential that any measure of recognition include a blank photospread, that is, one which does not include a target photograph.

## Free Recall

In spite of variations in methodology and problems of ecological validity, there appears to be one conclusion that the empirical literature confirms along with the clinical literature: most children are accurate in the information they supply in a free recall about an event. There is a clear relationship between the age of the child and the amount of information he or she will recall. The younger the child, the less information he or she will report about an event. Regardless of age, however, free recall will generally be accurate (+80%). The inaccuracies that do occur typically pertain to the physical descriptions of individuals. Information about the actions involved in the event is usually the most accurate.

Many of the concerns expressed about children's eyewitness accounts have been refuted. Children's statements are generally coherent, correctly reflecting the temporal and causal relationships of the event. While it is often assumed that children will include fantasized and irrelevant details in their accounts, this has not been found. The relationship of age to amount of recall seems to reflect the different and less complex cognitive structure of younger children. We know that, generally, memory is directly related to cognitive structure. The more complex and elaborate a person's knowledge structure about any given area of knowledge, the better that person's memory for such information. Recipes are best remembered by chefs, chess positions by chess masters, automobile appearance by car buffs, and so on. One consequence of this idea is that, while children generally lack the elaborate cognitive structures of adults and hence recall less, in those instances where they are tested on a topic about which they have specialized knowledge, they may recall more than an adult. This expectation was confirmed in a study of children's memory for cartoons.

A final point is the failure of existing studies to investigate the quality of children's accounts of events to which they have had repeated exposure. Research has shown that children's memories of repeated experiences are organized in the form of scripts, which include the children's understanding of roles, props and expected actions for various events. These scripts are important devices for children, because they help them participate in their social world. With repeated exposure, a child's knowledge of a script's elements becomes more detailed. Although the existing research on script knowledge has dealt only with scripts of such benign events as birthday parties and restaurant meals, it is nonetheless likely that scripts of sexual abuse develop in children who have been repeatedly molested over the course of their childhood. It has been suggested (King & Yuille, 1987) that the script approach be recommended

to aid recall of sexual abuse patterns. In short, while most of the research on children's eyewitness accounts has focused upon children's ability to answer "what happened" questions, the reality of sexual abuse makes the assessment of children's responses to "what happens" questions more appropriate.

## Types of Questioning

Researchers have employed multiple choice questions (Was his hair black, brown, or blond?), yes/no questions (Was his hair black?), open-ended, specific questions (What did his hair look like?) and free recall procedures (What did he look like?). The results using other than the free recall format have been mixed. Some studies report age-related differences in the accuracy of answers to direct questioning (see for example, Goodman et. al., in press; King, 1984; Yuille, Cutshall, & King, 1986), while others report no such differences (see, for example, Marin et. al., 1979). Explanations for these differences have been proposed (see, for example, Cole & Lotfus, in press), but variations between the studies on the type of event and those on questioning format make a synthesis difficult.

The best conclusion at this point is that interviewers should avoid specific questions with children, at least during the initial phase of an interview. Should further questioning be required, the interviewer must be sensitive to the potential for misunderstanding and the possibility that the child will treat questions as a demand for an answer rather than an inquiry for information. Laboratory investigations of preschool children have shown that children will respond as best they can, even when the communication or directive is unclear or ambiguous (Robinson & Whittaker, 1986). In a related vein, Hughes & Grieve (1980) clearly demonstrated that children will attempt to provide a plausible answer to most questions posed by an interviewer, no matter how bizarre the question. Any question, then, has the potential for suggestiveness. This conclusion is consistent with the results of research that has examined children's responses to deliberately misleading or suggestive questions.

## Suggestibility

In spite of procedural and generalizability problems, the empirical literature points to suggestibility as the major problem when interviewing the child witness. Children are more

susceptible to suggestion than adults, and the younger the child, the more this is true. Legal skeptics have assumed that suggestibility is a trait or inherent characteristic of children. Research has demonstrated, however, that the degree of a child's suggestibility depends upon the salience of the information (Yuille, Cutshall & King, 1986), the status of the interviewer (Ceci, Ross & Toglia, in press), the phrasing of the questions (Dale, Loftus, & Rathbun, 1978), the number of times a question is repeated (Moston, 1985), and the instruction to respond "I don't know" when the answer is unclear (Moston, 1985). In short, it appears that the dynamics of the interview situation, the child's understanding of it, and the behaviour of the interviewer can all affect the degree of suggestibility.

At least three types of explanations have been offered for the greater suggestibility of children as compared with adults. The cognitive examination assumes that children have sketchier memories of an event and are thus more likely to incorporate suggested information. A modification of this point of view is that children are less able to maintain a distinction between what others have told them about an event and their own memory (Lindsay & Johnson, in press). Finally, other authors have asserted that suggestibility reflects the child's response to the subtle and non-subtle dynamics of the interview situation. Children are trying to learn how to deal with the world, and much of their learning takes place through modeling and through watching and listening to adults for cues on how to behave and respond in different situations. When children are in an unfamiliar context they will often orient to adults to find the appropriate way to behave. In an interview situation children are looking for clues to what they are supposed to do. If the adult implies, through the use of specific questions, that they should know in great detail about an event, and if the children have been oriented to cooperation, they may fabricate information to meet the perceived needs of the interviewer. Whatever the basis of the suggestibility of children, it is clear that specific questions should be minimized and used with great care, and that leading questions should be avoided.

## Identification

Corresponding to the findings on free recall is the clear age-related trend among children to recognize a face from a photospread. Younger children perform more poorly than older children. The reasons for this are not fully understood at present, although it is clear that uggestibility plays some role. Presenting a photospread to a child makes an implicit demand: pick someone. Simply advising children that they do not have to make a selection has no effect

in reducing this selection bias (Yuille, Cutshall & King, in press). The few studies (Peters, in press; Yuille, Cutshall & King, 1986) that have included blank photospreads (the "criminal's" picture is not included) emphasize the selection bias in children. The younger the child, the more likely he/she will select someone from a blank photospread.

Laboratory research concerned with the face recognition abilities of children (Chance & Goldstein, 1984) has demonstrated that regardless of procedures, clear developmental differences exist. Younger children have a reduced ability to recognize faces in a set of photographs.

## New Directions

The research studies to date have focused on what researchers believed were the most important theoretical issues: testimony abilities, identification capacities, and the suggestibility of child witnesses. Several important concerns have been ignored. These include witness characteristics, such as mental deficiency and traumatization, and interview characteristics, such as length of retention intervals and the effects of multiple interrogations.

## Very Young Children

Very little research has examined the ability of children under four years of age to report complex events they have experienced. Goodman & Reed (in press) had children interact with a strange adult for five minutes. The results showed that, relative to six-year-old children, three-year-old children recalled less about the event, were poorer at identifying the stranger from a photospread, and were more suggestible. This negative finding is balanced by the more positive results of recent investigations into the memory recall abilities of preschoolers. For example, Nelson & Ross (1980) examined the memory of two- and three-year-old children in a natural (home) context. They concluded that children as young as two years old show evidence of a memory for experiences and can recall events up to a year after they have occurred. They remember the things that happened only once, as well as those that happened often.

One interesting case study reported the remarkable memory of a three-year-old girl who was abducted by a stranger (Jones, 1986). She was taken to a park and sexually assaulted. The attacker then abandoned the girl in the cesspool of an outhouse. The girl survived, provided

the police with an account of the event and picked someone's picture from a photospread. The identified individual was arrested and confessed. His version of the event corresponded almost completely with the version provided by the three-year-old. Although this is only one incident, it indicates that a very young girl can provide an accurate and useful account of a crime.

## Mentally Handicapped Children

Only a few researchers have examined the competency of mentally handicapped children in giving testimony (Dent, 1986; Goetze, 1979; Gudjonsson & Gunn, 1982). The results of these modest efforts have been positive and indicate that the testimony of handicapped children may be given credence. Dent (1986) investigated the optimal questioning style to use with mentally handicapped individuals and concluded that general questions (more specific than free recall) are the most effective. An actual case study of a mentally handicapped witness was reported by Gudjonsson & Gunn (1982). They were called to evaluate the capacity of a 15-year-old girl to give testimony in a case in which she was alleged to have been sexually assaulted by several boys. The investigators found that the girl, who had a mental age of eight, was very susceptible to suggestion and would fabricate information to answer questions. However, these problems did not arise when she was describing any event she had directly experienced. When she had seen, heard or otherwise sensed something herself, her memory was accurate and not susceptible to suggestion. In short, while generally unreliable in her accounts of general knowledge, this witness was reliable about things that she had directly experienced. She was permitted to testify. This case is provocative in suggesting the need to confine the question of credibility of children's testimony to the specific needs of court cases instead of to the general issues of cognitive maturity. In this case, a mentally retarded girl who had trouble distinguishing fact from fantasy in many areas was judged capable of giving accurate reports of her direct experience.

## Stress and Recall

While there are case studies of children who have witnessed or have been involved in traumatic events such as parental homicide (Pynoos & Eth, 1984; Zeanah & Burk, 1984) and kidnapping (Terr, 1983), these reports focus on therapeutic concerns. The experimental literature on the impact of stress on memory is weak. Goodman et. al. (in press) assessed the

witnessing abilities of three- to six-year-old children following ventripuncture in one study and inoculation in another. They found that these children remembered more information relative to a nonstressed control. Face recognition was unaffected by stress. This result contrasts with that of Peter (in press), who interviewed children after a visit to the dentist. In that case, stress led to poorer face recognition.

Conflicting findings will continue to characterize the research until there is some agreement on the definition of stress. A visit to the dentist's office is no longer a stressful event, and it is not clear whether having an inoculation or blood test is comparable to the kind of stress that a victim or witness of a crime experiences. These studies are a step in the right direction in finding more ecologically valid arenas for research, but more concern for studying the effects of crime-induced trauma is needed.

## The Impact of the Interview

Children in sexual abuse cases are typically interviewed on repeated occasions by police, lawyers, social workers, psychologists and others. It is clear that repeated interviews add to the trauma for the child, but we have little knowledge of the effect of repeated interviewing on the child's memory. Dent & Stephenson (1979) examined the impact of repeated interviewing upon recall. They found that the longer the delay before the first recall, the more adverse the effect on the completeness of recall. The impact of the length of the retention interval has been a feature of other studies, but the length of time involved was only a matter of days. There is a great need for research on the effect of both retention interval length and repeated interviews.

## Future Needs

The previous sections have demonstrated the need for continued research, work which must focus on the needs of the criminal justice system in evaluating the eyewitness abilities of children. This requirement relates to the argument presented by Melton & Thompson (1986). It points out that too frequently, research questions are molded by the methodological preoccupations of psychologists. Experimental psychologists' training encourages them to formulate questions that fit best into their experimental paradigms and are consonant with their

training in developmental psychology issues. The resulting research may be of limited or no value to those who make and implement policy in the criminal justice system.

Melton & Thompson (1986) argue that research efforts should be directed away from the question of children's competency and towards the investigation of juror perceptions of children and juror ability to draw proper inferences from the testimony of children. This advice makes sense in the context of the United States, where competency assessments are being dropped and jurors are deciding the credibility of the child witness.

The authors of the present review support these suggestions and argue that there is a pressing need for information about the best techniques for interviewing children. Researchers need to move beyond clinical intuition and the narrow confines of experimental concerns to determine how children perceive the interview situation and how they as researchers can maximize the information children provide. The basic research question should not ask whether children are competent, but rather how the reliable information obtained from children can be maximized? What are the methods of assuring that jurors draw the proper inferences from the testimony of children? The elements of a model child witness already exist. One aspect of future research could be to ensure that they are combined to form a useful body of knowledge. This is discussed in more detail below in the chapter on future research.

## CONCLUSIONS

Children can supply as accurate an account of an event as an adult. However, they will probably supply less information than an adult, and the younger the child, the more this is true. Children must be carefully interviewed, since they are especially prone to suggestion and leading questions. Identification is a special problem for children. There are no grounds in the research literature for treating children's testimony any differently than that of an adult's. However, the individuals responsible for obtaining testimony from children require special knowledge about children's abilities and problems in giving testimony. Research needs to focus on finding the best methods for obtaining testimony from children. In addition, the triers of fact need to be aware of the special concerns associated with interviewing children.

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## CHAPTER 2

## A REVIEW OF THE LEGAL LITERATURE

Canadian courts have concentrated on the truthfulness, or honesty of the child witness. However, there are no special legal rules governing the situation where an adult or mature child testifies to matters that he or she experienced or observed as a child.[1]

The preoccupation with truthfulness flows from the governing legislation,[2] which provides that a "child of tender years" may not give sworn evidence if the child "does not understand the nature of an oath," but may give unsworn evidence if "the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth." In principle, we would expect that the standard set for the reception of sworn evidence would be higher than the standard set for the reception of unsworn evidence. The courts do, in fact, permit some children to give unsworn testimony in cases where they presumably lack the capacity to give sworn evidence. But the tests have become very similar.

### Sworn Evidence

The **Canada Evidence Act** does not expressly provide that a child may give sworn testimony. The key provision is s. 16 which states:

> 16(1) In any legal proceeding where a child of tender years is offered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.
>
> (2) No case shall be decided upon such evidence alone, and it must be corroborated by some other material evidence.

The courts have drawn two implications from this provision, that a mature child, not of tender years, can give sworn testimony, and a child of tender years can give sworn testimony, if the judge is satisfied that the child understands "the nature of the oath."

## Child of Tender Years

The term "child of tender years" is copied from an English Act - the **Criminal Law Amendment Act**, 1885. Neither the English Act, nor the Canadian legislation following it, contains a statutory definition of the term. At common law there was a presumption that any child 14 years of age was presumed to understand the nature of the oath - and this principle seems to have been adopted in the Canadian case law.[3]

In this analysis, it is not necessary to examine children 14 years of age or older. Such children, like adults, are presumed to understand the nature of the oath. However, there are cases where children over the age of 14 have been examined. The practice is explained in **R. v. Dawson**[4] in the passage below.

In **R. v. Armstrong** (1959), 125 C.C.C. 56 at p. 57, 31 C.R. 126, 29 W.W.R. 141, DesBrisay, C.J.B.C., referred to a presumption that children 14 years old and upwards understand the nature of an oath, and referred to **R. v. Antrobus**, supra, at p. 122 (C.C.C.), where Robertson, J.A., for the Court stated as follows:

> In practice, when an adult is tendered as a witness, it is not customary to examine him as to his competency. It is presumed that if he is willing to take the oath, he has the requisite degree of religious knowledge necessary to render him competent to take the oath. In a note at p. 143 of Best, supra (Best on Evidence, 12th ed.), it is stated, speaking of the competency of a child, that the requisite degree of religious knowledge should be presumed at the age of fourteen, but the Court has a right to examine as to the religious knowledge even of an adult if it suspects him to be deficient. The fact of capacity is not presumed, but must be shown where the child is under 14 years of age. See vol. 1, Wigmore on Evidence, Canadian Edition, 1950, p. 640, referring to 1 Hale's Pleas of the Crown at p. 302. Again in vol. 1 Wigmore on Evidence, pp. 588, 634 and 640 it would appear that the capacity of an adult offered as a witness is presumed.

It will be noted therefore, that it was quite proper in the instant case for the learned trial judge to examine the witness as to his religious knowledge and to ascertain whether or not he was deficient, despite the fact that he was almost 16 years of age.[5]

It is clear, however, that a court must examine a child under the age of 14 and satisfy itself that the child is competent to be sworn. If no adequate inquiry has been made, a court of appeal will usually set aside any conviction and order a new trial.[6]

**Understanding The Nature of an Oath**

There are at least two, and probably three, tests supported by case law in Canada for determining whether a child understands the nature of an oath.

1. The Antrobus Test. Although the **Canada Evidence Act** refers only to "the nature of an oath" in **R. v. Antrobus**,[7] the B.C.C.A., following English authority, introduced "the nature and consequences" test. Robertson, J.A. stated:

> A child without any religious belief or knowledge, might understand the nature of an oath, but not the consequences. It seems to me therefore, that before a child of tender years may be sworn the two requirements in Braser's case must be fulfilled, namely, that the child understands the nature and consequences of an oath.[8]

It is not clear what consequences Robertson, J.A. had in mind. It seems likely that he contemplated spiritual as well as temporal consequences. But even a learned and devout adult would have difficulty determining the spiritual consequences of telling a lie under oath.[9]

2. The Bannerman/Budin Test. In **R. v. Bannerman**,[10] Dickson, J. (as he then was) emphasized that the **Canada Evidence Act** referred only to the "nature" of the oath[11] and that it was reasonable to expect a child to describe the spiritual consequences of telling a lie under oath.[12] This case has been treated as the leading authority for the "nature alone" test. It does not clarify, however, what is meant by the "nature" of an oath, although Dickson, J. does state:

> The oath having been explained to him, he may quickly show an understanding of the solemnity of the oath, that he is calling upon God to witness the truth of what he says, that a lie is always wrong; and, even worse, to tell a lie after one has been sworn to tell the truth; that to lie, whether on oath or not, is a sin.[13]

In **R. v. Budin**[14] Jessup, J.A. said,

> The essential things are that the Trial Judge's questioning should establish whether or not the child believes in God or another Almighty and whether he appreciates that, in giving the oath, (which can be read to the witness) he is telling such Almighty that what he will say be the truth. A moral obligation to tell the truth is implicit in such belief and appreciation.[15]

3. The Fletcher Test. In R. v. Fletcher,[16] a five-judge panel of the Ontario Court of Appeal had an opportunity to review what was said in Budin. MacKinnon, A.C.J.O., who delivered the judgment of the Court, discussed the comments of Jessup, J.A. in Budin and continued:

> With deference, I do not think that the understanding of the nature of an oath in any legal proceeding now requires a belief or an expressed belief by the child in God (or another almighty). Nor does it require the child's understanding, in giving the oath, that he is telling such almighty that what he will say will be true... Those adults to whom the sanctity of the oath has lost its religious meaning, none the less have a sense of moral obligation to tell the truth on taking the oath and feel then conscience-bound by it. That is the nature of the oath for many adult witnesses today. Nor do they object on grounds of conscientious scruples to taking the oath. In my view, a child of tender years is in the same position as an adult witness when the determination is being made whether the child witness understands the nature of an oath.[17]

The Fletcher test is clearly the law of Ontario, and one is tempted to assume that it represents the law of Canada. Certainly it has been cited with approval by the Alberta and Manitoba Courts of Appeal.[18] Nevertheless, some judges in other provinces may feel bound by earlier authority in their province to apply the Antrobus or Bannerman/Budin tests.

## Unsworn Evidence

If a child cannot be sworn, s. 16 of the Canada Evidence Act provides that the court may receive his unsworn evidence if "the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth."

There are numerous cases where a child has given unsworn evidence. However, the difference between the Fletcher test for determining whether a child is competent to give unsworn evidence and the test for determining whether a child is competent to give unsworn evidence is so slight, that a child who fails the Fletcher test will probably rarely be able to give unsworn evidence. Unsworn evidence was much more likely when courts were applying either the Antrobus or Bannerman/Budin tests in interpreting s. 16(1).

**Affirmation**

Can a child of tender years "affirm" under s. 15 of the **Canada Evidence Act**? The conventional view is that a child cannot affirm - that the child must either give sworn evidence or unsworn evidence, which is subject to the corroboration requirement of s. 16(2). Thus, in **R. v. Budin**, Jessup, J.A., delivering the majority judgment, stated: "It is clear that the right to affirm does not extend to a child of tender years."[19]

Certainly s. 15 must be interpreted having regard to s. 16 - and s. 15 should not be interpreted in such a way as to undermine the legislative policy set out in s. 16. However, what of children who understand the nature of the oath within the Fletcher test (that is, who "have a sense of moral obligation to tell the truth on taking the oath, and feel they are conscience-bound by it")? In **R. v. Conners**[20] the Alberta Court of Appeal held that a 12-year-old who did not have a belief in a deity could be affirmed under s. 15. It is submitted that the decision is clearly correct and that a decision to the contrary would have been difficult to reconcile with section 2 (freedom of conscience and religion) and 15 (equal benefit of the law without discrimination based on age) of the Canadian Charter of Rights and Freedoms.

Of course a child should not be permitted to affirm if he/she does not understand the nature of an oath. That would be an obvious evasion of s. 16(2). Consequently, the decision of the British Columbia Court of Appeal in **R. v. Dawson**[21] has been criticized and regarded as a questionable decision. It is true that the British Columbia Court of Appeal said that the child in that case "did not understand the very nature of the oath." But the reason for that conclusion was that the child had no religious belief or knowledge. "It is clear, from the lack of religious knowledge disclosed by the evidence, and in particular that swearing on the Bible meant nothing to him, that Callow was not competent to take an oath."[22]

Under the old **R. v. Antrobus** test, such a child could not give sworn evidence. Nor should he/she be permitted to affirm. The case is more difficult if the Fletcher case is accepted as correct. In that analysis, the Dawson decision is similar to the Conners case, and the B.C. Court of Appeal was correct in allowing the child to affirm. The only question would be whether the Fletcher test was actually met (that the child had a sense of moral obligation to tell the truth on taking the oath and felt conscience-bound by it).

## Corroboration

The principal significance of the distinction between sworn and unsworn evidence is that the latter, but not the former, requires corroboration. The basic definition of corroboration is to be found in the judgment of Lord Reading, C.J. in R. v. Baskerville.[23]

> We held that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.[24]

That relatively simple idea becomes both technical and complex in practice, and a large number of cases are concerned with the question of whether there was corroboration and whether the jury was adequately instructed on corroboration. Of particular concern in this area is the rule that the unsworn testimony of one child need not be corroborated by the unsworn testimony of another child.[25]

The requirement of corroboration in s. 16(2) is a deliberate planned protection of an accused. It can only operate to protect him from conviction in circumstances where he might otherwise be convicted. The question is whether this protection is necessary to ensure that innocent people are not improperly convicted.

## Frailty of Children's Evidence - The Duty to Warn

Even when a child is sworn as a witness, his evidence is not received and treated as that of the competent adult witness. In Horsburgh v. R.,[26] Spence, J. in dicta said it was "a serious misdirection" for the trial judge to direct the jury that

> once the Judge has decided, after making due inquiry, that a child witness may be sworn, that child's evidence may be received and treated as if it was the evidence of a competent adult witness.[27]

Instead, the judge must warn the jury or, if he is sitting alone, himself about the special risk in acting on the uncorroborated evidence of a young child even when sworn. In the leading Canadian case, R. v. Kendall, [28] Judson, J. stated:

> The basis for the rule of practice which requires the Judge to warn the jury of the danger of convicting on the evidence of a child even when sworn as a witness is the mental immaturity of the child. The difficulty is fourfold: 1. His capacity of observation; 2. His capacity of recollection; 3. His capacity to understand questions put and frame intelligent answers; 4. His moral responsibility (Wigmore on Evidence, 3rd ed., para 506).[29]

It has been suggested by Wilson[30] that the later Supreme Court of Canada decision in R. v. Vetrovec[31] effectively abolished all non-statutory corroboration requirements and that the warning is no longer required. However, recent decisions at the trial and provincial Court of Appeal level (see, for example, R. v. Gratton[32]) assume that the rule is still applicable. Because the rule is based on the immaturity of the person testifying, rather than the nature of the offence charged, it appears to be unaffected by the recent Criminal Code amendments abolishing the need for corroboration for sexual offences.

In R. v. Kendall, it was held that there was no duty to warn when the witnesses were testifying as mature persons (aged 17, 18 and 21 at the time of the trial) to what they had observed as children. However, the duty to warn arises whenever a "child of tender years" gives sworn evidence. The result is not unlike the rule requiring corroboration - although it is not as arbitrary in its operation. A jury is unlikely to convict a person on the sworn evidence of a child unless it is supported by independent evidence. However, the jury can convict if it has been properly warned. If it has not been properly warned, the conviction will be set aside on appeal.[33]

## Young Offenders Act

The Young Offenders Act introduces a new set of evidentiary rules that govern proceedings under the Act. Section 60 abolishes the distinction between sworn and unsworn evidence by requiring a child witness to give a "solemn affirmation" to tell the truth. In the case of a child (defined in this Act as a person apparently or actually under the age of 12 years) the Court must determine that he or she "is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth" (s. 61[1]). If the child cannot meet this test no evidence can be received. If the witness is 12 years of age or older, no inquiry is required by the Act. But the court presumably retains its common law power to declare a witness incompetent.

Evidence given by a child or young person under solemn affirmation has the same effect as if taken under oath (s. 60[2]). However, no case shall be decided on the evidence of a child (a person under the age of 12 years) alone. There must be corroboration of such evidence (s. 61[2]).

## Children Who Lie

The case law does contain an occasional case in which the court is satisfied that a child witness lied.[34] However, adult witnesses also lie. It is arguable that the traditional technique for testing any testimony - cross-examination - is adequate for discovering such cases. Certainly we would argue against arbitrary, inflexible rules (such as the need for corroboration and mandatory warnings) and in favour of more flexible approaches (such as the admission of expert testimony) for identifying cases in which the child's evidence is unreliable.

## Proposals for Change

While the Canadian case law is primarily concerned with an elaboration of the existing statutory rules, many of the articles and books reviewed contain proposals for change. There appear to be two main concerns: many of the present legal rules operate to block the successful prosecution of the accused, and the present procedures for receiving the evidence of children do not meet the needs of child witnesses and subject them to unnecessary trauma.

## Abolition of Special Competency Requirements for Children

Much of the literature is concerned with the question of whether there should be special rules governing the competency of children to give evidence. The general consensus seems to be that every witness should be presumed to be competent and that the credibility of the witness is to be determined by the trier of fact. In its Report on Evidence, the Law Reform Commission of Canada stated:

> At one time many persons were, for a variety of reasons, disqualified from giving testimony. However the trend has been to reduce these disqualifications. The only significant remaining grounds of incompetency abolished by this section

> [section 54] are mental immaturity and marital relationship to the accused. Because of the impossibility of stating and applying a standard of mental immaturity that renders a witness incompetent to testify, it seems preferable to let the trier of fact take into account any such incapacity in assessing the weight to be given to the testimony.[35]

Even if this view is accepted, certain questions remain: Is there any point in maintaining the present distinction between sworn and unsworn evidence? At present, the principal significance of this distinction is the requirement of corroboration for unsworn evidence (**Canada Evidence Act** s. 16). If that were abolished, there would seem little point in the distinction. Similarly, if corroboration is required for all evidence given by children (see the **Young Offenders Act**, s. 61[2]) the distinction between sworn and unsworn evidence is of little significance. However, it might be argued that children who wish to give their testimony with the added formality of an oath or affirmation should be permitted to do so, whether or not the corroboration rules are changed. If the distinction is maintained, two tests may still be needed - one to determine whether a child may be a witness at all (because there would still be problems with very young children) and another to determine whether a child may give evidence on oath or affirmation.

What should be done about very young children (for example, children under three)? Consideration should be given to either videotaping evidence from the child or using an Israeli procedure, under which a youth examiner presents the evidence obtained by interviewing the child.

Some consideration may have to be given to allowing expert testimony on the child's testimony. The courts will not permit an expert to testify that a witness is likely to be telling the truth. But it is arguable that there are many popular misconceptions about children as witnesses and that it would be useful to the trier of fact to have expert advice on the child's testimony.

## Corroboration and the Duty to Warn

Both the Law Reform Commission of Canada and the Badgley Committee (which produced the Report of the Committee on Sexual Offences Against Children and Youths) recommended that all rules relating to corroboration be abrogated.[36] The law concerning corroboration is complex,

requiring lengthy direction to the jury and resulting in numerous appeals on the grounds of misdirection. More important, section 16(2) of the **Canada Evidence Act** inevitably results in the acquittal of some guilty persons. The Law Reform Commission "recommended the abolition of all these exceptions to the general rule that the evidence of a single competent witness is sufficient in law to support a verdict."[37] This was based on their view that

> [t]here is no evidence to suggest that juries are more likely to be misled by the evidence of accomplices, the victims of certain sexual offences, or young children than by any other witnesses. And there is no reason why cross-examination and counsel's argument to the jury cannot expose the frailties of the evidence given by these witnesses as effectively as it exposes the weaknesses in the testimony of any other witnesses.[38]

The Law Reform Commission took the view that the same arguments applied to cautions (see "Frailty of Children's Evidence - The Duty to Warn", supra). Consequently, s. 88 (6) of their proposed **Evidence Code** provided that

> (b) every rule of law that requires the corroboration of evidence as a basis for a conviction or that requires that the jury be warned of the danger of convicting on the basis of uncorroborated evidence is abrogated.

This recommendation did not find favour with the Federal/Provincial Task Force on Uniform Rules of Evidence. They were prepared to dispense with the caution when a child gave sworn evidence.[39] But they wanted to retain the requirement of corroboration where a child gave unsworn evidence.

Some members of the Task Force maintained that the powers of observation and recollection were no worse in young people than old people; yet no special requirement exists regarding the use of geriatric evidence. If the trier of fact could be trusted to put the evidence of old people in proper perspective, likewise the trier of fact could be trusted as to the unsworn evidence of children. The same applies to fantasies: the trier of fact would take this tendency of children into account in assessing what weight to attribute to their evidence. The majority of the Task Force, however, felt that the historic reasons for the present requirement are still valid, and that a special rule regarding the use of the unsworn evidence of children is required.[40]

It should be noted that the **Young Offenders Act** expands the requirement of corroboration. It provides that all evidence by a child (defined in the **Act** as a person under the age of 12)

shall be taken under solemn affirmation (s. 60[2]) - thus effectively eliminating the distinction between sworn and unsworn evidence. But s. 61(2) provides that "[n]o case shall be decided on the evidence of a child alone, but must be corroborated by some other material evidence." The effect of this provision is to expand the number of cases in which corroboration is required.

**Changing the Procedures: The Constitutional Issue**

It is generally assumed that the traditional procedures for taking the evidence of children place significant stress on the child. Prosecutors may be reluctant to charge because of the risk of emotional harm to the child victim or witness. Various changes in the traditional procedure have been suggested, and much of the recent literature is concerned with evaluating those proposed changes. Problems can arise in countries where the accused is protected by an entrenched Bill of Rights or Charter of Rights and Freedoms.

In the United States these new procedures may be subject to constitutional challenge under either the Sixth Amendment, which guarantees that "in all criminal prosecutions the accused shall enjoy the right...to be confronted with the witnesses against him;" or the "due process" provisions of the Fourteenth Amendment. In a recent analysis of the impact of the Sixth Amendment in child abuse cases, Myers suggested:

> There are three basic requirements of the sixth amendment right of confrontation. First, and most importantly, the accused must be offered an opportunity to cross-examine available witnesses. Second, available witnesses must be brought face to face with the jury so that the trier can evaluate their demeanour. Finally, and of least constitutional importance, the constitution "reflects a preference for face-to-face confrontation" with accusatory witnesses.[41]

He concluded that there was a "reasonably good chance" of drafting legislation providing for videotaped testimony that would withstand constitutional attack under the Sixth Amendment.[42]

Because the Canadian Charter of Rights and Freedoms does not contain a confrontation clause, some Canadian writers have urged the adoption of procedures used in the United States or other countries, without considering whether they would be subject to constitutional challenge in Canada under the Charter. The Canadian Charter of Rights and Freedoms requires that trials must be conducted in accordance with the principles of "fundamental justice" (s. 7) and that they must provide "a fair and public hearing by an independent and impartial tribunal"

(s. 11[d]). Whether these constitutional provisions pose any problems for proposals to reform the law relating to the testimony of children has not been considered adequately in the literature, and further research is required.

## Videotaped Testimony

At least 27 states in the United States permit the introduction of a child's videotaped testimony under certain conditions.[43] Among the advantages claimed for the videotaped statement are the following: it reduces the number of interviews the child must endure; if the interview is conducted properly, the child will testify more easily, and more honestly, than in open court; it encourages guilty pleas. The approaches taken vary widely. The Texas Act of 1983 provides that both the interviewer and the child must be available for cross-examination at trial.[44] On the other hand, the legislation in Florida permits the videotape to be used in lieu of live testimony in open court if "there is a substantial likelihood that such victim or witness would suffer severe emotional or mental stress if requested to testify in open court."[45] Similarly, the statutes differ in their specification of how the videotape is to be made and who is entitled to be present.

Despite the popularity of videotaped testimony in the literature, Myers notes that many prosecutors favour in-court testimony because they believe that putting the child on the stand is the strongest aspect of their case.[46] In short, they are worried about how the use of an artificial medium will interfere with the trier's ability to assess the witness' demeanour and credibility. Other concerns that have been expressed include the need to keep the videotape secure and, in particular, out of the hands of the media -- misuse of the tape could cause increased harm to the child and his/her family[47] -- and the question of whether this procedure gives the prosecution an unfair advantage. In the United States, this is reflected not only in the constitutional challenges to the legislation permitting videotaped testimony, but also in the ongoing debates about the procedure for taking videotaped testimony and the use and control of the videotape after it is made. Normally, the accused and the accused's lawyer will be entitled to see the videotape in order to prepare the defence. Thus it will be necessary for the law to define how the videotape may be used prior to trial to protect the different interests of the child witness and the accused.

Most of the existing literature on videotaped testimony is American and is primarily concerned with the constitutional validity of the procedure. It seems likely that attempts to introduce videotaped testimony in Canada will similarly be challenged under the Charter. In addition, Canadians are likely to be concerned about the specifics of practice in relation to videotaped testimony and about the fairness of the procedure. Even in the United States, this is a relatively new procedure, and the literature contains little research into, or analysis of, the practices under the State statutes. This is an area in which further research is required.

## Closed-Circuit Television

Some 20 states in the United States provide for the child's testimony to be relayed to the courtroom by means of closed-circuit television.[48] England has apparently introduced a similar procedure in its recent **Criminal Justice Act**.[49] The primary purpose of such legislation is to avoid direct confrontation between the child and the accused. There are numerous variations on the basic scheme. Thus, different states have different rules about how the child should be questioned, who should be present with the child, and whether the child and the accused can see each other over the television monitors.

It has been suggested that legislatures have felt pressured to adopt this procedure without adequate opportunity for reflection and study. Certainly it has been criticized as less desirable than some other alternatives (such as the videotaped interview) because of following: the proposed procedure would operate only at trial, which may be long after the incident; the child would still be subject to some form of cross-examination -- more experience with the technique will be required before it can be determined whether this procedure is significantly less disturbing to the child than testifying in open court; there is concern that testimony given in this manner would be less effective than testimony given in open court -- that the jury, or other trier of fact, may react differently to televised testimony than to testimony presented in open court; and there may be simpler ways of achieving the same objective -- for example, the courtroom could be redesigned or the position of the accused determined by the judge, to protect the child witness.

## Hearsay Rules

The hearsay rule generally excludes any out-of-court statement that is offered to prove the truth of the matter contained in the statement. Thus, if a child reports something to a parent, a doctor, a teacher or anyone else, the hearsay rule will prevent that person from testifying as to what the child said. Occasionally it will be possible to admit the statement under one of the exceptions to the hearsay rule, but there are numerous decisions, especially in the United States, where a conviction has been set aside because it was based on improperly admitted hearsay evidence. Often the child's out-of-court statements are highly relevant to a successful prosecution. At least 22 U.S. states have created a special hearsay exception explicitly limited to child sexual abuse victims.[50]

In its Report of the Committee on Sexual Offences Against Children and Youths the Badgley Committe recommended that the **Canada Evidence Act** be amended to provide that "[a] previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, or in the presence of the child by another person" be admissible to prove the truth of the matters asserted in the statement, whether or not the child testified at the proceedings.[51] At the time, the Committee referred to comparable provisions in at least two American jurisdictions. It is now clear that the amendment is more generally accepted in the United States.

## The Use of Expert Testimony

McCord suggests that there are four groups of cases in which prosecutors in the United States have sought to introduce expert testimony regarding the psychology of the child complainant: where the expert diagnoses the complainant as a victim of child abuse, to prove that the abuse occurred (diagnosis cases), where the expert vouches for the complainant's credibility regarding the sexual abuse allegation (credibility cases), where the expert "enhances" the complainant's credibility by explaining the behaviour of the complainant (for example, why a complainant recanted) (explanation cases), and where the expert enhances the complainant's credibility by explaining children's capabilities as witnesses (capacity cases).[52]

McCord analyzes the U.S. case law. He notes that in the first group of cases (diagnosis cases), the evidence may be that the child demonstrates a "child sexual abuse syndrome," or the

child exhibits characteristics that permit a diagnosis of abuse. In both sub-groups, however, the U.S. decisions are divided and inconsistent.

In the second group of cases (credibility cases), U.S. courts have generally rejected expert testimony, whereas in the third group of cases (explanation cases), U.S. courts have invariably permitted expert testimony. The cases in the fourth group (capacity cases) are few and are not consistent.

McCord also considers what the rules should be. He suggests a four-factor analysis - based on necessity, reliability, understanding and importance. By importance, he means whether "the expert opinion, if believed, would be dispositive or virtually dispositive of the case."[53] In general, McCord argues that the law should be more concerned when such testimony is of high importance to the case and less concerned when it is of less importance. Using this analysis, he argues that expert testimony should not be used in diagnosis and credibility cases, but that it should be admissible in explanation and capacity cases. He concludes:

> With respect to the types of expert opinion testimony that have been offered regarding child sexual abuse complainants, the four-factor balancing test produces varying results. An expert diagnosis that a child is the victim of sexual abuse offered to prove that abuse occurred should not be admitted because the testimony is not demonstrably reliable, may be difficult to effectively cross-examine or otherwise put into proper perspective and, if believed, will be dispositive or virtually dispositive of the case. The use of an expert's testimony vouching for the complainant's credibility by the opinion that the complainant is telling the truth should also be inadmissible for the same reasons. An expert's vouching for the complainant's credibility by an opinion that it is rare for a child to fabricate or fantasize a claim of sexual abuse should not be admitted because of its tendency to overwhelm the jury on the key issue in the case. However, use of an expert opinion to enhance the complainant's credibility by explaining the complainant's unusual behaviour should be admissible because generally the defendant has made this testimony necessary and it is not, even if believed, dispositive or virtually dispositive of the case.[54]

McCord's article also suggests that another type of expert opinion used to enhance the complainant's credibility, by explaining either the capabilities of the particular child or the capabilities of children in general as witnesses, may be available to prosecutors.

While this is an imaginative attempt to categorize and organize the existing U.S. case law, it should be emphasized that the existing U.S. cases reflect neither McCord's categorization nor the four factors that McCord uses in his analysis. As McCord himself notes, even when the U.S. decisions are consistent, the courts often give different explanations for those decisions.

In a recent Canadian case, R. v. Kostuck,[55] the prosecutor called a psychologist to testify. From the report, it is not clear into which of McCord's categories the psychologist's evidence would fit - possibly diagnosis and credibility. The difficulty with categorization demonstrates that there may be practical problems in applying McCord's analysis. The Manitoba Court of Appeal allowed Kostuck's appeal from his conviction on charges of indecent assault and gross indecency. Hall, J.A., delivering the judgment of the court stated:

> It has long been part of the law for which no authority need be cited that a witness, expert or otherwise, may not testify that an accused or any other witness, including a complainant, is likely telling the truth. That is not saying that a witness may not depose facts or give opinions (if qualified) that would be helpful in the difficult task of finding the truth. While concern about sexual abuse is commendable and should be encouraged, it should not be at the expense of the standards of proof designed to protect the innocent from allegations which in many cases are very difficult to prove.[56]

## A Word of Caution

Technological innovations have attracted a great deal of attention in the recent legal literature. Several writers emphasize, however, that technological changes will have only a marginal effect on the prosecution of criminal cases involving children. Thus, Whitcomb concluded:

> [T]echnological interventions - like closed-circuit television and videotaped depositions in lieu of live testimony - will only be used in extraordinary cases. They should not, indeed cannot be seen as panaceas.[57]

More important, in her view, was the sensitive treatment of the child during the pre-trial and trial periods.

## NOTES

Notes to pages 33 - 37

1. R. v. Kendall (1962), 132 C.C.C. 216 (S.C.C.).

2. The governing legislation is section 16 of the Canada Evidence Act. Section 586 of the Criminal Code is similar but not identical. The provincial Evidence Acts contain provisions similar, but not identical, to section 16 of the Canada Evidence Act.

3. R. v. Sankey (1927), 48 C.C.C. 97 (S.C.C.); R. v. Armstrong (1959), 125 C.C.C. 56 (B.C.C.A.); R. v. Dyer (1972), 17 C.R.N.S. 207 (B.C.C.A.).

4. [1968] 4 C.C.C. 33, 64 W.W.R. 108 (B.C.C.A.).

5. Ibid, at p. 38.

6. R. v. Sankey (1927), 48 C.C.C. 97 (S.C.C.); R. v. Pawlyna (1948), 91 C.C.C. 50 (Ont. C.A.). But see R. v. McKevitt (1936), 66 C.C.C. 70 (N.S.C.A.); R. v. Dick, [1969] 1 C.C.C. 147 (Ont. H.C.).

7. [1947] 2 D.L.R. 55 (B.C.C.A.).

8. Ibid, at p. 61.

9. See the comments of Dickson J., in R. v. Bannerman (1966), 48 C.R. 110, at 135; 55 W.W.R. 257, at 282.

10. (1966), 48 C.R. 110; 55 W.W.R. 257 (Man. C.A.); aff'd. (1966), 50 C.R. 76 (S.C.C.).

11. Ibid, at p. 138 (C.R.); 284-5 (W.W.R.).

12. Supra, n. 9.

13. Op. cit., n. 10, at pp. 136-7 (C.R.); 283 (W.W.R.).

14. (1981), 120 D.L.R. (3d) 536; 58 C.C.C. (2d) 352 (Ont. C.A.).

15. Ibid, at p. 540 (D.L.R.); 356 (C.C.C.).

16. (1982), 1 C.C.C. (3d) 370 (Ont. C.A.); leave to appeal to S.C.C. refused 48 N.R. 319.

17. Ibid, at pp. 376-77.

18. R. v. Conners, [1986] 5 W.W.R. 94; 46 Alta. L.R. (2d) 65 (Alta. C.A.); R.v. Green (1986), 42 Man. R. (2d) 81 (Man. C.A.).

19. Op. cit., n. 14, at p. 539 (D.L.R.); 355 (C.C.C.).

20. Supra, n.18.

21. **Supra**, n. 3.

22. **Ibid**, at p. 37.

23. [1916] 2 K.B. 658 (K.B.).

24. **Ibid**, at p. 667.

25. **R. v. Manser** (1934), 25 Cr. App. R. 18; Re Paige and R. (1948), 92 C.C.C. 32 (S.C.C.).

26. [1968] 2 C.C.C. 288 (S.C.C.).

27. **Ibid**, at p. 320.

28. **Supra**, n. 1.

29. **Ibid**, at p. 220.

30. Wilson, J. and Tomlinson, M., **Children and the Law** (2d ed., 1986), p. 324.

31. (1982), 67 C.C.C. (2d) 1 (S.C.C.).

32. (1985), 18 C.C.C. (3d) 462 (Ont. C.A.).

33. **R. v. Quesnel** (1979), 51 C.C.C. (2d) 270 (Ont. C.A.).

34. **R. v. Wills** (1985), 39 S.A.S.R. 35 (Sth Aust. C.A.). See also P. Wilson, False Complaints by Children of Sexual Abuse (1986), 11 **Legal Services Bulletin** 80.

35. Law Reform Commission of Canada, Report on Evidence (1975), at p. 88.36. See Libai, D. "The Protection of the Child Victim of a Sexual Offence in the Criminal Justice System": (1969), 15 **Wayne Law Review** 977.

36. **Sexual Offences Against Children (Report of the Committee on Sexual Offences Against Children and Youths)** (1984), Vol. 1, pp. 68-69.

37. **Op. cit.**, n. 35, at p. 107.

38. **Ibid**, p. 108.

39. **Report of the Federal/Provincial Task Force on Uniform Rules of Evidence (1982)**, p. 367.

40. **Ibid**.

41. Myers, John E.B., "The Legal Resvponse to Child Abuse: In the Best Interests of Children?" (1985), 24 **Journal of Family Law** 149, at p. 237.

42. **Ibid.**, at p. 240.

43. **Ibid**.

44. Texas Stat. Ann. art. 38.071 3 (Vernon 1984).

45. Fla. Stat. 918.17(1) (1984).

46. **Op. cit.**, n. 42, at p. 241.

47. Whitcomb, Debra, "Child Victims in Court and the Limits of Innovation" (1986), 70 **Judicature** 90, at p. 92.

48. Estman, Ross and Bulkley, Josephine, **Protecting Child Victim/Witnesses: Sample Laws and Materials** (1986), at pp. 35-36.

49. The **English Act** is not currently available. This comment is based on a report in **The Times**, November 25, 1986.

50. Eastman and Bulkley, **op. cit.**, n. 48, at pp. 13-15.

51. **Op. cit.**, n. 37, at pp. 70-71.

52. McCord, David, "Expert Psychological Testimony About Child Complainants in Sexual Abuse Prosecutions: A Foray Into The Admissibility of Novel Psychological Evidence" (1986), 77 **Journal of Criminal Law and Criminology** 1.

53. **Ibid**, at p. 33.

54. **Ibid**, at p. 67.

55. (1986), 29 C.C.C. (3d) 190 (Man. C.A.).

56. **Ibid**, at p. 192.

57. **Op. cit.**, n. 47, at p. 94.

## CHAPTER 3

## SOCIAL SCIENCE AND THE LAW: FUTURE RESEARCH PRIORITIES

The previous sections of this report provided independent reviews of the social science and legal literatures. Separate treatment of these literatures was appropriate, given the different issues which characterize them. Indeed, it is a difficult task to establish a relationship between the legal and the social science bodies of knowledge. Although the two fields are often addressing the same problem, they do so from such different perspectives that common ground is difficult to find. For example, a central concern of the legal literature is the requirement that children understand the nature of the oath. In contrast, social scientists have found that understanding the oath is irrelevant to whether or not a child will tell the truth. This gap between the two disciplines will continue until social scientists are encouraged to address the practical needs of the judiciary, and the justice system acquires access to the relevant knowledge of the social science literature. In evaluating the evidence provided by children, social scientists and legal experts are addressing a number of common problems, but they need to appreciate the perspectives of each other's disciplines, and they need to bridge their language differences.

This chapter examines the problems common to the social science and criminal justice systems. The discussion concentrates on highlighting the type of future research that will facilitate the exchange of information between the two disciplines and address the central issues related to the testimony of children. After the first section, which examines the general issues related to research in this area, the chapter deals sequentially with the involvement of the child in court. Thus, the second section focuses on the general problem of evaluating children's evidence obtained during pre-trial interviews, the third section considers the decisions that are made before a case proceeds to trial, the fourth section examines the issues surrounding the child's appearance in court, and the final section deals with the knowledge base of the triers of fact.

### General Issues Related to Research Involving Child Witnesses

Recently, social scientists have devoted considerable attention to the abilities of child witnesses. While this literature is of obvious interest to members of the legal profession, much of it suffers from one basic flaw: it is of questionable ecological validity. For example, a typical psychological study of child witnesses involves showing a group of children a slide

sequence or film representing a crime. The children are then asked to answer a series of questions about the event. The children in this type of study are, for obvious ethical reasons, not negatively affected by the event they see. Their answers have no effect on them or anyone else. In contrast, actual child witnesses are typically the victims of sexual abuse or observers of domestic violence. They have usually been deeply affected by what they witnessed, and their answers to investigators' questions have a profound effect on their lives. In short, the relationship between real witnesses and those employed in most research projects is tenuous at best. The direct relevance (ecological validity) of much of the research is seriously in doubt. This is not to say that laboratory investigations are of no value, but rather that research that depends solely on the laboratory context must be examined in a very critical manner.

A similar problem exists with research involving court issues. For example, a researcher interested in the impact of children's testimony on jurors may give an edited transcript of a trial involving child witnesses to a group of university volunteers. The transcript will vary between "jurors" concerning the centrality of the child witness. After reading the transcript, the experimental jurors make a decision of guilt or innocence about the accused. They are provided with restricted amounts of information, they have no opportunity to observe the demeanour of the child, they have no chance to deliberate, and their decision is trivial in its consequences. The contrast between the role of real jurors and that of the experimental jurors is striking, and their relationship is tenuous at best. The researcher must be able to prove, at the very least theoretically but preferably through research evidence, that the controlled research has some use to the criminal justice system.

Social scientists' dependence on artificial contexts for research is a reflection of their training, which emphasizes the need for control in research in order to establish the causes of any particular phenomenon. While the exercise of experimental control is laudable in some contexts, it is an inappropriate primary goal in the study of complex human affairs. The problem is that when an experimenter tailors a question to suit the demands of the laboratory, the question often becomes so different that it bears little relationship to the original question. For example, interesting questions about the eyewitness abilities of children are transformed into investigations of age-related differences in children's memory for slide sequences. In such cases, laboratory control inevitably leads to artifice and the trivialization of important research questions.

If social scientists are to provide information of use to the criminal justice system, their first concern must be ecological validity and not how well controlled the research is. The focus of their research must remain the phenomenon of interest - the degree of control that the

research question permits should be determined only after the most valid arena of study has been determined. The preferred approach is one that combines the reality of field investigations with the control and precision of the laboratory.

Researchers must be encouraged to work in real world contexts with actual child witnesses, and in real court situations. Such research may lack the precision and control of laboratory investigations, but the results will have applicability. Research proposals need to be critically examined to assure that the researcher is really investigating what he or she claims.

## Obtaining and Evaluating Children's Evidence

Many of the states in the U.S.A. have dropped the requirement for corroboration of children's testimony. In contrast, existing Canadian statutes require corroboration for unsworn testimony from witnesses of tender years (this position was supported by the recent Federal/Provincial Task Force concerned with children). Also, the Young Offenders Act requires corroboration of all testimony of young witnesses. According to the present review of the legal literature, conventional legal opinion holds that children's testimony does not require special status with respect to corroboration. Thus, a conflict exists within the legal community. Available findings from the social sciences literature support the view that children over the age of six (age markers are intended only as rough guidelines) are as capable of providing testimony about a witnessed event as an adult. However, all of this research is laboratory based. No research has examined the memory of children in real crime contexts. For comparison purposes, to assure the validity of the laboratory work, there is a need for field research.

At times the testimony of a child may be false. Although the information about false allegations is limited at this point, the literature indicates that such occurrences may be as low as 7% to 10% of total allegations of sexual abuse in some jurisdictions, and as high as 50% in heated custody and visitation disputes. Whatever the rate, we need to maximize our ability to detect false allegations. The tradition in our system is to depend on cross-examination to facilitate the detection of false accusations. In the case of children, as noted above, this presents some special problems. From a forensic perspective, the most important issue is to find ways of improving the methods of interviewing child witnesses to maximize the useful information obtained from them. In addition, we need to explore methods of evaluating the credibility of a child's testimony. The most promising area for future research is techniques, such as Statement Reality Analysis. This procedure offers both a systematic interview procedure and a method of evaluating the credibility of the child's statement. There is an

urgent need to determine if the procedures of Statement Reality Analysis work, or to modify them so that they do work. Once a useful procedure for obtaining and evaluating children's evidence has been developed, the task will be to determine the most effective way of providing this knowledge to practitioners in the field.

One method of ensuring adequate forensic interviews of children would be to develop professional interviewers. These would be individuals with in-depth, perhaps post-graduate training in interview procedures. They would have sufficient training in the development of children and in the relevant aspects of the law to be sensitive to the special psychological and legal problems associated with children. Their availability could reduce the need for multiple interviews, if the interviews they conduct are videotaped. The tapes of their interviews could provide a source of information for the decision-makers in cases involving child witnesses. Skilled child interviewers could become a source of information in criminal cases, as friends of the court. Future research might explore the nature and locale of interviewer training and the legal issues surrounding the admissibility of the evidence they obtain from children during interviews.

One legal issue would emerge from research on Statement Reality Analysis or similar systematic interview procedures: how the judiciary would use an evaluation of the credibility of a child's statement. This problem goes to the heart of the potential conflict between the aims of social science research and those of the court. The determination of the truthfulness of a witness statement is a fundamental privilege of the court in our legal system. If social scientists are successful in providing objective evaluations of the credibility of a statement, will such evaluations be admissible in court? Could an expert interviewer render an opinion on the child's truthfulness?

While the determination of the truthfulness and credibility of a child's testimony is the overarching concern, some special issues arise in considering preschool children. These children may lack the verbal competence to describe what they have seen or experienced. The legal response to this is generally not to admit the testimony of such a child (e.g., R. v. Andrew F, 1985, British Columbia). The social science literature, alternatively, has sought a variety of non-verbal methods of eliciting the child's account, which involve some kind of "play" interview. During the interview, the child may draw his/her representation of the events, or play with the contents of a doll house or with anatomically detailed dolls. Such methods are not without their legal critics, but the social science literature contains frequent endorsement of play techniques, in spite of a lack of any research to support their use.

For younger children, research needs to be oriented toward the use of the "play" techniques in interviewing (doll houses, anatomically detailed dolls and drawing techniques). The widespread adoption of use of the dolls has taken place with virtually no research on their efficacy. At the time of this report, only two studies into the suggestive effects of the dolls have been completed, and the results of these are contradictory. There is an urgent need to determine how non-abused children interact with the dolls, and what is the most effective method of using the dolls with abused children (and the limitations of that method). The value of drawings in obtaining evidence from a child likewise remains unexplored. At the present time, the courts need to be alerted to the fact that these techniques, although in common use, exist without a research basis to support their efficacy.

The legal issue that arises here concerns the use the courts can make of nonverbal evidence obtained from children. Two alternatives, other than rejection of the evidence, have been explored primarily in the U.S.A. One is the admission of a videotaped interview of the child. Several United States jurisdictions have allowed videotapes to be viewed in court. However, in the absence of court testimony by the child, this precludes the accused of his fundamental right to face and examine his accuser. At a recent conference of the British Psychological Association on child witnesses (December 1986, Oxford), legal experts offered the opinion that videotapes would be inadmissible in the British context, since they would be seen as hearsay evidence.

There is a second alternative for children whose immaturity or emotional trauma prevents them from acting effectively as courtroom witnesses - as suggested earlier, to have an expert, the person who interviewed the child, offer evidence. This procedure can be used in substitution for or in addition to presentation of a videotape of the interview. Such expert evidence is admitted in family court hearings but is inadmissible in criminal proceedings. At the recent Oxford conference, the legal experts indicated that such expert evidence would be ruled hearsay evidence in Britain. Clearly, legal attention needs to be paid to this new type of evidence made possible by interview techniques and video technology.

While children's abilities play a determining role in the quantity of the testimony they provide, the skill of the interviewer affects the quality. Several sources of inconsistency can be introduced through the interaction of the children's abilities and the interviewer's skill. First, given the susceptibility of children to leading questions and suggestion, a child's testimony may be contaminated by an untrained interviewer. This problem is compounded by the typical occurrence of multiple interviews by multiple interviewers. Courts usually rely on the testimony that is provided last in the legal process, the testimony provided in the courtroom. As noted

above, the admission of a videotape of an initial interview and/or the testimony of an expert interviewer may assist the court in establishing the nature of less contaminated testimony. However, generally speaking, such evidence is not currently admissible. Contamination of the child's testimony can be reduced by assigning one individual to follow the child through the criminal justice system. Several jurisdictions now use this plan and appoint a child worker, police officer or other, to be a constant element during different interviews.

Whatever procedures are employed to minimize contamination, research is needed to determine how much of a problem it really is. The authors of this report suspect that multiple interviews contaminate the child's memory for the events, especially considering the inadequate training most interviewers receive. Yet the critical issue of multiple interviews remains completely unexplored. Research is needed to determine how many interviews children do receive, what can be done to minimize them, and the effect they have on children's memories. Minimum standards for interviewer training must also be established.

A second potential source of inconsistency in a child's testimony concerns age-related changes in memory. The general developmental literature demonstrates that there are qualitative changes which take place in the organization and nature of memory. As children grow, they use increasingly complex strategies to organize memory and to facilitate recall. As a result, it is possible that the memory a four-year-old child has for a recent event will change when that child remembers the same event at the age of nine. The cognitive and memorial changes the child has experienced may lead him/her to recall the event in a modified form. Since some cases of sexual abuse involve victims who are providing evidence years after the events occurred, the problem of age-related changes is germane to the legal system. The basic problem is that not enough is known about age-related memory changes, especially their relationship to victims and witnesses, to know how severe this problem is, or to specify any corrective procedures. This is a priority for future research.

## Pretrial Considerations

Social workers, psychologists and psychiatrists agree that the court appearance of the child can be a traumatic experience. This conclusion is made without any evidence. There has been no systematic research on children's response to court. In any event, reports from prosecuting attorneys indicate that the trauma, in some instances, can be sufficient to render the child an ineffective witness. Indeed, there are cases in which a prosecutor may decide not to proceed because of the response of the principal witness (the child) to the court appearance (see section

below on courtroom trauma). To circumvent both the psychological and legal problems of the child's response to appearing in court, a variety of preparation aids have appeared. These include colouring books and pamphlets, films and videos, and the use of mock courtrooms. Unfortunately, the value of these aids, with the exception of the mock court (see Jaffe & Wilson, 1986), has not been determined. The judiciary must rely on the intuitive notion that any information will be useful to the child and instrumental in reducing anxiety. While this notion is likely correct, the most effective method for assisting children in preparing for court is not known; nor is it known whether this method varies with age.

There is one legal issue that arises in the course of preparing child witnesses: the possibility of contamination. To the extent that preparing the child for court involves a review of the nature and presentation of their evidence, there is the possibility that the evidence may be modified in the process. Given the special susceptibility of children to suggestion, the need for special caution in this regard is great. There has been no attention to the problem of contamination of testimony in preparing children for court, nor in fact has there been sufficient attention to the general problem of multiple interviews of child witnesses. In cases where the principal evidence is the testimony of one or more children, research needs to determine the factors that influence the decision to proceed with the prosecution of the case.

## The Child's Appearance in Court

The major difficulty for children testifying in court is the trauma generated by the courtroom and its procedures. As noted earlier in this chapter, such trauma may lead a prosecutor to suspend prosecution. However, in addition to the methods of preparing children for court already discussed, there are two procedures that may assist the child. The first is use of a live video link to obtain the child's testimony. The child is in a room that is separate from the court but equipped with a two-way audio link, and a one-way visual link from the court to the child. Thus the court can see and hear the child, and the questions of the court and the defense can be communicated to the child by audio link. This system was introduced in England in December 1986. In this application, the prosecutor is present with the child and poses both the Crown's questions and those communicated by the defence. Removal of the child from the court and all the characters in it, especially the accused, is assumed to make the experience of giving testimony much less traumatic.

The introduction of such innovations as video links in United Kingdom courts provides a unique research opportunity. It would be most useful to compare the reaction of children to

giving evidence in court and giving evidence via a video link. Detailed, systematic information needs to be culled from actual cases in Canada to assess the extent and degree of damage the court appearance causes. Which features of the court are most upsetting to the child? Do age differences affect the response to the court? Are there any positive (cathartic) benefits of the court experience? What type of preparation is most effective and realistic? In short, an extensive investigation of children in the courtroom is needed. Also, legal researchers need to consider the acceptability of alternatives to giving testimony in a standard fashion in court.

A major source of trauma for the child is the process of cross-examination. To a certain extent this may result simply because the defence lawyer is unaware of insensitive to the special needs and problems associated with interviewing children. One method of overcoming this problem would be the development of a code of ethics to guide lawyers during cross-examination of children. Such a code could be generated through the co-operation of prosecutors, defence lawyers and social scientists. Given the increased appearance of children in court, such a co-operative effort would be beneficial to everyone.

The use of innovative interview techniques, as well as several other issues raised in the above discussion, point to the central issue of alternative forms of testimony by child witnesses. Video technology presents the judicial system with new problems. It is now possible to provide an accurate audio and visual record of an investigative interview. Should the court use this record? The social sciences and the legal system need to co-operate in research efforts to examine these questions in the light of the issues which characterize both fields.

## Knowledge of the Triers of Fact

The law and the courts view the evaluation of a witness' testimony as a problem for the triers of fact. At issue is the credibility of the witness, which must be determined by the judge and jury. In the case of child witness testimony, the social science literature suggests that a special knowledge of the linguistic, cognitive and memory abilities of children may be of considerable assistance in assessing credibility. How can the criminal justice system assure that the triers of fact have the requisite knowledge? Social scientists argue that expert witnesses are required to ensure that the triers of fact possess the requisite information. However, the weight given to expert testimony is of concern to the legal experts.

The type and content of instruction provided by a judge to a jury is critical. This is an area of research where legal experts and social scientists need to cooperate to determine the type of knowledge required and the most effective manner of assuring its presence.

Prosecutors and other law enforcement officials may not be properly prepared to deal with cases involving the testimony of children. In the U.S., for example, there is evidence that prosecutors are not making extensive use of technological innovations. While this may be partly explained by a desire to avoid a constitutional challenge and other strategic considerations, it is possible that a lack of familiarity with the techniques is also a factor. Within Canada, there are probably wide variations. There are some prosecutors who are extremely knowledgeable, and others who have no specialized training or knowledge. As the decision to prosecute is a critical one and the conduct of the case by the prosecutor will affect the result in the case, it is important to ensure that prosecutors are aware of the procedures available when a child is required to give evidence in a criminal case.

## Summary

Members of the legal profession and social scientists need to develop common approaches to the problems associated with child witnesses. Each professional needs to be aware of the needs, issues, and language of the other's profession. A co-operative research atmosphere should concentrate on the following research problems:

(1) The need to develop systematic interview procedures for children of different ages. It is necessary to determine whether an objective method of assessing the credibility of a child's statement can be developed.

(2) The need to examine the use of play techniques in interviewing. What is the value, if any, of anatomically detailed dolls and of drawings? There is a need to establish the limits of these procedures and the admissibility of this type of evidence in court.

(3) Training of the interviewer - the core of the problem relating to interviews of children. What are the minimum standards of training for interviewers? Where should the training be done and who should assess the competence of the interviewers? What role should professional interviewers play in court?

(4) The most effective methods of preparing children for the court experience.

(5) The new technology employed with child witnesses. How should it be viewed by the court? Should videotapes of interviews be admitted as evidence? Should a video link be an alternative to direct testimony by a child witness?

(6) Judges' and jurors' knowledge about the eyewitness abilities of children. What do they know and what is the most effective method of ensuring that current knowledge about the linguistic, cognitive, and memory abilities of children is available to them?

(7) Ethical guidelines. Should there be a separate set for dealing with children in court?