THE LEGAL IMPLICATIONS AND EMOTIONAL CONSEQUENCES OF SEXUALLY ABUSED CHILDREN TESTIFYING AS VICTIM-WITNESSES

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I. THE LEGAL IMPLICATIONS AND EMOTIONAL CONSEQUENCES OF SEXUALLY ABUSED CHILDREN TESTIFYING AS VICTIM-WITNESSES

The National Center on Child Abuse and Neglect reported a sixty-six percent increase in the number of cases of child abuse between 1980 and 1986. In this six year span, the incidence of reported sexual abuse of children more than tripled from 42,000 in 1980 to 138,000 in 1986. A similar trend was found for reported physical abuse with a more than fifty percent increase over the six year period resulting in a total of 311,200 children physically abused in 1986.[1] More recent data indicate that in 1992 there were 129, 982 cases of substantiated sexually abused children and 474, 945 cases of substantiated physically abused children.[2]

One consequence of the growing number of abuse cases is that legal standards are changing to "ease prosecution and protect the rights of the child victim."[3] For example, now a majority

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1. NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, STUDY FINDINGS: OF NATIONAL INCIDENCE AND PREVALENCE OF CHILD ABUSE AND NEGLECT: 1988 3-6.

2. U.S. BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACTS OF THE UNITED STATES: 1994 213 (114th ed.).

3. L. Matthew Duggan et al., *The Credibility of Children as Witnesses in a Simulated Child Sex Abuse Trial*, in PERSPECTIVES ON CHILDREN'S TESTIMONY 71, 73

of states have adopted evidentiary rules (Rule 601 of the Federal Rules of Evidence) which no longer require children to demonstrate competence before testifying,[4] and in some states, like New York, children's uncorroborated sworn testimonies are legally sufficient to convict in criminal court.[5] As a result, jurors are now responsible for determining the credibility of the child victim's eyewitness testimony.

However, even with the new legislation making it more likely that children can testify, there is still a question as to whether children *should* testify as victim-witnesses. There are two factors that need to be considered in answering this question. First, what are jurors' perceptions of child victim-witnesses? That is, how does the child's testimony affect the jury? Is the testimony seen as credible, and does the child's testimony impact the final decision made by the jury? Specifically, the issue is whether there is a legal advantage to having the child testify at all.

Even if it may be beneficial to have the child victim-witness testify, there is a second factor to consider which is the psychological or emotional impact that testifying has on the child. Many experts have argued that testifying may have severe negative consequences to the child.[6] For example, some experts assert that court proceedings may exacerbate a child's emotional distress.[7] In addition, the child victim-witness may feel intimidated or embarrassed under cross-examination where the veracity of his testimony is questioned.[8] This may either intensify his existing problems or create new problems with which the child

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(Steven J. Ceci et al. eds., 1989).

4. JOSEPHINE A. BULKLEY, THE IMPACT OF NEW CHILD WITNESS RESEARCH ON SEXUAL ABUSE PROSECUTIONS 210 (Steven J. Ceci et al. eds., 1989).

5. N.Y. Penal Law § 130.16 (1984).

6. Lucy Berliner & Mary Kay Barbieri, *The Testimony of the Child Victim of Sexual Abuse*, 40 J. SOC. ISSUES 128 (1984); A.W. BURGESS & L.L. HOLMSTROM, THE CHILD AND FAMILY DURING THE COURT PROCESS 205 (A.W. Burgess et al. eds., 1978); Jacqueline Y. Parker, *The Rights of Child Witnesses: Is the Court a Protector or Perpetrator?* 17 NEW ENG. L. REV. 643, 643-64 (1982); E.H. Weiss & R.F. Berg, *Child Victims of Sexual Assault: Impact of Court Procedure*, 21 J. AM. ACAD. CHILD PSYCHIATRY 513 (1982).

7. E.H. Weiss & R.F. Berg, *Child Victims of Sexual Assault: Impact of Court Procedure*, 21 J. AM. ACAD. CHILD PSYCHIATRY 514 (1982).

8. Lucy Berliner & Mary Kay Barbieri, *The Testimony of the Child Victim of Sexual Abuse*, 40 J. SOC. ISSUES 128, 133 (1984).

> [D]ecisions regarding whether abuse has in fact occurred have diagnostic implications (e.g., whether the first criteria for Post Traumatic Stress Disorder has been met), case disposition implications (e.g., the removal of the child or perpetrator from the home), treatment implications (e.g., formation of treatment goals for the child and alleged perpetrator) and more general consequences such as possible stigmatization and divorce. False positives or false negatives can have potentially traumatic consequences for the child, alleged perpetrator, and others.

As a result, the issue of whether children should testify as victim-witnesses in cases of sexual abuse is of critical importance.

Psychologists are clearly most concerned with the emotional impact that testifying has on the child. However, it is also important to determine under what conditions children's testimonies benefit the outcome of the case so that there is no risk of causing children psychological harm when there is no advantage (and possibly a disadvantage) to having them testify. Therefore, this Article will begin by reviewing the factors that suggest when children's testimonies are perceived by jurors to be credible and when these factors lead to an increase in conviction rates. Next, the psychological effects of testifying on child victim-witnesses of sexual abuse will be carefully examined. That is, assuming a child's testimony can increase the conviction rate, do the psychological consequences to the child outweigh the need for him to testify? Finally, recommendations will be made as to when children should testify and what steps might be taken to enhance their perceived credibility and decrease their psychological harm.

II. Factors Affecting Jurors' Perceptions of Children's Eyewitness Testimony

The literature in this area has focused primarily on whether children are viewed as credible witnesses. If child victim-witnesses are viewed by jurors as credible, then their testimonies

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Abuse Allegations: Effects of Gender and Sexual Attitudes, 7 Violence & Victims 147, 148 (1992).

In some cases determinations of guilt or innocence are made individually, and in others subject-jurors are asked to deliberate as a jury and reach a consensus. The latter approach is more externally valid, as this is the processes by which real juries make determinations. However, asking subject-jurors about the accuracy and credibility of the child victim-witness may result in making these factors more salient for the subject-jurors than for real jurors which may affect whether they vote to convict the defendant.

Age of the victim-witness is an important factor to consider when reviewing credibility studies for a number of reasons. First, in the typical experimental design, identical testimony is provided by victim-witnesses of varying ages, and their credibility ratings are then compared to determine if child victim-witnesses are as credible as adults. However, the ages of the child victim-witnesses differ across studies, making comparisons difficult to draw.

Finally, the nature of the case seems to affect credibility. One distinction that seems to be important is between child witnesses and child victim-witness. There is some evidence to suggest that credibility increases with age when children are only witnesses[13] and credibility decreases with age when children are victim-witnesses.[14] No studies have examined whether this difference is due to the child serving as a victim as well as a witness or to the fact that sexual abuse is a special case in which children are perceived to lack the relevant experience to fabricate this type of testimony. To determine what is causing this difference, one would only have to do a study in which the child acts as both a witness and victim-witness in a type of case in which children are presumed to have the relevant experience. For example, one could compare credibility ratings from a case where a child witnessed an assault to a case in which the child

13. Gail S. Goodman et al., *When a Child Takes the Stand: Jurors' Perceptions of Children's Eyewitness Testimony*, 11 LAW & HUM. BEHAV. 27, 31 (1987); MICHAEL R. LEIPPE & ANN ROMANCZYK, CHILDREN ON THE WITNESS STAND: A COMMUNICATION/PERSUASION ANALYSIS OF JURORS' REACTIONS TO CHILD WITNESSES 168 (Stephen J. Ceci et al., 1987).

14. Duggan et al., *supra* note 3, at 84; GAIL GOODMAN ET AL., DETERMINANTS OF THE CHILD VICTIM'S PERCEIVED CREDIBILITY 15 (Stephen J. Ceci et al., 1989); PETER K. ISQUITH ET AL., BLAMING THE CHILD: ATTRIBUTION OF RESPONSIBILITY TO VICTIMS OF CHILD SEXUAL ABUSE 206-08 (Gail S. Goodman & Bette L. Bottoms eds., 1993).

pate in a series of studies where they either read or viewed different sexual abuse trials. Child victim-witnesses ranged in age from six to twenty-two years depending on the particular study. The predicted trend in credibility from childhood to preadolescents was generally supported in these studies.

Goodman found that the twenty-two year old victim-witness was rated as less credible than the six year old victim-witness, and consequently the defendant was rated as more credible when the case involved the older rather than younger victim-witness.[20] These findings generalized to degree of guilt as well. The defendant was judged to be the least guilty when the victim was twenty-two or fourteen and the most guilty when the victim was six years old.[21]

While Goodman found that the youngest victim-witness (six years old) produced the highest degree of guilt, Duggan found that it was the nine year old witness that produced the highest percentage of guilty verdicts (81%), followed by the youngest victim-witness who was five years old (75%) and then the thirteen year old (65%).[22] The same pattern of results emerged for credibility.[23] Bottoms and Goodman used two different written scenarios to determine if results would generalize across cases. In one scenario the six year old victim-witness' testimony was rated as more credible than the twenty-two year old victim-witness' testimony and resulted in significantly more guilty verdicts.[24] However, in the other scenario there was no difference found between either the credibility or the number of guilty verdicts resulting from the testimonies of six, ten, and fourteen year old witnesses.[25] This is somewhat surprising since both cases had an equal amount of evidence and involved male teachers forcing children to engage in oral sex. Finally, in a third experiment, actual videotaped trials were used to test the generality of the findings. Here, an eleven year old was perceived as

20. *See* Goodman et al., *supra* note 15, at 15.
21. *See id.*
22. *See* Duggan et al., *supra* note 3, at 83.
23. *See id.* at 84.
24. *See* Bottoms & Goodman, *supra* note 19, at 709.
25. *See id.* at 716.

dant if the child was thirteen than if the child was five or nine years old.[30]

Finding that attributions of responsibility affected conviction rates, Isquith conducted another study to determine at what specific ages jurors begin to attribute responsibility to the child for the abuse. The ages of the child in the vignette were five, seven, nine, eleven, thirteen and fifteen years old. Results indicated that boys are perceived on average to develop an interest in sexuality at 11.7 years, while girls' interests develop slightly later at thirteen.[31] Isquith noted that it is at approximately these ages that there is an increase in the hesitation for jurors to convict because of attributions of responsibility.[32] These results are consistent with those of Bottoms and Goodman who found that significantly more positive comments were made about a six year old's sexual naivete than that of a fourteen or twenty-two year old victim-witness.[33]

Together these studies provide strong support for the idea that children are seen as more credible than adults up to the preadolescent years. By age twelve or thirteen, children are perceived to be possibly responsible for the abuse, and no longer have an advantage in the courtroom.

C. *Corroboration and Age by Corroboration Interaction*

Two studies examined the effects of corroborating testimony on the child victim-witness' credibility and the defendant's guilt independently from the victim-witness' age.[34] Duggan had three corroboration conditions: corroboration was either provided by a nine year old, an adult, or no one. The child corroboration condition produced significantly more guilty votes (89%) than either the adult corroboration (75% guilty votes) or the no-corroboration conditions (57%).[35] Duggan gives two explanations as to why the corroboration of the adult appeared to have less of an

30. *See id.* at 206.
31. *See id.* at 208.
32. *See id.* at 208.
33. *See* Bottoms & Goodman, *supra* note 19, at 712.
34. *See id.* at 717; *See* Duggan et al., *supra* note 3, at 76.
35. *See* Duggan et al., *supra* note 3, at 82.

roborating evidence by a child that her testimony was judged to be as credible as the testimony of the two younger witnesses, regardless of corroboration.[42]

It is possible to make sense of these findings by drawing on what we know about how age affects credibility. Recall that very young children were seen as less credible because of possible cognitive deficits. Thus, corroboration may increase a juror's confidence in the victim-witness' recollection and interpretation of the events. Similarly, early adolescents were doubted because of jurors' tendencies to place some blame on the victim. Again, corroboration seems to increase jurors' confidences in the truthfulness of the victim-witness' report. However, the preadolescent child is seen as very credible from the beginning. The finding that corroboration does not increase their credibility and the likelihood of the jury finding the defendant guilty suggests that preadolescent victim-witnesses are already as credible as they can be.

D. Gender of Victim-Witness

It is difficult to draw any conclusion with regard to the effects of the child victim-witness' gender. The majority of studies have used only a female victim-witness. Only three studies manipulated victim-witness gender, and they found no significant differences between either the credibility of male versus female victim-witnesses[43] or the hesitation of subject-jurors to convict.[44]

E. Gender of Subject-Juror

Studies that examined the effects of jurors' genders generally found that female subject-jurors rated child victim-witnesses as more credible, and they were more likely to convict the defendant than male jurors.[45] Only one study found no differences

42. *See id.* at 84.

43. *See* Bottoms & Goodman, *supra* note 19, at 715; *See* O'Donohue et al., *supra* note 12, at 152.

44. *See* Isquith et al., *supra* note 28, at 207.

45. *See* BETTE BOTTOMS, INDIVIDUAL DIFFERENCES IN PERCEPTIONS OF CHILD

claim that they have been abused over a long period of time and/or took a long time to disclose the abuse. The specific type of sexual act (fondling versus penetration) and the amount of aggression involved may also be important to the case verdict. Other factors such as sex and age of the offender may be significant. No studies reviewed included female or child/adolescent perpetrators. Finally, parental reactions may impact the outcome of the case. Some parents are so fearful of losing a relationship with the perpetrator that they will not support the child's claim. If jurors see that the child's mother does not believe the child, they will likely have difficulty believing in the veracity of the child. All of the above-mentioned factors have been identified by Browne and Finkelhor as having a significant impact on the well-being of child sexual abuse victims, and it will be important in the future to determine how these factors may influence the child's credibility and case verdict.

G. *Subject-Jurors Attitudes*

Two recent studies have examined the effects of jurors' attitudes on children's credibilities and case outcomes. Gabora, Nicholas, Spanca, and Joab investigated the extent to which jurors' misconceptions about sexual abuse influence the outcome of the case. Before viewing the videotaped trial, they had 352 undergraduate students complete a Child Sexual Abuse Belief Scale which was designed to assess the degree to which jurors believe that children fabricate false allegations of abuse. They then watched the trial of a female child (thirteen or seventeen years old) alleging that her father had sexual contact with her for the last ten months. The child claimed that it began as touching but had escalated to intercourse three days before she finally disclosed the abuse.[52]

In evaluating the effects of jurors' attitudes, jurors believed that the thirteen year old victim was significantly less likely to fabricate her story than the seventeen year old victim.[53] This

52. *See generally* Natalie J. Gabora et al., *The Effect of Complainant Age and Expert Psychological Testimony in a Simulated Child Sexual Abuse Trial*, 17 LAW & HUM. BEHAV. 103 (1993)

53. *See id.* at 112.

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57. *See* Isquith et al., *supra* no

sexual behavior of the child by gift giving or increased attention can result in the child learning to use sexual behavior as a means of getting what he wants. Fetishes of the child's anatomy by the perpetrator can result in distorted importance of that particular body part. Finally, negative feelings can become associated with sexual behavior, causing the child to feel that way about all types of sexual contact.[63] The consequences of such occurrences can include sexual preoccupation, increased sexual knowledge, sexual aggressiveness and victimization toward peers, promiscuity (and sometimes prostitution), difficulty with arousal and orgasm, vaginismus, as well as negative attitudes toward the child's sexuality and body.[64]

Betrayal is the second traumagenic dynamic and "refers to the dynamic by which children discover that someone on whom they were virtually dependent has caused them harm."[65] This dynamic takes on increased importance when the offender is a family member. When the child realizes that a trusted person has manipulated him or caused him harm, betrayal becomes a factor. The child may also feel betrayed by a non-offending adult who has failed to keep him safe or who has had a change in attitude toward the child following disclosure of the abuse.[66] Betrayal can result in grief reactions and depression over the loss of the trusted individual, disenchantment and disillusionment, lack of trust in others or impaired judgment, and dependency.[67]

Powerlessness (disempowerment), the third traumagenic dynamic, "refers to the process in which the child's will, desires, and sense of efficacy are continually contravened."[68] Invading a child's body against his will and then threatening him if he discloses the events clearly results in a sense of powerlessness. Even after disclosure of the abuse, powerlessness can be exacerbated if the child is not believed or the abuse somehow continues.[69] This sense of disempowerment can result in fear and

63. *See id.* at 531.
64. *See id.* at 534.
65. *Id.* at 531.
66. Finkelhor & Browne, *supra* note 61, at 532.
67. *See id.* at 535.
68. *Id.* at 532.
69. *See id.* at 532.

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may emerge from repeat questioning about the abuse as well as from physical examinations. A child's betrayal may also be intensified if legal advocates or courts make promises that they cannot keep. Powerlessness may be either intensified or decreased depending on the case outcome. If the child testifies and no action is taken against the perpetrator, the child may feel revictimized. However, a child may feel empowered if he either stands up to his offender or if the offender is fittingly punished. Finally, disclosing the abuse publicly in court could increase a child's feelings of stigmatization by generating adverse opinions by friends, relatives, and possibly the media. In addition, the child's self-blame and guilt may increase as a result of any cross-examination by the defense.

In searching the literature, eight studies were identified that examined the emotional effects that testifying in court has on child victim-witnesses. These studies were broken down and reviewed in three time periods: early empirical evidence, evidence from the 1980s, and current evidence. Interestingly, although the earlier studies found support for the idea that testifying was harmful to children, more recent research indicates that, for at least a subgroup of child victim-witnesses, there are no long term negative consequences to providing testimony.

1. Early Empirical Evidence.—The issue of how testifying in court might affect child victim-witnesses was first addressed in the 1960s by two different researchers. Both studies reported psychological harm to children who testified in court. Gibbens and Prince used records from the Federation of Committees for the Moral Welfare of Children in England to compare a sample of child victims involved in court proceedings to a random sample of child victims who did not go to court. They reported that while just over half of the no-court group showed no overt signs of disturbance, only eighteen percent of the court group fared as well.[74] DeFrancis identified 173 cases of sexual assault and incest in New York resulting in prosecution. His findings suggest that the multiple court appearances required of the children caused significant amounts of stress and tension.[75]

74. See T. GIBBENS & J. PRINCE, CHILD VICTIMS OF SEX CRIMES (1963) (cited in Goodman et al., *supra* note 11, at 4).

75. See V. DEFRANCIS, PROSECUTING THE CHILD VICTIM OF SEX CRIMES COMMIT-

validated measures of distress or pathology would have improved this study's internal validity.

Oates and Tong conducted a retrospective study of the effects of testifying in court and drew similar conclusions. Fifty-eight families were located from an initial sample of 229 sexually abused children seen over a two year period at a children's hospital in Australia. These children had been seen at the hospital on average two and one-half years previously. Of those families, forty-six agreed to participate in the study and were representative of the larger sample from which they were drawn. A structured interview was conducted with the non-offending parent in which questions were asked about the child's behavior and school work both at the time of the abuse and at the present time. Twenty-one of these families had court involvement of whom six had children who had testified in court. The majority of the parents of the twenty-one children whose cases had gone to court reported that their children were "very upset" immediately after court, and twelve reported that they were still upset even two and one-half years later.[80] These families also reported that their children had more behavioral problems at school than the families of the children who cases had not gone to court.[81] Although this study employed more valid measures, the representativeness of its sample was still problematic with only twenty percent of the cases of sexual abuse reviewed. Additionally, too few of the cases required children to testify which made it impossible to make comparisons between children who testified and those who had not. Finally, the retrospective nature of the study is problematic, as families may not clearly remember how they were functioning over two years ago.

In 1988 Runyan, Everson, Edelson, Hunter, and Coulter[82] conducted a study to determine the psychological impact of legal interventions on sexually abused children. One hundred children who were victims of substantiated intrafamilial abuse were involved in this study. The children were between the ages of six and seventeen and were involved primarily in child protection

80. R. Kim Oates & Liz Tong, *Sexual Abuse of Children: An Area with Room for Professional Reforms*, 147 MED. J. AUSTRL. 544, 545 (1987).

81. *See id.*

82. *See generally* Desmond K. Runyan et al., *Impact of Legal Intervention on Sexually Abused Children*, 113 J. PEDIATRICS (1988).

The general trend for children to show improvement in their distress continued. However, those children for whom charges were still pending did not improve as much as children whose cases had been resolved regardless of level of court involvement or case outcome. However, the differences between these groups were not as great as they had been at five months. Similarly, the difference in improvement between children who had testified and those that had not diminished as well. Additionally, maternal support was shown to be positively rated to improvement.[86]

The researchers draw several conclusions from their data. Most importantly, all children showed a reduction of distress in as little as five months. However, those children with prolonged involvement with the legal system showed the least improvement. This is consistent with the findings of DeFrancis and Tedesco and Schnell which found a negative effect of multiple court appearances and interviews. Finally, testifying in juvenile court (as opposed to criminal court) may be therapeutic. Although these children were more distressed initially, they showed more overall improvement than children who were not required to testify and showed similar levels of distress five months later. However, this finding is confused by the fact that proceedings were completed for testifiers but not for other children. Improvement may therefore be attributable to the resolution of the case rather than from any effects of testifying. Finally, no conclusions can be drawn about the effects of child victims' testifying in criminal courts.

3. Current Evidence.—Three studies have been completed in the last five years. The first study was retrospective and examined the impact that testifying in court had on child victim-witnesses.[87] Tidwell, Lipovsky, Crisp, Plum, Kilpatrick, Saunders, and Dawson conducted at least one interview on eighty-eight

86. *See* DESMOND K. RONYAN ET AL., IMPACT OF COURT PROCESS ON SEXUALLY ABUSED CHILDREN (final report submitted to the National Institute of Justice under Grant No. 85-IJ-CX-0066, 1989) (cited in DEBRA WHITCOMB ET AL., THE EMOTIONAL EFFECTS OF TESTIFYING ON SEXUALLY ABUSED CHILDREN 2 (National Institute of Justice: Research in Brief, Apr. 1994).

87. RITCHIE P. TIDWELL ET AL., CHILD VICTIMS AND WITNESSES: A THREE-STATE PROFILE (State Justice Institute Grant, Final Report, Grant No. 88-11J-D-064, 1990).

The second study, *The Child Victim as Witness Program*, was designed to assess the effects of court involvement on child victims of sexual abuse in four geographically distinct sites.[91] Two hundred fifty-six victims of both intrafamilial and extrafamilial abuse were assessed as soon after referral for prosecution as possible and nine months later using a battery of measures designed to assess Finkelhor and Browne's four traumagenic dynamics. Measures included the Child Assessment Schedule (a structured psychiatric interview), the Intervention Stressor Inventory (a measure designed to quantify the stressfulness of postdisclosure societal interventions), the Parental Reaction to Abuse Disclosure Scale (a measure of parental support) and a large battery of additional psychiatric instruments including behavioral measures (the Child Behavior Checklist or the Preschool Behavioral Checklist), sexuality measures (Adolescent Sexuality Inventory or the Child Sexual Behavior Inventory), a cognitive measure (the Peabody Picture Vocabulary Test-Revised), and a self-concept measure (Perceived Competence Scale for Children and Pictorial Scale for Perceived Competence).

Results indicated initial high levels of distress for all victims with the majority exhibiting nonsignificant improvement on all psychological measures at follow-up. There were no significant differences between testifiers and non-testifiers on any psychological measures.[92] In examining results from the testimony subscale of the Intervention Stressor Inventory, older children experienced more stress than younger ones when testifying. In fact, testimony stress scores for twelve to seventeen year old children were more than four times higher than those for six and seven year olds.[93] Testimony stress ratings were based both on the number of times the child was required to testify and the harshness and length of the cross-examination. For younger children, the investigation phase was found to be the most stressful. The authors suggest that these results indicate that testifying may be helpful for children under eight years old.

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91. *See generally* DEBRA WHITCOMB ET AL., THE CHILD VICTIM AS WITNESS RESEARCH REPORT (Office of Juvenile Justice and Delinquency Prevention, Final Report, October, 1994).

92. *See id.* at 123.

93. *See id.* at 124.

The child's age, severity of abuse, fearfulness of the defendant, and maternal support were expected to be relevant factors. They also predicted that longer legal proceedings (e.g., postponements and delays) and increased child involvement (e.g., repeated testifying) would result in greater disturbance to these children than children for whom this was not the case.[97]

Two hundred eighteen children out of 359 potential subjects, recruited through District Attorneys' offices in the Denver area, agreed to participate in the study. Fifty-five of these children testified in court. These children were all between four and seventeen years of age and were predominantly white children from middle to lower socioeconomic status. Almost all of the perpetrators were male, and most knew their victims (forty percent lived in the same house as the victimized child).

Children were followed for over a two year period with several assessment points. They were assessed as soon as their case was referred for prosecution, at three and seven months after their first testimony experience, and then again when their case was finally closed. At each assessment point, children who had testified ("testifiers") were compared to a matched control of children who had not testified ("control"). Children were matched on age, gender, initial distress scores (as measured by the Child Behavior Checklist), relationship to defendant, severity of abuse, SES, and ethnicity when possible.

In the initial assessment, the primary caregiver completed a Child Behavior Checklist (CBCL), one of the best measures of children's psychological adjustment, the Sexual Assault Profile, which is an interview designed to obtain information about the details of the child's assault, and the Social Adjustment Scale to assess the caretakers overall social adjustment. At times children were also interviewed as part of the Sexual Assault Profile, and as much information as possible was obtained from the District Attorneys' offices. Finally, teachers' reports concerning the child's functioning were obtained when possible.

Follow-up assessments predominantly involved the primary caregiver again completing the CBCL at three and seven months as well as at the final assessment period. In addition, those children who did testify completed pre-court measures of anxiety

97. *See id.* at 13-15.

point.[104] Goodman suggests that one reason testifiers exhibit more distress than controls at seven months and not at three months is that at this point some children in this condition had testified twice whereas no children had testified twice at three months.[105] In support of this conclusion, Goodman found that testifying more than once was related to an increase in disturbance.[106]

In comparing testifiers and controls after their cases had come to a conclusion, testifiers continued to exhibit significantly more overall behavior problems in general, and more internalizing problems specifically, than children who had not testified.[107] Although all children's scores on the CBCL decreased over time, children who had testified continued to demonstrate clinically significant behavioral disturbances.[108] Control children's scores also remained elevated, but were no longer considered to be significant.[109]

In examining multiple testifiers, results indicated that children who had testified more than once had significantly higher CBCL scores than children who only testified one time.[110] More interesting was the finding that CBCL total scores of one time testifiers did not differ from controls at final follow-up, which suggests that there is something unique about having to testify more than once that may be responsible for the increased disturbance.[111] Two factors were associated with multiple testimony: a greater number of traumas and higher day-of-court scores.[112] Multiple traumas included things such as divorce, death of a parent, and placement outside the home. Correlational analyses revealed that multiple traumas were related to more credible child witnesses and more frequent corroborating evidence.[113] Goodman suggests that "for both these reasons, prosecutors

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104. *See id.* at 50.
105. *See id.* at 51.
106. *See id.*
107. *See id.* at 53.
108. *See* Goodman et al., *supra* note 11, at 54.
109. *See id.*
110. *See id.* at 55.
111. *See id.*
112. *See id.* at 57.
113. *See* Goodman et al., *supra* note 11, at 57.

Although this study is by far the most complete on the effects testifying in court has on children, there are still several important weaknesses. First, there is a question as to the representativeness of the sample.[123] The authors note that, while they had a fairly large sample, families of incest victims, females, and older children were less likely to participate. Since victims of incest are less likely to have maternal support (a protective factor), these results may underestimate the negative effects of testifying. In addition, this study was somewhat limited by its dependence on the CBCL as the only measure of behavioral disturbance.[124] Although this measure is one of the best for determining behavioral problems, Goodman questions its sensitivity with respect to sexual abuse problems. However, due to prosecutors' concerns about interviewing and parental concerns about self-report, the CBCL was felt to be the best alternative. Finally, the study was focused on only one geographical area, which limits its generality.

4. *Summary.*—In reviewing the literature, several conclusions can be drawn. Although most sexually abused children report high levels of distress following disclosure, they tend to show a general course of improvement over time. With respect to testifying, most studies showed that testifying in court as a victim-witness was associated with negative effects (the one exception was Runyan, and those children testified in juvenile court). These consequences appear to be more detrimental in the short rather than long-term, and more profound for multiple testifiers as compared to one time testifiers.[125] While children who were only required to testify once had similar levels of distress to non-testifiers, children who were required to testify multiple times did not show as rapid or as complete improvement and continued to exhibit clinically significant behavioral problems even after the cases were closed. These children had more traumas in their lives, reported more anxiety about testifying, were viewed as more credible witnesses and their testimony

123. *See* Goodman et al., *supra* note 11, at 123.
124. *See id.* at 124.
125. *See generally* DeFrancis, *supra* note 75; Goodman et al., *supra* note 11; Tedesco & Schnell, *supra* note 78; Whitcomb et al., *supra* note 91.

Based on these extreme differences, it is not surprising that studies that compare effects of testifying in juvenile court are in contrast to those that looked at testifying in criminal court. Testifying in juvenile court appears to be therapeutic.[129] Perhaps, as some have suggested, testifying allows these children to regain a sense of control over their lives they may not otherwise have acquired. Conversely, there does not appear to be any psychological benefit to testifying in criminal court.[130] However, there does not appear to be any long-term adverse effects either.

V. CONCLUSIONS

It is estimated that relatively few children are required to testify in criminal court.[131] However, there are certain circumstances that increase the likelihood of children having to testify. With respect to child victim characteristics, cases involving older victims (seven years old and above) are twice as likely to be prosecuted than cases involving preschoolers (four to six years old).[132] Cases in which children are placed in the home of a relative were significantly less likely to be prosecuted than cases in which children are placed in either foster care or an institution.[133] Presence of oral-genital abuse, use of threat or force, presence of physical or eyewitness evidence, maternal support, and victim internalizing problems are also independent predictors of decisions to prosecute nonconfessed cases of child sexual abuse,[134] and, therefore, likely increase the child's chance of having to testify. Finally, because only a minority of biological fathers and the boyfriends of the biological mothers are prosecuted (as compared to fifty percent or more in every other category of relationship to perpetrator),[135] children are less likely to have to testify in these cases.

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129. *See generally* Runyan et al., *supra* note 82; Runyan et al., *supra* note 86.

130. *See generally* Goodman et al., *supra* note 11; Whitcomb et al., *supra* note 91.

131. *See* Julie A. Lipovsky et al., *Child Witnesses in Criminal Court: Descriptive Information from Three Southern States*, 16 LAW & HUM. BEHAV. 642 (1992).

132. *See* Whitcomb et al., *supra* note 91, at 96.

133. *See Id.*

134. *See* Theodore P. Cross et al., *Prosecution of Child Sexual Abuse: Which Cases are Accepted?*, 18 CHILD ABUSE & NEGLECT 663, 673 (1994).

135. *See* Whitcomb et al., *supra* note 91, at 96.

A review of this topic would not be complete without addressing how we can maintain a child's credibility and, at the same time, decrease any harm that may come to the child as a result of testifying. Topics that have already been addressed include the presence of corroborating testimony and limitations on the number of times a child is required to testify. The former solution increases the child's perceived credibility, while the latter tends to significantly decrease the amount of distress caused by testifying.

Although the fear of facing the defendant is the most frequently reported concern of child victim-witnesses,[136] a situation with several available solutions, few protective courtroom measures have been employed. Over the years there has been much concern that these procedures may violate the defendant's Sixth Amendment right to confront the accuser. The confrontation clause is designed to reduce the temptation for the witness to lie and to increase the jury's opportunity to determine if the witness is lying. In *Coy v. Iowa*,[137] the United States Supreme Court reversed the conviction of a defendant who was accused of sexually assaulting two thirteen year old girls. The defendant was convicted on the basis of testimony given behind a screen so the victim-witnesses did not have to see the defendant. The Court ruled that the Sixth Amendment rights of the defendant had been violated, thus limiting the future use of protective measures in the courtroom.[138]

In 1990 there was a change made in this policy. Aided by a brief by the American Psychological Association,[139] the United States Supreme Court ruled in *Maryland v. Craig*[140] that the constitutional right of the defendant to confront the accuser is not absolute. More specifically, it was determined that if a child may be traumatized by testifying in the presence of the defen-

136. *See* Gail S. Goodman et al., *Child Witnesses and the Confrontation Clause: The American Psychological Association Brief* in Maryland v. Craig, 15 LAW & HUM. BEHAV. 21 (1991).

137. 487 U.S. 1012 (1988).

138. *See id.*

139. *See generally* Goodman et al., *supra* note 136.

140. 497 U.S. 836, 849-50 (1990).

found that subjects in the closed circuit television condition believed that the video had a positive effect on children's abilities to testify and their psychological well-being.[146] Thus, we see that the use of protective measures may increase accuracy and decrease distress and, based on Ross' results, may favor the defendant.

Finally, three related studies examined the effect of open court versus closed circuit television on mock trials concerning events that actually happened to the child victim-witnesses. In each study, prior to testifying in real courts, children were brought into the laboratory and asked to make "a movie." Children were asked to put stickers on their belly buttons and toes and to expose their upper arms. Later they were asked to testify in the real courtroom about making the movie with people from the community serving as subject-jurors. In this way children could be asked realistic questions such as "where did the man touch you?"

Sachsenmaier reported that there was no difference in the accuracy of free recall,[147] the accuracy to predict guilty verdicts,[148] or the perceived fairness[149] to the defendant or child in cases where children testified in open court versus cases where children testified via closed circuit television. However, Batterman-Faunce demonstrated that for children who initially exhibited high levels of anxiety, their free recall was enhanced when they testified via closed circuit television.[150] Additionally, closed circuit television aided younger children in making fewer errors of omission in response to misleading questions.[151]

Orcutt modified the above procedure by having the children testify either live or via closed circuit television in one of three

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146. *See* Janet K. Swim et al., *Videotaped Versus In-Court Witness Testimony: Does Protecting the Child Witness Jeopardize Due Process?*, 23 J. APPLIED SOC. PSYCHOL. 603, 615-16 (1993).

147. *See* Toby Sachsenmaier, The Effects of Closed Circuit vs. Regular Courtroom Procedures During Children's Courtroom Testimony 47 (Nov. 11, 1992) (unpublished doctoral dissertation, State University of New York at Buffalo).

148. *See id.* at 61.

149. *See id.* at 54.

150. *See* Jennifer Marie Batterman-Faunce, Closed-Circuit versus Open-Courtroom Testimony: Effects on the Accuracy and Suggestibility of Child Witnesses 85 (1993) (unpublished doctoral dissertation, State University of New York at Buffalo).

151. *See id.* at 67.

is that it may imply defendant's guilt. In fact, all of the studies seem to suggest that closed circuit television does not have this effect. A second objection to the use of closed circuit television is that it decreases jurors' abilities to detect whether a witness is lying. Results, however, indicate that there is no support for this notion either.

A second approach to decreasing a child's courtroom distress is to better prepare the child for the experience. The Child Witness Project in Canada[157] attempted to evaluate this very issue. One hundred forty-four sexually abused children between five and seventeen years old participated in this study of whom seventy-one testified in trials and sixty-three testified in preliminary hearings. Child victim-witnesses were randomly assigned to one of two intervention models. In the first model, approximately one week before going to court, children were given a tour of the courtroom and a verbal explanation of what they could expect in court. The second model included the courtroom tour plus three to eight individual sessions with the child that focused on educating the child about courtroom procedures and on reducing the child's fears through a variety of stress reduction techniques. Additionally, Child Witness Project staff provided consultation with Crown Attorneys as to the child's cognitive and emotional functioning as well as information concerning the impact of the sexual abuse on the child victim-witness and his family.

Results from this study indicate that, overall, children who received the additional services (model two) experienced significantly less abuse-related and general fears at post-court than child victim-witnesses who only received the courtroom tour and a brief verbal explanation of the courtroom procedures (model one).[158] This finding held for those children who testified as well.[159] That is, in comparing only those scores for children who were required to testify, testifiers in model two exhibited significantly fewer abuse-related and general fears. There were no differences between the two models on measures of depres-

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157. *See generally* LOUISE SAS ET AL, REDUCING THE SYSTEM-INDUCED TRAUMA FOR CHILD SEXUAL ABUSE VICTIMS THROUGH COURT PREPARATION, ASSESSMENT AND FOLLOW-UP (1991).

158. *See id.* at 79-80.

159. *See id.* at 83.