IF I’M ‘THE PARTY,’ WHERE’S THE CAKE?: THE NEED FOR COMPREHENSIVE CHILD-WITNESS COURT PREPARATION PROGRAMS.

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Introduction
Court preparation is beneficial for the children required to testify in a courtroom. The purpose of a child-witness court preparation program is to assist the child witness in her or his ability to testify truthfully and effectively in a courtroom. This is important because children are required to testify about serious allegations that hold potentially significant outcomes for them or those accused. Having an unprepared child take the witness stand and offer poor testimony is not only regrettable, but preventable.

My experience in preparing children for testifying started in 1994. It was then that I realized how incredibly challenging the work was and how utterly courageous these children could be. Now, many years later, I continue to be amazed at not only how brave these children are but how terrifying the system can be for them. I have many memories of children being victimized by a system designed to seek truth and justice. I saw children’s fears, inexperience and developmental challenges prevent the truth from surfacing. However, it was clear those children who had the benefit of a preparation program were less fearful, more prepared and testified with greater ease. Thus, I pursued graduate work, and in the course of my studies, examined whether court preparation programs and other testimonial aids were effective in enhancing a child’s testimony. The extensive research proved most valuable in writing these recommendations for preparing the child witness. Most importantly, the research supported what I already observed: children benefit from court preparation and support.

The Importance of Children’s Advocacy Centers
The work of children’s advocacy centers (CACs) is a significant step towards minimizing systemic trauma. CACs provide a multi-disciplinary approach in responding to child abuse victims, and are dedicated to reducing the secondary victimization children may experience in the investigative and judicial processes. One aspect that can induce secondary victimization in children is being subpoenaed into courtrooms with the expectation that they provide full and accurate accounts of the abuse they suffered or the violence they have witnessed (Gersch, Gersch, Lockhart & Moyse, 1999; Sas, 2002). This expectation imposes stressors on children that even adult witnesses find challenging. As a result, child witnesses of all ages are required to enter courtrooms to testify about potentially traumatic events.

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memory processes are useful to understand impact of stress, language development and of the child witness include cognitive abilities, testimonial capabilities required of the child witness, which then aids in eliciting accurate testimony. There are a number of abilities required of the child witness, including abilities of the child witness, and vulnerabilities and unique developmental demands of being a witness, simply due to their inherent vulnerability, age, limited social awareness, lack of life experiences and naïve understanding of the criminal justice system (Sas, Hurley, Hatch, Malla & Dick, 1993). To accommodate these limitations, the goals of this program seek to: (A) demystify the court process through education, (B) reduce fear and anxiety about testifying through stress reduction techniques and (C) empower children through emotional support.

Elements of the Court Preparation Program:

A thorough child-witness preparation program is designed to reduce the stressors most often reported by child witnesses. Preparation is necessary as children are ill-prepared for the demands of being a witness, simply due to their inherent vulnerability, age, limited social awareness, lack of life experiences and naïve understanding of the criminal justice system (Sas, Hurley, Hatch, Malla & Dick, 1993). To accommodate these limitations, the goals of this program seek to: (A) demystify the court process through education, (B) reduce fear and anxiety about testifying through stress reduction techniques and (C) empower children through emotional support.

A. Demystify the court process through education

Research demonstrates children who are fully prepared for the courtroom experience provide enhanced testimony (Sas et al., 1991). We know children lack an understanding of the court process, as various studies examine the extent to which a child understands the roles of those within the court process and court procedures (Flin et al., 1989). The consistent findings of these studies demonstrate young children have limited understanding of court terms, procedures and roles (Saywitz, 1989).

The expectation of any witness requires the ability to process and verbalize information in a coherent manner. Therefore, child witnesses are expected to understand the rules of grammar, the meaning of words and how to place them into categories (Sas, 2002; Saywitz, 1995). Additionally, child witnesses are expected to understand generalizations and that words may have different meanings depending on their context (Saywitz, Jaenick & Camparo, 1990). Limited language development, as compared to an adult’s understanding of grammar, multiple meanings and definitions, places children at a disadvantage. Witnesses who are confused or inconsistent can be perceived as unreliable or incompetent (Saywitz et al., 1990).

Depending upon the age and developmental level of children, they may have different language skills. Preschool children (ages three to five), generally only understand words that have one or two syllables (Saywitz, 1995). They do not have an appreciation for complex grammar and have difficulty with the past tense. Children of this age tend to respond in present tense even if the event occurred in the past. Early primary school-aged children have mastered common language skills enough to carry on conversations. However, prepositions can be difficult, such as “under” and “over,” “before” and “after,” and “in” and “out” (Saywitz, 1995). The following table summarizes some of the developmental barriers of language acquisition for this age group (Saywitz, 1995).

### Language Barriers for Children Ages 3-5 Years

**AVOID**
- Long compound sentences
- Embedded clauses
- 3-to-4 syllable words (identify)
- Multword verbs (might have been)
- Uncommon usage
- Pronouns (them, their)
- Referents (here/there, yesterday/tomorrow)
- Relational terms (more, less)
- Failure to introduce new topics
- Passive voice (“Was she hit by him?”)
- Uncommon negatives (“Is that not true?”)
- Nominalization (when the hitting occurred)
- Double negatives (“Didn’t Mom tell you not to go?”)
- Hypothetical (“If you want a break, let me know”) (Saywitz, 1995, pp.119)

The stress of discussing these potentially traumatic events can be overwhelming when combined with the pressures of walking into a new environment. When stress is reduced or minimized through education and information, children have an advantage for providing credible evidence. Thus, children deserve to be properly prepared to give them the best advantage in delivering their testimony.

### Establishing the Competency of Children

Controversy exists regarding the involvement of children within the courtroom, as some professionals argue children are easily suggestive to misleading questions (Bruck & Ceci, 1999); others argue children are capable of accurately remembering and can be competent witnesses (Bottoms & Goodman, 1996). Research shows when children feel safe and are questioned within their developmental levels, they have the ability to recall events and memories (Goodman, Aman & Hirshman, 1987). Is this possible to achieve within a courtroom setting that is intimidating even to the average adult layperson? Courtroom preparation can address vulnerabilities and unique developmental abilities of the child witness, which then aids in eliciting accurate testimony.

There are a number of abilities required of the child witness. Testimonial capabilities required of the child witness include cognitive abilities, language skills and memory functions. The impact of stress, language development and memory processes are useful to understand
Late primary school-aged children also have developmental limitations that can affect their testimony. Until age seven or eight, children are not capable of recalling times, dates or distances (Saywitz & Goodman, 1995, as cited in Sas, 2002). They lack descriptive adjectives and the ability to reason. Children under age 10 do not interpret words in the same manner as adults, as children tend to interpret words literally (Saywitz & Goodman, 1995, as cited in Sas, 2002). Children within this age group also have difficulty with tag questions (i.e., you’re sure, aren’t you?), which are commonly used in a courtroom (Saywitz & Goodman, 1995, as cited in Sas, 2002).

A few studies capture the significance of children’s developmental limitations as it applies to the courtroom (Flin, Stevenson & Davies, 1989; Warren-Leubecker, Tate, Hinton & Ozbeck, 1989, as cited in Saywitz, 1995). Findings reveal the understanding of the legal language used in a courtroom is limited, and the linguistic demands exceed the developmental abilities of children (Saywitz, 1995; Walker, 1993, 1994). These findings are consistent across countries and cultures (Brennan & Brennan, 1988, as cited in Shrimpton, Oates & Hayes, 1996; Flin et al., 1989; Saywitz et al., 1990). Child witnesses often make two types of language errors that may affect their testimony: auditory discrimination errors and homonym errors (Saywitz et al., 1990). Auditory discrimination errors include errors where children mistake the unfamiliar legal term for a similar sounding familiar word. For example, children mistake jury for jewelry. Homonym errors are those in which children assume a familiar non-legal definition is the only definition of a word. For example, “charges are something you do with a credit card,” “A motion is like waving your arms” (Saywitz et al., 1990, p. 528). Children who are from different cultures, and whose first language is not English, may find greater difficulty interpreting meaning. Additionally, children under age eight are more likely to have auditory discrimination errors and homonym errors (Saywitz et al., 1990).

Walker (1993, 1994) also found children confused meanings and/or made homonym errors with legal terms. Specifically, three grammatical areas presented difficulty for children: age-inappropriate words and expressions, complex syntactic constructions and general ambiguity. Walker (1993, 1994) found the complicated exchanges between lawyers and the unfamiliar setting made it difficult for children to appropriately answer questions. Walker analyzed court transcripts and found children mistook legal terms for everyday familiar words. For example, children confused a court hearing with hearing someone speak, a court with a basketball court and the party in a matter with a birthday party. Subsequently, children’s responses to questions were not reflective of the original intent of the lawyers’ questions.

Various studies examine the extent to which a child understands the roles of these legal terms within the court process and the procedures of the judicial system (Flin et al., 1989; Warren-Leubecker et al., 1989, as cited in Saywitz, 1995). Studies illustrate legal terms and an understanding of procedures for children under ten years of age are often misinterpreted. Younger children do not understand some terms: going to court, evidence, jury, lawyer, prosecute, trial, witness. As children get older, generally by age ten, they understand most of the terms.

Children under ten have a difficult time understanding the opposing sides of the lawyers. Most five-year-old children only have a basic understanding of legal terms such as: police, remember, promise and judge (Saywitz & Goodman, 1995, as cited in Sas, 2002). Concepts not understood by age ten include the roles of the lawyers and the jury, and what the word “evidence” meant (Flin et al., 1989). This knowledge is often required of witnesses and is repeatedly asked in both direct examination and cross-examination (Saywitz & Goodman, 1995, as cited in Sas, 2002). Failure to understand the role of a defense lawyer can result in intimidation and being misled on the witness stand (Walker, 1993). These studies consistently demonstrate children’s understanding of court terms and procedures increases as they age. Children who do not understand the adversarial nature of the relationship between prosecutor and defense attorney can be left feeling like they are the cause of the arguments.

Language studies have been very successful in demonstrating the gap between children’s developmental abilities and what is required of them in court (Sas, 2002). The research in this area greatly contributes to our understanding of child witnesses’ developmental capabilities. Studies examining transcripts illustrate that questions asked in court frequently exceed children’s developmental abilities. Children under age ten are only starting to develop an understanding of many concepts, including legal terms. These concepts include measurements, body parts, locations, numbers and colors. The use of sentence structures or measurements that exceed children’s developmental abilities only generates confusion and results in incorrect responses within their testimony.

Children’s limited understanding of the judge’s role can have a significant impact on their ability to provide testimony. Children who cannot appreciate the function of the judge fail to understand the judge has an impartial role. When children do not understand evidentiary rules, they can become confused. Children may believe the judge did not believe their testimony if parts of their experiences cannot be discussed or if an acquittal occurs due to insufficient evidence (Walker, 1993).

Court preparation programs need to do more than provide tours of courthouses. A comprehensive program must include an educational component so children understand the courtroom processes and the roles of those who work within it. Research shows the complicated exchanges between lawyers, misinterpretation of legal terms and the unfamiliar setting make it difficult for children to answer questions appropriately. An educational component addresses these areas and provides children with the knowledge and skills required to become effective witnesses.
B. Reduce fear and anxiety of testifying through stress reduction techniques

The second component, stress reduction, should be included in a court preparation program, as courtroom testimony creates stress and anxiety for children. Research reveals children expressed the following fears about testifying in court: (a) facing the accused; (b) being hurt by the accused in or outside the courtroom; (c) being on the stand or crying on the stand; (d) being sent to jail; and (e) not understanding the questions. Behavioral indicators of these fears include difficulty falling asleep, relaxing or concentrating in school (Finn et al., 1985; Sas et al., 1993, as cited in Sas et al., 1996). Child witnesses who have experienced or witnessed traumatic events may attempt to avoid the person who elicits a fear response (i.e., the defendant) and prevent the reoccurrence of the same or similar fear experience. Imagine a child who is sitting on a witness stand, 10 feet from the person who allegedly inflicted physical and emotional harm, and is required to focus, recall and recount in detail, traumatic acts inflicted upon her or him. The sight of the defendant may trigger fear and trauma reactions. Trauma can prohibit effective testimony from the child. Relaxation activities conducted while children are safe and in control help child witnesses’ bodies become reconditioned to recognize that previously feared stimuli are not dangerous and avoidance is no longer necessary. Child witnesses are then able to provide a full and candid account of their experiences, provide more thorough testimony and enhance their credibility on the witness stand.

Research demonstrates stress can also negatively impact memory recall (Bruck & Ceci, 1999; Peters, 1991, as cited in McGough, 1994; Sas, 2002). The ability to recall past events is a critical component for any witness. Preparation programs help children reduce fears of the unknown when they know what is expected of them. Stress reduction techniques enhance the abilities of child witnesses to concentrate, recall events and mitigate secondary victimization.

C. Empower the children through emotional support

Other sources of stress child witnesses report are the presence of strangers and the lack of familiar supportive figures in the public gallery of the courtroom (Sas et al., 1995). Research identifies maternal support as a strong indicator of successful recovery for child abuse victims (Goodman, Taub, Jones, England, Port, Rudy & Prado, 1992, as cited in Goodman, 1993; Sas et al., 1995). However, it is very common for mothers to be excluded from the courtroom (Sas et al., 1995). A comprehensive child-witness preparation program includes a separate group for non-offending parent/caregivers. The focus and goal of this component is to emphasize the importance of parental support for the child through the court process. This group provides the non-offending parent/caregiver with skills on how to support her or his children through the court experience. When children feel less anxious and more comfortable with the presence of a support person, their testimony can be enhanced.

The research supports what those in the field have already experienced: children often do not understand legal terminology, they have many court-related fears and anxieties and they value the presence of a support person. Anecdotal evidence supports research findings and demonstrates the need for preparation, support and advocacy for the child witness. As discussed, there are many factors that affect the child witnesses’ ability to deliver effective testimony: stress, language acquisition, court-room knowledge, sense of security and support. Thus, it is essential that a good preparation program encompass the various elements that address these hurdles for the child witness.

Components, elements and objectives of a good program

While the goals of a good program have been discussed, the following section discusses specific components. There are five components of a good preparation and support program (Hurley, Scrath & Stevens, 2002): education, role play and practice, relaxation and anxiety management, court accompaniment and support and debriefing and follow-up.

1. The educational component addresses the cognitive deficits of children due to age. The education component includes (Hurley et al., 2002):
   - role of courtroom personnel,
   - rules for witnesses,
   - difference between truth and lie,
   - oath and promise to tell the truth,
   - the judge/jury has no prior knowledge of the abuse, and
   - the court process (i.e., investigation, subpoena, testifying, trial, and sentencing).

The objectives of the educational component are to (Sas et al., 1996):  
   - familiarize the child witness with courtroom procedures and legal terms,  
   - aid in helping the child understand the adversarial nature of the criminal justice system, and  
   - help the child feel comfortable with the courtroom layout.

Ultimately, the educational component assists children in developing good techniques for testifying.

2. The role-play and practice component is an important experience. This component provides children with skills to cope with cross-examination, practice listening to questions, ask for clarification and speak loudly. The goal of practicing the courtroom experience in a non-confrontational manner is to reduce children’s anxiety. It is important to note that one should never role-play with evidentiary questions. This is important for several reasons. Children should role-play in an atmosphere that is positive and enhances confidence. Recalling details of abuse or other potentially traumatic events may be counterproductive. Finally, all evidentiary information should only be handled by the investigating officer and assigned prosecutor. Suggested topics on which the child witness can write a paragraph or practice statement may include: a recent school trip, a summer vacation, a birthday party or any other topic that is unrelated to the allegation.
3. The relaxation and anxiety management component aims to teach skills that increase coping within a potentially stressful experience. This is accomplished through the witnesses’ identification of their support team and learning where responsibility for prosecution and outcomes lie (i.e., prosecutor, judge/jury). The child witness should practice self-talk, such as saying quietly to himself, “I am safe. The Judge will keep me safe. I know best what happened.” Children should also practice breathing and relaxation techniques on a daily basis. Most importantly, the child witness should have an opportunity to practice newly-learned relaxation techniques in the mock courtroom experience, where she or he will later be executing the skill. Children should be encouraged to teach their own parents/caregivers the new techniques to encourage daily practice.

4. The support person component aims to teach the non-offending adults/caregivers how to support the child witness. It includes elements such as how to identify the appropriate support person, how to anticipate the needs of the child witness and how to respond to the support person’s own concerns as well as those of her or his child. The experiential component includes practice on where the support person should sit for best eye contact with the child while in the courtroom. The support person also learns how to practice relaxation techniques with the child witness, explain procedures and provide support and comfort to the child witness.

5. The fifth element, debriefing and follow-up, should be incorporated in program procedures. It does not matter whether debriefing and follow-up are done by the child advocacy center staff, prosecutor or court preparation program coordinator. The importance of follow-up and debriefing is just as necessary as the pre-testimony elements. This debriefing conversation should take place in an office, not in the hallway or empty courtroom. Examples of questions that help debrief the child include:

- What was worst part?
- What was the worst part then?
- What did you see during the worst part?
- What is the same since the worst part?
- What is different since the worst part?
- Is there anything you would do differently during the worst part?

Some parents/caregivers may not be able to provide for all the needs of their child. Professional crisis intervention, explanations of unexpected procedures or explanations for possible exclusion of the parents/caregivers as witnesses should be provided by the child advocacy center or appropriate community agency staff. The following elements should be included in follow-up and debriefing services: helping the child identify traumatic aspects of the court experience, re-framing the experience with the child, celebrating the child’s courage and accomplishments, explaining the victim impact statement and identifying on-going sources of support and community referrals (Hurley et al., 2002).

As mentioned, the goals and elements of a thorough court preparation program are critical; however, how one introduces these topics can be creative and fun. Many resources provide ideas and tools to assist in this process. Additional information regarding resources can be found by contacting this author.

Conclusion

A thorough court preparation program can enhance a child’s testimony. As researchers and practitioners continue to examine the link between child development and that which is required of children in a courtroom, more can be gleaned on how to elicit good evidence from young witnesses. However, systemic support is required for any program to directly benefit the child witness. Developmental research may close the gap for the forensic field but those who have the authority and role to implement programs must be willing to utilize them. By doing so, we will enable children to provide rich and accurate accounts of their experiences.

For additional information on program implementation or training on how to prepare the child witness, contact the author at 717-337-9888 or via email at jwalker@kidsgaincac.org.
FOR MORE INFORMATION:
The National Child Protection Training Center (NCPTC) at Winona State University provides training, technical assistance and publications to child protection professionals throughout the United States. In addition, NCPTC assists undergraduate and graduate programs seeking to improve the education provided to future child protection professionals. In partnership with CornerHouse, NCPTC also assists in the development and maintenance of forensic interview training programs utilizing the RATAC® forensic interviewing protocol. For further information, contact NCPTC at 507-457-2890 or 651-714-4673. Please visit our website at www.ncptc.org.