

GOING TO THE COURTHOUSE

This chapter reports the opinions and feelings about the court process of the child witnesses and their parents. Seventy of the 77 follow-up children made at least one trip to the courthouse expecting to testify and about two thirds had actually testified at least once. We asked the children what it was like to be a child witness, how they perceived the situation from their vantage point. With the experience now well behind them, with the benefit of hindsight and added maturity, perhaps they would be able to offer a more objective interpretation of the events than they could have at the time. We mentally walked the children through the process and asked them how they had been feeling at each point. It is important to reiterate that this was done in the context of a clinical interview with a therapist, because we anticipated that this could be upsetting for some children.

THE DAY OF COURT

Children looked to court dates with mixed feelings. As we noted in the last chapter, few were eager to testify. But testifying marked a hurdle over which they had to jump in order to end their involvement with the court system. Their lives were on hold until court was over. Parents reported an increase in behavioural and emotional problems as the court date approached. Children reported that they had not slept well the night before court, nor had they been able to eat much that day. Going to court was very, very scary for the majority of these children.

AT THE COURTHOUSE

Those children who were expected to be witnesses were subpoenaed to attend court. In almost all cases, the families had been informed beforehand about the court date so the subpoena's arrival was not a surprise. However, it was sometimes upsetting. Being in the courthouse was not a new experience because the children had previously been there for a court tour conducted by staff members of the Victim/ Witness Assistance Program (VWAP). The VWAP staff were highly regarded by the children and their parents. Even after several years, many children and parents could actually recall the names of the people who helped them on their day in court. The court tours were frequently mentioned by the children as being of tremendous benefit. Most important, however, the families felt that there was someone on their "side." The children especially tended to conceptualize the process as a contest between them and the defendants and this show of support was important to them.

Another helpful feature that was mentioned by the children and the parents was the segregated waiting area, where they felt protected. The availability of this service meant that witnesses did not have to encounter defendants in the time period before the case was called. Where accidental meetings did occur, this was emotionally very difficult. In the case of two very young children, seeing the defendant, a former babysitter, before court caused such a panicked reaction that they could not testify. The charges were withdrawn. (Incidentally, the defendant subsequently found himself before the court again for sexually abusing another girl left in his care.)

WHAT DO YOU REMEMBER ABOUT WAITING TO TESTIFY?

"Wishing I was at home."

"[I remember] sitting in the chair, feeling sick and upset and not being able to eat and having daydreams that he [the defendant] would jump up and kill me in court."

"I was scared. I couldn't think of anything except having to go in and see him [the defendant]."

"It took a long time; people were nice. I remember colouring and eating doughnuts. I was scared."

"[I remember] my party. It was my birthday. They kept me preoccupied and celebrated my birthday."

"I cried and kept repeating 'I don't want to do this'."

When there were several alleged victims associated with one case, it was often commented that they derived strength from numbers. A mother said: "All the kids were there and their parents. We knew we weren't alone. We had a [waiting] room to ourselves." In contrast, some children were there with no family support. In fact, their families had been in the general waiting area — with the defendant.

COPING WITH ADJOURNMENTS

Many children recalled the experience of being in the courthouse waiting to testify only to discover that the proceedings were being adjourned to another day. Unlike a guilty plea, which ended their active role in the process, an adjournment only extended the time of their involvement in the case. Therefore, continuances added to their stress, even if at the time they experienced relief that they did not have to testify on that day. As one boy said: "I was a little mad 'cause I wanted to get it over with." Ten children in the follow-up reported that they attended court at least three times, a few of them as many as five times.

The most common reasons for adjournments were: defendants changing lawyers or refusing to retain lawyers; defence attorneys taking themselves off record in the middle of the case; Crown attorneys having competing cases in different courtrooms; insufficient time to proceed because of time overrun on previous cases; and, over-scheduling of cases to accommodate the possibility that some cases would not go ahead. Usually, these factors would not have been known until the family was already in the courthouse.

The negative clinical implications of these delays cannot, in our experience, be overestimated. The children's lives remained in limbo and many could not function normally until their day in court was over. We observed at the time that any family members who had to testify were anxious as well, and their stress was often communicated to the child, intensifying the child's already anxious state. Children became focused on their court dates and emotionally charged up for the experience of testifying. They were ready to testify and had rallied all their energies in order to be able to complete the task. Many expected to testify only to hear that the matter was adjourned for several months. Moreover, in situations such as this, the child had likely sat all day in the courthouse and been exposed, although at a distance, to the defendant and his support system. From a therapeutic point of view, trying to prepare children over and over again for hearings that were postponed became increasingly difficult.

REACTIONS TO NOT TESTIFYING

Twenty-two of the follow-up children we interviewed were not, as it turned out, required to testify. A guilty plea by the defendant obviated the need; or, the charges were withdrawn. Because cases with early guilty pleas had been dropped from this sample, these developments occurred fairly late in the process for this group of child witnesses, close to the time that the testimony was to have been given. Most of the non-testifiers (81 percent) indicated that they were relieved and were not at all sorry that their testimony would not be needed. Three reported being disappointed when they learned about the guilty plea. They had waited so long and been so prepared that they wanted to go through with the testimony. As with the adjournments, mixed feelings were sometimes expressed. A girl told us: "I was disappointed that I didn't get to testify, but I was also relieved that I didn't have to see him [the defendant]."

Parents had different views of guilty pleas than did the children. In addition to being relieved because they did not have to testify, most children welcomed guilty pleas as admissions of guilt by the defendants. Because of their often-times overwhelming fear of not being believed, these admissions were very important. Most parents were as relieved as the children that no testimony was needed. However, a few felt that the guilty plea was an unsatisfactory outcome for the case. Some parents had been looking forward to the courtroom confrontation and public exposure of the defendants. And some felt that the guilty plea did not carry as much weight as would a trial verdict. A few even felt that the guilty plea did not result in a criminal record or that it was tantamount to the offender "getting off."

The majority of the parents who were disappointed at the guilty plea, however, had been opposed to the plea because they felt it was the result of a bad plea bargain where the defendant reaped some benefit that he did not deserve. For example, a few were extremely angry because they felt that the sentence would have been higher if the child had testified. For them, the possibility of a higher sentence was worth having their children testify. It was ironic that the Crown attorneys, on the other hand, considering the child's point of view, saw not testifying as a benefit. Almost no parents had been involved in the plea bargaining process and there was some lingering resentment and a great deal of misinformation because of this.

TESTIFYING

For the Project evaluation, we had observed the testimony of each child witness. At trial, the average length of the examination-in-chief was 25 minutes and the average length of the cross-examination was 32 minutes. For all the children under the age of 14 years, about half the cases, these questions were preceded by a period of qualification, where the judges inquired about the children's ability to communicate the evidence and to take an oath. Ninety percent of the children were deemed able to take an oath and the remainder testified unsworn.

We observed that the treatment of these child witnesses in court varied greatly. For example, some judges appeared kindly, making eye contact with the children, and reassuring them by telling them not to be afraid. Others appeared abrupt in their manner and rarely interacted with the children directly. From our courtroom observations, we compiled a list of stressors that could occur during a child's time in the witness box (Figure 9).

Sixty-two percent of the follow-up children had testified on at least one occasion. Most of them (66 percent) had testified twice, at a preliminary inquiry and at a trial. Twelve had testified only at a trial, because the matter was heard in youth court or because the defendant had waived the preliminary inquiry. Four had testified at only the preliminary inquiry; their trial testimony was not needed either because the matter was not committed to trial, the charge was withdrawn by the Crown, or because a guilty plea was subsequently entered by the defendant. As we noted in Chapter Three, victims of intrafamilial abuse were more likely than were victims of extrafamilial abuse to testify at least once. In addition, testifiers, as a group, had experienced significantly lower levels of maternal support following the disclosure than had the non-

testifiers.

Figure 9

Courtroom Stressors Observed by Project Personnel During Testimony of Child Witnesses

DEFENCE ATTORNEY	PRESIDING JUDGE
! violating the child's physical space by coming too close during questioning	! asking the child unusually difficult questions during qualification
! frightening and intimidating the child by loud, sharp voice during cross-examination	! having no eye contact with the child and no direct conversation with the child
! confusing the child by using complex sentences and vocabulary	! not intervening on behalf of the child when the child harassed by defence
! causing the child to face the accused by standing behind or near him when asking questions	! not permitting modifications to court procedures to make testimony easier
! arguing for long periods of time over points of law while the child was in the witness box	CROWN ATTORNEY
! insinuating that the child either enjoyed the abusive relationship or that it did not happen because the disclosure was delayed	! using terminology too difficult for the child during examination
! stressing the importance of dates and times even after it's known that the child could not produce this information	! asking very general questions which confuse the child
	! not intervening or objecting to harsh defence strategies
	! not recognizing the child's vulnerability and emotional status in witness box
	! not applying for testimonial aids

The fact that almost two thirds of the sample had testified enabled us to gather a good deal of information about children's interpretations of the experience of testifying. However, nearly a quarter of the testifiers reported having no memory of the event. The results reported in this section reflect the comments of the 35 children who were able to discuss their testimony. A few had vivid memories of the experience, relating the specific wording of questions or the remarks of the judge. Others had to struggle to recall the details. All questions asked were open-ended.

WHAT WAS IT LIKE, WALKING TO THE WITNESS BOX?

"I thought I was going to fall on my face, like I had a 50 pound weight on my shoes. It took every ounce of energy not to look at my father."

"I felt like my body and my spirit were separate — my body walking and my spirit running."

"It felt like it took forever to get up there, though everyone said after that I went fast."

"I felt so centred out."

"It was terrifying, especially getting to the end and actually going up on the stand — fear builds up as you approach it."

"It was embarrassing and scary. There was a whole audience there."

"[I was] nervous. I saw [my father's] big smile. It felt like he didn't care. That made it harder. I felt like crying."

CHILDREN'S RECOLLECTIONS OF TESTIFYING

The experience of testifying began when the children were summoned into the courtroom. Hearing their name called over the loud speaker triggered an extreme emotional reaction in some. One of the most difficult parts was the simple act of walking through the courtroom doors. Once inside, many of the children said they were struck by the number of people present at the hearing. Including court personnel, there were rarely fewer than a dozen people already in attendance. School tours could increase the number substantially. As noted earlier, the public was rarely excluded from watching the testimony of child witnesses.

To get to the witness box, the children had to walk through the seating area of the court and immediately past where the defendant was sitting. Almost half of the children reported that their most salient memory was of experiencing intense fear just walking up to the witness box. The remainder recalled being focused on the presence of the accused as they walked by him or being disconcerted by the number of people who were in the courtroom.

The children were typically the first witnesses to testify. Parents who were subpoenaed for later testimony were excluded from the room along with any other witnesses. For about half of the child witnesses, this meant that their mothers could not be in the courtroom to watch their testimony. This was most difficult for the younger children. The presence of VWAP or Child Witness Project personnel in the courtroom was very important in these cases. Their presence was also meaningful when there were members of the child's family there to support the defendant.

WHAT DO YOU REMEMBER ABOUT TESTIFYING?

"Misleading questions and trickery."

"Sometimes I went blank but most of the time I was scared seeing my father. I was scared he might do something because he made me promise not to tell."

"I told the story. I wasn't thinking about what I was saying. I wanted to do a good job."

"All I remember is that it had to be the hardest thing in my life to do."

"The only thing I remember was the defence lawyer — he grilled me, twisted everything I said, made me feel like a criminal and as if [my stepfather] was the victim."

"I remember everything. I was horrified, scared. I kept looking down at him [the defendant]. The Crown attorney kept giving me signs to look up at him."

"I got really scared because he [the defendant] was so close and I had to look at him and he gave me a very threatening look."

"I remember crying a lot."

During the follow-up interview, the children were asked an open-ended question about what they remembered most about testifying. Nearly one third (31 percent) remarked on the confusing questions they were asked. They recalled feeling intellectually challenged and not wanting to appear incompetent. Seven children (19 percent) described being focused on their own internal emotions, such as being scared or nervous. About 15 percent reported their most salient memory was of seeing the accused during the testimony. Most had not been eye-to-eye with him or her since before the disclosure.

When reviewing the entire court-day experience, the child witnesses were asked to identify the worst part for them. One third reported seeing the defendant as the worst and another quarter reported that it was having to describe the details of the abuse in court. The public nature of the proceedings was also mentioned, as was the cross-examination.

WHAT WAS THE WORST PART OF TESTIFYING?

"I wanted to tell those young people [a high school tour] what it was like and that they had no right being there."

"Walking up there, to the witness stand — everyone was staring at me."

"To tell what happened."

"Just being there."

"Knowing he was right there — identifying him, looking him in the eye."

"Him sitting in front of me and watching me."

"Talking in front of people, especially my mom."

"Having my dad sitting in front of me. I could be responsible for a long jail term."

"Having to tell your story in front of [the defendant] and having the defence lawyer make out that it's your fault."

"Having to share the most private things in my life with strangers."

"Having him there. And explaining what he did to me."

"The whole thing. I feel like I let too much emotion show."

"There were people there I didn't know and even two of my dad's witnesses and my aunts, uncles, grandparents, all on his side."

When asked what had been the best part of testifying, nearly a third spontaneously said that there was no best part. Another 24 percent said that the end of the testimony — getting it over with — was the best part. Only four children talked about the conviction or punishment as the best part of testifying. A little over one third of the children were able to identify a positive aspect of the experience, either the emotional catharsis they experienced when facing their abuser and telling what happened, or feeling the support of significant others. For those who testified at both a preliminary inquiry and at a trial, about half believed their experience at the first hearing to be easier.

They were asked if they had left anything out of their testimony regarding the details of the abuse. Two thirds said they had been able to tell the entire story. The remainder, nine children, had forgotten pieces only to recognize the omission later; or, had found it so difficult that they could not describe every aspect of the abuse. They were also asked if they had been able to say everything during the testimony that they had wanted to. Fifty-five percent said that they had. Five children (15 percent) had wanted to say something else about the abuse experience, for clarification. The remainder mentioned comments they would like to have made but were not possible given the question-and-answer format of testimony: four (12 percent) had wanted to be able to address a statement to the defendant directly, in the safety of the courtroom; four others had wanted to offer some information about their family or the defendant that would provide useful background material for the trier of fact; one child wanted the opportunity to thank the people who had brought the defendant to court; and, one boy wanted to speak more of his feelings at the time of the abuse than purely his actions.

WHAT WAS THE BEST PART OF TESTIFYING?

"That I told the truth, that it was over."

"Knowing that my family was there."

"Knowing that he was going to get what he deserved."

"That I finally got it all out of my system and said it in front of a judge."

"Getting down off the stand and walking away."

"Being able to look at [my stepfather] and get it out of my system and let him know I didn't appreciate what he'd done."

"When I learned that he wasn't allowed near me."

When asked what they thought made it hard for children to testify, the most frequently cited factors were: 1) facing the accused person (32 percent); 2) describing the intimate details of the abuse (15 percent); and, 3) fearing the defendant's reaction (12 percent). The last factor was related to the fact that some children believed that the defendants could jump up and hurt them when they were testifying. Worrying about repercussions after court was more common, however. This was especially likely when the accused had threatened or intimidated the children to keep the abuse secret. Other factors that made testifying difficult were: having strangers in the courtroom; feeling under so much pressure; and, not having any support person present.

DO YOU THINK YOU WERE A GOOD WITNESS?

"I thought I was but then when you get the verdict [acquittal] you question yourself."

"I wish I'd remembered more details. I couldn't, it was no longer clear. It was so long ago — it's not like you record it all on a calendar."

"They say I was."

"Kind of and kind of not."

In reviewing their performance in court, 75 percent of the child witnesses felt that they had been good witnesses and another 20 percent described themselves in neutral or mixed terms. One child felt that she had done badly. These findings were encouraging in that the majority of the child witnesses interviewed at the follow-up maintained the view that they had done well, despite the sometimes disappointing outcome.

ATTITUDES TOWARD THE PRESIDING JUDGE

Almost 25 percent of the child witnesses had no recollection at all of the judge who had presided while they testified. Another 25 percent remembered the judge but could relate nothing significant or special

that the judge did. The other half of the children did recall some positive aspect of the judges' interaction with them. They remembered being granted some concession or courtesy, like a drink of water or a stool. Some recalled a comforting glance or word of reassurance. For those who had a positive memory of the judge, it was a very significant feature.

WHAT DO YOU REMEMBER ABOUT THE JUDGE?

"He sounded mean to me, rough — like my dad."

"He was pretty quiet."

"I knew I was beside the judge so I felt comfortable."

"Mostly he said to speak up but I didn't want to because I didn't want my uncle [the defendant] to hear."

"He was nice, offered me water and kleenex. He said I did a great job. He said I was one of the best witnesses he'd ever had."

"He just told me to relax — offered me water, said I could ask for a break."

On a ten-point scale, the children on average rated the helpfulness of the judges as 7.7, relatively low compared with the other courtroom actors. This probably reflected the fact that there is little direct interaction between a witness and a judge, but also to some extent the fact that a few children (ten percent) felt the judge should have better protected them during the cross-examination. The judges were rated higher on trustworthiness (8.4) and patience (8.1). Interestingly, despite the negative outcome for 42 percent of the testifiers whom we interviewed, the majority of the children who testified in court, about two thirds, were of the opinion that the judge believed them. Only two children felt that they had not been believed and one quarter had mixed feelings on the subject or were not sure.

ATTITUDES TOWARD THE DEFENCE AND CROWN ATTORNEYS

The testifying children were asked to rate the Assistant Crown Attorney's overall performance on a scale of zero to ten. The average of the responses was 9.1. The defence attorneys were seen in a considerably less favourable light, receiving a mean score of 4.4. The Crown attorneys were rated by the children as highly trustworthy (9.1), patient (8.8) and helpful (8.5). The less favourable ratings of the judges probably reflected the fact that there was so much more contact between the children and the prosecutors than between the children and the judges; and, the fact that the judges were seen as neutral while the prosecutors were seen as being on their "side."

In London, there is a policy of red flagging child sexual abuse cases so that one Crown attorney deals with the case through the entire process. They have at least one, and sometimes up to three, appointments with the children to establish rapport before court. Only three children could offer a suggestion for how the prosecutor could have done a better job. These suggestions all focused on the level of difficulty of the language used to question child witnesses in court. As one said: "He used fancy words I couldn't understand and he spoke too fast." Overall, they felt that the prosecutors had handled the case well.

Not surprisingly, most children (56 percent) retained negative recollections of the defence attorneys. They were seen as mean, tricky, argumentative and even belligerent. There was a significant difference, however, in the ratings of defence attorneys by intrafamilial and extrafamilial victims. Intrafamilial victims

gave defence counsel significantly lower scores ($t=-2.36$, $df=17$, $p=.03$). This is, no doubt, related to the more difficult task of testifying against a family member. These children were open and vulnerable to harsh cross-examination that could be fuelled by personal information about them provided by the accused person. Some children, however, did not take the defence counsel's action as a personal affront, recognizing that s/he was just doing his/her job. One girl recalled that the defence attorney apologized to her father (who was not the defendant) after court. Therefore, one third of the children saw the defence attorney in neutral terms. A few were able to commend the lawyer for doing a good job under the circumstances.

WHAT DO YOU REMEMBER ABOUT THE DEFENCE ATTORNEY?

"I hated him because of the way he asked questions — he scared me."

"I met him outside of court and he was okay then, but in court it was a different story. It was like he was trying to prove me guilty."

"My dad's lawyer was on my case about a certain date — he drilled me so hard the date clicked into place and I remembered it."

"She badgered me. I hated her. I don't know how she could defend a guilty man."

"I wanted him to go away so badly.... He's good but I hated him, obviously."

In comparing the children's rating of four groups of personnel, we see that the scores are high overall (Table 19). Victim assistance workers were seen in a very positive light, probably because their role is entirely supportive and sympathetic.

Table 19

Mean Child Ratings of Performance of Four Professional Groups

	Police	Crowns	VWAP/ CWP	Judges
Patience	8.2	8.8	9.3	8.1
Helpfulness	8.4	8.5	9.1	7.7
Trustworthiness	8.8	9.1	9.2	8.4

PARENTAL OBSERVATIONS OF CHILD TESTIMONY

Almost half of the parents we spoke with had not been in the courtroom when their children testified. This was typically because the parent was expected to be a witness following the child's testimony. Of those who had been present, five heard the details of the abuse for the first time. About an equal number would have heard the details for the first time had they been in court. Sometimes the parent had opted not to watch and sometimes the child felt that testifying would be easier if the parent was not there.

The latter opinion was most common among the teenaged witnesses who tended to be more embarrassed about the sexual content of their testimony than were the younger children. One mother was able to testify instead of her pre-school aged daughter. She gave evidence about the disclosure statement that the girl had made to her, the defence agreeing to the use of this hearsay evidence.

Like the children, the parents generally reported that they had felt that the judge took a passive role in the trial. One mother commented that she thought the judge had been asleep. Few indicated that something happened in court for which they were not prepared, but several felt that the cross-examination was more painful to watch than anticipated. In fact, most parents described feeling some degree of animosity toward the defence attorney. It was not uncommon that their children had become distraught and cried under defence questioning. Several mothers described suppressing the urge to jump up and rescue their children from out of the witness box. As with the children, however, some mothers recognized that the defence attorney was performing a legitimate function within the adversarial system. One mother said of the defence lawyer: "He tried to confuse the boys. It upset me at first, we had no experience with courts. But now, looking back, he was doing his job." Even so, many were critical of the defence tactics used to undermine the witnesses. One mother summed it up well:

I don't think a defense attorney has to be cruel in order to try and discredit a child witness. His skill and maturity should enable him to trick someone who is lying, not to make them feel bad about themselves.

CHILD SUGGESTIONS FOR IMPROVEMENTS TO THE SYSTEM

One of the most important reasons we conducted the follow-up study was to ask the former child witnesses for suggestions on how the system could be improved to make it easier. The five factors identified by the testifiers were: 1) not having to see the accused while testifying; 2) receiving court preparation; 3) closing the courtroom to the public; 4) using simpler language; and, 5) having emotional support.

TESTIMONIAL AIDS

Few of the children with whom we spoke had had the opportunity to use a testimonial aid. The only aid available at that time had been the screen and it had been infrequently used. The children who had been able to testify from behind a one-way screen were happy to have been permitted that concession. One girl we talked to had testified at the trial with the screen placed in front of her father, the defendant. Compared with her experience of no screen at the preliminary inquiry, she found this much easier. However, she said that she would not have wanted to have the screen placed in front of her: "If it had been in front of me I think I'd have felt closed in."

For those child witnesses who had not been able to use a testimonial aid, the screen was described to them during the interview and they were asked how useful this device would have been for them. Two thirds of them had indicated previously that not seeing the defendant would have made the experience much easier for them. A further ten percent said that not seeing the defendant would have made it somewhat easier to testify. When asked specifically about the screen, however, only a quarter indicated that they felt it would have been helpful. Forty percent felt that it would not have helped at all. Two principal reasons for this were advanced by them: 1) the screen would block their view of support people in the courtroom; and, 2) they could feel the defendant's presence even if they could not see him. Several children volunteered that they would have been comfortable with a screen placed at the defence table in front of the accused person. Others felt that it would be nice as an option for those child witnesses who wanted it, even though it would not have been necessary for them personally. Parents were more convinced of the screen's potential helpfulness — nearly half of them felt that the screen would have been helpful for their children.

Opinions of the closed-circuit television link were more positive than opinions of the screen. Even those who used the screen said that the closed-circuit television would have been better. Only one quarter of the testifiers indicated that it probably would not have been helpful for them. Nearly 60 percent reported that this provision would have been very helpful.

WOULD YOU HAVE LIKED TO USE THE SCREEN TO TESTIFY?

"No, I don't think so because you'd know he's there."

"I wouldn't have liked it. Closed in, not being able to see people, would have made you more nervous."

"[Would be good if it was placed] in front of [the defendant]. If it was in front of me I'd be afraid he'd be right there."

"I'd recommend a screen around [the defendant] because kids need to see support people in court."

"Seems pretty weird, talking to a screen. But it would be nice to block your view of him [the defendant]."

"I think it would have been worse because they can still see you and you can feel it."

"No, didn't need that. Maybe it would work for a younger kid."

"It would be real good for scared kids."

"No. I wanted to see him when he heard what he'd done to me."

Part of the reluctance to having children testify with a testimonial aid stems from the belief that it makes it easier for them to lie in the witness box. One of the questions we asked was designed to address the concern of some people that children can fabricate stories of abuse and tell about things that really did not happen. We asked the children what factors might cause or encourage children not to tell the truth in court. Their reaction to this question was interesting. Few could suggest a single reason that children might not tell the truth in court. It was inconceivable to them that anyone would go through the experience of testifying if they did not have to. Most, however, assumed that the question referred to false retractions. For example, one girl responded: "In my case it would be because I was so close to my dad [the defendant] and I was scared because they told me what could happen to him [jail]." It would seem that the formal court procedures may actually work to suppress true evidence more often than they discourage false evidence. If that is indeed the case, then modifications to court procedures which reduce the fear children experience should encourage the production of truthful accounts by them.

HOW CAN THE SYSTEM BE IMPROVED TO MAKE IT EASIER FOR YOUNG PEOPLE?

"Tell them [those preparing children for court] to be honest [about court] — probably nothing in their lives would be harder."

"It's really hard to make it easier — there's only so much you can do."

"Keep the guy who did it out of the courtroom."

"Go in a different room with the judge and ask you questions without [the defendant] being there."

"Only have the main people in court and him [the defendant] in another room."

"Anyone under the age of 12 shouldn't have to testify — it's too much pressure."

"Talk to [child witnesses] on their own level. I was 16 and I was confused."

"To tell you the truth, it's hard to make that situation easier. *You* still have to do it."

TRIAL OUTCOME

As we discussed in Chapter Three, the children who returned for the follow-up study were not significantly different from the non-responders in terms of the variable features of criminal justice processing of their cases. Among all 71 children whose cases went to trial, 52 percent saw a conviction and 48 percent an acquittal. During that time period, therefore, the chances for a favourable conclusion from the child's point of view were about 50/50. The 43 follow-up children who had testified at a trial, however, had experienced a higher rate of conviction after trial (58 percent). Therefore, their impressions as a group may be more positive than those of their non-responding counterparts.

All but a very few of the children had an accurate recollection of the verdict. Typically, they were not in the courtroom at the time the verdict was handed down because they were unlikely to have remained in the courtroom after their own testimony. Families were informed of the verdict over the telephone by either the investigating officer or the Assistant Crown Attorney, a courtesy deeply appreciated.

REACTIONS TO GUILTY VERDICTS

Almost three quarters of the children whom we interviewed recalled being happy when they heard the verdict of guilt but some could not recall how they felt, and two reported mixed feelings. When asked what was the best thing about hearing the guilty verdict, the most common response focused on personal safety. The children felt less vulnerable from retaliation by the offender. One child, however, welcomed the guilty verdict because she, erroneously as it turned out, thought that this would facilitate a rapprochement with her father and his family. It is not uncommon in our experience that children will pursue a prosecution against a father for this reason. They want to remain together as a family but they want the abuse to stop. They believe the criminal justice system can force a recognition of the problem and mandate treatment.

HOW DID YOU FEEL WHEN YOU FOUND OUT ABOUT THE ACQUITTAL?

"In a sense it kinda went both ways 'cause originally I'd just wanted to scare him. Then again I thought, hey — wait a minute, he'd made a mistake — why isn't he paying for it?"

"I was expecting him to go to jail so it made me feel bad. I felt really angry with the criminal justice system and with [the defendant]."

"I was very embarrassed [by the closing summations]. I was crying and the security guard asked me to leave [the courtroom]. My mom stayed and came out and told me about the verdict. [I felt like] I set myself up to fall."

"Happy in a way [because Dad could come home], but also concerned about the future."

"Actually, everything went blank — and stayed blank."

REACTIONS TO ACQUITTALS

The devastating impact of an acquittal for a sexually abused child cannot be underestimated. It may represent a confirmation of the child's greatest fear about disclosing — not being believed. It can also reproduce the abuse experience in those cases when the abuser used threats of disbelief and maternal rejection to solicit silence. "No one will believe you and your mom couldn't handle it" were prophetic words a girl recalled her stepfather had used to convince her not to disclose. Both predictions turned out to be true. For all, an acquittal revived the sense of powerlessness that had been temporarily suspended during the prosecution. Most were disappointed or angry at the verdict. And yet ambivalence, and even relief, were expressed by some, who still felt vague allegiances to the defendant. A girl, who testified against her father, was happy to learn of the acquittal because she had already accomplished her goal: the abuse had stopped. A developmentally delayed boy, for whom the charges were dismissed, had not fully understood the verdict. The offender had been convicted for charges concerning another victim and he erroneously believed that his testimony had also resulted in a guilty finding.

ATTRIBUTION FOR ACQUITTALS

As presented above, almost all children rated their testimony as being good or at least adequate. Most, but not all, in the acquittal group were able to attribute the cause for the verdict to some other aspect of the court process, and not to their own ability to be good witnesses. Perhaps those around them had attempted to deflect responsibility for acquittals on to other aspects of the case. Regardless of the reason, this perception was, in our clinical view, of benefit therapeutically for those child witnesses whose cases ended unfavourably. The most frequent explanations given by these children for the verdict were legal ones; for example, reasonable doubt or insufficiency of evidence. Five children had felt that it might have been because they did not testify well enough; for example: "I thought that I wasn't clear, that I wasn't believed." One child professed to having no idea why the charges were dismissed.

One might assume that an unfavourable verdict would be interpreted by almost all the witnesses as meaning that they were not believed. However, many recalled, or had been told, that the judge clearly said that the decision was made for a legal reason. When the judge specifically mentioned that he had believed the child, this was an extremely important occurrence, a simple remark that meant a great deal to the child. When the verdict had been handed down by a jury, the children were less clear on the reason and were left with questions and self-doubt. In almost the worst-case scenario from the child's point of view, a teenager

girl vividly recalled that the judge had told the jury that he concurred with their verdict. The overwhelming fear that she would "lose" in court prevented that girl from reporting a subsequent rape.

DID THE JUDGE BELIEVE YOU?

"Then I didn't [think so], now a little bit. He said he didn't have enough evidence. Now I think he may have believed me. I now understand the legal system better."

"I know he did — he said that in summation but he said that there was no hard, cold, evidence [for conviction]."

"He said he believed I'd been abused but didn't have enough evidence to point to [the defendant]."

"Well, he made it clear at the end that it was due to 'reasonable doubt' and not that I was lying."

"The judge said 'I know someone in the court is telling lies. I hope one day the truth comes out.'"

Overall, it was rare that the children blamed criminal justice officials for the verdict, except to the extent that they believed these officials had been outsmarted by the defendants. From their viewpoint, the abuser stood unadmonished even with the efforts of these educated and experienced professionals. The acquittal confirmed the child's view of the abuser as omnipotent and them as powerless. Some spoke of lasting resentment of defence witnesses who had lied or potential Crown witnesses who had backed out, because of their fear of the defendant. It is a recurring theme that the worst cases of abuse were the least well served by the justice system.

Continuing on that theme, it was sad to observe that the cases of some girls were lost because their credibility was called into question by reference to behaviours that may have been caused by the abuse. As we discussed in the literature review, child sexual abuse can result in acting-out or self-destructive behaviours in children and adolescents, such as running away, substance abuse, aggression, delinquency, and truancy. Other commonly observed consequences are psychological and emotional problems, such as depression and suicide attempts. It was ironic that the existence of such behaviours and conditions could be used by the defence as proof that the child was unstable and not credible. These girls often endured harsh cross-examination that demeaned their moral character and suggested that their sexual knowledge was gained not from sexual abuse but from promiscuity. As one mother stated: "I wanted the Crown to call a character witness for her, someone who knew her from before who could say she was a different girl before the abuse."

REGRETS OVER PURSUING THE PROSECUTION

Predictably, regret for pursuing the prosecution was associated with case outcome ($P^2=10.0$, $df=3$, $p=.01$). None of those children whose case ended in a guilty plea or conviction after trial expressed any regret; whereas many (57 percent) of those whose case ended in an acquittal did regret having gone to court. That this feeling was not universal among the acquittal group was, perhaps, more surprising. However, some saw benefits of the prosecution and others had been ambivalent about it all the way along. On the other end of the spectrum were those intrafamilial victims who felt that the acquittal was worse than having done nothing, because they would be faced with a lifetime of gloating by their abusers.

DID YOU HAVE ANY REGRETS OR WERE YOU GLAD YOU WENT THROUGH THE WHOLE THING?

"I regretted it. It seemed like a waste of everyone's time. I wanted him to go to jail."

"I believed that something was achieved — it was over with and I didn't have to see him again — no regrets."

"It was a total waste of time and energy."

"No [regrets]. I figured some good had to come out of all that."

"I wish I'd done nothing. I just don't think court was the way to go. If I'd been older, I would have handled it alone."

THE IMMEDIATE AFTERMATH OF ACQUITTALS

One of most salient issues for those who experienced acquittals was that any restraining order was immediately nullified. Personal safety became a concern. Two thirds of the follow-up children whose cases had been dismissed had alleged abuse by a family member, so on-going contact of some degree was inevitable. One girl recalled: "My father was escorted out [of court] and I was told to wait. He came back up the escalator and told me he hated me." He continued to monitor her movements and those of her mother for quite some time, at one point entering their apartment and leaving a note. The stepfather of two girls threatened to sue them for defamation of character. On-going and unwanted contact by the defendants is a topic that will be explored further in the next chapter.

Another immediate outcome of acquittals was that some children who had been coping well before court began to act out and manifest emotional problems. A teenaged girl had received the news about the verdict just before Christmas. On the day that her brother was to go for a holiday visit with their father — a visit from which the girl was excluded because of the abuse — the girl attacked her mother and gave her a black eye. The brother called the police. "They took her out in handcuffs," recalled her mother. "I was totally destroyed at that point."

In the case of one girl we talked with, the acquittal triggered the immediate reunification of the family. Reunification is rare in our experience. We interviewed nine girls who had testified against a father figure who was ultimately acquitted. All the fathers in these cases continued to deny their guilt, aided and abetted by the verdict. For the girls who desired rapprochement with the father, the acquittals were a significant barrier. In only that one case was there currently any degree of contact between these girls and their fathers. Equally, or more, disturbing is that the acquittals could prevent any meaningful reconciliation with defendant-supportive mothers. Again, this is discussed further in the next chapter.

Periodically, we see situations where family reconciliation is more stressful than family disintegration for the young person. Diane, like many other children we interviewed, reported that she had considerably minimized the abuse at the time of disclosure. She reported to us that it had in fact started three years earlier than she had originally stated. In recalling her role in the criminal justice system, Diane expressed ambivalence. She clearly recalled testifying as the "hardest thing I ever did." She was also left with intense memories of her father's anger during his court appearances. She recalled that one of her greatest fears prior to court had been that her father would have to serve a long jail term. She had not seriously anticipated an acquittal. She was in court to hear the verdict and clearly remembers that her father "came up and kissed me on the head" after the judge's decision. In retrospect, Diane feels betrayed by the justice system. Following the acquittal, the family reconciled. According to Diane, there has never been any discussion within the family of what had taken place. She sees each member as heavily invested in maintaining the family myth that "all is well." As a result, she feels alienated within her own family.

ROLE OF CHILD PROTECTION AGENCIES AFTER ACQUITTALS

Many of the intrafamilial abuse victims who had experienced acquittals were 16 years of age or older, but those who were younger came under the purview of the Children's Aid Society. In the one case where the family reconciled, the agency maintained supervisory contact in the face of much hostility by the parents. An acquittal in a criminal court does not diminish the validity of the agency's belief that the abuse occurred, as child protection matters involve a lower burden of proof. With that one exception, however, agency involvement immediately following acquittals took the form of undertaking guardianship for those girls who had been rejected by their families.

Alicia testified reluctantly about abuse she had suffered from her stepfather. He was acquitted by a jury. When asked if there was something, in retrospect, that she would add to her testimony, she said it would have been this statement: "I'm sorry, I didn't want to break up the family, but it was wrong what he did." After court, Alicia was made a ward of the CAS because of maternal rejection. Her mother continued to live with the stepfather and Alicia, regretfully, had no contact with her.

SENTENCING

For 68 percent of the original evaluation children, the case proceeded to the sentencing stage. The same was true for 54, or 71 percent, of the follow-up children.

VICTIM INPUT INTO SENTENCING

For about half of the children, clinical victim impact statements were prepared by Project therapists. A few children wrote their own statements. Of the 29 children we asked about sentencing, 11 recalled

having some input into the sentencing decision. Of the remainder, four said they would have liked to have had some input while 14 said that they did not want to address the Court, verbally or in writing, about sentencing. Parents were more likely to say they would have welcomed the opportunity. Some parents wanted to broaden the scope of the issue to include the impact of the abuse on the entire family. One mother recalled testifying as to victim impact at the sentencing hearing. She intended to ask for castration but the Assistant Crown Attorney phrased the questions in such a way as to avoid the topic. The intensity of her punitive feelings toward the offender was not altogether untypical.

OPINIONS OF SENTENCE

For the most part, the children were not present at the sentencing hearings and learned of the sentences through other parties. Usually this was accomplished by the investigating police officer or Assistant Crown Attorney telephoning the parents after the hearing. About half of the children remembered the sentence in general terms and another third had a completely accurate recollection of the sentence. Only four children had no memory of the sentence and two had an entirely incorrect recollection. This was because the parents had not told them the sentence or had misunderstood the sentence and relayed an inaccurate version. When asked to reflect on the severity of the sentence, the most common response from the children (55 percent) was that it was too lenient. About twenty percent felt that the sentence was fair and one child thought it was too severe. The remainder had no feeling either way.

HYPOTHETICAL SENTENCES

All the children and parents, regardless of case outcome, were asked about the sentence that they would have handed down if they, hypothetically, had been able to pass sentence. One fifth of the children said they would not have had the defendant incarcerated. This view was far more common among the children who experienced an acquittal (36 percent) than those whose cases ended in a guilty plea (22 percent) or a conviction after trial (eight percent). One quarter felt that a prison term of less than two years would be appropriate. On the other end of the spectrum, over one third (37 percent) of the children would have liked to see a life sentence, although they understood that such a penalty was highly unrealistic.

There was no significant association between the case outcome and the preferred prison sentence length of the children. An interesting trend emerged, however. Generally, those who testified tended to desire higher sentences than those who did not. A guilty plea constitutes an admission of guilt and this may be a more satisfying experience than having to testify to get a conviction. Interestingly, Canadian courts share a similar view in that sentences are justifiably lower where a defendant pleads guilty.

SENTENCING RATIONALES

We investigated the rationales that underlay the children's sentence preferences. Each sentencing philosophy was described, in lay person's terms, and the children were asked which factors were important in their decision. Ninety percent of the child respondents indicated that their desire for a jail term was motivated in part by the sense of personal safety it would bring. An equal number felt incapacitation was important because imprisonment would keep the offender away from potential child victims. Some 83 percent felt that incarceration itself might specifically deter him from abusing another child after release. The least commonly endorsed reason was treatment/rehabilitation (38 percent). The low rate of endorsement of this philosophy stemmed from misgivings that the correctional system could be beneficial, although the hope that offenders were treated was often expressed.

When asked to select the single most important reason for them, incapacitation was chosen by half of the children. In other words, they felt that incarceration was desirable most of all because the offender would be unable to abuse children while in jail. Twenty-two percent saw punishment as being most important for them. A further 16 percent thought in terms of personal safety in that they most of all wanted

to keep the offender away from them. Eighty-two percent cited revenge as a factor of some importance in their choice of incarceration but only one child (three percent) felt that it was the most important factor.

PARENTAL VIEWS OF SENTENCING

Parents were more likely than the children to feel that the sentence was too lenient, 68 percent expressing that opinion. Twenty percent thought it was fair and two parents thought that the sentence was too severe, a reflection of their own ambivalence over the need to prosecute the defendant. One quarter of the parents, a higher proportion than among the children, said that they would not have sent the offender to jail if they had passed the sentence. As with the children, there was some connection between case outcome and preferred sentence. Half of the parents whose children's cases ended in an acquittal said they would not have wanted to see a jail term. Incapacitation was the most frequently endorsed sentencing rationale (84 percent), with rehabilitation (11 percent) and specific deterrence (22 percent) as the least frequently endorsed. More than one quarter (27 percent) saw punishment as the most important reason, followed by incapacitation (24 percent) and the safety of their children (17 percent). Denunciation was the most important sentencing factor for 15 percent of the parents.

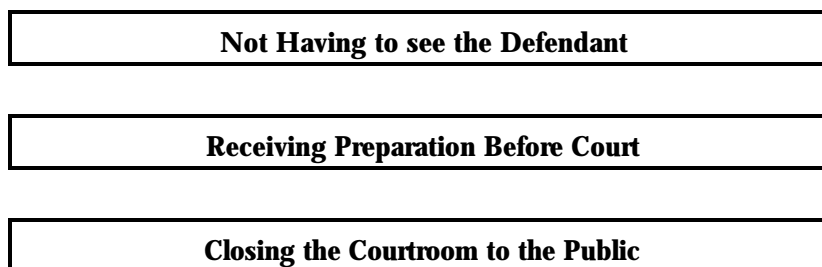
SUMMARY

In asking the children about their experiences in court, we mentally walked them through the process, from their arrival at the courthouse to hearing the verdict. They recalled a great deal of anticipatory anxiety in the days before scheduled court dates and parents reported that this was manifested in behavioural and mood changes. However, when at the courthouse, they recalled feeling safe and supported by victim assistance personnel. Adjournments were met with mixed feelings, because the immediate need to testify was forestalled but the time in the system was lengthened. Guilty pleas, on the other hand, generally triggered a sense of relief, although some children recalled a feeling of anticlimax. Parents, on the other hand, often felt that the guilty plea meant that the offenders had managed to negotiate concessions that they did not deserve.

Those children who had testified described the experience in largely negative terms. The passage of several years had not diminished in their minds the memory of feeling scared and vulnerable. The level of difficulty of the questions was a concern voiced by many. In reflecting on the benefits of testifying, almost no one focused on the conviction and punishment. Rather, most saw the experience as difficult and often frightening, with few immediate benefits. One third had been too anxious or embarrassed to give a full account of the abuse while in the witness box. These former child witnesses identified five ways to make it easier for children who have to testify (Figure 10).

Figure 10

Child Witnesses' Suggestions to Make Testifying Easier for Children



Having Support People in the Courtroom

Having Judges and Lawyers Use Easier Language

About half the parents of the children who testified had been unable to be in the courtroom during the testimony making the presence of victim support personnel important, especially for the younger children. Those parents who had observed the testimony recognized the experience as being difficult for both them and the children.

Given the prevailing public views of criminal sentencing, it was not surprising to find that those in our sample found the dispositions to be mild relative to the seriousness of the abusive behaviour. While some of the children appeared to have punitive attitudes in their hypothetical sentencing, we found that their desire for long prison terms was inspired by a sense of personal safety and concern for future victims rather than vengeance. The parents evidenced a slightly greater tendency toward punitiveness than did the children, however. While the parents were typically knowledgeable on the pre-court and trial stages of the criminal process, their misunderstandings about the system were noticeably more common for the post-adjudicative stages.

Overall, the children found the experience of testifying to be so challenging that they could not conceive of anybody undertaking a false prosecution. Contrary to the idea that children cannot comprehend the gravity of an allegation of sexual abuse, we found that they regarded the experience with greater awe and seriousness than many adults might. Some erroneously believed that their testimony — rather than the abusers' behaviour — would be the cause of any prison term. The rigours of the legal process and the formality of the court proceedings are touted as necessary to intimidate and identify false accusers. However, in our experience, they are equally, if not more, likely to discourage legitimate complainants from being able to tell their entire story in court.

Reviewing the results of the interviews and our research notes regarding their testimony, we found that, in general, child victims of intrafamilial abuse, particularly girls, had to endure more arduous cross-examination and so their memories were more negative. The painful task of testifying against a family member left much bitterness and grief. In addition, guilty pleas were much less common in intrafamilial cases so they were more likely to proceed to trial. It might be interesting to speculate whether support from non-offending parents was linked to the stance of the defendants. Perhaps also of importance was that, in the intrafamilial cases heard during the period under study, defence attorneys could, quite correctly, advise their clients that the chances of an acquittal at trial were good, especially when the complainant was a teenaged girl.

HIGHLIGHTS

- ! support on the day of court offered by personnel of the Child Witness Project and the Victim/Witness Assistance Program was appreciated by the children and their families;
 - ! the segregated waiting area in the courthouse was frequently cited as being helpful;
-

- ! lack of information about or understanding of the court process and its aftermath was cited as a frustration by some parents; this could lead to misconceptions around guilty pleas and sentences;
 - ! the children cited a number of fears and frustrations around testifying, including: facing the defendant; describing intimate details of the abuse; testifying in front of a courtroom full of strangers; and, not being able to understand all questions put to them;
 - ! nearly 60 percent of the children endorsed giving testimony by closed-circuit television as an option that would have been helpful for them;
 - ! many of the children whose cases ended in acquittals felt that they had been believed by the judge and therefore attributed the not guilty finding to other factors;
 - ! for those children whose cases were acquitted, a comment from the judge that he believed they were telling the truth was seen as extremely important by them; and,
 - ! the most important reason cited by those children who wanted their abusers sent to prison was that the offender could not abuse children while incarcerated.
-

PART III

