The Child as a Witness

Committee on Psychosocial Aspects of Child and Family Health

In the last two decades, there has been a dramatic increase in the recognition and reporting of child physical and sexual abuse. This, coupled with the current 50% divorce rate and the fact that many of these separations involve child custody decisions, has led to an increasing need for children to appear in court.

Custody decisions usually involve family or civil courts; however, allegations involving sexual abuse may require a child to appear as a witness in criminal court. Although the procedures and potential consequences of these legal processes are quite distinct, all situations in which children offer testimony can be quite stressful and merit the awareness and support of pediatricians.

Pediatricians can become involved with children who are to be witnesses at several levels, including: 1) supporting patients in the pediatric office; 2) participating in legal proceedings; and 3) advocating for legal reform.

SUPPORT IN THE PEDIATRIC OFFICE

The pediatrician is an important source of support for the child who is to be a witness, from the initial contact through preparation for court appearance, and after the court proceedings. A pediatrician should attempt to keep the legal process in the child’s best interest and should help the child maintain a healthy adaptation to a stressful experience. The pediatrician should also address the psychological impact of the event responsible for the child’s court appearance.

When parents plan to separate, pediatricians may help the family by discussing living arrangements and visitation during an office visit. If custody is disputed, which is the case in 10% of divorces, and a child is asked to appear in family court, the pediatrician can provide counseling to help prepare the child for the court appearance. If sexual abuse is suspected, the case will involve the criminal justice system, and a pediatrician is often the first person contacted. In such cases, the pediatrician needs the skills to sensitively and appropriately interview, examine, document, report, and provide ongoing counseling for the child. The pediatrician also needs to have knowledge of behavioral and physical indicators of abuse and of variations and current trends in sexually transmitted diseases.1 In one study of sexually abused children, more than half of the children were involved in court cases, and 15% were asked to testify.2

Separate attention must be devoted to preparing a child for the stress that accompanies a legal hearing. Appearances in family court are often in the judge’s chambers and are markedly different from criminal court experiences in which child witnesses may be examined for weeks by defense attorneys. Pediatricians can help prepare children for court appearances by explaining what will occur and that the child will always be accompanied by a supportive person, such as a parent. Pediatricians must be aware of children’s concerns about recrimination. A pediatrician can help minimize a child’s anxiety by explaining that the child will not be judged on his/her performance in the courtroom, that efforts will be made to ensure that the child will be safe from recrimination, and that the child should answer questions to the best of his/her ability.

Because of the stressful events leading up to and surrounding a court appearance, a follow-up visit with the pediatrician is indicated after a child appears as a witness. Children should be checked for behavioral manifestations of acute stress (sleep disorders, somatic complaints), adjustment, and functional status (school activities, resumption of usual activities, physical functioning, social functioning, mental health).

One study has shown that participating in legal proceedings may actually benefit a child psychologically.3 The study showed that waiting for court proceedings was likely to prolong depression in sexually abused children, whereas testifying helped decrease children’s anxieties.

PARTICIPATION IN LEGAL PROCEEDINGS

While the pediatrician’s principal role is to support and help the child and family cope with the stresses of being involved in legal procedures, some pediatricians will choose to use their knowledge and spirit of advocacy to help with their patients’ trial processes, or to serve as experts testifying on children’s cognitive abilities. Pediatricians may also be asked to testify based on their knowledge of and relationship with the child.

Setting and Support

All children should have a supportive individual present during court proceedings to explain procedures, assist the child and parents, and provide support by advising the court of the child’s needs. The courtroom and/or proceedings can also be adapted to
make the legal process more comfortable for the child. Specific adaptations include exclusion of spectators, use of videotaped or closed circuit testimony, use of child-size furniture, and eye-level interviewing. However, a recent Supreme Court decision that affirmed the right of defendants in abuse cases to face their accusers has raised questions about accommodations provided by many state laws to protect children by using videotape.

**Interview**

The purpose of interviewing a child in legal proceedings is to obtain accurate information. The setting, support persons, and interviewer's skills will influence the likelihood of success in accomplishing this task. A supportive environment is essential for two reasons: 1) so that the best interest of the child is served and the child is not subjected to undue stress, and 2) because the anxiety or emotional difficulties a witness feels due to the stress of a court appearance can hamper the process of obtaining valid and reliable information.

Individuals experienced in developmentally appropriate interactions should be involved. A variety of interviewing techniques may be appropriate, including use of behavioral observation techniques, play, storytelling, and drawing, as well as verbal questioning. The use of a single, well-trained interviewer capable of building rapport will enhance the process and minimize trauma to children. However, none of these techniques is completely accurate in determining whether a child may have been abused.

Principles of interviewing that apply to children in the office apply to children in the courtroom. These include building rapport and asking clear, simple questions. For children testifying in abuse cases, a time for "warm-up" is especially important. Questioning should be general at first and should gradually become more specific.

Children may be confused by negatively worded statements. They may also be eager to please, anxious to provide the "right" answer, and may have a tendency to choose either the first or the last option when given a number from which to select. Therefore, it is essential that clearly worded questions that encourage children to provide answers that will be viewed nonjudgmentally are used. Correct answers or scenarios should not be suggested as children may be influenced and are prone to suggestibility.

**Determining Competence**

The legal system is especially interested in three questions about a child's competence as a witness: 1) Can the child receive and relay information accurately? 2) Does the child know the difference between telling the truth and a lie? 3) Does the child understand the need to tell the truth in court? For adults, lying is an intentional deception that involves either concealing or falsifying information directed at an unsuspecting individual. Deception, as a developmental concept, has been studied extensively in young children, as has lying. Ekman has classified the reasons children lie. They include: to avoid being punished; to get something you couldn’t get otherwise; to protect friends from trouble; to protect yourself or another person from harm; to win the admiration or interest of others; to avoid creating an awkward social situation; to avoid embarrassment; to maintain privacy; and to demonstrate your power over an authority.

When assessing the validity of information provided by children, many factors must be considered. Younger children may not remember with as much accuracy as older children, but the poignancy of an event may enhance memory. A 3- or 4-year-old’s ability to recall major events is excellent, although less important information is less well remembered. Three-year-olds have actually been effective witnesses. A lack of accuracy may be due to the following:

1. poor recall of event or sequences in an event
2. misinterpretation or confusion around an event
3. suggestibility
4. delusion or other mental disorder
5. mental retardation
6. intentional deception initiated by the child or resulting from adult coercion.

Older children, who are capable of understanding the meaning of a lie, may be coerced into falsification by adults who label the action an act of secrecy. The child may conceptually consider a lie and a secret as two separate entities and, therefore, may not feel a lie is actually being told. Alternatively, children may be convinced that when a lie serves "a noble purpose" they are not really doing something wrong.

The amount of literature that addresses the accuracy of children as witnesses is growing.

**ADVOCATING LEGAL REFORM**

Finally, pediatricians may wish to collaborate with other professionals to improve the legal procedures and policies for examining children.

Treating children sensitively throughout the pretrial period, along with the court’s increased sensitivity to the special needs of children, will help make the legal examination easier for children. Specific actions that can be helpful include educating judges to be alert to lines of questioning that may confuse or intimidate a child. They must recognize signs of embarrassment or anxiety that may cloud or confuse a child’s testimony and must take the initiative to help the child. For instance, a judge could call a recess to explore a child’s discomfort.

It has been recommended that statutory reforms might be helpful. Possible reforms include: 1) abolishing competency requirements. Although state laws vary widely, traditionally, children have not been considered competent witnesses. Adoption of the more liberal Federal and Uniform Rules of Evidence, which allow children to testify and permit the trier of fact to determine the weight and credibility of the testimony, would facilitate justice in cases involving children. 2) Authorizing special hearsay exceptions for child sexual abuse victims. This would enable the child’s statements to others, such as pediatricians and social workers, to be admitted as evidence.
Perhaps it is most important for pediatricians to understand the current rights of children in their states' legal systems so they can advise children and parents in their offices and determine what reforms may be needed in their states. Many states have made major legal strides in treating children sensitively as the following California codes illustrate: 1) "Every person, irrespective of age, is qualified to testify."; 2) "The court should support, comfort, and protect child witnesses."; 3) "Up to two supporting persons in the courtroom are allowed for any child under 16."; 4) "The court is to take special care to protect the child from embarrassment and restrict the unnecessary repetition of questions."; 5) "The intent and purpose of the Legislature is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever necessary to prevent psychological harm to the victim."; 6) "Contemporaneous closed circuit television testimony is allowed in criminal prosecution." This last accommodation may need to be reviewed based on the Supreme Court's recent decision to affirm the "right to confrontation" of the Sixth Amendment. Nevertheless, in a concurring opinion, Justice O'Conner suggested that the "compelling state interest of protecting a child witness" would allow for case-by-case decisions.3

In addition, it is possible for pediatricians to advocate for limiting the duration and frequency of child interviews, to recommend that professionals competent in child interviewing question witnesses, and to urge for expedient trials in abuse cases in order to hasten the child's healing process. Judges also have considerable discretion to exclude spectators from trials. Many other modifications in legal proceedings for children have been recommended (AACP).17

Attempts to protect children from the stresses of a trial will continue to conflict with the rights of the accused to face an accuser and to have cross-examination of witnesses. We, therefore, anticipate that it will be necessary for pediatricians to engage in both ethical and legal debates in the process of working toward reform in the criminal court system. Nevertheless, all of the recommended accommodations can occur in civil, family, and juvenile courts.

3. A pediatrician also may be able to contribute to a child's adaptation by advocating for accommodations in the legal process that are in the child's best interest.

REFERENCEs
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*Pediatrics* 1992;89;513

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