

## **The Impact of Child Witness Demeanor on Perceived Credibility and Trial Outcome in Sexual Abuse Cases**

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*We examined how child witness demeanor at the moment of courtroom confrontation with the defendant affects trial outcome and the perceived credibility of the child witness in sexual abuse cases. Phase 1 (descriptive) utilized a free response format to explore the affective and behavioral responses men and women expect a child victim of sexual assault to demonstrate upon first confronting the defendant in the courtroom. The most frequently cited responses included crying, fear, and confusion. Phase 2 (experimental) investigated the impact of presence or absence of one of these expected responses (i.e., crying) upon juror perceptions. Participants who read about a child who cries upon initially confronting the defendant perceived her as more honest, credible, and reliable than a calm child, and they were more likely to convict the defendant.*

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**KEY WORDS:** child witness; witness demeanor; sexual abuse; credibility.

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### **INTRODUCTION**

Child sexual abuse is one of the most difficult crimes to detect and to prosecute, in large part because there are often only two witnesses to

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the assault: The child and her assailant.<sup>4</sup> As the Supreme Court recognized in *Pennsylvania v. Ritchie* (1987) and *Coy v. Iowa* (1988), the child's testimony is the most important (and often the only) evidence of wrongdoing. Consequently, the credibility of a child witness (i.e., the extent to which a judge or jury believe that she is providing honest and accurate testimony; Nurcombe, 1986) becomes an essential aspect of the prosecution's case, and psychologists have become interested in the factors (e.g., age) that may influence the perceived credibility of child witnesses. For example, several studies indicate that younger children generally are viewed as more credible witnesses in sexual abuse cases than older children or adults (e.g., Corder and Whiteside, 1988; Duggan *et al.*, 1989; Goodman *et al.*, 1989; Nightingale, 1993; but see Crowley *et al.*, 1994). Presence of corroborative testimony by another child also appears to enhance a child witness's perceived credibility (e.g., Duggan *et al.*, 1987), as does inclusion of particular types of expert testimony (e.g., Borgida *et al.*, 1992; Crowley *et al.*, 1994; Gabora *et al.*, 1993).

One potentially important factor that may affect perceptions of credibility of the child witness and that has yet to receive systematic empirical attention is demeanor at the moment when she first confronts the defendant in the courtroom. The Confrontation Clause of the Sixth Amendment to the U.S. Constitution guarantees a defendant's right to confront his or her accuser(s) within a court of law, and is predicated upon the assumptions that: (1) it is more difficult for a witness to lie if the witness is required to accuse the defendant to his or her face, and (2) a face-to-face confrontation will enable the trier of fact to more readily detect deception in the witness's demeanor. In fact, the Supreme Court explicitly mandated in *Coy v. Iowa* (1988) that jurors use this moment of confrontation to observe witness demeanor and to inform their subsequent evaluations of witnesses' testimony. As Justice Antonin Scalia explained, "Face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser or reveal the child coached by a malevolent adult."

However, prosecutors frequently prepare children for the trial experience [e.g., inform the child about courtroom procedure; for discussion, see Westcott and Davies (1993)], and a prepared child witness may not demonstrate affec-

<sup>4</sup>The predominant child sexual abuse pattern is that of male perpetrator-female victim. Girls are more likely than boys to be the victims of child sexual abuse (Finkelhor, 1986, 1993; Fritz *et al.*, 1981; Rogers and Terry, 1984), and men are more likely than women to perpetrate sexual abuse against girls (e.g., Russell and Finkelhor, 1984). Therefore, we will use female pronouns to refer to the child victim witness and male pronouns to refer to the alleged perpetrator for the remainder of this paper.

tive or behavioral responses that jurors believe serve as accurate indices of credibility. Survey data indicate that many attorneys who prosecute child sexual abuse cases agree that court preparation reduces a child witness' confusion, uncertainty, and hesitation, and results in a more confident and emotionally controlled demeanor (Gresham *et al.*, 1991). Jurors may expect a credible witness (i.e., a child who has indeed been sexually abused by the defendant) to express fear or to cry when he or she first comes in proximity to the defendant; a truthful child who has been prepared for this moment may not display these behaviors and thus may not be viewed as credible. Indeed, Goodman and colleagues (1992) examined various aspects of the trial experience with a sample of 47 child sexual assault victims, and reported that the less anxiety a child sexual assault victim demonstrated prior to testifying, the less credible he or she appeared to adult observers while on the stand.

The present research was designed: (1) to determine what, if any, affective and behavioral responses mock jurors expect a (female) child witness to demonstrate at the moment she confronts the alleged (male) assailant in a sexual abuse trial; and (2) to examine experimentally how the presence or absence of these responses affects perceptions of the child witness's credibility and trial outcome.

## METHOD

### Design and Procedure

This study had two parts. In Phase 1 (descriptive), 27 undergraduate students (13 men and 14 women) volunteered to participate in exchange for course credit. These students had an average age of 19.20 years, and described themselves as Caucasian (37.0%), Latino/a (29.6%), African American/Black (18.5%), and Asian American (14.8%). Phase 1 participants read a brief trial scenario involving an adult male defendant indicted on charges of first degree criminal sexual conduct and a 6-year-old (female) child victim witness (his daughter). The script stopped at the moment of confrontation between the defendant and child witness, and participants listed in free response format their expectations of the child's reactions upon confronting the defendant. The most frequently expected reactions were crying (81%), fear (67%), confusion (43%), and anger (30%). Fewer than 5% of the respondents spontaneously cited such reactions as embarrassment, frustration, and anxiety. Crying was thus selected as the experimental manipulation for Phase 2.

Phase 2 (experimental) participants were 31 undergraduates (11 men and 20 women) with an average age of 18.39 years; 67.7% were Caucasian, 16.1% were Asian-American, 9.7% described themselves as "Other," and 6.5% were African-American. All participants read a circuit court trial scenario, similar to that utilized in Phase 1, involving a male adult defendant indicted on charges of criminal sexual conduct in the first degree. Participants were informed that the defendant had been charged with molestation (including digital penetration) of his 6-year-old daughter (the child victim witness). The scenario continued with the defendant seated with his attorney while the child witness was ushered into the courtroom by a victim advocate prior to taking the stand. Participants then read a description of the child witness' reaction upon approaching the front of the courtroom and initially confronting the defendant; her reaction (i.e., crying vs. calm reaction) constituted the experimental manipulation. Specifically, each participant was randomly assigned to read about a child witness who cried or who maintained a calm demeanor at the moment of confrontation with the defendant. Finally, participants responded to a series of questions about the defendant and the child witness on 9-point, Likert-type scales.

## RESULTS

A 2 (Participant Gender)  $\times$  2 (Condition: crying, calm) multivariate analysis of variance (MANOVA) on the inferences made by participants revealed a multivariate main effect for Condition, Pillai's  $V = .720$ ,  $F(9,19) = 5.42$ ,  $p < .002$ . As illustrated in Table I, a series of univariate followup analyses of variance (ANOVAs), controlled via the Bonferroni procedure and using a familywise error rate of .05, indicated that participants who read about a child who cries upon confronting the defendant were more likely than those who read about a calm child to perceive the child witness as honest ( $F[1,27] = 14.29$ ), credible ( $F[1,27] = 9.07$ ), accurate ( $F[1,27] = 6.88$ ), and reliable ( $F[1,27] = 4.72$ ),  $ps < .05$ . They were also more likely to believe that the child witness had been sexually abused ( $F[1,27] = 5.48$ ), to conclude that the defendant was guilty ( $F[1,27] = 6.28$ ), and to believe that other jurors would find him guilty ( $F[1,27] = 7.04$ ),  $ps < .05$ . Although there was no multivariate Participant Gender main effect or Gender  $\times$  Condition interaction, univariate ANOVAs conducted on each dependent measure revealed that women were more likely than men to perceive the child witness as credible (6.95 vs. 5.91,  $F[1,27] = 4.30$ ,  $p < .05$ ) and as reliable (7.00 vs. 5.64,  $F[1,27] = 5.83$ ,  $p < .05$ ); however, these results must be interpreted with caution in view of the lack of an overall effect for gender.

**Table I.** Perceptions of Witness Credibility and Defendant Guilt as a Function of Child Witness Demeanor Upon Face-to-Face Confrontation with Defendant

Perceptions of	Child Witness Response	
	Cries	Calm
Defendant's guilt		
Other jurors will find the defendant guilty	8.00	6.88 <sup>a</sup>
Defendant is guilty	7.67	6.50 <sup>a</sup>
Child witness's credibility		
Child witness is honest	8.00	6.56 <sup>a</sup>
Child witness was sexually abused	7.47	6.44 <sup>a</sup>
Child witness is credible	7.33	5.87 <sup>a</sup>
Child witness is reliable	7.00	6.06 <sup>a</sup>
Child witness is accurate	6.80	5.19 <sup>a</sup>
Child witness has falsely remembered the encounter	3.40	4.00
Child witness is deceptive	2.33	4.00 <sup>a</sup>

<sup>a</sup> Univariate follow-up comparisons (using the Bonferroni procedure and a familywise error rate of .05) reveal that the means in this row are significantly different at  $p < .05$ .

## DISCUSSION

Subsequent to the *Coy v. Iowa* (1988) decision, the Supreme Court ruled that a defendant's right to face-to-face confrontation is not absolute and may be forfeited if such confrontation would adversely affect the physical or psychological wellbeing of the child witness and/or would "impair the child's ability to communicate" (*Maryland v. Craig*, 1990, p. 3170). There is growing empirical evidence that confrontation does indeed negatively impact upon children's emotional wellbeing and upon the completeness of their testimony in sexual abuse cases (e.g., Goodman *et al.*, 1991, 1992). For example, Goodman and colleagues (1992) interviewed 38 child sexual assault victims who ranged in age from 4.5 to 16.6 years about aspects of their criminal trial experiences. They reported that, both before and after testifying, the primary fear expressed by the child witnesses concerned having to face the defendant. The researchers also asked children whether there was anything "that would make you feel better about testifying today." The most frequent response to this open-ended question concerned presence of the defendant in the courtroom; fully half (50%) of the 20 children who provided an answer stated that they would have preferred that the defendant be absent. In addition, those children who spontaneously gave explanations for their objection to the defendant's presence cited such factors as potential threat to self and family, fear of the defendant, and an unpleasant reliving of the sexual assault upon viewing the defendant.

In response to evidence documenting the deleterious consequences of face-to-face confrontation, increasing numbers of state legislatures have passed laws to protect children who might suffer emotional distress as a result of having to confront defendants in criminal trials. For example, the majority of states permit the use of videotaped testimony of alleged sexually abused children, at least 24 allow the child witness to be separated from the defendant via a one-way closed-circuit television, and several have authorized the use of a two-way closed-circuit television system (Small and Melton, 1994). Nevertheless, many jurisdictions continue to demand face-to-face confrontation between the defendant and the child victim witness (Yates, 1987) as a means of ensuring that a defendant's constitutional rights have been upheld and as a way of providing jurors with an opportunity to observe the child witness's demeanor and to inform their subsequent evaluations of his or her testimony.

A child victim witness may not, however, respond to the moment of confrontation in a manner the corresponds to juror expectations. Results of our preliminary, descriptive study suggest that adult men and women do hold very specific expectations about child witness demeanor in sexual abuse trials:

If Joy has truly been abused, then she will experience a great deal of sadness and possibly anger. I would expect to see her tear up when she first sees the defendant. I think she will cry, and become very upset, and I don't think she'll be able to answer many of the questions when she actually testifies. She'll be too upset at seeing the guy who abused her. [male]

I would expect to see terror and fear in her eyes. She would see the defendant, and she will feel this intense sadness and hurt and pain and terror at being reminded of what he did to her. She would cry, probably a lot, because she'd be scared that Leon would molest her again or hurt her in some way. And because she would be scared and confused about the whole court situation. She probably has no idea what's going on. [female]

Furthermore, these expectations appear to affect the child's perceived credibility and the trial outcome (i.e., verdict). Recall that mock jurors who read a scenario involving a child victim witness who cries upon confronting her alleged assailant prior to taking the stand found her to be more credible, believable, honest, accurate, and reliable than mock jurors who read about a child who responded calmly to the moment of confrontation. In addition, they were more likely to believe that the child had been sexually abused, to conclude that the defendant was guilty, and to believe that other jurors would share their opinion as to the defendant's guilt. In sum, jurors (at least, mock jurors) seem to do exactly what the Supreme Court mandated that they do in *Coy v. Iowa* (1988) — that is, allow a child witness's demeanor to guide their subsequent evaluations of that witness.

However, several factors decrease the likelihood that a child witness will in fact demonstrate the affective and behavioral reactions that jurors associate with credibility and veracity. Children are prepared for their courtroom appearances by prosecutors, social workers, and police officers, who teach them about general court procedures and who inform them that the defendant will be present and unable to harm them. Such preparation is designed to reduce a child's anxiety about testifying and is believed to be associated with a more relaxed, confident manner in the courtroom (Gresham *et al.*, 1991; Morgan and Williams, 1993). In addition, children are frequently exposed to multiple interview sessions as part of the fact-finding and court preparation processes, and this also may result in a less overtly emotional and/or distressed demeanor (Quinn, 1988). Finally, a substantial delay may elapse between the time of the assault, or the report of the assault, and the child's appearance in court (e.g., Goodman, 1984). This delay may attenuate the emotional response the child demonstrates upon confronting the defendant (Morgan and Williams, 1993).

The recognition that child witnesses may, for a variety of reasons, not demonstrate emotional distress during a courtroom appearance in which they confront the defendant(s), coupled with the awareness that jurors equate emotional distress with credibility, presents an interesting conundrum. On the one hand, every attempt must be made to safeguard the psychological and physical health of child victim witnesses and to increase their ability to provide accurate testimony; on the other hand, some of the techniques currently utilized to help children cope with courtroom appearances (e.g., preparation) may increase the likelihood that they will behave in a manner that raises doubts about their credibility and the value of their testimony in the minds of jurors. In short, the very measures that we take to safeguard young witnesses may inadvertently tilt the scales of justice against them.

There are no easy solutions. Perhaps it would be beneficial to decrease the delay between the first report of sexual abuse and the trial date, to curtail the number of interview sessions conducted with children who allegedly have been abused, and to reduce the amount of preparation children receive prior to testifying. Such changes might increase the likelihood that the demeanor of a (presumably truthful) child would correspond to juror expectations. Alternatively, the courts might rely more heavily on innovative techniques (e.g., videotaped testimony, closed-circuit television, screens) that would prevent the need for face-to-face confrontation. In trials where such confrontation is deemed necessary, one solution might be to educate jurors about the possible impact of factors, including trial delay, multiple interview sessions, and court preparation on a child witness's emotional and behavioral responses. Whatever the ultimate solution, it is

important that we recognize that demeanor of a child witness may not match juror expectations, and that this in turn may stack the cards against that witness and his or her testimony. We must somehow strike a balance between a defendant's constitutional right to confront his or her accuser, a child witness' right to be protected from unnecessary emotional trauma, and the jury's right to make an informed decision about a witness's credibility and the accuracy of his or her testimony.

As with all research endeavors, a number of limitations must be addressed. In particular, it is important to recognize that we, like many researchers interested in juror perceptions of various aspects of courtroom procedure, have utilized a young, college-educated participant population. It is possible that this is the only population in which the results found in the present study may be obtained. As noted by one anonymous reviewer, not only are college-aged adults infrequently chosen for jury participation, but mature adults may be less (or more) affected by the same elements of witness demeanor. One final limitation must also be addressed. Our reliance upon a simulated trial scenario enabled us to manipulate effectively one variable (witness demeanor) while controlling for others; however, it also resulted in the loss of a certain degree of external validity. Future researchers might provide a more realistic test of our hypotheses, perhaps by utilizing a videotaped reenactment of a courtroom encounter between a child witness and defendant, as well as an examination of the impact of other aspects of witness behavior at the moment of confrontation (e.g., vocal demeanor cues, such nonverbal behaviors as proximity and eye contact).

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