

When a Child Takes it Back:

It takes a Team – Successfully Prosecuting a Case with a Recanting Victim

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Percentages?

Fewer studies on recantation
than on disclosure ...

Rates vary –

From 4% (Bradley & Wood,
1996)

To 22% (Sorenson & Snow, 1991)

To 27% (Lyon, 2007)



Percentages?



McElvaney (2013): Gradual disclosure, recantation and other inconsistencies are common

London (2008): Most adult respondents reporting CSA never disclosed as a child

Lyon (2007): <50% of children seen at hospital with genital gonorrhoea without prior suspicion made outcry of abuse.

Does it Matter if There's Corroboration?

Cases with corroborating evidence had about the same rate of recantation as cases without corroborating evidence – approximately 25% (Hershkowitz, Lamb & Katz, 2014)

Lawson and Chaffin Study

**7 Journal of Interpersonal
Violence 352-542 (1992)**

**Studied 28 children with STD's to
find the following disclosure
process:**

43% disclosed

57% denied and/or refused to disclose

3.5% greater probability that child would disclose if caretakers accepted the possibility that it had occurred

Risk Factors

- ✓ Abuse by a family member
 - ✓ Family's response?
- ✓ History of threats by abuser
- ✓ Hostility to disclose by family
 - ✓ Lack of family support
 - ✓ Offender denial
- ✓ Continued contact with offender
 - ✓ Evidence of pressure
- ✓ Other forms of family violence
 - ✓ Lack of court orders

- ✓ **Lack of system intervention**
 - ✓ **System delays**
 - ✓ **Lack of therapist**
- ✓ **Child's placement post-disclosure**
 - ✓ **Cultural stigmas**
 - ✓ **Lack of professionalism by investigators and prosecutors**
 - ✓ **Victim self-blame**
 - ✓ **Victim ambivalence**
 - ✓ **Isolation**
 - ✓ **Fear**
 - ✓ **Financial hardship**

Top Three

Younger children

**Children alleging abuse against a
parental figure**

**Children with a non-supportive
caregiver**

(Malloy & Mungo, 2016)

New Study (Malloy, Lyon, Quas, et al. 2016)

Children are LESS likely to recant when:

- (1) They were initially removed from the home postdisclosure;**
- (2) They were initially separated from siblings postdisclosure;**
- (3) Family members (including and other than the NOCG) expressed belief in the allegations; and**
- (4) Visitation with the perpetrator was NOT recommended**

What this Means -

Must consider more fully the social context of a child's post-disclosure experience:

Familial belief, including extended family members

Contact with siblings and the alleged offender

Avoiding and Preventing

Why?

**Child is an essential witness
(Crawford)**

Credibility....

Child returns to the offender

Only a short-term resolution

Perpetrator is reinforced

No therapy intervention

No further disclosures

Prepare the Child For Court

Court School

One-on-One prep

**Meet early in the case, and
often**

Use Pretrial Motions

Using proactive pretrial motions will ease a child's fears and concerns

Talk to caregiver, therapist, teachers, everyone with knowledge – find out child's particular fears or apprehension regarding court

Making the Child Comfortable in Court

- Child Friendly Oath
- Using Demonstrative Aids
- Altering Courtroom Layout
 - Periodic Recesses
 - Turning Witness Chair
 - Scheduling Testimony

Making the Child Comfortable in Court

- **Allowing a Comfort Item**
- **Questioning by the Court**
 - **Support Person**
- **Controlling Courtroom Behavior**
 - **Tone of Voice/Objections**

Making the Child Comfortable in Court

- Asking Developmentally Appropriate Questions
 - Child Friendly Courtroom
 - CCTV (only if necessary)
- Get Creative Be a Mover and a Shaker 😊

Demonstrative Aids

Assist the jury

Assist the child

How did the child initially disclose?

Be Careful

Screens/Shields

Closed Courtrooms

**Primarily because of Appellate
challenges**

How else? Five Ways....

1. Minimize Trauma
2. Minimize Disruption
3. Support Victim
4. Corroborate Victim
5. Effective Interviewing

Minimize Trauma

Resolve the case
Coordinate proceedings
Child Advocate/GAL
Meet early and often
Courtroom modifications
MDT approach

Minimize Disruption

Remember the child's hours....

Is it OK to skip school?

Coordinate proceedings

Is the child embarrassed... will he/she want to keep this private?

Support Victim

Provide for child's safety

Protective orders

Enforcement!!!

Placement of victim

Available therapy

Education for child/family

Corroborate Victim

Detailed statements

Sensory details

**Note circumstances and
demeanor**

Defendant's statement

History check

Use those search warrants!

Search Warrants

**Any/all corroborate
evidence, however small
Grooming materials
Incriminating information
Other victims.....**

Effective Interviewing

Videotape Protocol

Open ended questions

“You said X... tell me more
about X”

“What happened next”

Pretrial Issues

Assess Report of Recantation

- ✓ To whom did the child recant?
MDT member? Defense attorney?
- ✓ How did the notifier react?
- ✓ What were the child's words?
- ✓ What was the child's demeanor?
- ✓ What were the circumstances surrounding the recantation?
- ✓ To whom was it first reported?
- ✓ Obviously false statements?
- ✓ How have things been since?

Interview Witnesses

✓ Therapist/CPS

Home situation/level of support

Compliance with court orders

CPS plans?

✓ Witnesses to recantation

✓ Witnesses to original statement

✓ Child: “I don’t want him to go to jail
– I just want it to stop”.

Assess the Case

- **Continuance**
Therapy
Speedy trial issues

- **Go forward**

- **Dismiss**
Therapist involvement
Safety of the child

Going Forward with the Case

**Evaluate the admissibility of
child's original statement ...**

**Hearsay Exceptions
Tender Years Doctrines
Case law?**

Trial Issues

Generally

No matter when it happens, you *MUST* deal with it

Recantations create obstacles

Aggressively explore creative ways to proceed with criminal case

Child friendly courtrooms

Potential tampering charges?

What to do??

Recess

**Try to determine the reason for the
recantation...**

Consistency

Fabrication/coaching

Fear

Ambivalence toward perpetrator

What to do??

Gentle impeachment

Prior inconsistent statement

**Direct examination ... include
as much information as
possible in leading up to
recantation (e.g., level of
support, lifestyle, etc.)**

What to do??

**Testimony from the person(s)
you believe exerted pressure
on the child to recant?**

**Expert testimony re CSAAS
characteristics**

Rehabilitate Credibility

Common sense arguments
Expert testimony

Balance the Scales for Kids



ATTRIBUTION

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