

Case Notes

Support Persons and the Child Witness

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American trial courts often rule on motions that children testify in court accompanied by a support person. Unfortunately, the potential impact of providing a child witness with a support person has not been thoroughly researched.

A recent Utah Supreme Court case outlines factors a trial court should consider in deciding whether to allow a support person to sit near a child, factors that most American courts would also apply:

[A]bsent a showing of prejudice, the matter is best left to the sound discretion of the trial court after taking into consideration the age, maturity, emotional stability, and rigors facing a particular child witness, among other factors. These must be weighed against any appearance of inappropriate bolstering of the testimony by the presence of the support person, and any likelihood of interference with the testimony. *State v. Harrison*, 24 P3d. 936, 941 (Utah, 2001).

These factors are amenable to research. For example, one might predict that children are more relaxed when questioned in the presence of a supportive adult, and that this makes it easier for them to discuss potentially embarrassing or shameful events, and easier for them to resist suggestion. Researchers could explore whether the mere presence of the support person is sufficient to have an effect, or does there need to be physical or visual contact between the support person and the child? Is the identity of the support person important? One might expect parents to facilitate children's performance more than strangers, but any supportive acquaintance might be of some benefit.

Is the age of the child important? The Harrison court thought it obvious that the need for a support person "decreases with the increasing maturity of the witness." The fact that the minor in question was close to 18 years old contributed to a finding that the support person's presence "served little purpose." However, it is possible that adult witnesses benefit as much as children by the presence of a supportive person, particularly when questioned in an aggressive manner about sensitive topics.

The very factors that make support persons beneficial may also make them potential sources of suggestive influence. Visual and/or physical contact may reduce children's anxieties, but allow the support person to give the child cues to the preferred response. The defendant in Harrison complained that the seating arrangement "presented the possibility of 'non-verbal communication' between the advocate and the victim." The defendant's assertion raises several good research questions. Do support persons (particularly parents) exhibit non-verbal reactions when their children are questioned? Do non-verbal cues influence children's responses? Non-verbal cues could increase the likelihood of false allegations, but might also lead the truly abused child to become reticent about disclosure, if the support person exhibits disgust or anger in response to the child's disclosure. Child witness researchers might look to the literature on social referencing, whereby young children obtain information about the world from observing their caretakers' nonverbal reactions.

The trial court in Harrison dismissed the dangers of non-verbal communication by asserting that any such communication could be detected by the court. Whether lay persons can detect non-verbal communication is yet another empirical question. Moreover, the mere presence of the support person may suggest things to the judge and jury. Defendants will contend that the presence of the support person suggests that the victim is particularly vulnerable and sympathetic. Jurors might infer that the support person is a source of influence over the child, even without observing any apparent attempts to influence the child. Moreover, jurors might be suspicious if they learn that an investigative interview took place in the presence of an adult, particularly if that adult might have a motive to influence the child.

Research on support persons could be presented to the courts through expert testimony, and could influence research-based interview protocols. Research on mock jurors' reactions to the use of a support person can assist investigators and prosecutors in deciding whether to use support persons. Finally, research documenting the benefits and risks of support persons can lead to statutory guidelines dictating whether and when support persons are justified.

"Case Notes" informs Section members about legal cases having the potential to influence law or policy regarding child maltreatment. For more information, please contact Michelle McCauley, the chair of the Case Notes Committee.