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Courtroom Factors and Jurors' Decision-Making in Cases Involving Child Witnesses

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COURTROOM FACTORS AND JURORS' DECISION-MAKING
IN CASES INVOLVING CHILD WITNESSES

A Thesis

Presented to the
Department of Psychology
and the
Faculty of the Graduate College
University of Nebraska

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
University of Nebraska at Omaha

by

Debra Schwiesow

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THESIS ACCEPTANCE

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Nebraska, in partial fulfillment of the requirements for the degree
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Abstract

This study examined the influence of expert witness testimony and jury instructions on mock jurors' final verdicts of guilt in a case where the sole eyewitness to a murder/abduction was a five-year-old child. One hundred and ninety-two college students heard an audio-taped trial proceeding in which the testimony of an expert witness and the jury instruction were varied (both supporting or discrediting of a child witness' testimony or mixed testimonies). Individual judgments of guilt and judgments after group deliberation were recorded. It was hypothesized that expert witness testimony and jury instructions would significantly influence verdicts.

Contrary to predictions, neither expert witness testimony nor judge's jury instructions influenced individual ratings of guilt, group decisions, or time spent in deliberation. It was found that when a supporting expert witness was paired with a supporting judge the individual guilty rates were higher than when a supporting expert witness was paired with a discrediting judge. Only 37% of the groups reached a mutual decision, with groups who heard congruent supportive messages significantly less likely to reach a mutual decision than those groups who heard congruent discrediting messages. These latter groups were significantly more likely to reach a mutual decision. Implications for future research are discussed.

Introduction

Courtroom Factors and Jurors' Decision-making in Cases Involving Child Witnesses

Some legal professionals are reluctant to ask a child to testify in a court proceeding. This hesitation encompasses concerns in three areas: (a) children's ability to provide accurate testimony (competence); (b) emotional trauma likely to be experienced by a child witness as a result of participation in the legal system; and (c) the perceived credibility of a child's testimony (Goodman, 1984). This study will deal with the third issue, perceived credibility of the child witness in the eyes of the jury.

Although relatively little research has been devoted to jurors' perceptions of the child witness, several studies have investigated a jurors' perceptions of adult witnesses. In a study with mock jurors Loftus (1974) found that subjects were much more likely to convict a defendant when evidence was supported by an adult witness (72% convict), than when the same evidence was presented alone (18% convict). Even when the eyewitness was shown to be legally blind, the conviction rate remained high (68% convict). Indeed, similar studies have shown that adults overestimate the accuracy of adult eyewitness performance (Deffenbacher & Loftus, 1982; Wells & Leippe, 1981; Yarmey & Jones, 1983).

When a child is the eyewitness the outcome is less clear. Several studies have shown a strong reluctance to believe children. This is partly due to a large body of research conducted in the early 1900's

which demonstrated the malleability of children's memory through the use of suggestive questioning (Binet, 1900; Stern, 1910). In 1911 Varendonck conducted a classic study in which he asked a group of seven-year-olds to describe the color of a teacher's beard. He found that 84% of them indicated a color even though the teacher did not have a beard. As a result of this type of research, the scientific community came to believe that children are unreliable as witnesses. Such findings led Baginsky (cited in Whipple, 1911, p. 308) to conclude that "children were the most dangerous of all witnesses and that their testimony should be excluded from court record whenever possible."

More recently, studies have shown that children can be reliable witnesses when given special considerations. For example, in 1979 Marin, Holmes, Guth and Kovac compared children and adult subjects on eyewitness tasks. Subjects ages five to 22 witnessed an angry, unexpected verbal exchange between a researcher and a confederate. The subjects were asked to freely narrate what they had witnessed, recall the incident through objective questioning (including leading questions), and identify the confederate from six photos. The results indicated that although the younger subjects were unable to freely narrate what they had observed as completely as adults, they were as accurate as adults in answering objective questions and in identifying the confederate from photos. Furthermore, all age groups were equally susceptible to leading questions. Therefore, the eyewitnessing capabilities of children and adults may not be as different as was previously believed (also see Goodman & Reid, 1986; Johnson & Foley, 1984).

Still, biases carried into a courtroom may overshadow a child's true eyewitness capabilities. Yarmey and Jones (1983) conducted a study in which various professional, preprofessional and lay subjects were asked to estimate the reliability of an eight-year-old child who was being questioned by a policeman or a lawyer. The results revealed that fewer than 50% of the respondents felt that the child would respond accurately. Surprisingly, 91% of the professional respondents and 69% of the lay jurors believed that the child would either respond the way the questioner wished or would say, "I don't know." Clearly, these results indicate a strong bias against children's credibility as witnesses.

Such biases become especially important when the trial evidence is ambiguous (Goodman, 1984). In most cases the preponderance of evidence is weighted either in favor or in disfavor of the defendant, so it is the strength of the evidence, rather than the beliefs of the jurors that is the deciding factor (Saks, Werner & Ostrom, 1975). When the evidence is not decisive, jurors must base their decisions on other factors such as the testimony of witnesses. Clearly, biases against children as reliable witnesses could prove to be an important factor in decision-making. Such beliefs could be expected to influence the jurors' deliberations and final decisions, one way or the other.

Several studies have shown that biases against child witnesses do impact jurors' decisions. For example, a study conducted by Goodman, Golding & Haith (1984) simulated a realistic courtroom procedure using a videotaped mock trial. A judge provided initial jury instruction, a

district attorney called witnesses who were cross-examined by the defense attorney and both attorneys provided closing arguments followed by jury instruction by the judge. Age of eyewitness was the manipulated variable, with subjects viewing either a 30-, 10-, or six-year-old eyewitness. Subjects were divided into mock juries of 12 and then deliberated. The results showed that the six- and 10-year-old eyewitnesses were viewed as less credible than the adult eyewitnesses. Moreover, when the 30-year-old testified, there was a high correlation between the eyewitness' credibility rating and the jury's view of the defendant as guilty. In contrast, when a six- or 10- year old testified the statements of other witnesses increased in importance. "It appeared that jurors were hesitant to judge a person's guilt or innocence solely on the basis of a child's statement and looked for supporting or disconfirming evidence in the testimony of others." (Goodman, Golding & Haith, p. 151).

A similar study was conducted by Ross, Miller & Moran (1987). Mock jurors were asked to rate the degree of the defendant's guilt and how credible they found each witness. The subjects viewed a videotape which included the testimony of an eight-year-old, a 21-year-old, or a 74-year-old male. Unlike Goodman et al. (1984) these researchers found that in general the 8-year-old witness was viewed as more credible in the dimensions of accuracy, forcefulness, consistency, truthfulness, intelligence, and confidence than was the 21-year-old witness (p values ranging from .001 to .10). The 74-year-old was rated similarly to the 8-year-old. However, when credibility ratings were correlated to

subjects' ratings of the guilt or innocence of the defendant, it was demonstrated that when the witness was a child the correlation was essentially zero, indicating that in their final decision the child's testimony was not weighted heavily. Conversely, when the witness was an adult there was a significant positive correlation between ratings of witness credibility and guilt. Therefore, even when the jurors believed the child to be a credible witness they did not use this belief in deciding the guilt or innocence of the defendant. What, then, does a juror use in judging guilt or innocence when the sole witness is a child?

One possible influential factor may be the testimony of an expert witness whose purpose is to educate the jurors and judges about children's memory and motivation (Goodman, 1984). Expert testimony is admissible under two conditions: 1) there must be a consensus in a field concerning factual or theoretical issues and 2) the testimony must provide information which goes beyond the common sense and understanding of jurors (Wrightsman, 1987).

Unfortunately, in the field of psychology there is not a consensus concerning children's capabilities as witnesses. The testimony of an expert called upon by the prosecution may differ significantly from that of an expert called by the defense. Both positions can be supported by psychological research. How, then, does a jury respond to the conflicting views presented?

Cutler, Penrod and Dexter (1989) conducted a study in which subjects watched a videotaped trial. Expert advice was one of the manipulated

variables. When subjects watched a trial proceeding in which opposing experts (defense-hired and prosecution-hired) presented contradictory messages concerning witnessing, the subjects reported increased skepticism concerning the eyewitnesses' identification of the defendant. The subjects further reported increased sensitivity towards the witnessing condition in general. The results of this study indicate that the use of opposing expert testimony may promote closer scrutiny of a witness' testimony.

However, little research has been conducted to determine to what extent expert witness testimony influences a jury's final decision when the key witness is a child (Goodman, 1984). A recent study conducted by Perry, Docherty, & Kralik (1988) demonstrated that a mock jury was significantly influenced by an expert witness' testimony when the sole eyewitness was a five-year-old child. When the expert witness conveyed a positive message concerning a child's ability to testify, the jury was more likely to convict the defendant. However, when the expert witness conveyed a negative message concerning a child's abilities the jury was less likely to convict the defendant. Cross-examination was not included in this mock jury study. Therefore, while the manipulated variables were salient, the study lacked ecological validity.

Another courtroom factor that may need to be considered in cases involving child witnesses is jury instruction. In criminal litigation involving child witnesses, the defendant may request the judge to instruct the jury before deliberation cautioning them to consider the child's testimony with care (Myers & Perry, 1987). In this way judges

may transmit either positive or negative biases of children as witnesses. On the other hand, jury instruction may not be a part of the courtroom proceeding if the defendant does not request such a process or if the trial judge refuses to instruct the jury (Myers & Perry, 1987). It is unclear what effect jury instruction has on a juror's final decision.

Because a defendant's guilt or innocence is decided on by the process of group deliberation, it follows that research conducted on jury decision should include jury deliberation. In fact, the lack of jury deliberation has been pointed out as a major flaw of previous research conducted in this area (Perry, Docherty & Kralik, 1988; Ross, Miller & Moran, 1987; Weiton & Diamond, 1979).

In summary, there appears to be a bias against children as legal witnesses. Even if a child's testimony is believed, jurors tend to look to other substantiating evidence, the opinions of others, or their own opinions to reach a final judgment.

A review of the relevant resources leads to the following research questions: (a) In an ambiguous trial situation in which the key witness is a child, what influence does an expert witness' testimony (supporting or discrediting child witnessing) have on a jury's verdict and (b) what influence does a judge's jury instruction regarding child witnesses (supporting or discrediting) have on the jury's judgment of guilt or innocence?

It is predicted that when an expert witness provides supporting testimony the jury will be more likely to find the defendant guilty than

when an expert witness provides discrediting testimony. Furthermore, when a judge provides supporting jury instruction, the jury will be more likely to convict the defendant than when the jury instruction is discrediting. This effect will be intensified when a jury hears both testimonies as supporting (expert witness and jury instruction) or both testimonies as discrediting. When a jury hears mixed testimonies the outcome is more difficult to predict. In these cases, the result may be a jury that is unable to come to a consensus (a so-called hung jury) or a jury that takes longer in its' deliberation.

Method

Subjects

One hundred and ninety-two students at the University of Nebraska at Omaha and Creighton University served as subjects. They were recruited from undergraduate psychology classes and were randomly assigned to groups of six. In order to ensure an adequate number of subjects, the sign-up sheet asked for more subjects than were needed for each condition.

Materials

Several forms were used in this research. They included the following: (a) consent form which was signed by each prospective juror (Appendix A) and (b) a trial packet which included a written transcript of all audiotaped trial proceedings, an individual verdict form and a deliberated form. The audiotaped trial proceedings included in the following order: (a) instructions to the subjects (Appendix B); (b) synopsis of the case (Appendix C); (c) judge's statement of the child

eyewitnesses' competency (Appendix D); (d) the child eyewitnesses' testimony and cross examination (Appendices E and F); (e) the defendant's testimony and cross-examination (Appendices G and H); (f) the expert witness's testimony (supporting or discrediting and cross-examination; Appendices I thru L); (g) the prosecution's summation (Appendix M); (h) the defense's summation (Appendix N); and (i) the judge's final instructions to the jury (supporting or discrediting; Appendices O and P); (j) an individual verdict form (Appendix Q); and (k) a deliberated verdict form (Appendix R).

Design and Procedure

All subjects listened to the audiotape which included instructions, synopsis of the case, child's and defendant's testimony, and prosecution's and defense's summations. In addition to these, the groups listened to one of the following conditions: (a) eight groups of subjects heard supporting expert witness plus supporting jury instruction; (b) eight groups of subjects heard supporting expert witness plus discrediting jury instruction; (c) eight groups of subjects heard discrediting expert witness plus supporting jury instruction; and (d) eight groups of subjects heard discrediting expert witness plus discrediting jury instruction.

After listening to the audiotape of the trial proceedings and having possession of the trial proceedings in written form, each subject completed a 7-point individual verdict form which indicated judgment of guilt or innocence before group deliberation. At this point the researcher entered the room and instructed the groups to deliberate

until a verdict was reached. This portion of the research was tape recorded for time analysis. The groups were not informed that a time limit of 30 minutes for deliberation had been imposed. Once the group finished deliberating or reached the 30 minute time limit and had recorded their judgments on the group deliberation form, the researcher reentered the room and turned off the tape recorder. The outcomes of deliberation ranged from zero votes for guilty to six votes for guilty. Subjects were then debriefed and informed that the results of the study would be made known to them as soon as the research was completed.

Results

The first analysis was conducted on each subjects' ratings of guilt or innocence after listening to the trial proceeding but before engaging in group deliberation. Subjects' verdicts were recorded on a 1-7 rating scale (1 = not guilty beyond a shadow of a doubt and 7 = guilty beyond a shadow of a doubt). It was hypothesized that ratings of guilt or innocence would be influenced by expert witness testimony and jury instruction with higher levels of guilt corresponding to supporting testimony concerning child witnesses and lower levels of guilt corresponding to discrediting testimony concerning child witnesses. No prediction was made for the interaction of these variables.

All individual verdicts ranged from 1-6, with no one using the highest level of guilt (7). The highest mean rating was found when the expert witness testimony and jury instructions were supporting (5.04); the second highest when both the expert witness and jury instructions

were discrediting (4.87); third highest when the expert witness was discrediting and the jury instruction supporting (4.83); and fourth when the expert witness was supporting and jury instruction was discrediting (4.50). The means and standard deviations may be found in Table 1.

A 2 (expert witness testimony) X 2 (jury instruction) factorial analysis of variance based on the 1-7 rating scale was performed. Neither the main effect of expert witness testimony ($F < 1$) nor the main effect of jury instruction were statistically significant, $F(1,188) = 2.20$, $p > .10$. The interaction effect of expert witness testimony X jury instruction approached statistical significance, $F(1,28) = 3.02$, $p < .10$. The summary table of these results may be found in Table 2.

A simple effects analysis showed that when jury instruction and expert witness testimony were both supporting of a child witness' testimony, subjects were more likely to perceive a higher level of guilt in the defendant than when jury instructions were discrediting of the child witness while the testimony of the expert witness was supporting of the child witness, $F(1, 188) = 5.18$, $p < .05$. All other combinations of expert witness and jury instruction were nonsignificantly different ($p > .05$ in each case). The results of this analysis are summarized in Table 3.

In sum, contrary to prediction, neither expert witness testimony nor the jury instruction alone influenced individual subjects' ratings of guilt. On the other hand, consistent with expectations, the highest rating of guilt occurred when supporting jury instructions were combined with a supporting expert witness.

Table 1

Cell Means and Standard Deviations for Individual Subjects' Ratings

	+ Jury Instruction	- Jury Instruction	Main Effect
+ Expert Witness	M = 5.04	M = 4.50	M = 4.77
	SD = 1.20	SD = 1.34	SD = 1.2
- Expert Witness	M = 4.89	M = 4.87	M = 4.85
	SD = 1.17	SD = 1.89	SD = 1.17
Main Effect Jury	M = 4.93	M = 4.68	
Instruction	SD = 1.18	SD = 1.14	

Note: + = supporting; - = discrediting

Table 2

2 (Expert Witness Testimony) X 2 (Jury Instruction) Analysis of Variance
 Conducted on Individual Subjects' Rating of Guilt

Source	df	SS	MS	F	P
Expert	1.00	0.33	0.33	< 1	NS
Instruction	1.00	3.00	3.00	2.20	p >.10
Expert X Instruct	1.00	4.08	4.08	3.02	p <.10
Error	188.00	253.83	1.35		

Table 3

Simple Effects Conducted on Interaction Effect of Expert by Jury

Instruction

Source	df	SS	MS	F	P
A at B1	1.00	1.06	1.06	<1.00	NS
A at B2	1.00	3.29	3.29	2.44	p >.05
B at A1	1.00	6.99	6.99	5.18	p <.05
B at A2	1.00	0.03	0.03	<1.00	NS

Note: A = Expert testimony; A1 = Supporting expert testimony; A2 = Discrediting expert testimony; B = Jury instruction; B1 = Supporting expert testimony; B2 = Discrediting jury instruction

It also was predicted that expert witness testimony and jury instruction would significantly influence the verdict following deliberation of each group of six subjects.

Overall, only 37% of all groups were able to come to a mutual decision of guilt or innocence following deliberation. Results showed that the highest number of guilty votes was provided by groups who heard expert witness and jury instruction that were supporting of a child witness ($M = 3.50$); the second highest number of guilty votes were provided by those who heard discrediting expert witness and supporting jury instruction ($M = 3.12$); the third by those who heard both discrediting expert witness and jury instruction ($M = 2.50$); and the fourth by those who heard supporting expert witness and discrediting jury instruction ($M = 2.37$). The means and standard deviations appear in Table 4.

A 2 (expert witness testimony) X 2 (jury instruction) factorial analysis of variance was performed on the number of subjects who reached a judgment of guilt following deliberation. The main effect of expert witness ($F < 1$), the main effect of jury instruction, $F(1,28) = 1.38$, $p > .25$), and the interaction effect ($F < 1$) were not statistically significant. The summary table appears in Table 5.

All the groups that heard both supporting expert witness and jury instructions were unable to reach a mutual decision in the time limits (100% hung juries). For those groups that heard both discrediting expert witness and jury instructions 75% were able to reach a mutual

Table 4

Cell Means and Standard Deviations of Group Verdicts

	<u>+ Jury Instruction</u>	<u>- Jury Instruction</u>	<u>Main Effect</u>
+ Expert Witness	M = 3.50	M = 2.37	M = 2.93
	SD = 1.31	SD = 2.06	SD = 1.76
- Expert Witness	M = 3.12	M = 2.50	M = 2.81
	SD = 2.03	SD = 2.77	SD = 2.37
Main Effect Jury	M = 3.31	M = 2.44	
Instruction	SD = 1.66	SD = 2.36	

Note: + = supporting; - = discrediting

Table 5

Anova Conducted on Group Verdicts of Guilt

Source	df	SS	MS	F	P
Expert(A)	1	0.125	0.125	<1	NS
Instruct(B)	1	6.125	6.125	1.375	>.25
A X B	1	0.500	0.500	<1	NS
Error	28	124.75	4.455		

decision in the time limit (50% for not guilty, 25% for guilty, and 25% undecided).

A Fisher Exact test was conducted to compare those groups that reached a mutual decision (guilty or innocent) in the two congruent conditions (supporting expert and jury instructions or discrediting expert and jury instruction). The results of this analysis showed that groups that heard testimonies which were congruent and supporting were less likely to reach a mutual decision than groups that heard testimonies which were congruent and discrediting ($p=.003$) These results are summarized in Table 6.

Therefore, contrary to prediction, it was shown that neither expert witness testimony nor jury instruction alone significantly influenced final judgment. However, when looking at groups strictly on the basis of tendency to reach a mutual decision it was shown that congruence in terms of expert witness and jury instruction differentially influenced final judgment.

It was hypothesized that groups who heard incongruent testimonies (supporting expert and discrediting jury instruction or discrediting expert witness and supporting jury instruction) would take longer in deliberation than those juries that heard congruent testimonies (both supporting or both discrediting). An upper limit of 30 minutes was imposed and three groups went beyond this limit. Two groups that were included in this study chose to leave deliberation early due to scheduling conflicts.

Deliberation times ranged from two minutes to 30 minutes with an

Table 6

Fisher Exact Test Conducted on Groups That Did or Did Not

Reach a Decision

		Trial Condition	
		<u>Congruent Supporting</u>	<u>Congruent Discrediting</u>
Group	<u>Decision</u>	f = 0	f = 6
Decision		(0%)	(75%)
	<u>No Decision</u>	f = 8	f = 2
		(100%)	(25%)

 $p = .003$

overall mean of 16.52 minutes spent in deliberation. When juries heard both supporting expert witness testimony and jury instruction mean deliberation time was 18.42 minutes; when juries heard both discrediting expert witness and jury instruction the mean deliberation was 17.68; when juries heard discrediting expert witness testimony and supporting jury instruction the mean was 16.01 minutes in deliberation; and when juries heard supporting expert witness and discrediting jury instruction the mean was 13.96 minutes. The means and standard deviations are presented in Table 7.

A 2 (expert witness testimony) X 2 (jury instruction) factorial analysis of variance was conducted on the time each group took to reach a decision. Neither of the main effects were significant ($F < 1$ in each case) nor was the interaction effect $F(1/188) = 1.59$, $p > .10$). A summary of these results may be found in Table 8.

Discussion

Contrary to expectations, the present findings showed that neither an expert witness' testimony nor a judge's jury instructions significantly influenced either individual votes of guilt or group verdicts. This finding is consistent with other studies that showed that even when a child witness is viewed as credible the child's testimony is not used in final judgments of guilt or innocence (Goodman, Golding, Helgeson, Haith & Michelli, 1987; Ross et al., 1987).

The results in this study showed that only 37% of the groups reached a mutual decision leaving 63% who could not agree to guilt or innocence. Subjects were asked to commit to a verdict individually as

Table 7

Cell Means and Standard Deviations of Time Spent in Deliberation in
Minutes

	+ Jury Instruction	- Jury Instruction	Main Effect
+ Expert	M = 18.42	M = 13.96	M = 16.18
	SD = 7.78	SD = 7.11	SD = 7.56
- Expert	M = 16.01	M = 17.68	M = 16.84
	SD = 4.42	SD = 7.67	SD = 6.10
Main Effect	M = 17.21	M = 15.82	
	SD = 6.24	SD = 7.39	

Note: + = supporting; - = discrediting

Table 8

Anova Conducted on Time in Minutes Each Group Spent in Deliberation in
Minutes

Source	df	SS	MS	F	P
Expert(A)	1	3.48	3.48	<1	NS
Instruct(B)	1	15.42	15.42	<1	NS
A X B	1	75.18	75.18	1.59	>.10
Error	28	1326.89	47.38		

well as being required to work as a group to reach a final decision. An analysis of the deliberation recordings showed that the groups were particularly concerned with the lack of strong evidence in the trial proceeding, perhaps contributing to the high number of groups failing to reach a decision. A similar finding was reported by Duggan, Aubrey, Doherty, Isquith, Levine, and Scheiner (1989). Only 36% of the mock juries in their study reached a unanimous decision.

One explanation for the lack of consensus in this study may be that the lack of hard evidence led to an unwillingness to commit to a firm position of guilt or innocence. In fact, previous research has shown that mock jurors tend to vote not guilty where the evidence is weak (as it was in the present study) or moderate in the implication of guilt. For example, Leippe and Romanczyk (1987) presented a case in which eyewitness age and strength of evidence in a robbery-murder case were considered. The results showed that eyewitness age was not a factor when the case against the defendant was weak (mock jurors' ratings of guilt were consistently low regardless of eyewitness age).

In the present study, several subjects indicated informally that while they tended to believe the child's testimony they were not willing to convict the defendant because the case lacked hard evidence such as forensic reports on the victim, blood type, corroborating testimony, etc.

Nigro, Buckley, Hill and Nelson (1989) showed that adults do in fact closely scrutinize the testimony of a child witness. In this regard, subjects in the present study may have been influenced by two salient

factors: the consistency of the child's testimony and the confidence with which it was reported. During cross-examination the child witness appeared less certain about his identification of the defendant. When questioned by the prosecuting attorney the child witness stated three times that he was absolutely certain that the defendant was the man who had abducted his sister. However, when examined by the defense attorney, the child witness made such statements as, "Ummm, I think that's the man...Gosh, I'm pretty sure that's him. He looks like him, anyway." The result of this cross-examination may have caused the child witness to lose credibility and confidence. Indeed, several subjects did indicate concern about this aspect of the trial. The importance of consistency and confidence of the eyewitness has been noted by several researchers (Lindsay et al., 1981; Leippe & Romanczyk, 1987; and Wells & Leippe, 1981).

Along this same line, it should be considered that the speech style of the child changed through cross-examination. Nigro et al (1989) demonstrated that the powerfulness of a child eyewitness' speech style influenced guilty rates, with the lowest conviction rates reported when the child demonstrated a powerless speech style. According to these researchers two characteristics which define a powerless speech style are the use of hedges (e.g., "kind of," "I guess"); and hesitation forms (e.g., "uh," "well"). A powerful speech style would not include these factors. In this study the child witness' speech style did not initially exhibit hesitations or hedges but in cross-examination he began to use such words as "Umm," "Well, maybe," "Gosh, I'm pretty

sure..." and "I think that's the man" as opposed to "He is that man", "He's the bad man". It may be said that although the child witness began with a powerful speech style he adopted a powerless speech style by the end of cross-examination.

It should also be pointed out that upon cross-examination the expert witness was compelled to weaken his initial position. It may be that subjects were forced to reevaluate the credibility of both the expert witness and the child witness in this trial.

Analysis of the subjects' individual guilt ratings showed that when a supporting expert witness was paired with a supporting judge, guilt ratings were higher than when a supporting expert witness was paired with a discrediting judge. Since the expert witness was consistent in both cases, it appears that the judge had the more powerful impact on subject's ratings of guilt.

It is interesting to note that judgments of guilt tended to change as a result of deliberation. For example, when jurors heard both an expert witness and jury instructions which supported the child witness' testimony guilt ratings were the highest among all the groups. However, after deliberation 100% of these groups failed to reach a mutual decision (although they maintained the highest number of guilty votes when compared to the other groups). It is possible that the inability to reach a mutual group decision when hearing both supporting testimonies may reflect the general unwillingness to commit to a position solely on the basis of a child's testimony regardless of how much support for the child is presented. The fact that these groups

differed significantly from the groups that heard both discrediting testimony may take the same argument. For the groups that heard both discrediting testimonies there may have been the same reluctance to believe that the child's testimony was important in making a decision but these groups had more support for discounting this testimony (both an expert witness and a judge telling them to not believe the child witness). This may have resulted in these groups relying on their own beliefs about the evidence presented. In this case 50% judged not guilty, 25% judged guilty and 25% remained undecided.

Neither expert witness testimony nor jury instructions significantly influenced the time spent in deliberation. Recall that two groups included in this study chose to leave deliberation early due to scheduling conflicts and as such time of deliberation may have been biased. Similarly, Nigro et al. (1989) found that deliberation times did not differ as a function of treatment condition. Duggan et al. (1989) allowed their subjects a minimum of 15 minutes and a maximum of 45 minutes to deliberate. Although, only a few groups deliberated past the time limit, the imposed upper limit might have influenced the amount of deliberation time. While only three groups deliberated up to the time limit in the present study, it is possible that a 30-minute time may have influenced the amount of deliberation time.

Conclusions

One of the strengths of this study is its' ecological validity. As discussed in a recent colloquium on child witnessing reported in the September 1989 issue of the APA Monitor, the balance between laboratory

research and ecologically valid field research is one which warrants further consideration. An attempt was made in the present study to create a real-life trial proceeding. All appropriate roles were represented in the script including those who would normally be subject to cross-examination. The script was previewed by a community mental health director who works predominantly in the area of juvenile justice. In fact, many subjects asked if the trial was an actual one.

As discussed by Duggan et al. (1989), while ecologically valid research is desirable, this type of research may present new concerns. One of these concerns is that the trial presented may be generalizable only to similar scripts with similar actors. Many other factors such as type of trial, voice quality and vocal inflections may all influence results. The subjects in the present study discussed these factors in the course deliberation. It is no doubt important to control for these factors or at least acknowledge their existence.

Another concern must be addressed and that is the use of college students who may not be representative of the population from which jurors are typically chosen (Weiton & Diamond, 1979). The subjects used in this study may have been younger than actual jurors, may have had less contact with children, and may have been more educated than a typical juror. These factors may have affected the results of this study in ways unrepresentative of actual jury proceedings.

Another concern is that in the attempt to be ecologically valid the effects of the study may have been weakened. If testimonies had been presented without cross-examination the impact of these variables may

have been greater.

Another factor which may have affected the results is the fact that the subjects in this study were given the option of not reaching a decision. In a real trial proceeding the jurors would have been instructed to deliberate until a mutual decision was reached. If the only option available to the subjects in this study was to reach a verdict of either guilty or innocent the results might have been different.

In reviewing the results of this study some recommendations for future research are apparent. The hypotheses of the study may not have received a fair test or may have been weakened in the attempt to establish ecological validity. As stated above, the child witness may have lost credibility through cross-examination. Future studies should attempt to maintain the child eyewitness' confidence and consistency throughout cross-examination. This concern applies to the expert witness who also was cross-examined. Consistency and confidence should be maintained in the expert witness. Secondly, the lack of hard evidence may have led a general unwillingness to commit to a decision. Future studies might consider varying the strength of the evidence as was done by Leippe and Romanczyk (1987). Finally, of particular concern was the failure to impress each group with the need to reach a mutual decision. In an actual trial the need to reach a decision would have been much more rigid.

The results of the present study are ambiguous with regard to the influence of expert witness testimony and jury instructions on subjects'

judgments of guilt. It appears that many other factors such as strength of evidence, the presence or absence of corroborating evidence, and characteristics of the child witness (speech style, confidence), role of the child witness (victim or bystander) may unduly influenced the results. These factors should be examined or controlled for in future research efforts.

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Appendix A

Consent Form

Form for Consent to Participate in Research

Title: Jurors' Decision-Making

Invitation: You are invited to participate in a research study investigating jury decision-making processes. Your signature in the space at the end of this document indicates that you have read this entire consent form and are willing to participate in this research.

Basis for Selection: Approximately one hundred and ninety-two undergraduate psychology students have been invited to participate in this study. You have been asked to be involved in this study because you are a psychology student and because you are a potential citizen juror in an actual court of law.

Purpose of the Study: The purpose of the study is to investigate how mock jurors reach verdicts.

Procedure: This research will take place in Arts and Science Building and/or Kayser Hall on the UNO campus. The entire research will take approximately 30 to 60 minutes. You will listen to an audiotaped proceeding of a trial case. You will also have access to written proceedings of the same case. After listening to the tape recording you will be asked by the primary researcher (listed above) to fill out a form which asks you to give a verdict for this trial. You will then be randomly assigned to a jury, asked to deliberate with five other mock jurors and come up with a group decision. Jury deliberations will be tape recorded for later analysis.

Debriefing: At the conclusion of this research, the primary researcher will answer any questions you may have about the study and explain some things to you. Final results will be posted outside the Psychology Department door on the 3rd floor of the Arts and Science Building. You may contact Debra Schwiesow at 554-4817 for more information.

Potential Risks: There are no foreseeable risks in this research.

Possible Benefits: Benefits to you as an individual are minimal. In a broader sense, you will be contributing to the psycholegal knowledge base concerning factors that influence jury decision-making processes.

Compensation for Participation: You will be credited with research participation for the psychology class of your choice (assuming the professor for that class is granting research credit).

Confidentiality: Confidentiality will be strictly maintained. You will not be personally identified; instead you will be identified by your initials only. The tape recording and all other forms will only be used for purposes of this research and will be kept strictly confidential.

Voluntary Participation: Your participation in this research is completely voluntary. Your decision whether or not to participate will not affect your present or future relationship with the University of Nebraska. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time.

Questions: If you have any questions, please ask them now. The investigator will attempt to answer them. If you have any additional questions concerning the rights of research subjects you may contact the University of Nebraska Institutional Review Board (IRB), telephone

402/559-6463.

* * * * *

Consent Statement: YOU ARE MAKING A DECISION WHETHER OR NOT TO PARTICIPATE. YOUR SIGNATURE INDICATES THAT YOU HAVE DECIDED TO PARTICIPATE HAVING READ THE INFORMATION PROVIDED ABOVE. YOU WILL BE GIVEN A COPY OF THIS CONSENT FORM TO KEEP.

Signature of Subject

Date

Signature of Investigator

Date

Investigators: The primary investigator of this study is Debra L. Schwiesow, graduate student at UNO (554-4817).
Dr. Raymond Millimet, Professor of Psychology at UNO, is the faculty advisor for this research (554-2592).

Appendix B

Jury Instructions

Welcome,

You are here today to participate in an experiment to investigate how mock jurors reach verdicts. It is very important that you adhere to the following instructions.

Please fill out, to the best of your ability, all of the questionnaires and forms given to you. It is extremely important to remember to fill in the jury code, juror number, and gender spaces on each form.

- 1) Open folder. Read carefully the consent form and sign it if you wish to continue participating. Give this to the researcher.
- 2) Listen to the audiotaped instructions and trial excerpts. You may follow along with the written transcripts.
- 3) Fill out the individual verdict form without discussing anything with your fellow jurors.
- 4) At this point you will be divided into groups of six jurors.
- 5) When you enter the room, depress the record mechanism on the tape recorder.
- 6) Next, with the other people in this room, deliberate the evidence of this case as a jury and reach a unanimous verdict (with the criterion being guilty beyond a reasonable doubt) or indicate that you are a "hung jury" and give the number of votes for guilty/not guilty. You may refer back to the written trial transcripts, if you wish.

- 7) After reaching a verdict fill out the jury verdict form.
- 8) When you are finished, put all your materials back in your folder and wait for the experimenter to pick up your folder. Check to make sure that the spaces for jury code, juror number, and your gender are completed on each form.

Thank you for your participation.

Appendix C

Synopsis of Case

- 1) On July 20th, at approximately 9:15 Melissa Clark, age 8, allegedly was abducted from her front yard during which time her mother was inside talking on the telephone.
- 2) Melissa's younger brother Joseph Clark, age 5, reported that he was in the garage at the time of the abduction. Joseph was out of sight of the perpetrator but had a clear view of the alleged abduction site.
- 3) Joseph, the sole eyewitness, later was questioned by police and gave a report of the events of the abduction as well as a description of the perpetrator.
- 4) Melissa's body was found, 4 days later, in a garbage dumpster several miles from her house. The forensic report indicated that Melissa had been sexually assaulted and strangled to death.
- 5) On the basis of the eyewitness statement and description provided by the 5-year-old Joseph, a suspect, Fred Smith, was brought in for questioning. Joseph positively identified Smith, via a live line-up, as the perpetrator. Smith was later charged with kidnapping, sexual assault, and murder.
- 6) Fred Smith's legal defense is that he is innocent and was mistakenly identified by the 5-year-old boy. His alibi is that he was at his girlfriend's house at the time of the alleged abduction.

Appendix D

Competency Statement by Judge

When a young child is a key witness or a sole witness in a trial proceeding they are required to pass a competency examination. This examination takes place before any trial proceedings are conducted and consist of a few simple questions. Such questions assess the ability of a child to distinguish between the truth and a lie and in general, the child's capability to perform in a court of law. The child involved in this trial is quite young and therefore has undergone a competency examination. This child has been found to be competent to testify in a court of law based on the court's prior examination.

Appendix E

Examination of Eyewitness by Prosecution

- Prosecution- What is your name?
- Joseph Clark- Joey.
- P- What's your last name, Joey?
- J.C.- Clark.
- P- Where do you live, Joey?
- J.C.- In the red house on the corner.
- P- Do you know the name of the streets by your house?
- J.C.- Yep. Atlantic Street. And 93rd Street.
- P- Who lives in your house with you?
- J.C.- Me and my mom and my dad and my dog, Sparky.
- P- Did anyone else used to live with you?
- J.C.- Melissa.
- P- Who's Melissa?
- J.C.- My sister.
- P- But she doesn't live with you any more?
- J.C.- No. She's dead and buried and she won't be coming back ever again.
- P- I'm sorry about that, Joey. When did you last see Melissa.
- J.C.- In the summer.
- P- Could you tell me the month and the day?
- J.C.- (pause) No. But I know it was real, real hot.
- P- Did you last see your sister in the morning or the

afternoon or at night?

J.C.- I don't know. After I ate breakfast.

P- And what happened when you saw your sister for the last time?

J.C.- This man came and made her get in his car.

P- What did the man look like?

J.C.- Like that man over there (indicates the defendant).

P- He looked like that man (indicates the defendant)?

J.C.- Yep. He looked like that man and he is that man (indicates the defendant). He's a bad man, and I don't want to be near him.

P- I know it's hard for you to be here and tell about what you remember. We'll finish as quickly as possible, Joey.

J.C.- (nods)

P- What happened when the man had Melissa get into the car?

J.C.- Well, he talked to her and she shook her head and then he grabbed her arm like this and pulled her in the car and they drove off.

P- Where were you when this happened?

J.C.- I was in the garage playing with my new bike.

P- Could the man see you?

J.C.- I don't know, but I saw him.

P- Did anybody else see him?

J.C.- Melissa did.

P- Anybody else?

J.C.- No. Nobody else was around.

P- Where were your parents?

J.C. Dad went to work in the car.

P- And your mother?

J.C.- I didn't know where she was and then I found her talking on the phone.

P- Joey, I have just one more question for you. You say that the man over there is the one that Melissa drove away with in the car. Are you sure about that? Are you very, very sure?

J.C.- Yep. He's the bad man. I don't like him.

P- Okay, Joey. Before you get down someone else would like to ask you a few more questions.

Appendix F

Cross-examination of Eyewitness by Defense

Defense - Joey, I would like to ask you a few questions, is that okay?

Joseph Clark - Okay.

D- You say that the man over there is the man who took your sister?

J.C.- Yep, he's the man?

D- When you saw this man you were in the garage, is that right?

J.C.- Yep, that's right?

D- Could you see all of him from the garage?

J.C.- Ummm, I think that maybe I could see his face.

D- You could only see his face. Were you scared?

J.C.- Yeah, I was real scared!

D- Do you think that because you were scared that maybe you didn't get a good look at the man's face?

J.C.- Well.....maybe. But I think I saw his face good enough. That's the man over there.

D- Are you really sure that is the man or do you only think that's the man?

J.C.- Ummm, I think that's the man.

D- Joey, you know that it's very important that you be

absolutely sure that that is the man you saw take your
sister?

J.C.- Yeah, I know.

D- So, are you very sure that is the man?

J.C.- Gosh, I'm pretty sure that's him. He looks like him,
anyway.

D- That's all the questions I have. You can step down now,
Joey.

Appendix G

Defense's Questioning of Defendant

Defense- Please state your name.

Fred Smith- Fred Smith

D- Where do you live, Mr. Smith?

F.S.- 4701 West Maple.

D- And who lives with you?

F.S.- I live alone.

D- What is your occupation?

F.S.- I work the night shift at the Hammel Company loading dock.

D- How long have you worked at the Hammel Company?

F.S.- Two years.

D- And how has your performance record been there?

F.S.- Good. I haven't heard no complaints.

D- Where were you on the morning of July 20th between 8:30
a.m. and 9:30 a.m.?

F.S.- Well, I left my house at 8:30 a.m. to go to my
girlfriend's house and I was there most of the morning.

D- What is your girlfriend's name?

F.S.- Sara Hudson.

D- Will she testify that you were at her house?

F.S.- Yeah, but she's out of town now and won't be back until
next week.

D- What is your girlfriend's occupation?

F.S.- She's a cocktail waitress at the Blue Poodle Bar and
Grill.

D- Does she also work the night shift?

F.S.- Yeah, she usually gets off work around 4 or 5 in the morning.

D- And where does Ms. Hudson live?

F.S.- 102nd and Garfield.

D- Why were you at your girlfriend's on the morning of July 20th?

F.S.- She called me and asked me to come over because she was having trouble with her mom and she was all upset. She wanted someone to talk to.

D- So you went over to her house to talk with her about the problems she was having with her mother?

F.S.- Yeah, she couldn't sleep because she was so upset. She's always having trouble with her mother.

D- Let's go back to the time factor. You said you left your home a little after 8:30 that day. So you probably arrived at Ms. Hudson's 5-10 minutes before 9 o'clock?

F.S.- Yeah, sometime before nine.

D- How can you be sure that you were there before 9?

F.S.- She had the T.V. on-- her T.V. is always on and I remember Geraldo was on.

D- You're sure that "The Geraldo Show" was on?

F.S.- Yeah...yeah, I'm sure.

D- Did anyone else see you that morning?

F.S.- No. It's not a busy street and at that time of day people have either left for work or they're still sleeping. So no one was around.

D- How long have you been dating Ms. Hudson?

F.S.- Oh, about two years now.

D- So you've helped her out of some difficult times, with her mother and such?

F.S.- Yeah, and she's helped me with some problems, too. We have a real nice relationship.

D- I have one last question.

F.S.- Okay.

D- Were you anywhere near 93rd and Atlantic on the morning of July 20th?

F.S.- No, I swear that I went straight to my girlfriend's place. I was no where near 93rd and Atlantic on that day. I swear that I didn't kill that little girl.

D- I have no further questions.

Appendix H

Cross-Examination of Defendant by Prosecution

Prosecution- Mr. Smith, you stated that you work the night shift at the Hammel Company?

Fred Smith- That's right. I work from 11 p.m. to 7 a.m.

P- So, what is your normal daily schedule like?

F.S.- Well, I get home from work around 8:00 and then I sit around and relax for awhile before I go to bed.

P- On the morning of July 20th you disrupted your normal routine to go to your girlfriend's house? Why?

F.S.- Like I said, she called and was real upset.

P- What exactly was the problem?

F.S.- I don't remember exactly. Just general problems with her mother. She's always having problems with her mother.

P- You also stated that you knew you were there at 9:00 because the "Geraldo Show" was on TV. What was that particular show about?

F.S.- I don't remember exactly. Just regular stuff.

P- How far away is Ms. Hudson's house from your house?

F.S.- About 5 or 10 minutes.

P- If no one else saw you on that morning, isn't it possible that you could have driven the extra ten minutes to the Clark's house undetected?

F.S.- Well, anything's possible I guess; but I told you, I was at my girlfriend's place.

P- Isn't it possible that she's saying that you were at her house to protect you? After all, you've been dating her for awhile and I assume that she would want to protect you?

F.S.- Hey, are you calling me and my girlfriend liars?

P- No further questions. You can step down.

Appendix I

Expert Witness Testimony

Prosecution: Please state your name and profession.

Dr. Mitchell: My name is Dr. Mitchell and I am currently a professor of psychology and law at Stanford University in California.

P: Dr. Mitchell, you have been called here today to provide expert testimony in the area of child witnesses. Will you please tell us what qualifies you as an expert in this area?

Dr. M.: My major area of research for the past 15 years has focused on child witnesses specifically in the area of eyewitness memory. I have co-authored a book which deals exclusively with child eyewitnesses. I am past president of the American Psychological Association and have spoken on several symposiums on eyewitness memory throughout the country. It is both my area of interest and expertise.

P: According to your research, how would you say that children compare with adults in their ability to make eyewitness identifications?

Dr. M: Since young children are able to store accurate mental snapshots I think that they are quite capable of making accurate eyewitness identifications. This has been found to be especially true when a subject is identified

via a live line-up.

P: Generally, how truthful are children?

Dr. M: I think that children are generally very truthful. Children are much less likely to have something to gain from being untruthful. It is highly unusual for children to completely fabricate a series of events.

P: Can a child between the ages of 3 and 6 serve as a competent witness?

Dr. M: Yes, I believe that children of this age are capable of serving as competent witnesses in a court of law. Children develop the ability to mentally visualize objects that are out of sight by age 2; and it is at this point that they become capable of serving as competent witnesses. Also, because children tend to focus more on central information they tend to encode that information better than adults. Adults encode more, but less well. Children may also be more effective witnesses because they concentrate on observing, rather than on observing and interpreting, as adults do. Further, I think that children can be more reliable than adults because they tend to make fewer intrusion errors. Adults, on the other hand, tend to fill in the gaps in their memory with plausible, yet not necessarily true, information. With relatively straightforward, factual occurrences, children are very

capable of accurately perceiving what transpires and since it is with regard to such information that children are usually asked to testify, I think that they have the perceptual skills necessary to give accurate testimony.

P: Thank you. I have no further questions.

Appendix J

Cross-Examination of Expert Witness by Defense

Defense: Dr. Mitchell, your research has focused on child witnesses, is that correct?

Dr. Mitchell: That's correct?

D: Isn't it also correct that all of your research efforts have taken place in the laboratory?

Dr.M.: That's also correct. However, other research studies I have reviewed have been conducted in field settings.

D: In laboratory settings, the researcher has much more control over the situation. How generalizable are your results to a real court of law.

Dr.M.: The results are confounded in a real court of law due to the number of factors over which we have little or no control.

D: Isn't it possible then that your research may have no relevance to an actual trial proceeding in which the key witness is a child?

Dr.M.: That would be stretching it a bit far, but it is possible that in an actual court of law a child witness may perform differently than in a laboratory setting.

D: One last question. Isn't it true that young children are more likely to be influenced by an adult's expectations?

And in this way isn't a child witness more suggestible

than an adult witness?

Dr.M.: In some cases, this is true. However, adults can be just as suggestible.

D: I have no further questions.

Appendix K

Expert Witness Testimony

Defense: Please state your name and profession.

Dr. Mitchell: My name is Dr. Mitchell and I am currently a professor of psychology and law at Stanford University in California.

D: Dr. Mitchell, you have been called in here today to provide expert testimony in the area of child witnesses. Will you please tell us what qualifies you as an expert in this area?

Dr. M.: My major area of research for the past 15 years has focused on child witnesses specifically in the area of eyewitness memory. I have co-authored a book which deals specifically with child eyewitnesses. I am past president of the American Psychological Association and have spoken at several symposiums on eyewitness memory throughout the country. It is both my area of interest and expertise.

D: According to your research, how would you say that children compare with adults in their ability to make eyewitnesses identifications?

Dr. M: Eyewitness identification accuracy increases with age. Because of their poor inferential ability, children may be able to conjure up an accurate mental snapshot of an individual but will have difficulty comparing that

person's features to other individuals. This is of the essence in eyewitness identification.

D: Generally, how truthful are children?

Dr. M: A child's moral decisions are strongly affected by the conditions surrounding the choice. Since preschool age children are at the earliest stage of moral development, for them the only reason to behave is to obtain rewards or punishments. Thus, children at this age may be persuaded to tell lies.

D: Can a child between the ages of 3 and 6 serve as a competent witness?

Dr. M: No, I don't believe that children of this age serving as competent witnesses in a court of law. There are too many limitations to their abilities at this age. While children may be capable of making accurate recognition judgements with simple stimuli, they typically do not perform not perform as well with complex stimuli and witnesses in court are typically asked to testify regarding complex events. Children have difficulty in conceptualizing complex events, identifying relationships, and attributing intentions. Language is another complicating. Even if children can perceive an event accurately, they may have difficulty translating these perceptions into accurate verbal representations

due to their limited linguistic abilities. Major misperceptions can result because of this.

Appendix L

Cross-Examination of Expert Witness by Prosecution

Prosecution: Dr. Mitchell, how long have you been conducting research in the area of children's eyewitness memory?

Dr. Mitchell: About fifteen years now.

P: Would you say that it's an area of psychology that has been well researched?

Dr. M.: No, it's actually a fairly new area. However, there has been more research devoted to it within the last five to ten years.

P: So would you say that we have any definitive findings on the strengths and weaknesses of child witnesses?

Dr. M.: While some clear cut trends are emerging, I would have to say at this time, that most of the findings are tentative.

P: Dr. Mitchell, you have stated that children are less competent witnesses than adults in identifying an individual. Is this true in all cases?

Dr. M.: Well, not in all cases. It has been shown that children are sometimes as accurate a witness as adults when identifying an individual from a live line-up.

P: What about in the area of intrusion errors? Isn't it true that children eyewitnesses are less likely to add details of which they are unsure and aren't adult eyewitnesses more likely to make such intrusion errors?

Dr. M.: Yes, it has been shown that children eyewitnesses are less likely to make intrusion errors (adding untrue details) and more likely to make omission errors (leaving out details). Adult eyewitnesses, on the other hand tend to make more intrusion errors.

P: Thank you, I have no further questions.

Appendix M

Prosecution's Summation

It is the position of the prosecution that on the morning of July 20th, Mr. Fred Smith did not drive all the way across town to talk to his girlfriend, but rather drove the ten minutes to the Clark home where he kidnapped Melissa Clark and subsequently sexually assaulted and murdered her.

Mr. Smith's claim that he arrived at Ms. Hudson's home before nine o'clock is dependent upon his claim of having seen the Geraldo show on her television. He remembers clearly having seen the show, yet he cannot recall what it was about. Furthermore, he claims to have broken with his normal sleeping patterns and followed atypical schedules so that he could discuss a major crisis that Ms. Hudson was experiencing; yet he cannot recall what the crisis was. If the problem that Ms. Hudson was having with her mother was "just the usual stuff" and "nothing special," then couldn't it have waited until later in the day, when he had had some sleep.

It is your responsibility, as jurors, to assess the validity of two sets of testimony. You must choose between the testimony of a five-year-old boy who saw with his own eyes the man who abducted his sister, and the testimony of an adult of questionable reputation. Joseph Clark is certainly too young to conceive of the motivation for revenge, yet he is just as certainly capable of telling us all of what he saw. Joseph has already lost his sister. He has nothing to gain from telling you anything but the truth. His memory is clear, and his eyewitness

identification of Fred Smith is positive. Please consider these factors seriously in making your decision.

Appendix N

Defense Summation

You, the jurors, must consider the testimony of two witnesses. On the one hand, we have the testimony of a preschool-age child who has obviously been traumatized by the unfortunate disappearance and death of his older sister. On the other hand, we have the word of an adult; a grown man, a reliable caring man, who when his girlfriend needed a friend, was willing to let his own sleep be interrupted to go to her and help her out with her family problems.

It would be very easy to answer the question of guilt in this case merely on the basis of my client's past history, to discredit his testimony and find him guilty merely because he has made mistakes in the past. But this would be taking the easy route. I would like you to look at some other factors. My client has been gainfully employed for two years now. He has been a reliable worker, prompting no complaints from his supervisors. Over the same period of time, he has maintained a stable, long-term relationship with the same woman. Since these accomplishments represent a dramatic change in lifestyle for my client, it appears obvious that he is making a valiant effort to turn his life around and get back on the right track.

Thus, while it is certainly regrettable that Joseph Clark has lost his sister under such horrible circumstances, you must ask yourselves whether you can truly feel comfortable convicting this man, Fred Smith, who is striving to create a new life for himself, when the only evidence

against him is the testimony of a traumatized, five-year-old child. Common sense should tell you that a child of this age, when placed in such trying circumstances, is hardly capable of serving as a competent witness in any fair judicial proceeding.

Appendix O

Judge's Final Instructions to Jury (Discrediting)

The defense has asked that I address the jury concerning the testimony given by the child eyewitness. While I have found this child to be competent to stand trial in this court of law, I do have grave concerns about child witnesses in general.

In evaluating the testimony of a child, you should consider all the factors surrounding a child's testimony. Because of age and level of cognitive development, a child may perform differently as a witness from an adult. In the eyes of the court, a child of tender years does not have the same powers of comprehension and understanding as an older child or adult, nor the same ability to observe, remember, and report what he or she has seen or heard. You should guard against being influenced by a child's testimony and be cautioned that children are more suggestible to influence and suggestion and are more prone to imagination than are adults.

In my considered opinion, a child is overly dependent to the power of suggestion. This may result in a child saying what may not be true. This is done not from deceitfulness, but simply because a child may have come to think or believe certain things are so by having talked to others, from high suggestibility, or from imagining what has happened.

In determining just how much credit you should give to the testimony of a child, you should evaluate his or her testimony with caution. You should weigh this testimony in light of the child's young age, mental capacity, experience, and maturity.

Appendix P

Judge's Final Instructions to Jury (Supporting)

The defense has requested that I make a statement concerning the child's testimony you have just heard. Since I have found this child to be competent to stand trial in this court of law I believe that his testimony is valid. A child's testimony in such cases as these should be weighed as you would an adult's testimony.

In evaluating the testimony of a child, you should consider all the factors surrounding the child's testimony. Because of age and level of cognitive development, a child may perform differently as a witness from an adult. That does not mean that a child is any more or less credible a witness than an adult. In fact, competency to give testimony depends largely on intelligence and understanding rather on obtaining a certain age. In my considered opinion, you should not discount or distrust the testimony of a child solely because he or she is a child. In many ways, a child witness is as capable as an adult witness in giving accurate and truthful testimony. For example, adult witnesses have a greater tendency to fill in the gaps in their memory with plausible, yet not necessarily true, information. On the other hand, it seems to me that children concentrate more on observing what actually takes place, rather than interpreting what is going on, as adults appear to do.

A child is allowed to testify in a court of law only if he or she is believed to be a competent and credible witness. You can be assured, as I am, that the child you heard give testimony is, in the eyes of the court, a competent and credible witness and you should give his testimony as much consideration as you would that of an adult.

Appendix Q

Verdict

Jury_____

Jury Member #_____

Gender:_____M_____F

Do you believe that the defendant in this case is (circle one)

- 1 Not guilty beyond a shadow of a doubt
- 2 Not guilty beyond a reasonable doubt
- 3 Probably not guilty
- 4 Undecided as to guilt or innocence
- 5 Probably guilty
- 6 Guilty beyond a reasonable doubt
- 7 Guilty beyond a shadow of a doubt

Appendix R
Jury Verdict

Jury Code _____

This jury finds Fred Smith guilty/not guilty (circle one) beyond a reasonable doubt of kidnapping, sexual assault and murder. So say us all.

Please place your initials below.

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

We were unable to come to a unanimous decision within the time limit.

Our votes are as follows (sign your initials).

Guilty:

1. _____
2. _____
3. _____
4. _____
5. _____

Not Guilty:

1. _____
2. _____
3. _____
4. _____
5. _____