

H O T S H E E T

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Next Issue:

Child
Witnesses
(Part II)

Dealing with Child Witnesses (Part I)

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Most everyone is familiar with issues that arise when a child is a victim of abuse, but there are many situations where a child can just be a **witness** to a crime and not a victim. The most common situations arise in family violence cases and drug cases, but children can be witnesses to any type of crime. Thus, the information below is designed to help deal with all child witnesses, regardless of whether the child is a victim of a crime or just a witness to a crime.

Since this topic is so extensive, it will be presented in two issues. Part I will deal with issues to be aware of in interviewing child witnesses in general. Part II, which will be published in the March/April HOTSHEET, will deal with issues that arise when interviewing children at school or when the parents of the child are reluctant and/or hostile.

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Are there special issues to be aware of when dealing with child witnesses?

Yes. The first thing to remember about child witnesses is that they don't think like adults do. Their thought processes are not always logical. Their attention span is usually very short. Basically, they are not small adults, they are children, and if you interview them like you would an adult, you will not get the correct information.

Building rapport with children is very important. Your approach and demeanor – not just with them – but around them is very important. The saying is true: “Children Are Sponges”. They are watching you from the moment you arrive on scene.

Unfortunately, some children are raised in an atmosphere where law enforcement is portrayed in a negative light. Oftentimes they are told that police and sheriff's deputies are bad, are out to get them, or take them away from their families. There are many of these “myths” out there. Being aware of this and acting accordingly can keep your investigation from missing out on vital information.

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Moreover, be aware that even children who have been raised with “respect” for law enforcement may still believe in “myths” that need to be dispelled. They may have seen a television show or movie where the questioning of a suspect by law enforcement was aggressive. They do not draw the distinction between that and themselves, nor do they recognize it as entertainment. They may think they are in trouble because you want to “talk to them.” Uniforms can be very imposing.

Finally, these are not the only “myths” a child witness may harbor. So, spend some time with them before the interview talking about school or a favorite show, game or toy. You will find that this may help you determine what “myths” they **do** subscribe to and you will be better equipped to address them. While time is often of the essence, taking these extra steps may make the difference between a child telling you where he saw the gun thrown or not telling you anything at all!

Are there special considerations in interviewing child witnesses?

Yes. Once you have a rapport with the child witness, it is vitally important to ask open-ended questions. **Do NOT lead a child witness.** The most common attacks on a child witness' statements are the allegations by defense that the child was *merely agreeing with law enforcement*, the statement was *not in his/her own words*, or that the child's *answers were suggested by the questions*.

Questions such as "Do you know why we are here?" and "Tell me more about that" are better questions than "Did you see the suspect shoot the victim?" and "How many gunshots did you hear?" These are examples of how to get the same information in a more reliable way. The latter questions are fine as follow-up questions, after the child witness has relayed what he/she knows in his/her own words. However, they should not be the first questions asked in the interview.

Should we record interviews with child witnesses?

Yes. *Whenever possible, record the interview with the child.* This serves two purposes. First, it limits the ability of defense to challenge the accuracy of the police report. A recorded interview will show that the information was in the child's words, not law enforcement's. Secondly, children can forget things that they have told to law enforcement. Hearing their own voice again is an effective way to trigger children's memories since the interview is couched in language that they themselves used.

***"Any child who can be understood
can be interviewed."***

Are there age limits to being able to question a child?

No. *Any child who can be understood can be interviewed.* Admissibility of the evidence later in court is a separate question. The extent of the future admissibility of their statement depends upon the child's understanding of the importance to tell the truth and understanding of what that is.

However, merely because something may not later be admissible does not mean that there is no value in interviewing a younger child witness. The three-year-old may be able to tell you where daddy put the knife or where mommy keeps the drugs, which will save you lots of time and energy. So, don't shy away from interviewing a young witness just because you think that his/her statements may be problematic later in court.

H O T S H E E T

Children under age “x” are incompetent, right?

Wrong. The evidence code presumes that all people *regardless of age* are competent to testify. (Cal. Evid. Code § 700). The only two challenges to a person’s competency are: (1) that the witness is incapable of expressing himself/herself so that he/she may be understood directly or through interpretation, or (2) that the witness is incapable of understanding his/her duty to tell the truth. (Cal. Evid. Code § 701).

*An investigation is **not** testimony.* Just because a child does not qualify to testify doesn’t mean the statement should not have been obtained in the first place. This is true especially if the child has information that can assist you in your investigation. In this instance, just be aware that the case cannot solely rely on the child witness. There must be other evidence that is admissible and presentable at trial.

Do I use Gladys R. to qualify a child witness?

NO! **This point cannot be stressed enough.** The Gladys R. advisal came out of a case involving a 12-year-old **suspect** – NOT A WITNESS. The issue in the case of In re Gladys R. (1970) 1 Cal.3d 855, was whether a child under the age of 14 understands the *wrongfulness* of his/her actions. A child **witness** need not understand the wrongfulness of an act in order to relay what he/she saw.

Child witnesses only need to understand the difference between **truth** and a **lie**; and, if they do, they must understand the importance of telling you the truth. There is no “magic age” at which this happens. So long as they understand the difference and promise to tell the truth, they can qualify as a witness in a case.

Upcoming in Part II:
“Parents who don’t want their child interviewed” &
“Interviewing children at school”

If you would like to see a topic covered in the Hotsheet, please e-mail your suggestions to:

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