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Child Witnesses: Using Modern Tools & Approaches in Seeking Justice

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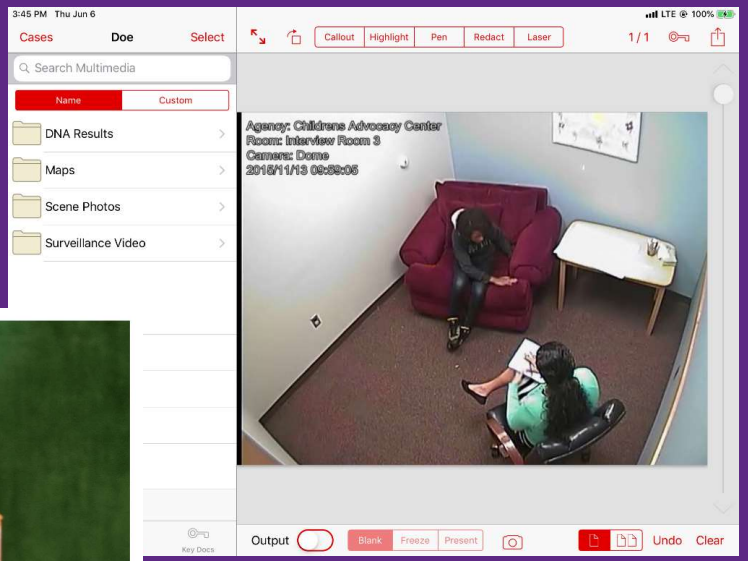
Child Witnesses:
A Modern Approach

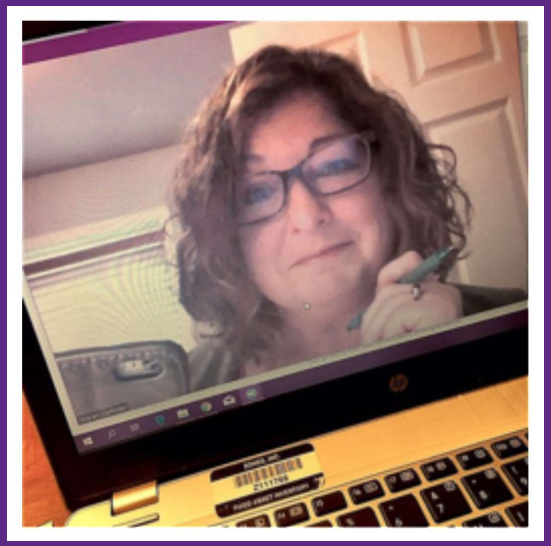
Pima County Attorney's Office

Special Victims Bureau

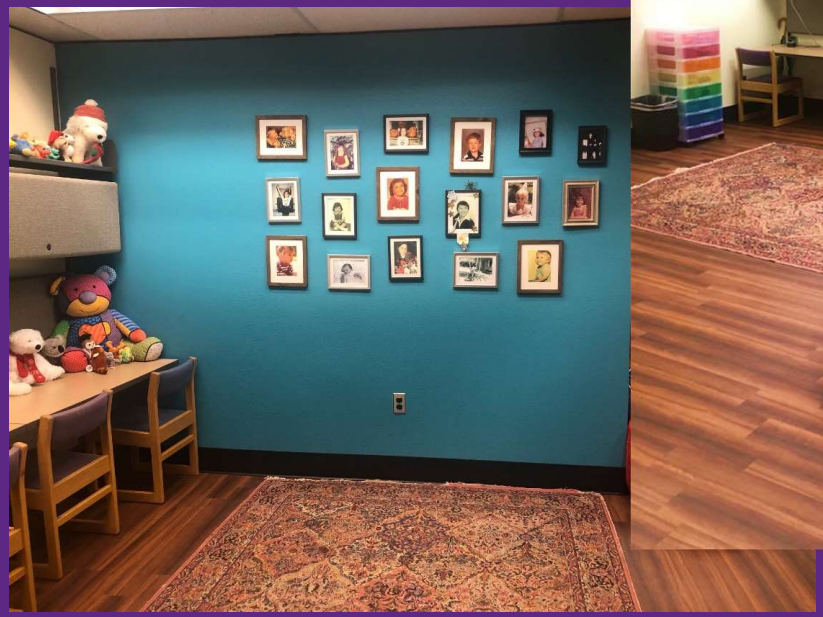
Tools of the Trade:

Tech Tools of the Trade





Office Space



What do kiddos know about the legal system?

What is a prosecutor?

- A person who doesn’t like anybody.
- Someone who camps by the water in a tent.
- Not sure, but something naughty.

What is a defendant?

- Someone who defends you.
- Someone who tells you what to say in court.

Why do judges wear black robes?

- He is ready for bed.
- She has on ugly clothes and wants to cover them.

NDAA Prosecution Standards

2-10.4 Witness Interviewing & Preparation

The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness's testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

Preparing a Child Witness

- What are your ethical guidelines?
- What are your goals?

Colin Murray, Nuts and Bolts of Child Witness Examination, 31 Litigation 16 (2005)

"The manner in which you prepare and examine the child will dictate the quality of her testimony, and quite possibly, the result of the trial."

Predators, Pedophiles, Rapists & Other Sex Offenders (p. 50), Anna C. Salter

"I could have made her nervous enough to make her lie, or make her stumble to make people think she was lying."

"A simple look to a child is traumatizing."

Goals of Witness Preparation

- Develop rapport with the child
- Develop rapport with the parents or guardians
- Educate yourself about the child
- Assess witness ability and viability
- Prepare witness for testimony

Initial Meeting

- Begin developing rapport with the child
- Usually do not want to discuss “what happened”
- Explain roles
  - Our job: Worrying about the case.
  - Child’s job: Being a fourth grader.
  - Parent’s job: Loving and caring for their child.
- Explain the process
  - Always explain to the parents
  - Level of explanation depends on the age & maturity of the child

Rapport Building: No textbook answer

- “Find your inner kiddo” approach
- “Awkward and funny” approach
- “Coolest person in the room” approach
- “Parent/Grandparent” approach
  - Supportive approach
  - Authoritative approach

Semper Gumby: Always flexible

- Every child is different.
- No “one way” to approach every child.
- This is a team effort.

Participants in the initial meeting and what they do:

- Secretary*
- Legal Assistant
- Detective*
- Victim Advocate
- Courthouse Dog*
- Prosecutor

Initial Meeting - Possible Topics

- Who you are (What have Mom and Dad told you about me? What do you think a lawyer does?)
- Child's Expectations for Meeting, Questions, Concerns, Fears
- Your Responsibilities to the Child; The Child's Responsibility to You and Herself.

Initial Meeting –Rapport Building

- Coloring or drawing
- Hot Wheels/Lego
- Board Games
- Puzzles
- Anything at all that entertains and comforts.

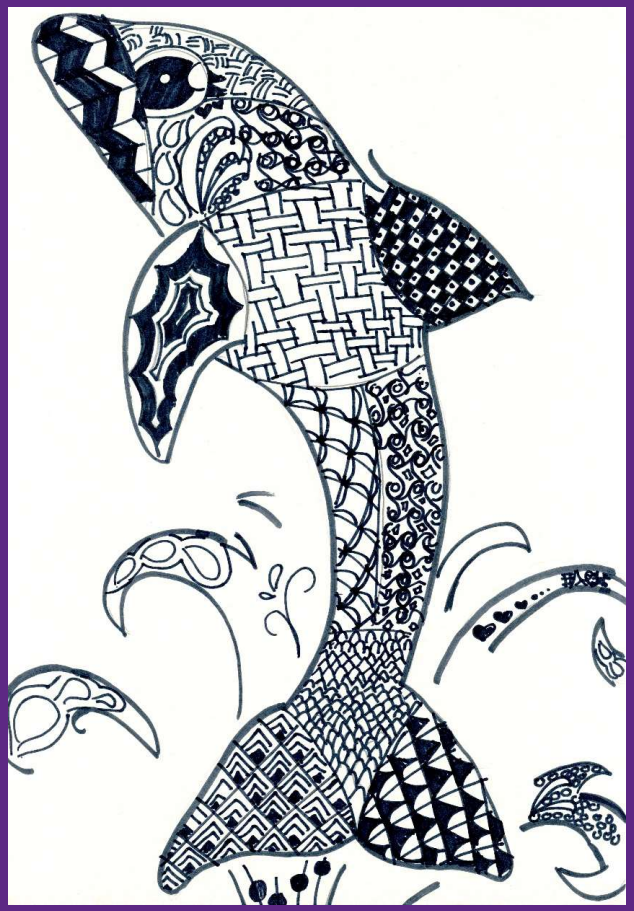
How many meetings?

- It depends on the case.
- It depends on the child (and family, circumstances, degree of victimization/trauma, level of complexity).
- Case comparisons:
  - *Talkington*
  - *Randall*
  - *Foster*
  - *Morgan*

Kids in Court Program

Goals:

- Educating the kiddos
- Educating parents & guardians
- Familiarizing everyone with the process
- Rapport building
- Confidence building



Overview of the Program

Courthouse Dogs (and your options)

Potential pretrial motions

- Use of Courthouse Dog in the courtroom
- Child friendly oath
- Use of comfort items
- Courtroom modifications

Appearance

- Like for school
  - Comfortable
  - Something you feel like yourself in
  - Warm
- Input from legal assistants and advocates:

Rules in the courtroom

#1: Tell the truth.

#2: Make sure you understand the question.

Useful reminders

- Don’t have to look at defendant.
  - (Do you want or need in-court ID?)
  - Address safety/interpersonal concerns
- OK to look just at me (or the jury, the desk, or supports (Be mindful of placement; emphasize guidelines.))
- If you don’t know the answer, then “I don’t know” is the right answer.
- If you can’t remember something, we can show you the transcript or video to help you remember.
- Let us know if you need a break.
- Your only responsibility is the truth; the outcome is MY responsibility.

Guidelines for Parents/Caregivers

- No visible emotional response
- No affirmation/encouragement while on the stand; no coaching.
- Notes concerning seating
  - Parents and caregivers need privacy from jury eyes for unavoidable emotion.
  - Jury needs to focus on the testifying witness.
- Entrances and exits
- How to provide support for the testifying child

Semper Gumby…. “Always Flexible”

- Every child is different
- No “one way” to approach every child

Be prepared to:

- Approach a topic in multiple ways
- Retreat into “safe territory” if need be
- Draw on diagrams with young children

Jury Selection

- Abused kids acting like . . . kids.
- Credibility of children and teenagers
- Expectations of a particular emotional response
- Memory of traumatic events – PREVIEW POSSIBLE LACK OF DETAIL, THE NEED TO REFRESH MEMORY
- Delayed disclosure/piecemeal disclosure/memory and trauma/expert testimony
- *Tell your child witness how you're going to pick people who can listen to them fairly and who will not judge them for what they've endured.*

Opening

- Under promise, over deliver . . . limited details so you're not putting too much pressure on your child witness
- Introduce your kid (background, vulnerability to abuse, personality quirks, expected energy level or iffy recall)
- Tell the jury the unexpected things you'll be putting together for them in closing, e.g. dissociation and hyperfocus on peripheral details, description of body parts and acts way beyond expected knowledge for age
- *Tell your child witness how you're going to give the jury a preview of what happened before they testify, so the jury isn't going to be shocked or surprised by what they hear from the child.*

Form of questions

- Avoid big words, “cop speak,” and legalese
  - “Delayed disclosure”
  - “Forensic interview / medical exam”
  - “Observe” vs. “see”
  - “Disclose” vs. “tell”
- Use simple language
  - “Would reviewing the transcript of your forensic interview perhaps refresh your recollection?” is Not Simple.
- Use their words

Preparing your Direct Exam

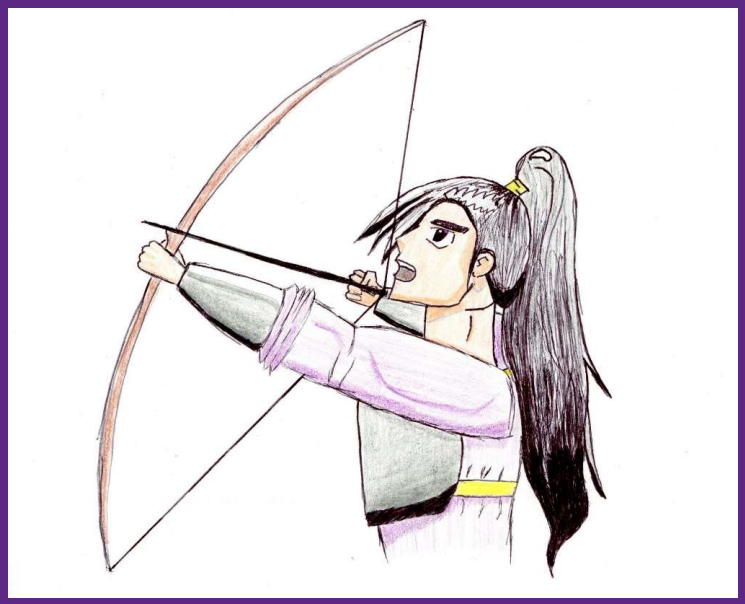
- General Format:
  - Introduce your child to the jury: Age, hobbies, favorite classes, pets, siblings? How can you put the jury and the witness at ease? How can you remind the jury that they are listening to a child?
  - Home life or background at time of offense
  - Intro to event that anchors the child in time, place, some sense memory
  - Details of the Events
- Essential Steps:
  - Every answer you want to get needs Page:Line Number, Audio Start- Audio Finish.
  - Listen to and watch your child witness, *not your notes.*
  - Let them explain how they felt, how they feel now, why they chose what they did.

Be prepared to:

- Refresh recollection – A.R.E. 612
  - Using transcripts
  - Using audio or video clips

- Impeach w/ prior inconsistent statements - A.R.E. 801(d)(1)(A)
  - Using transcripts
  - Using audio or video clips
  - What is the definition of "inconsistent?" *State v. Joe*, 316 P3d 615
    - Real loss of memory vs. Feigned loss of memory
    - Not limited to cases where testimony & prior statement totally opposite

Be prepared to:



- Introduce “recorded recollection” if you can’t refresh – A.R.E. 803(5)
- Rebut cross-examination with prior consistent statements – A.R.E. 801(d)(1)(B)

Prior Consistent Statements -- A.R.E. 801(d)(1)(B)

- A statement that meets the following conditions is not hearsay:

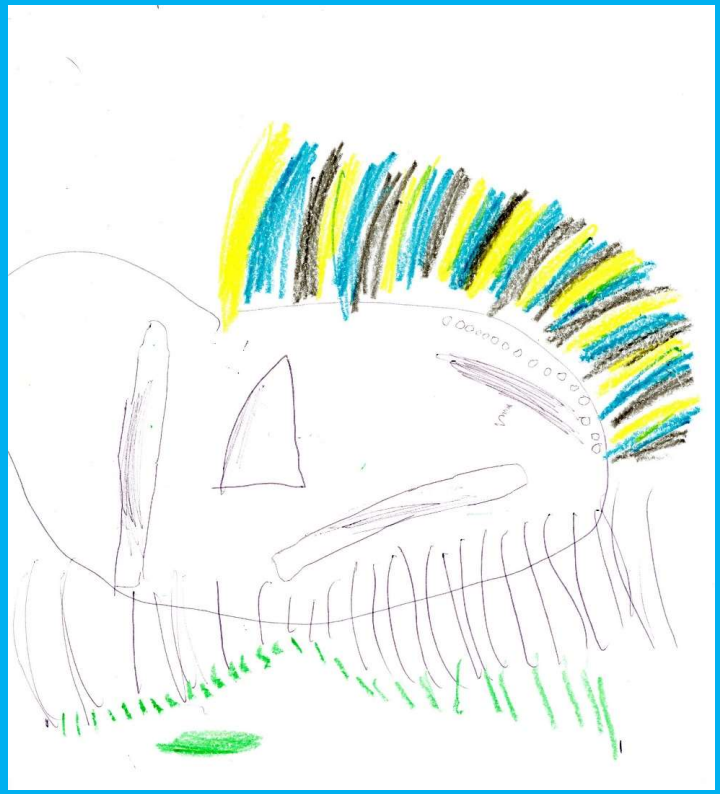
- The declarant testifies and is subject to cross-examination about the prior statement and the statement:
  - Is consistent with the declarant's testimony *and*
  - Is offered to rebut a charge that the declarant:
    - Recently fabricated it, or
    - Acted from a recent improper influence or motive in so testifying, OR
  - [Is offered] to rehabilitate the declarant's credibility when attacked on another ground

Be prepared to: Check your ego

- It's about the case and the kiddo, not about you.
- Some kiddos will work better with others than with you.
  - Gender issues often arise.
  - Case types with frequent issues:
    - Male victim cases.
    - Teenaged girl victim cases.
    - Cases with victims from a male-dominated culture.
- If the case ends in a negative way:
  - It is ALWAYS our fault.
  - It is never the child's fault.

"This is what we do, people. This is what we do."

Justice
Accountability
Empowerment



This is why we do what we do.

Bourke & Hernandez Study – Average Number of Victims per Offender

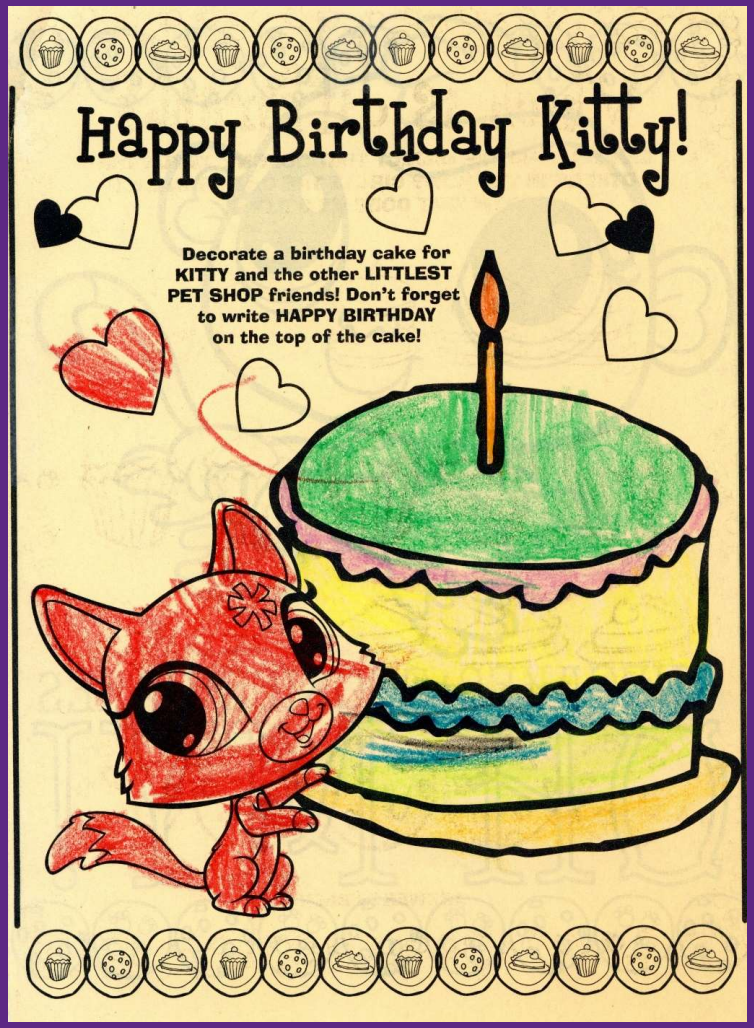
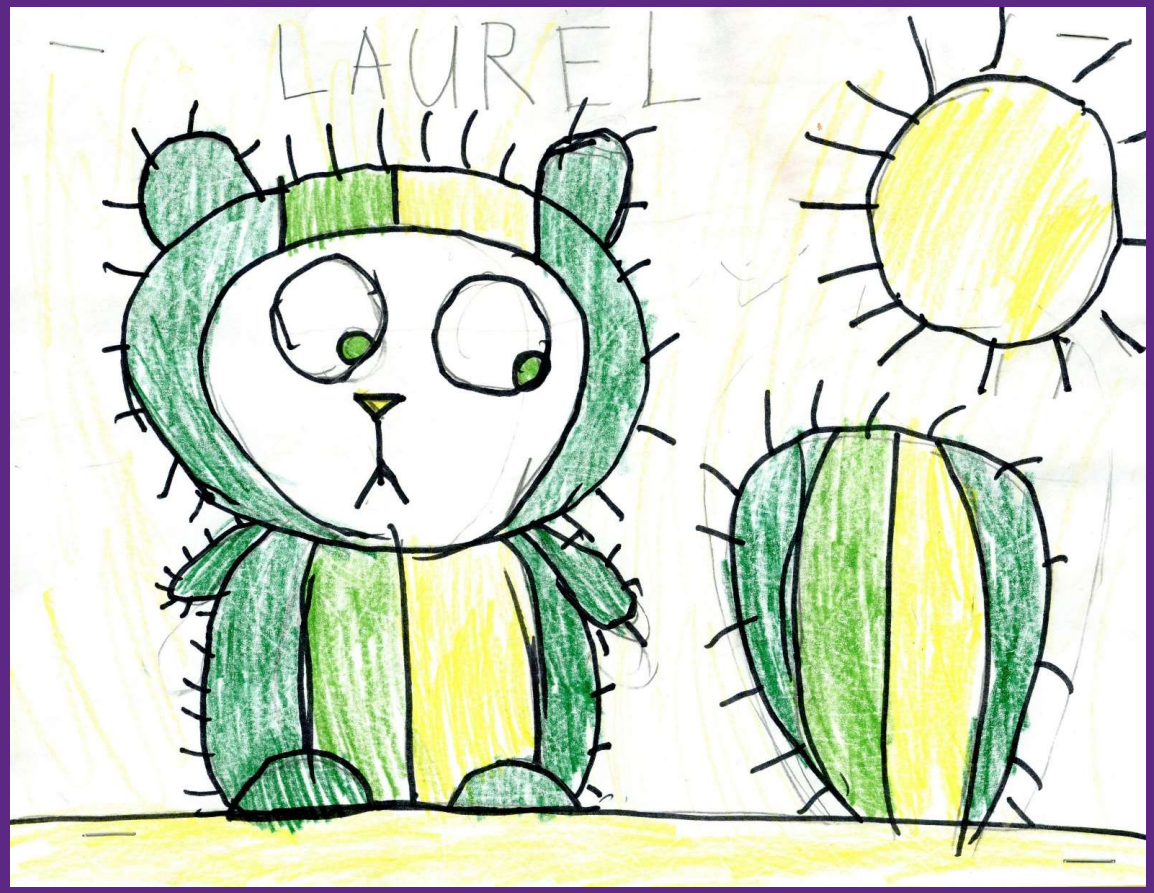
- Subjects with documented sex crimes histories: 19.4
- Subjects without documented sex crime histories: 8.7

This is why we do what we do.

Bourke *et al* -- 2014 Polygraph Study of 127 subjects under investigation for possessing CP

- **Initial interview:** 6 admitted child sexual abuse (5%)
  - Admitted 10 total victims (1.7 each)
- **Pre-test interview:** 26 more admitted sexual abuse (20%)
  - Admitted 102 total victims (3.9 each)
- **Post test interview:** 41 more admitted sexual abuse (32%)
  - Admitted 170 victims (4.1 each)
- Total: 73 offenders (57%); 282 admitted victims (3.9 each)
- 54 maintained they had not abused a child
  - 17 found "non-deceptive" (31%)
  - 26 found "deceptive" (48%)

This is why we do what we do.


Happy Birthday Kitty!
Decorate a birthday cake for KITTY and the other LITTLEST PET SHOP friends! Don't forget to write HAPPY BIRTHDAY on the top of the cake!

The End ... Any questions?