

"I TAKE IT BACK": WHEN A CHILD RECANTS

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At one point or another during our careers, every professional in the child abuse arena will be faced with a recanting child victim or witness. Recantation occurs at various stages during the investigation or prosecution of child abuse cases. A recantation may derail a case pretrial, during the trial, or even subsequent to a verdict being rendered.

A child may recant for a variety of reasons, including secrecy, inducements by perpetrators, lack of support from the non-offending caregiver, societal attitudes regarding the sexual abuse of children, or the child's interactions with professionals within the criminal justice system.

- ◆ *Secrecy:* Child sexual abuse is characterized by secrecy. According to Dr. Roland Summitt, "[I]nitiation, intimidation, stigmatization, isolation, helplessness and self-blame depend on a terrifying reality of child sexual abuse: It happens only when he child is alone with the offending adult, and it must never be shared with anyone else."²
- ◆ *Lack of Support and pressure to Recant:* Not getting enough support from those responsible for the child's health and safety or being under direct pressure to recant her disclosure are significant factors to consider when faced with a recantation. Children feel powerless over their discomfort in an unsupportive environment. The lack of control over the situation is compounded by the fact that children operate in a time frame very different from that of adults. One month of dealing with an angry mother can be unbearable for a child.
- ◆ *Societal Attitudes:* Most adults are shocked that child sexual abuse is as widespread as it is. Additionally, societal attitudes toward children suggest that children are not credible witnesses. Highly-publicized cases in which prosecutors were unable to prove allegations of child abuse beyond a reasonable doubt have contributed to a backlash against child protection efforts. Recantations are often used to support the assertion that children do make up stories of sexual abuse.
- ◆ *Child and Family Interaction with Professionals:* Even under optimal circumstances within the criminal justice system, it is not difficult to understand why a child might withdraw her disclosure of abuse when she realizes the ordeal she must experience following the disclosure. It is also easy to understand why even the most supportive caretaker might encourage a child to recant under these circumstances. If one or more of the numerous professionals with whom the child and family must

interact is less than sensitive, professional or understanding about the needs and feelings of those with whom she is working, what might have been simply a painful and prolonged experience is now a further source of trauma for the child and her caretaker.

Remembering the typical reasons for recantation, we as professionals should strive to prevent our child victims from recanting by keeping in mind the following guidelines:

- ◆ *Access the Case for Recantation Risk Factors:* Risk factors for recantation include abuse by a family member; hostility to disclosure by family members; lack of support for the child; expressed support for the offender; continued contact with the offender; other forms of family violence; lack of protective court orders, system contact and intervention; victim self-blame and isolation; and lack of professionalism by investigators, social workers and prosecutors. If any of these risk factors are present, apprise the team accordingly and assess which types of intervention may be appropriate to provide for the comfort and safety of the child. Such interventions may include therapy for the child and her family, educating the child and her caretaker about system delays and the court process, and discussing ways to reduce trial stress or trauma to the child.
- ◆ *Provide for the Safety of the Victim:* A child who feels safe will feel less threatened, intimidated and stressed throughout the prosecution process. Some ways to provide for the safety of the victim include having protective orders in place and swift enforcement of those orders when violated; removal of the perpetrator from the home as opposed to removal of the victim; and finding the best placement for the child when faced with an unsupportive parent or caregiver.
- ◆ *Provide for the Support of the Victim:* Support for the victim and her family may include intervention by a therapist; education for both the child and the caregiver; involvement by a victim-witness advocate or guardian ad litem; and utilization of a vertical prosecution system. All of the foregoing provide the child and caregiver with mechanisms to communicate doubts, concerns and questions and to receive answers. Additionally, a vertical prosecution system, one in which one prosecutor handles the case from intake to post-trial issues, prevents the child and caregiver from having to meet a different professional at each stage of the litigation.
- ◆ *Provide Evidence of the Victim's Credibility:* Providing evidence of the victim's credibility reduces trial stress, and validates and encourages the child. Such things as sensory details in the child's statement (i.e., descriptions of smell, sight, touch, feel, taste and sound), and noting the circumstances and demeanor of the child at disclosure all go a long way toward enhancing the child's credibility. Additionally, checking the perpetrator's history for other possible victims, as well as photographs and items from the perpetrator's home will also aid in the victim's case at trial.
- ◆ *Reduce Trial Stress and Trauma to Child:* Trial stress can be reduced through the use of coordinated proceedings, which prevent the child from having to provide multiple testimonies; by fully preparing children for the court process; and by

considering alternatives to testifying in open court for special circumstances. If reducing trial stress includes a plea negotiation in order to spare a traumatized child from having to face her perpetrator, remember that the focus of the plea should be on the safety of this particular child victim, as well as future possible victims of this assailant.

Despite all of these precautions, the child still may recant. At that time, the report of recantation needs to be objectively assessed, the case needs to be assessed for further prosecution, and the child's credibility needs to be rehabilitated.

- ◆ *Assessing the Report of Recantation:* The report of recantation needs to be reviewed objectively. To whom did the child recant? A recantation given to a defense attorney at the insistence of an unsupportive caregiver should be looked at skeptically, while a recantation to the child's trusted therapist or teacher needs to be viewed with more credibility. What was the child's demeanor, and her exact words at the time of recantation? What were the circumstances surrounding the recantation, and to whom was the recantation first reported? During the recantation, did the child make statements which were obviously false?
- ◆ Any possible witnesses to the recantation should be interviewed, with the foregoing questions asked of them as well. The child's therapist should be contacted to learn more about the child's home situation. Some possible areas of exploration are the level of support for the child, whether there has been compliance with court orders in place, and what the plans are for the child's immediate future. Additionally, all witnesses to the child's original statement should be interviewed, and questions regarding the child's demeanor and exact words at the time of disclosure need to be explored.
- ◆ *Assessing the Case:* The three choices after a report of recantation are (1) continuance of the trial; (2) going forward with the trial, utilizing the child's original statement; and (3) dismissing the case.
- ◆ *Continuance:* Should the defendant's right to a speedy trial not be an issue, moving for a continuance and having the child continue in therapy may help the child deal with the issues which caused the recantation.
- ◆ *Going Forward with the Trial:* In order to go forward with the trial, the admissibility of the child's original statement needs to be assessed. Can the statement be admitted under one of the recognized exceptions to the hearsay rule? Some common exceptions under which statements have been admitted are the medical diagnosis exception,³ the residual exception,⁴ the child hearsay exception,⁵ excited utterance,⁶ and present sense impression⁷
- ◆ *Dismissing the Case:* If there is no other option but to dismiss the case, it should be done with the child in mind. Make sure the child's therapist and CPS, if allowed, stays involved.

- ◆ *Rehabilitating the Child's Credibility:* Expert testimony is often necessary for rehabilitation of the child's testimony to explain issues such as delay in reporting, recantation, inconsistencies in reports and other related matters. The majority of jurisdictions allow experts to testify that such behaviors as delay in reporting and recantation are common behaviors in sexually abused children.⁸

As outlined above, children recant for a number of reasons. If prosecutors routinely dismiss cases involving recanting victims, these children and other children may not be safe. If children do not disclose having been sexually abused, they may not be able to overcome the trauma of the abuse. Furthermore, child sexual abusers may take the threat of prosecution less seriously.

As shown, a number of interventions can be made to prevent recantation and to minimize its effects. Victims of sexual abuse should have advocates appointed for them early in the proceedings to provide them with early and continual support. Both children and abusers should receive mental health treatment directly following disclosure as another source of support for the children. Finally, judicial changes should take place so the experience of testifying and gathering evidence is less traumatic for the children.

Notes

1 Senior Attorney, APRI's National Center for Prosecution of Child Abuse

2 Roland C. Summit, M.D., *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE AND NEGLECT 177-193 (1985).

3 FEDERAL RULES OF EVIDENCE 803(4).

4 FEDERAL RULES OF EVIDENCE 803(24).

5 Many state legislatures have enacted statutes to admit a child's statement into evidence provided the trustworthiness of the statement can be established. See CHILD ABUSE AND NEGLECT STATE STATUTE SERIES 1998, Volume IV, Number 23, *Child Witnesses: Child Hearsay Exceptions* (National Clearinghouse on Child Abuse and Neglect Information & APRI's National Center for Prosecution of Child Abuse).

6 FEDERAL RULES OF EVIDENCE 803(1).

7 FEDERAL RULES OF EVIDENCE 803(2).

8 There are, however, three notable exceptions: Kentucky—*Newkirk v. Commonwealth*, 937 S.W.2d 690 (Ky. 1996); Pennsylvania—*Commonwealth v. Dunkle*, 529 Pa. 168, 602 A.2d 830 (Pa. 1992); and Tennessee—*State v. Anderson*, 880 S.W. 2d 720 (Tenn. Crim. App. 1994).