



# **Forensic Interview Techniques for Prosecutors**

**Julie Kenniston, MSW, LISW**

**Tom Fallon, JD**

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# Perspectives

- **Advocacy depends on a well done investigation/interview and continues throughout sentencing.**
- **Verisimilitude (believability) is the name of the game.**
- **If you believe in the child & in your case; then you must get the jury to do the same!**

# **Perspectives**

- **Rapport is not communication!**
- **Testifying is stressful.**
- **But, not all stress is bad.**
- **Testifying is harder on children than being interviewed.**
- **It is your job to minimize the stress attendant with testifying.**

# **Minimize Stress & Enhance Accuracy**

- **Use the same FI principles in your Direct Examination!**
- **Apply social science research.**
- **Use Pretrial Motion Practice to prepare the court for the child.**
  - **Insist on use of developmentally appropriate language and questioning.**

# **Forensic Interview Techniques**

- **Use NEP with the child.**
- **What did D say about touching you?**
- **How do you feel about D?**
- **What has it been like after you told?**
- **Tell me (all)(more) about that?**

# **Forensic Interview Techniques**

- **What/how causality questions:**
- **How do you know that?**
- **What kept you from telling right away?**
- **What made you want to tell?**
- **What did X say when you first told her?**

# Forensic Interview Techniques

- **“Any” questions pull for a “no” answer.**
- **Avoid “yes” “no” questions.**
- **Be wary of the developmental issue on “ask” v. “tell.” Children confuse those concepts. “Did your Mom tell you what happened?” “Mom **told** me what happened.**



# **Perspectives: Minimize Stress & Enhance Accuracy**

- **Use Pretrial Motion Practice:**
- **To prepare the child for court  
&**
- **Prepare the court for the child.**

# THE RECIPE

**1. Social Science  
Research**

**2. Law**

**3. Public Policy**



# **Questioning Children: What Research Says**

- **Use simple words such as “show”, “tell me about” and “said” instead of legalese such as “depict”, “describe” and “indicated”.**
- **Check the child’s definitions against your own understanding and interpretations.**
- **Avoid using the word “story.”**

# **Questioning Children: What Research Says**

- **Avoid pronouns - use names and places: “What did Tom (not “he”) say?”**
- **Stay away from negatives and tag questions: “You said this, didn’t you?” “Isn’t it true that ...?”**

# **Questioning Children: What Research Says**

- **Avoid “yes/no” questions with multiple propositions: “Do you remember when Mary asked you if you knew what color Bill’s shirt was and you said ‘blue’?”**
- **Signal shifts in time, place or date: “OK, now I want to talk about X.”**

# **Questioning Children: What Research Says!**

- Don't ask unnecessarily leading or suggestive questions.**
- Ask follow up, open-ended explanatory questions following questions that call for a yes/no response.**
- Tell the child to correct you, or to say "I don't know" or "I don't understand."**

# Perspectives:

**A leading question is different than and not necessarily a suggestive one!**

**Check you state rules but the law and psychological research may define those terms differently. *E.g.***

**“A leading question is one which unmistakably suggests the desired answer.”**

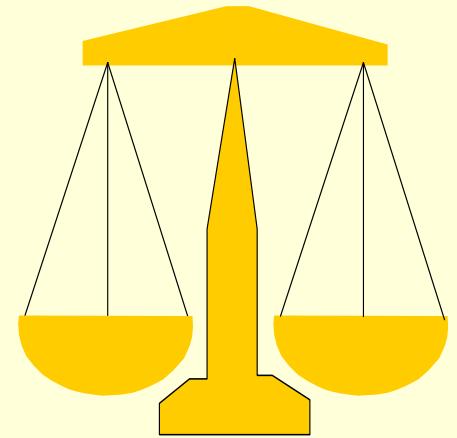
***Wisconsin v Sarinske*, 280 N.W.2d 725 (1979).**

# **Perspectives: Minimize Stress & Enhance Accuracy**

- If a trial is a search for the truth; and leading and suggestive questioning diminishes accuracy (does not lead to the *truth*); why should it be permitted on cross examination?**
- See *e.g.* FRE 611 Mode & Order of Interrogation.**



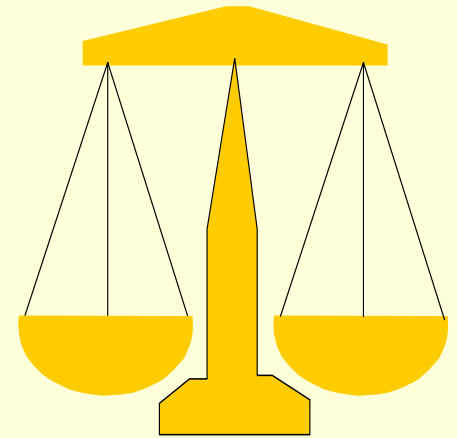
# ***Federal Rules of Evidence***



## **Rule 611 Mode and Order of Interrogation and Presentation**

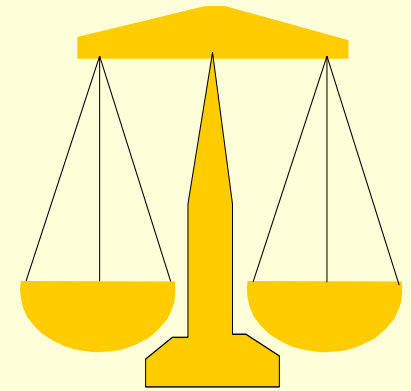
**(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses so as to:**

# ***FRE***     **611**



- (1) make the interrogation and presentation effective for the ascertainment of the truth,**
- (2) avoid needless consumption of time, and**
- (3) protect witnesses from harassment or undue embarrassment**

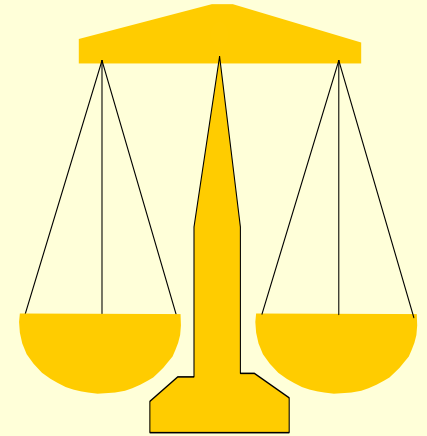
# ***FRE* 611**



## **(b) Scope of cross-examination.**

**Cross-examination . . . . The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.**

# ***FRE*** 611



**(c) *Leading questions.*** Leading questions should not be used on direct examination of a witness except as may be necessary to develop the witness' testimony. *Ordinarily* leading questions are permitted on cross . . . .”

# **Perspectives: Minimize Stress & Enhance Accuracy**

- You **must** spend time with the child if you are calling that child as a witness!
- Decide how you will address the *confrontation* issue with the child.

# **Reduce negative consequences of testifying**

- Caregiver support. Moms matter.**
- Corroboration is very important. Evidence matters.**
- How many times child has to be involved (testifying/interviewed). Professional's preparation and skill matter.**

# **Reduce negative consequences of testifying**

- **Delays and continuances are bad.**
- **Repeated interviewing/prepping:**
  - ❖ **fine if done well**
  - ❖ **troubling if done poorly**

**Lesson:** Prosecutors, detectives, professionals...get it together!

# Repeated Interviews

- **What we know about repeated interviews has changed**
- **La Rooy, D., Katz, C., Malloy, L. C., & Lamb, M. E. (2010). *Do we need to rethink guidance on repeated interviews?* Psychology, Public Policy, and Law, 16(4): 373-392.**



# **Repeated Prep Sessions?**

- **What do we know about repeated preparation of witnesses?**
- **Not much;**
- **But we should follow those research principles.**

# Repeated Prep Sessions-ok?

- **As long as we don't unnecessarily lead or *suggest answers*;**
- **Use open-ended & free memory recall questioning;**
- **As long as we don't unnecessarily traumatize, we should be fine.**

**Reduce negative  
consequences of testifying**

**Use good social science experts  
when needed to support or  
explain the child's testimony!**

**But . . . .**

**A word of caution . . . .**

**In 1995, New Mexico state senator Duncan Scott was getting aggravated by the number of psychologists and psychiatrists being used as expert witnesses in legal trials. To protest this perceived overuse of psychiatric professionals, Scott tacked the following protest amendment onto a bill:**

- **When a psychologist or psychiatrist testifies during a defendant's competency hearing, the psychologist or psychiatrist shall wear a cone-shaped hat that is not less than two feet tall. The surface of the hat shall be imprinted with stars and lightning bolts.**

- **Additionally, a psychologist or psychiatrist shall be required to don a white beard that is not less than 18 inches in length, and shall punctuate crucial elements of his testimony by stabbing the air with a wand. Whenever a psychologist or psychiatrist provides expert testimony regarding a defendant's competency, the bailiff shall contemporaneously dim the courtroom lights and administer two strikes to a Chinese gong [...]**

# Wizard of Expertness!



# **Reduce negative consequences of testifying**

## **Winning matters:**

**“In summary, the most consistent predictor of legal attitudes among child victims who participate in a sexual abuse prosecution is case outcome: Negative attitudes are strongest when defendants are acquitted or received minimal punishment.”**



# **Much Thanks To**

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**Tom Fallon**

**608.266.7340**

**fallontj@doj.state.wi.us**

**Julie Kenniston**

**513.604.6739**

**julie.kenniston@gmail.com**