

JUDICIAL MANAGEMENT IN CHILD SEXUAL ABUSE CASES¹

Submitted by the Child Witness Institute

KEY CONCEPTS	
Child Abuse	Child Sexual Abuse
Presiding Officer	Court Management

1. Introduction

It is the normal procedure for a judicial officer to allow attorneys or advocates fairly wide latitude in shaping their cases. When child witnesses are involved, however, there is a greater need for judicial involvement. Myers, Saywitz and Goodman² argue that 'enhanced judicial involvement is a necessity' for the following reasons:

"Children's relative lack of knowledge regarding the legal system, along with embarrassment and fear of public speaking, can fuel stress and anxiety, with deleterious consequences for performance on the witness stand."

Adults are to a certain extent able to manage their stress through their general understanding of what happens in court. Some children may believe that they will go to jail if they give the wrong answer. A stressful courtroom situation may cause a young child to be unable or unwilling to testify.

2. The Need for Judicial Management

The need for judicial management is well described in a remark of the Alaskan Supreme Court: "Despite the adoption of procedures making the process of testifying less intimidating for a young child, the fact remains that many children are not able to discuss incidents of abuse even in a modified courtroom setting..... Generally speaking the rules of evidence were not developed to handle the problems presented by the child witness. Therefore our courts must be free to adapt these rules, where appropriate, to accommodate these unique (circumstances). However, this increased flexibility places a proportionately greater burden on the trial judge" (*In re T. P.*, 838 P. 2nd 1236, 1240-41 Alaska 1992).

In order for judicial officers to fulfill properly their responsibility of managing the testimony of the child witness, they must be trained to identify and apply various techniques during trial to reduce unnecessary emotional trauma for the child witness.

¹ This paper is an excerpt from the book: Müller, K.D. 2002. **The Judicial Officer and the Child Witness**. Printridge. pp1-380, and was compiled by Dr Karen Muller (CEO of the Child Witness Institute) and Prof Annette van der Merwe (Child Witness Institute consultant).

²Müller, K.D. and Van der Merwe, I.A. 2005. *Judicial Management in child abuse cases: Empowering judicial officers to be 'the boss of the court'*. **SACJ**. 18(1): 41 - 55.