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COMPROMISING FACE-TO-FACE CONFRONTATION: DOES THE PROTECTED
CHILD WITNESS THREATEN IMPARTIAL JUROR DECISION-MAKING?

by

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Abstract

The use of protective testimonial aids by the child witness has been advocated for as research indicates that it decreases witness stress and suggestibility; however, the use of such aids has also been attacked as incompatible with the defendant's confrontational right and the fact-finding function of the jury. The present study examines the effects of testimony modality, as well as empathy-inducing closing arguments, on juror perceptions of the child witness, perceptions of the defendant, and ultimate judgments of guilt. In this between-subjects factorial study, workers on Amazon Mechanical Turk were invited to participate in an online simulated sexual assault case survey. Participants read all trial stimuli, which consisted of written juror instructions, case facts, testimonies, closing arguments, and legal definitions. In addition, participants were exposed to photographs depicting the child witness testifying under one of three possible conditions (direct, shielded, CCTV) and either read the prosecutor's closing argument that contained a specific empathy-inducing portion or did not. Results indicated that regardless of testimony modality and empathy-inducing closing arguments, jurors did not exhibit a pro-prosecution or pro-defense bias.

Keywords: child witness, protective testimonial aids, confrontation clause, empathetic closing arguments

Compromising Face-to-Face Confrontation: Does the Protected Child Witness Threaten
Impartial Juror Decision-Making?

The confrontation clause of the Sixth Amendment of our Constitution spells out the right of the accused “to be confronted with the witnesses against him” in criminal trials. The defendant’s face-to-face confrontational right is a linchpin of the American justice system, and is often understood as encouraging honest testimony, thus enhancing the fact-finding function of the jury. However, when the accuser is a child (and particularly the victim of sexual-assault), concerns have been raised about the potential consequences of that child taking the stand. These consequences could include exposure to psychological stressors, trauma, or other anxiety causing circumstances. Research has shown that this is a valid concern, as many children express fear and apprehension at the thought of facing the defendant (Berliner & Conte, 1995; Spencer & Flin, 1990). Furthermore, children of a certain age may have difficulty understanding what the judicial system demands of them (Christiansen & Loftus, 1987; Goodman, et al., 1992). In order to accommodate children and hopefully reduce confrontational stress, the Supreme Court has allowed for utilization of certain protective testimonial aids in cases where the child witness is unable to “reasonably communicate” (*Maryland v. Craig*). Protective measures may include, but are not limited to, testifying behind a protective shield or via closed-circuit television. Although published research investigating the effects of various methods of testimony delivery on jurors’ perceptions of both the defendant and the child witness is rather limited, studies conducted in this field suggest that while children who testify under protective circumstances experience less discomfort and provide more detailed statements (Goodman, et al., 1998; Orcutt, Goodman, Tobey, Batterman-Faunce, & Thomas, 2001), they also engender a pro-defense bias. That is, jurors tend to be more skeptical of the accuracy and trustworthiness of testimony provided under

protective circumstances (Goodman, et al., 1998; Orcutt, et al., 2001; Ross, et al., 1994; Swim, Borgida, & McCoy, 1993) and perceive protected testimonies as lacking emotional immediacy, or as pallid (Bell & Loftus, 1985; Landström & Granhag, 2010; Nisbett & Ross, 1980). Jurors may also be inclined to regard testimony devoid of emotionally salient content as less credible (Golding, Fryman, Marsil, & Yozwiak, 2003; Regan & Baker, 1998). Yet, research has also revealed that when attorneys successfully induce a sense of empathy in the jury towards the sufferer of a negative event, jurors are less likely to disparage the sufferer (Haegerich & Bottoms, 2000; Plumm & Terrance, 2009). Since the utilization of protective testimonial methods may jeopardize perceived credibility of the child witness, it is important to understand what legal players can do to counter this effect while simultaneously ensuring the child's psychological well-being. The present study examines the specific effects of child testimony modality in conjunction with empathetic attorney arguments on juror perceptions of the defendant and the child witness in sexual-assault cases. Research in this field has yet to investigate how empathy-induction might counter a pro-defense bias.

I. Innovation in Child Testimony Delivery

The child witness' involvement in the criminal legal system poses a unique set of circumstances that call for careful consideration (Christianson & Loftus, 1987). Specifically in situations where the child has suffered a serious trauma in connection with the crime being contested, it can be difficult for lawyers to establish rapport with the child and get them to testify confidently in the unfamiliar and perhaps uncomfortable setting that is the courtroom (Christianson & Loftus, 1987). Beyond establishing trust, language and comprehension discrepancies between a young child and either the directing or crossing attorney may make the fact-finding responsibility of jurors more complex (Christianson & Loftus, 1987). Certain

innovations in the delivery method of child witness testimony may also have implications for juror decision-making.

In cases of child sexual assault, where a child's participation (and testimony) in the trial can be crucial to fact-finding and reaching a just verdict, concerns have been raised involving the increased psychological stress or trauma that may be imposed upon a child forced to face their aggressor (Hill & Hill, 1987). To counteract this phenomenon, procedural processes have been established in order to ensure the psychological well-being of the testifying child. These innovations have been advocated for on the basis that they create a more comfortable environment in which "a child may provide more complete and accurate reports, and thus enhance the truth-seeking function of trials" (Goodman, et al., 1998, p.165). Studies (Carter, Bottoms, & Levine, 1996; Moston & Engelberg, 1992) have indicated that, "several aspects of legal involvement are stressful for children" (Goodman, et al., 1998, p. 167) and that, "in contrast, a supportive atmosphere can have a positive effect on children's reports, especially to decrease suggestibility" (p. 167). Child testimonies via closed-circuit television (CCTV), with a protective shield, or even with a support person, represent examples of such procedural innovations. Even though the utilization of these different modalities is rather rare (Lipovsky, 1994), issues concerning both constitutional rights and evidence bias have consequentially arisen (McGrath & Clemens, 1985) provoking the question of how the courts can best ensure the psychological well being of child witnesses without burdening the fact-finding process (Goodman, et al., 1998).

II. Procedural History of Protective Testimonial Aids

In *Coy v. Iowa* (1988), pursuant to a 1985 state statute, a protective shield was placed between two thirteen year-old girls and the man charged with sexually assaulting them. Lighting adjustments made in the courtroom allowed for the defendant, John Coy, to clearly hear and see his accusers under dim lighting; however, the two adolescent accusers' view of him was obstructed by the shield. Coy was convicted on two counts of lascivious acts with a child, but appealed arguing that the testimonial procedure utilized by the prosecution directly violated his criminal rights dictated in both the Sixth and Fourteenth Amendments. The Supreme Court overturned the conviction, holding that Coy's face-to-face confrontational rights had been violated in an "obvious" and "damaging" (1988, p. 1020) manner, since the witnesses did not have to view his face. Delivering the court's opinion, Justice Scalia emphasized that, "human nature... regards face-to-face confrontation between accused and accuser as 'essential to a fair trial in a criminal prosecution'" (*Pointer v. Texas* as cited in *Coy v. Iowa*, 1988, p. 1017). Sticking to an originalist argumentative approach, Scalia indicated that the exception created and authorized by Iowa's 1985 statute was not "firmly rooted in [the United State's] jurisprudence" (p. 1033). Furthermore, although Scalia's argument did call attention to the possibility that "face-to-face presence may, unfortunately, upset the truthful rape victim or abused child," (p.1020) he was quick to retract this logic by identifying testimonial protections as potentially confounding legal aids that may "undo the false accuser, or reveal the child coached by a malevolent adult" (p. 1020). Although the court answered the question concerning the defendant's Sixth Amendment right to confront and cross-examine the evidence presented against them, the questions of possible exceptions and the defendant's right to due process were left for another day. Yet, Scalia articulated that "to accuse" implies direct confrontation as opposed to "hid[ing]

behind the shadow[s]”, and that “it is always more difficult to tell a lie about a person to his face” than “behind his back” (p. 1019). His remarks suggested that protective measures might compromise the integrity of a witness’ testimony and thus the jury’s fact-finding duty.

In the dissenting opinion, Justices Blackmun and Rehnquist rejected the appellant’s claim for ensuring the right to have witnesses view the defendant as “the irreducible meaning of the [Confrontation] Clause” (p. 1021). Instead, Blackmun and Rehnquist argued that the language of the confrontation clause functions “to prevent the use of *ex parte* affidavits, to provide the opportunity for cross-examination, and to compel the defendant ‘to stand face to face with the jury’” (p. 1028), with exceptions. That is, face-to-face confrontation is not the *sine qua non* of the confrontational right. If this was simply an issue of literal confrontation, or viewing, as suggested by the appellant’s argument, this would conflict with past precedent allowing for the admission of hearsay statements. Furthermore, the dissenting argument addressed psychological data indicating that children often lack understanding of their own legal rights, and may experience overwhelming anxiety if placed in close proximity to the defendant (p. 1031). According to Blackmun and Rehnquist, this anxiety “may so overwhelm the child as to prevent the possibility of effective testimony, thereby undermining the truth finding function of the trial itself” (p. 1032). This logic would resurface in the Court’s holding in *Maryland v. Craig* two years later.

In *Maryland v. Craig* (1990), the defendant was tried in court on several charges connected with the alleged sexual assault of a six year-old girl. The State permitted the alleged victim to testify by one-way closed-circuit television upon the judge’s determination that the child’s level of emotional distress would prevent her from reasonably communicating within the courtroom throughout the adversarial process. The testimonial procedure invoked required the

child to be examined and cross-examined in a room outside of the courtroom with both the prosecution and defense council present. Although the child did not see the defendant at any point during the trial, a screen within the courtroom permitted the judge, jury, and defendant to view the child and communicate with both attorneys electronically. Sandra Ann Craig was convicted of first and second-degree sexual offenses, child abuse, perverted sexual practice, assault, and battery. Craig appealed, objecting to the use of closed-circuit television on the grounds that it violated her right to direct evidentiary confrontation. By a slim majority (5-4), the Supreme Court decided that a criminal defendant's right to face-to-face confrontation was not absolute; that is, "there are circumstances that excuse compliance with the right of confrontation" (p. 850). Delivering the opinion of the Court, Justice O'Connor, joined by Rehnquist, White, Blackmun, and Kennedy, recognized the state's compelling interest in safeguarding the psychological well-being of a minor participating in the adversarial process, drawing support from the American Psychological Association's *amicus brief* (Goodman, Levine, Melton, & Ogden, 1991). Additionally, the court found that this interest may supersede the defendant's right to face-to-face confrontation upon adequate showing of case-specific inability of a minor to reasonably communicate (p. 851). To attest to the widespread support of policies aimed at protecting the welfare of child assault victims while testifying in court, the opinion cited the enactment of statutes in a significant majority of the states. (At that time thirty-seven states had statutory provisions allowing for the admission of videotaped testimony of sexually abused children, twenty-five allowed for testimony via one-way closed-circuit television, and eight allowed for testimony via two-way closed-circuit television) (p. 853).

III. Implementation of Protective Testimonial Aids

Despite the Supreme Court's finding that closed-circuit television is permissible on a case-by-case basis, some state supreme courts have been reluctant to follow suit or have altogether found it impermissible due to the language within the respective state's constitution. In *Commonwealth v. Ludwig* (1991), for example, Pennsylvania's Supreme Court "decline[d] to adopt the United States Supreme Court's analysis and reasoning", stating that, "the Pennsylvania Constitution does not reflect a 'preference' but clearly, emphatically, and unambiguously requires a 'face to face' confrontation" (p. 478). Due to this "unmistakably clear" language, the court reasoned that it must do all in its power to "zealously protect and safeguard" (p. 479) the defendant's confrontational right. Subsequent to this decision, the State electorate authorized a ballot measure to amend the Pennsylvania constitution's confrontational clause to allow for child testimony via closed-circuit television; however, the State Supreme Court found that the measure was impermissible as those endorsing it lacked legal standing and it encroached upon authority that lie solely in the hands of the Supreme Court judges (*Bergdoll, Davis, and Grimaud v. Honorable Yvette Kane, Secretary of the Commonwealth of Pennsylvania and the General Assembly of the Commonwealth of Pennsylvania*, 1999). Other states, finding themselves in tug of war situations with the interest of defendant's rights on one hand and the interest of protecting the welfare of child victims on the other, have proposed to permit closed-circuit television testimony under specific circumstances. New York law, for example, has applied the *Maryland v. Craig* holding in a limited fashion. Adolescent witnesses may testify via closed-circuit television only in child sexual abuse (CSA) cases, while utilization of this procedure is impermissible in trial of other crimes (Davies, 1999). Although some states have barred the availability of certain protective measures to child witnesses, that majority of states provide for

at least one alternative testimonial procedure. Fifteen total modifications exist between both federal and state statutes, including:

(a) providing a guardian *ad litem*, (b) providing a support person or child advocate, (c) protecting the child's identity, (d) closing the courtroom, (e) allowing the use of leading questions, (f) encouraging the use of developmentally appropriate questioning, (g) permitting the use of demonstrative aids and evidence, (h) limiting the length of child testimony, (i) limiting the number of child interviews, (j) encouraging expeditious disposition, (k) using remote testimony (CCTV), (l) using videotaped testimony, (m) using videotaped investigative interviews, (n) allowing a child hearsay exception, and (o) permitting courtroom design changes (Hall & Sales, 2008, p. 21)

However, even as federal and state courts have taken a rather piecemeal approach to accommodating the child witness, the vast majority of prosecutors prefer not to employ certain protective testimonial measures (such as CCTV, protective shields) as they fear challenges or appeals on behalf of the defense (Goodman, Quas, Bulkley & Shapiro, 1999). The lack of financial resources may also contribute to the infrequent implementation of these types of innovative tools in U.S. courtrooms (Goodman, et al., 1999), research has indicated that the driving rationale for attorney underutilization seems to stem from the constitutional controversy surrounding the use of protective testimonial procedures (Goodman, et al., 1999). No published research has specifically investigated attorney or judge perceptions of the use of protective testimonial modalities or the children that testify under them.

IV. What Legal Scholars Are Saying

Although the Supreme Court has established that protecting the physical and psychological well-being of child victims of sexual assault constitutes a compelling state interest (*Maryland v. Craig*, 1990), concerns about potential threats to defendant rights specified in the

Sixth and Fourteenth Amendments have certainly not evaporated. In fact, many of these concerns were stressed in the arguments of the Supreme Court Justices themselves. Scalia called attention to the idea that protective testimonial aids may “impinge upon the truth-seeking... purposes” (*Maryland v. Craig*, 1990, p. 852) of a trial as their use may provide for the admission of inaccurate statements. Blackmun and Rehnquist, although dissuaded by the argument, called attention to the theory that the “use of [a protective shield] was inherently prejudicial because it indicated to the jury that appellant was guilty” (*Coy v. Iowa*, 1988, p. 1015). Blackmun, however, was clear to express his opinion that, “Unlike clothing the defendant in prison garb... or having the defendant shackled and gagged, ... using the screening device [does] not ‘brand [the accused]... with an unmistakable mark of [guilt]’” (p. 1034).

These claims consider that testimonial protections may interfere with fact-finding or even engender a pro-prosecution bias, thus threatening a defendant’s right to due process (Goodman et al, 1998). In essence, opponents of testimonial innovations for children have argued that by providing the child witness with protective measures during testimony, jurors may question the innocence of the defendant in a way that is at odds with the “innocent before proven guilty” presumption that is crucial to the American criminal justice system (Christianson & Loftus, 1987).

Although Congress “effectively codified the holding of *Craig* when it enacted section 3509 of Title 18 of the United States Code (‘18 U.S.C. 3509’), ...allowing videotaped and closed-circuit testimony of child victims in federal prosecution under certain circumstances” (Rowlands, 2006, p. 295), this procedural admission has also been a source of contention among legal scholars. The United States first recognized that protecting minor, sexual assault victims may override a defendant’s right to confrontation in *Globe Newspaper Co. v. Superior Court*

(1980), with the Court finding a compelling state interest in safeguarding children from “public degradation, humiliation, demoralization, and psychological damage” (p. 295). However, some legal scholars have argued that despite a societal interest in protecting the welfare of children, face-to-face confrontation promotes sound jury decision-making and is demanded by the literal language of the law (Grant, 1987). According to this side of the argument, the concept of the confrontational right traces back to ancient Roman law; “indeed, the word ‘confront’ likely comes from the Latin words ‘contra’ (against) and ‘frons’ (forehead), strongly suggesting a face-to-face encounter” (Rowlands, 2006, p. 294). Beyond this originalist, textualist interpretation, it has also been argued that the “mechanisms of confrontation... encourage presentation of reliable evidence at trial” (Grant, 1987, p. 283). In other words, the right to confrontation is not only a right given to satisfy the defendant, but it is a right that advances the reliability of evidence presented at trial:

Confrontation: (1) insures that the witness will give his statements under oath— thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to *cross-examination*, the ‘greatest legal engine ever invented for the discovery of truth’; (3) permits the jury that is to decide the defendant’s fate to observe the *demeanor of the witness* in making his statement, thus aiding the jury in assessing his credibility (Havens, 1989, p. 1006).

Although none of these components of confrontation would seem to require the physical presence of the witness, closed-circuit television may be problematic in that it prevents jurors from fully assessing the demeanor and thus reliability of the witness (Grant, 1987, p. 293). Even more problematic, according to proponents of this argument, is that the witness who testifies via closed-circuit television may experience credibility inflation as a result of the phenomenon called status-conferral. According to status-conferral, “media bestows prestige and enhances the authority of an individual by legitimizing his [or her] status” (Grant, 1987, p. 295).

Another camp of legal thought has recognized and fervently endorsed protecting the psychological welfare of children who may be asked to face their aggressor in the court of law (King-Ries, 2004-2005). However, as videotaped testimonies and those delivered via closed-circuit testimony have raised constitutional queries, this argument identifies how litigators may rely upon other strategies, including the admission of hearsay statements (often by police officers, doctors, social workers, therapists etc.) to protect the child witness. However, the Supreme Court's ruling in *Crawford v. Washington* (2004) now "bars the admission of certain hearsay statements of unavailable witnesses" (King-Ries, 2004-2005, p. 302). Prior to the *Crawford* decision, admission of hearsay testimony hinged on an "indicia of reliability" standard dictated in *Ohio v. Roberts* (1980). The Court's ruling, found the traditional, historical component of the Constitution's Confrontation Clause to be "primarily directed at the use of testimonial statements as evidence against the accused" and to prohibit the allowance of "open-ended exceptions" by the court (p. 314). Although "testimonial" was described as including statements collected by law enforcement personnel, the court left the clarification of this term for another day. This could have serious implications, as "the ability of prosecutors to continue employing victimless prosecutions... is dependent upon which definition of 'testimonial' the Supreme Court determines in appropriate" (King-Ries, 2004-2005, p. 320). Although one argument sees the need for victim protections, the other views these same protections as detrimental to the impartiality of trials. This is where psychology may serve to inform policy.

V. Testimony Modality's Influence on Juror Perceptions

Research has shown that a number of characteristics may influence juror perceptions of the child witness (Goodman et al, 1992). In sexual assault cases in particular, young children may be perceived as especially credible by jurors processing information under the assumption, or heuristic, that children are typically honest and “lack sufficient sexual knowledge to make false claims” (Goodman, et al., 1998, p. 169). Yet, just as children may be perceived to be more credible in these cases (due to their association with sexual innocence), when strength of memory and accurate recall of events are crucial to determining the trial outcome, jurors may view children as substantially less reliable than their adult counter-parts, since they may operate under the stereotype that a child’s memory is inherently unreliable and prone to suggestion from external sources (Goodman & Bottoms, 1993; Leippe & Romanczyk, 1989). Juror characteristics, such as exposure to and experience with children, may also influence perceptions of the testifying child. Duggan et al. (1989) found that when mock jurors had more experience with children they were more confident in the child’s testimony, and thus the guilt of the defendant.

Although there are very few studies that have examined predictors of children’s assent to testify (whether over CCTV, with a protective shield, or directly in court), it is likely that individual differences in factors like verbal skills, and socio-emotional and cognitive development may affect a child’s ability to successfully cope with the pressures that may come with testifying (Goodman, et al., 1992). In young children in particular, inadequate understanding of the criminal justice system may result in heightened fear and anxiety (Berliner & Conte, 1995). However, since the goal of procedural innovations in child testimony is to

protect children from, or diminish potential psychological stressors, hopefully, this would promote consistent, confident testimony that would be reliable and factually informative.

VI. An Overview: What Is the Research Telling Us?

Limited research has been conducted examining the effects of child testimony via CCTV on jurors' perceptions of both the child eyewitness and the defendant's guilt. However, some of the studies that have been conducted in this field employ noteworthy methodology. Taken holistically, the research suggests that children testifying via closed-circuit television or with a protective shield are perceived as less attractive, intelligent, consistent, confident, accurate, and believable than children testifying directly in open court (Goodman, et al., 1998; Orcutt, et al., 2001; Ross, et al., 1994; Swim, et al., 1993). The use of out-of-court testimonial innovations may also significantly reduce the emotional impact of testimony (Davies & Noon, 1991; Goodman, et al., 2006; Landström & Granhag, 2010), causing jurors to respond to it in a way that engenders a pro-defense bias (Golding, et al., 2003; Regan & Baker, 1998; Swim, et al., 1993), but further research is needed to investigate these phenomena.

Goodman et al. (1998) conducted a study in which 186 five to six and eight to nine year old children were randomly assigned to a "guilty" or "not-guilty" play session with a male confederate whom they were unacquainted with. In the "guilty" condition, children were asked to place stickers on their bare skin, while in the "not-guilty" condition, children placed stickers on top of their clothes. Eighty-eight trials were held in which mock juries (each consisting of 9 to 12 community members) watched the children testify in a staged real courtroom setting either via CCTV or in open court. In the CCTV condition a large TV monitor was brought into the courtroom and the child was escorted into a room directly behind the courtroom. Mock jurors

completed pre and post-deliberation questionnaires in which they rendered verdicts and rated the certainty of their verdict choice on a 6-point Likert scale. Six-point Likert scales were also used to assess juror perceptions of the child witness's honesty, suggestibility, accuracy, believability, consistency, and confidence in addition to other variables. Results indicated that the closed-circuit condition functioned to negatively bias juror perceptions of the child witness. Despite the fact that children testifying via CCTV were less suggestible and more accurate, they were also viewed as less believable: "Children who testified via CCTV rather than in regular trials were also viewed as less attractive, less intelligent, more likely to be making up a story, and less likely to be basing their testimony on fact versus fantasy" (Goodman, et al., 1998, p. 199).

Furthermore, regardless of whether the child testified via CCTV or directly, the defendant was no more likely to be convicted. These results suggest that while closed-circuit testimony may ease stress, anxiety, and suggestibility of children, due to the negative bias toward children testifying in this mode, it should be reserved for extreme circumstances. Additionally, although children testifying under protective measures are more likely to provide composed and collected testimony, jurors may misinterpret the frank, less emotional nature of a child's testimony, using it, though unreliably, as a mechanism for determining witness credibility (Golding, et al., 2003; Regan & Baker, 1998).

Research has examined how jurors use emotional demeanor of the witnesses to deduce credibility. Regan and Baker (1998) investigated the impact of the child witness' demeanor on perceived credibility and trial outcomes in sexual abuse cases. In this study an ethnically diverse sample of 31 undergraduates (both male and female) were randomly assigned to read a trial vignette describing a six year-old female witness who either cried upon confronting her alleged sexual abuser (which was her father) prior to taking the witness stand, or maintained a calm

disposition at the moment of confrontation (p. 192). Participants rendered dichotomous verdicts and responded to a series of questions pertaining to perceptions of the child witness and the defendant on 9-point Likert scales. The results indicated that mock jurors in the crying condition found the child's claim to sexual assault to be significantly more credible, believable, honest, accurate, and reliable than mock jurors in the control, or calm condition. When the child cried upon confronting her alleged assailant rather than remaining calm, jurors rendered significantly more guilty verdicts. The researchers reasoned that, "adult men and women... hold very specific expectations about child witness demeanor in sexual abuse trials" (p. 192) and that this could be particularly problematic in terms of correctly assessing the child victim's credibility given that, "a child victim witness may not... respond to the moment of confrontation in a manner that corresponds to [those] expectations" (p.192).

In a more recent study, Golding et al. (2003) further examined the effects of children's emotional displays on juror perceptions of credibility. One hundred and fifty jury-eligible undergraduates from the University of Kentucky read a trial summary describing the alleged sexual assault of either a 6 year-old or 15 year-old female or male victim. Trial summaries, which described the child victim as either, "calm", "teary-eyed", or "crying hysterically" (p. 1315), were accompanied by courtroom pencil drawings of the child's demeanor. Following random assignment to one of twelve possible conditions, participants provided a verdict, along with their confidence in that verdict, and assessed the child witness' credibility on 10-point Likert scales. The results demonstrated that participants who perceived the child witness as emotional provided significantly more guilty verdicts than those who did not, and found the child to be more credible. However, the "teary" condition produced significantly more guilty verdicts and higher ratings of witness credibility than both the "calm" and "hysterical crying" conditions,

suggesting that, “it is not simply the case that any display of crying behavior will lead to a positive outcome for the alleged victim” (p. 1318). These findings, in addition to other literature discussing the effects of demeanor on credibility (Blumenthal, 1993; Miller & Burgoon, 1982), indicate that jurors may hold certain expectations about the appropriate display of emotion in child victims of sexual assault; when emotional display violates those expectations, they may perceive the alleged victim as less credible or even deceptive (Cooper, 2012).

Research has also been conducted investigating techniques that may be employed to satisfy defendants’ right to due-process, while also calling explicit attention to how protective measures may promote accurate disclosure of information in lieu of witness emotionality. More specifically, research has looked at the impact of the use of procedural innovations in child witness testimony with the inclusion of juror instructions regarding how to interpret them. While it “was once common in the United States to instruct jurors to consider children’s testimony with care... the modern trend is away from such cautionary instructions” (Myers, 1996, p. 418). However, the presentation of instructions regarding protective testimonial modalities may serve to inhibit pro-prosecution bias, by discouraging jurors from assuming the guilt of the defendant before it has been proven or disproved (Myers, 1996).

Ross et al. (1994) designed a two-part experiment in which 300 college students watched a 2-hour videotaped sexual-assault trial including a 10 year-old child witness who testified in one of three modalities; either via video monitor (video condition), with a 4x6- ft protective screen restricting the defendant’s view of the child (shield condition), or in open court in plain view of the defendant (open court condition). In Experiment 1, participants in the video and shield conditions were exposed to an implied guilt warning delivered by the judge prior to hearing the child witness’ testimony. The child witness’ testimony was followed by testimony from two

expert clinical psychologists (each testifying on behalf of either the prosecution or the defense), the child's mother, the defendant, and the defendant's wife. After exposure to the trial stimulus, mock jurors rendered verdicts and assessed the credibility of both the defendant and the child witness. Assessments of the child witness' accuracy of memory, intelligence, suggestibility, likelihood of misinterpreting events, truthfulness, general believability, fear of providing testimony, emotionality, confidence, and general credibility were all assessed with 6-point Likert scales. Subjects assessed the defendant on similar measures. Across all three modalities, results indicated no significant difference in conviction rates (which was 48% across all three conditions) or perceived credibility of the defendant or the child witness. More simply put, the protective devices did not significantly alter juror perceptions of credibility of either the child witness or the defendant. Credibility was neither inflated nor deflated.

In Experiment 2, Ross et al. (1994) manipulated Experiment 1 in two important ways. First, the videotaped trial stimulus was stopped immediately after the child witness testified (so participants were exposed only to this testimony), and the implied guilt warning in the shield and videotape conditions varied: it was either present or absent. Following the child's testimony, subjects watched the judge read instructions regarding deliberation and then completed the same guilt and credibility measures that were used in Experiment 1. Although participants never actually saw the defendant testify they were asked to provide their impression of him based on the child's testimony. Results indicated that presence or absence of the implied guilt warning had no significant effect on conviction rates; however, unlike Experiment 1, in Experiment 2, testimony modality significantly impacted conviction rates, such that mock jurors in the open court testimony condition were more likely to convict the defendant than in the other two protective conditions. No significant difference was found in conviction rates between the two

protective testimony modalities. Similar to Experiment 1, the results of Experiment 2 indicated that child witness testimony modality did not significantly alter juror perceptions of child witness or defendant credibility. Thus, the implied guilt warning does not seem to function as an effective method for reducing a potential pro-defense bias.

Ross et al. (1994) argued that the findings of Experiments 1 and 2 collectively shed light on the “interesting legal dilemma concerning how to ensure the psychological safety of the child without biasing the trial process against *any* of the parties involved- including the child witness” (p. 565). Taken together, these experiments suggest that procedural innovations in child witness testimony modality may potentially work against the prosecution by generating a pro-defense bias under certain circumstances. In particular, this effect may be tied to the quantity of evidence presented in a case.

Swim, Borgida, and McCoy (1993) also found evidence for a pro-defense bias in cases utilizing protective testimonial procedures. In this study, 143 volunteer undergraduate psychology students watched a 3-hour videotaped mock trial stimulus based on the *State v. Myers* (1984) child sexual assault case, which was “one of the child’s word against the defendant’s” (p. 608). Through experimental variation, participants were exposed to one of two possible modalities of child testimony (either videotaped or in-court). Similar to Ross et al.’s (1994) Experiment 1, the trial stimulus included testimony from numerous other individuals; including the child’s mother, a gynecologist, a social worker, and the defendant. Following exposure to the trial, participants completed pre-deliberation questionnaires in which they were asked to render dichotomous verdicts on three charges (criminal sexual assault in the first degree, attempted criminal sexual assault in the first degree, and criminal sexual assault in the second degree). Then they formed juries consisting of four to six total members, and deliberated for a

maximum of forty-five minutes. Following deliberations, juries were asked to deliver a unanimous verdict. Inconsistent with the research hypothesis, mock jurors in the videotaped testimony condition were less likely to render guilty verdicts (30%) in comparison to those in the direct, in-court condition (48%). In particular, jurors watching videotaped testimony were significantly less likely to render guilty verdicts on the charge of criminal sexual assault in the first degree.

Although research in this field fails to provide consistent conclusions, it seems that, counter to Justice Scalia's concerns, utilization of testimonial protections by children may negatively bias the child's case rather than produce unwarranted inferences of defendant guilt. The rationale for this may stem from what Nisbett and Ross (1980) have coined the "vividness effect". According to this effect, vivid testimony is "emotionally interesting, concrete and imagery provoking, and proximate in a sensory, temporal or spatial way" (p. 45). Bell and Loftus (1985) found that vivid, as opposed to pallid testimonies, are more persuasive, receive higher judgments of credibility, and are paid more attention to by jurors, and thus remembered more completely at a later time. Landström and Granhag (2010) conducted a study examining the effects of child interview modality (live, two-way closed-circuit television, or pre-recorded) on adult perceptions and assessments of the child interviewee. In line with the vividness effect, they found that the more temporally and spatially proximate a testimony was; the more positively it was evaluated. Adults in the direct interview condition perceived children as more forthcoming, involved, eloquent, pleasant, and natural, and as having to think less hard, taking a defensive position to a lesser extent, and as providing more detailed statements.

VII. Emotional Impact Through Empathy-Inducing Legal Argument

Research seems to suggest that children testifying under protective circumstances provide pallid testimonies, thus creating impressions with less emotional impact on jurors. However, employment of certain courtroom tactics may counter this effect. One of the most crucial times for lawyers to effectively synthesize evidence and convince the jury of their case is during closing arguments (Matlon, 1993). Closing arguments also allow attorneys the opportunity to plead an emotionally powerful, or empathetic, case for their clients. Integration of dimensions of logos and pathos in closing arguments may resonate with the jury (Haegerich & Bottoms, 2000; Plumm & Terrance, 2009). In particular, research has indicated that when individuals are empathetic towards the victim of an adverse event, they are less likely to disparage them, and increasingly likely to perceive them as attractive, to help them, and to take an interest in their well-being (Aderman, Brehm, & Katz, 1974; Batson, Duncan, Ackerman, Buckley, & Birch, 1981; Batson, Turk, Shaw, & Klein, 1995; Eisenberg & Miller, 1987; Krebs, 1975; Sulzer & Burglass, 1968).

Haegerich and Bottoms (2000) conducted a study investigating the effects of empathetic closing arguments on juror decision-making in a patricide trial involving allegations of sexual assault by the child defendant. Two hundred and five men and women undergraduate students from the University of Illinois at Chicago read a condensed transcript from an actual patricide trial. Participants randomly assigned to the experimental condition were exposed to empathetic opening statements and closing arguments delivered by the defense attorney. The prosecuting attorney framed the defendant as a spoiled brat who was solely interested in receiving inheritance money, while the defense portrayed the defendant as a victim of chronic sexual abuse who killed the father in self-defense. The study adopted Davis' (1994) definition of empathy,

which outlined empathy as “the cognitive act of adopting another’s perspective,” “a cognitively based understanding of others,” and “an affective reaction to the emotions of another” (p.11). To ensure that mock jurors understood the fifteen year-old defendant’s cognitive perspective, participants in the experimental condition were asked to write a brief empathy-inducing essay after reading opening statements that addressed how they might be thinking and feeling if in the same situation. Participants in this condition were asked in opening and closing arguments to “imagine that they [were] the [defendant]”(p. 448). Participants in the control condition read opening statements without empathetic manipulations and were simply asked to write about their thoughts and feelings concerning the case. After reading the trial transcript, mock jurors completed a variety of measures assessing their feelings of empathy and beliefs of defendant responsibility for the crime being contested, (which was murder in the first and second degrees). Consistent with the research hypothesis, jurors in the experimental condition were significantly less likely to find the defendant guilty. While the target for feelings of empathy in this scenario was a victim and also the perpetrator of a crime, it seems likely that jurors would feel even more empathetic towards individuals who have only been victimized.

VIII. The Present Study

The proposed study sought to further examine how the utilization of three different testimony modalities (CCTV, protective shield, or direct testimony) by a child victim in a sexual assault case affects juror verdicts and perceptions of the child witness’s accuracy, trustworthiness, believability, suggestibility, honesty, anxiety, and confidence, as examined in previous research. In addition, this study investigated how the presence or absence of empathy priming in the prosecution’s closing argument affects juror verdicts among other assessments. It was hypothesized that the child testifying directly in court would be perceived in the most

positive terms and as the most reliable witness due to the vivid nature of statements made in court. As protective shields and closed-circuit testimony are less spatially direct, it was predicted that the child testifying under these conditions would be perceived as less credible, thus creating a pro-defense bias reflected in fewer guilty verdicts. The child testifying via closed-circuit testimony was predicted to receive the lowest ratings of credibility, as this testimony modality is the most spatially removed from the jury box. Furthermore, it was hypothesized that jurors exposed to empathy-inducing conditions, in the form of empathetic closing arguments, would be more concerned with the welfare of the alleged child victim, and more likely to view the child in a positive light, resulting in an inflation of guilty verdicts rendered across all three testimony modalities. An interaction between the experimental manipulations was also projected, such that empathy-inducing arguments would have more of an effect on the indirect testimony modalities (CCTV, protective shield), than on the direct testimony modality where there might already be a substantial empathy effect. In the empathy absent conditions it was hypothesized that the child testifying directly would be perceived in the most positive terms, while the defendant would be perceived most negatively. The more protected, or spatially removed the witness was from the courtroom, the more likely he was to be perceived in more negative terms. In the empathy-inducing conditions it was hypothesized that the child testifying under protective circumstances would be perceived as equally as positively as the child testifying directly in court.

Method

Design

The design of this study is a 3 (testimony modality: direct, protective shield, or closed-circuit television) x 2 (prosecution empathy-induction in closing argument: present or absent) completely randomized between-subjects factorial design.

Participants

Participants were recruited to participate in this study using Amazon's Mechanical Turk. In order to follow the juror venire procedure inherent to jurisdictions across the US, participants had to meet certain eligibility requirements (i.e., be a citizen of the United States, not be a judge, be at least 18 years of age with no prior criminal record, and either be a registered US voter or registered under the US department of motor vehicles), enhancing the samples comparability to actual juries. A total of 155 subjects served as mock jurors, excluding mock jurors who dropped out after reading the informed consent and eligibility requirements (3), mock jurors who failed to complete any dependent variables (54), and mock jurors who failed to correctly identify the experimental manipulations (118) inherent to the study. The sample consisted of 94 (60.6%) females and 61 (39.4%) men. The majority identified as Caucasian ($n = 122$, 78.7%), with the next largest categories being African American ($n = 9$, 5.8%), Asian American ($n = 8$, 5.2%) and Latina/o ($n = 6$, 3.9 %). Two participants (1.3%) identified as Asian Pacific Islander and two (1.3%) identified as American Indian. Five participants (3.2%) identified as "other" and one participant (0.6%) did not disclose their identity. Sixty-six participants (42.6%) reporting having at least a high school degree, while only 20 participants (12.9%) reported holding a graduate level degree. Fifty-eight participants (37.4%) had children of their own, and fifty-six participants (36.1%) reported future plans to have children. Twenty-two participants (14.8%) indicated that their job entailed working with children. Twenty percent ($n = 31$) of the sample disclosed that they had been victims of sexual assault, and 59.4% ($n = 92$) said that they knew of someone who had been a victim of sexual assault. Twenty-three participants (14.8%) had served on a jury prior to taking this study. All subjects were compensated with \$0.50 through the Mechanical Turk

pay-pal system for participating in the study. Participants spent an average of 26 minutes and 30 seconds completing the online survey. The minimum time spent was 10 minutes and 46 seconds, while the maximum time spent was 197 minutes and 19 seconds. All participants were treated within the ethical standards established by the American Psychological Association.

Materials

Mock juror summons. All mock jurors were invited to participate in this study through an informational link on Amazon Mechanical Turk. They were told that they would be compensated with \$0.50 cents should they choose to participate, and they were also made aware of the sensitive, sexually-graphic content that would be presented in the study's fictional trial. Participants were informed that the case involved the sexual assault of a minor and that they must not participate if they felt in any way partial to such a case. They were also reminded that they could withdraw from the study at any point, for whatever reason. Before providing informed consent (see Appendix A), participants were asked only to participate if they met certain eligibility thresholds. Participants had to be 18 years of age or older with no criminal record, have a valid ID, be a US citizen, and not be a judge.

Preliminary juror instructions. (See Appendix B). Mock jurors read condensed trial evidence credibility assessment instructions, which were retrieved online from the State of Idaho's Supreme Court Criminal Jury Instructions. These instructions reminded participants that they should rely solely on evidence admitted in the trial to determine the facts of the case, and that "neither sympathy nor prejudice should influence [them] in [their] deliberations" (ICJI 104). Participants were also instructed to consider the "qualifications and credibility" (ICJI 104) of the witnesses in determining the appropriate weight to attach to their opinions.

Trial transcript. (See Appendix C). Participants read the basic facts of a trial that was based on the *State v. Myers* (1984) case. This case was chosen and modified to fit the present study as it represents one of “the child’s word against the defendant’s” (Swim, et al., 1993, p. 608). In the original *State v. Myers* case, a female minor accused her father of touching her vagina when she was drying off after taking a bath. However, the father claimed that the child had fabricated the story in an attempt to help her mother win custody rights in the parents’ heated divorce. He acknowledged that he had touched the child’s vagina, but only to apply medicine to a rash he had noticed. The present study modified the case to include an eight-year old male minor who claimed to have been sexually assaulted by his mother’s boyfriend when he got out of the shower. The mother’s boyfriend claimed that he saw the boy standing naked in the bathroom inspecting what appeared to be a poison ivy rash. The mother’s boyfriend claimed that he tried to help the boy by applying a topical cream to the rash, accidentally touching his genitals in the process. At the time of the incident, it was indicated that the mother was working late, and was thus not home. She never learned of the incident until a few days later, when she asked her son about his change in demeanor. The mother told her sister of the event, and months later the child’s maternal uncle contacted the county’s department of social services. After a social worker interviewed the alleged child victim, the county attorney’s office was contacted and formal charges were filed.

Judge’s instructions regarding protective testimonial aids. (See Appendix D). Mock jurors who were randomly assigned to conditions in which the child testified under protective circumstances (shield, CCTV) were exposed to written instructions delivered by a judge regarding the protective circumstances under which the child testified. These instructions, which were acquired from Ross et al.’s (1994) study, cautioned jurors against inferring defendant guilt

based on the physical condition in which the child's testimony was presented. These instructions were also intended to increase the salience of experimental manipulations.

Child witness examination and cross-examination. (See Appendix E). Participants read the examination and cross-examination of a ten year-old male witness, which was presented in conjunction with 11 interspersed images of the child actor making various facial expressions. Of the interspersed images, 3 presented the child exhibiting an anxious facial expression, 3 presented the child exhibiting a neutral facial expression, 3 presented the child exhibiting a distressed facial expression, and 2 presented the child exhibiting upset facial expressions. In "anxious" photos the child tilted his chin down and glanced towards the ground rather than making eye contact with the camera. In "neutral" photos the child looked straight at the camera, relaxing all facial muscles. In "distressed" photos, the child tensed his facial muscles as if he were crying. In one of these photos his hands covered the inside corners of his eyes, his nose, and his mouth. In another, the child used his left hand to wipe his face, as if he were wiping away a tear. In the "upset" photos, the child looked down at the ground while frowning. (In compliance with the child's legal guardian's wishes to protect his identity, none of these photos have been published in the Appendices).

The text of the testimony was not drawn directly from *State v. Myers*, as the facts of the case had to be adapted to suit this study, but was developed by the principal investigator. In the prosecution's examination of the boy, the child testified that he was "not friends" with his mother's boyfriend because he had hurt him and touched him in inappropriate ways. The child also indicated that this had happened on several occasions and that he had not spoken up initially for fear of being seriously injured. In the defense's cross-examination of the child, the testimony that was elicited was designed to make it appear as though the child was jealous of the attention

that his mother reserved for her boyfriend. This evidence was intended to provide the jury with a motive that the child might have for lying about, or exaggerating the actions of the boyfriend. The child also indicated that he received injuries while playing soccer. This information was intended to make the facts of the case more ambiguous, as the child claimed to have received bad bruising during his alleged sexual assault.

Supplemental testimonies. (See Appendix G). Jurors read the testimonies of five witnesses in addition to watching the child's testimony. Additional testimonies were extracted from the original *State v. Myers* (1984) trial transcript and modified to suit the present study. Witnesses included the defendant, the alleged victim's mother, a pediatrician, a clinical psychologist, and a social worker. The pediatrician, testifying on behalf of the defense, performed a physical examination of the child and found no physical signs of sexual abuse. According to the doctor's testimony, the child was normal for a boy of his age. The clinical psychologist, who had seven therapy sessions with the child, indicated that he showed classic signs of a victim of sexual abuse and suggested that it was very unusual for children to fabricate sexual assault claims. The social worker indicated that the child's descriptions of his repeated assaults were consistent. However, she mentioned that she had come across a few children who had made false allegations of sexual assault. The defendant denied the charges completely, saying that he only wanted to build a positive relationship with his girlfriend's son. The mother indicated that it took her quite some time to believe her own son's allegations, but also stated that she now believed them fully.

Closing arguments. (See Appendices H & I). After exposure to all testimonial components of evidence in the fictional case, participants read closing arguments; first from the prosecuting attorney and then from the defense attorney. Participants were randomly assigned to

either read the empathy-absent or empathy-present closing argument delivered by the prosecuting attorney. In the prosecution's empathy absent argument, the child was portrayed as a helpless victim of multiple incidents of sexual assault. He was framed as too scared to seek help out of concerns for his own physical safety, and he was described as psychologically traumatized. In the prosecution's empathy-inducing argument, participants heard the same statements as participants in the empathy-absent condition, however, they were additionally asked to assume the position of the alleged child victim and experience his thoughts and emotions. The empathy-inducing text in this condition was obtained from a closing argument in the Haegerich & Bottom's (2000) study and adapted to suit the present study. All participants read the defense's closing argument after reading the prosecution's closing argument. The defense attorney's closing argument encouraged participants to consider how the child's own mother failed to initially believe his accusations, and framed the child as a boy who "cried wolf" in order to receive his mother's attention. The defense's closing argument also described the defendant as the real victim.

Juror instructions. (See Appendices J, K, & L). Participants were informed of their duty to act as impartial fact-finders prior to making decisions about the case. They were also provided with instructions (retrieved from uscourts.gov) describing the "beyond a reasonable doubt" standard, which is the evidentiary standard in criminal trials. Participants were also given a thorough definition of criminal sexual assault in the first degree. This definition was taken from a Minnesota Statute, as the original *State v. Myers* case, which the trial in this study was based upon, occurred within that jurisdiction.

Post-trial dependent measures. (See Appendix M). Participants completed a questionnaire in which they were asked to render a verdict (a dichotomous variable), rate their

confidence in that verdict, and indicate whether or not the state had proven their case beyond a reasonable doubt. An open-ended question prompting participants to write down information that they felt would have warranted discussion during deliberation was also included within dependent measures. Participants also rated the child's believability, accuracy, honesty, intelligence, consistency, attractiveness, confidence, likelihood of making up the story, likelihood of misunderstanding the defendant's actions, likelihood of experiencing stress, and likelihood of being nervous on 7-point Likert scales (1= "not at all", 7= "completely"). The defendant was assessed on similar measures. Both sets of questions used to measure perceptions of the alleged victim and defendant were adopted from the Goodman et al., (1998) study. Participants were also asked to complete a set of empathy measures that were adopted from the Haegerich & Bottoms (2000) study. These measures, which were also assessed using 7-point Likert scales, questioned participants' ability to cognitively assume the child's position. Participants were then subject to manipulations checks, and were asked to rate the authenticity and fairness of the trial on 7-point Likert scales. Finally, participants were asked more general demographic questions. These included questions about gender, age, ethnicity, marital status, education, as well as history of service on a jury, and experience with children. Participants were also asked if they had ever been victims of sexual assault or knew someone who had been. However, they were reminded that responding to these questions, as with any other question, was completely voluntary.

Procedure

A ten year-old male was recruited through the principal investigator's social network to act as the child victim in the fictional trial. Since the child was a minor, one of his legal guardians was required to sign a contract that acknowledged and granted his participation in the

study (see Appendix F). The child actor and his parents met with the principal investigator to thoroughly review the study, so that they could ask any pertinent or pressing questions.

Following briefing, the ten year-old was photographed sitting at a witness stand, without the use of protective mechanisms (i.e. without shield), in a mock courtroom setting. He was instructed to convey a variety of different emotions, which included making anxious, neutral, upset, and distraught facial expressions. After numerous pictures had been taken in this direct testimonial condition, the child was removed from the witness stand and a Dell monitor and Plexiglas shield were each placed and separately photographed at the witness stand. Once the photographing session was complete, the child was given \$40.00 as compensation and all pictures were uploaded onto the principal investigator's computer and modified using Adobe Photoshop CS6 image editing software.

Eleven photos depicting the child testifying directly in court were selected for use in the study. Once these 11 images were chosen, Photoshop was utilized to copy and manipulate these images so that they could be used for the shield and CCTV testimonial conditions. In order to create the illusion that the child was testifying from behind the shield, 11 copies of the original direct testimony pictures were separately merged with the picture of a Plexiglas shield at the witness stand. The picture of the shield at the witness stand was placed on top of a direct testimony picture to create a layered, composite picture. The photographs were aligned and manipulated such that the boy appeared to be directly behind the shield. After additional editing and digital manipulation to increase the authenticity of the photo, photographs prepared in this manner were ready for use in the "shield" condition. Additional manipulations included applying subtle blur and exposure adjustments to the photos so that there would be no visual distinction or boundary between the two photos. In order to create the illusion of testimony via CCTV, 11

copies of the original, direct testimony pictures were resized and separately merged with the picture of the Dell monitor at the witness stand. The direct testimony pictures were reduced in size and cropped so that they would fit within the rectangular screen space of the Dell monitor picture. After the pictures were successfully merged, subtle manipulations were applied to increase the images' authenticity. These manipulations included applying a slight blur and shadowing to the edges of the direct testimony pictures so that the images appeared to be presented through the monitor and not simply pasted on top of it. Following manipulation, these pictures were used in the "CCTV" condition. Thirty-three pictures in total (11 per each testimony modality condition) were combined with the written examination and cross-examination of the child witness (see Appendix E). After the child's testimony was combined with all other trial stimulus materials on SurveyMonkey, the survey was published on Amazon Mechanical Turk.

Amazon Mechanical Turk Workers were informed of their proper, impartial role as potential participants upon accessing the online study through SurveyMonkey. They were notified that the fictional criminal case inherent to the study contained sensitive information about the sexual assault of a minor, and were reminded that they could withdraw from the study, should they chose to do so, at any point in time. They were also informed that they would receive \$0.50 in compensation for their participation. As in the Goodman et al. (1998) study, all participants received initial instructions regarding juror eligibility, and were asked not to participate should they fail to satisfy the proper requirements. After giving informed consent, participants read preliminary instructions regarding their role as mock jurors in addition to the facts of the case. They were then randomly assigned to 1 of 6 possible conditions.

Manipulations included the child victim's mode of testimony (CCTV, shield, direct) and the prosecution's inclusion or exclusion of empathy inducing content in the closing argument. If

participants had been assigned to either the shield or CCTV condition, they read a judge's instructions regarding that respective testimony modality prior to exposure to pictures of the child testifying. Next, participants read the child's testimony in addition to testimony of additional witnesses, closing arguments, and additional instructions and definitions regarding the burden of proof and legal definition of sexual assault in the first degree. Participants submitted verdicts along with answers to a series of questions concerning confidence in their chosen verdict, the authenticity of the trial, the credibility of the child victim and of the defendant, and the empathetic nature of the prosecution's closing arguments. Through an open-ended question, participants were also prompted to write down information that they felt warranted discussion in deliberation. After completing these tasks, mock jurors filled out a demographic questionnaire and were then asked to paste a secret code from SurveyMonkey back into the Amazon Mechanical Turk interface to collect their \$0.50 compensation. Participants were debriefed and thanked for their time (see Appendix N).

Results

First, experimental manipulation checks are discussed and mock juror evaluations of the authenticity of the trial are examined. Then verdicts are analyzed in addition to relationships between the experimental manipulations and mock jurors' perceptions of the child and the defendant. Mock juror demographics are examined as possible predictors of judgments of guilt or perceptions of the child and/or the defendant. Finally, participants' deliberation comments are analyzed. All significant effects are reported across analyses. Due to the appreciable number of tests conducted, the majority of non-significant results can be found in Appendices O, P, & Q.

Manipulations Checks. A total of 118 participants, from an original sample of 330, failed to correctly identify the experimental manipulations inherent to the condition to which

they were randomly assigned. Of these participants, 78 incorrectly identified the child victim's testimony modality, 32 incorrectly identified whether or not the prosecution's closing argument asked them to specifically "put [themselves] in the [child]'s shoes", and 8 participants reported that they "did not remember" whether the prosecution's closing argument included or excluded the specific empathy-induction component. All data of participants who failed to correctly identify the experimental manipulations were removed from the following analyses (below). The final sample consisted of 155 participants. Of this sample, 151 (97.42%) correctly recalled the age of the alleged child victim; noting that he was eight years-old at the time of the defendant's alleged unlawful conduct and/or that he was ten years-old at the time of the trial. Three participants (1.94%) incorrectly reported the child's age (as either 9, 11, or 12 years-old) and 1 participant (0.65%) failed to report the child's age.

Authenticity of the Trial. Authenticity of the trial was assessed through five variables regarding whether the trial was realistic (TrialReal), whether the evidence presented was realistic (EvidenceReal), whether the participant took their role as a mock juror seriously (RoleSerious), and whether the trial was fair to both the defendant (FairDef) and the alleged victim (FairChild). Participants' mean ratings across all of these variables were significantly higher than the median scale score of 3.5 (see Table 1).

Verdict Analysis. Directly after reading the different trial stimuli, participants were asked to render a judgment (dichotomous) of the defendant's guilt. Figure 1 (below) illustrates the percentage of verdicts rendered in each of the six experimental conditions. It was hypothesized that the child testifying directly in court would be perceived in the most positive terms and as the most reliable witness due to the vivid nature of statements made in court. As

protective shields and closed-circuit testimony are less spatially direct, it was predicted that the child testifying

Table 1

Significant Mean Differences for Measures of Trial Authenticity

Variable	<i>m</i>	<i>SD</i>	<i>t</i>
TrialReal	5.83	1.36	21.24***
EvidenceReal	5.88	1.17	25.37***
RoleSerious	6.63	0.72	53.75***
FairDef	5.57	1.49	17.32***
FairChild	5.70	1.39	19.64***

* $p < .05$, ** $p < .01$, *** $p < .001$. Responses were measured on 7-point Likert scales.

under these conditions would be perceived as less credible, thus creating a pro-defense bias reflected in fewer guilty verdicts. Inconsistent with the hypothesis, a chi-square test revealed no significant relationship between testimony modality and verdict, $X^2(2, N = 155) = 0.271, p = 0.873$. It was also hypothesized that jurors exposed to empathy-inducing closing arguments would be more concerned with the welfare of the alleged child victim, and more likely to view the child in a positive light, resulting in an inflation of guilty verdicts. Inconsistent with this hypothesis, there was no significant relationship between empathy-induction or lack there-of and verdict, $X^2(1, N = 155) = 1.493, p = 0.146$. An interaction between the experimental manipulations was projected, such that empathy-inducing arguments would have more of an effect on the indirect testimony modalities (CCTV, protective shield) than on the direct testimony modality. A between-subjects 2 x 3 ANOVA was conducted to examine main effects of the experimental manipulations on judgments of guilt and any interaction effect. There were no significant main effects of testimony modality on verdict, $F(2, 149) = .159, MSe = 0.242, p = .853$ or of empathetic closing argument on verdict, $F(1, 149) = 1.328, MSe = 0.242, p = .247$. Contrary to the research hypothesis, analysis revealed no significant interaction between

testimony modality and empathetic closing argument as they relate to jurors' dichotomous ratings of guilt, $F(2, 149) = .470$, $MSe = 0.242$, $p = .626$.

To examine whether manipulations influenced participants' ratings of confidence in their rendered verdicts, a 2 x 3 ANOVA was conducted. Confidence was assessed on an 11-point scale and coded for this analysis such that confidence for "not guilty" verdicts were attached to positive numerical assessments of confidence (i.e. 0 to +11), while "guilty" verdicts were attached to negative numerical assessments of confidence (i.e., 0 to -11). There was a marginally significant main effect of empathy-inducing closing arguments on juror ratings of verdict confidence, $F(1, 149) = 3.289$, $MSe = 68.261$, $p = .072$, such that jurors exposed to the prosecutor's empathetic closing argument ($m = -3.87$, $SD = 7.96$) showed a propensity to be more confident in their guilty verdicts than jurors who did not read the empathy-inducing closing argument ($m = -1.26$, $SD = 8.57$).

An independent samples t-test was also conducted to examine mean differences in ratings of confidence between participants rendering guilty versus not guilty verdicts. There was a significant mean difference in ratings of confidence, $t(152) = 5.192$, $p < .001$, such that participants rendering guilty verdicts were more confident in their judgments ($m = 9.00$, $SD = 1.92$) than participants rendering not guilty verdicts ($m = 7.10$, $SD = 2.63$).

Empathizing with the Alleged Victim. A series of 2 x 3 ANOVAs were conducted to investigate interactions between the experimental manipulations and the effects of the manipulations on jurors' ratings of ability to empathize with the alleged child victim. (Cronbach's alpha for the 7-item empathy scale was .942). There were no significant interactions between testimony modality and the empathy-inducing closing argument as they relate to mock jurors' ratings of their ability to empathize with the alleged victim. However, there were

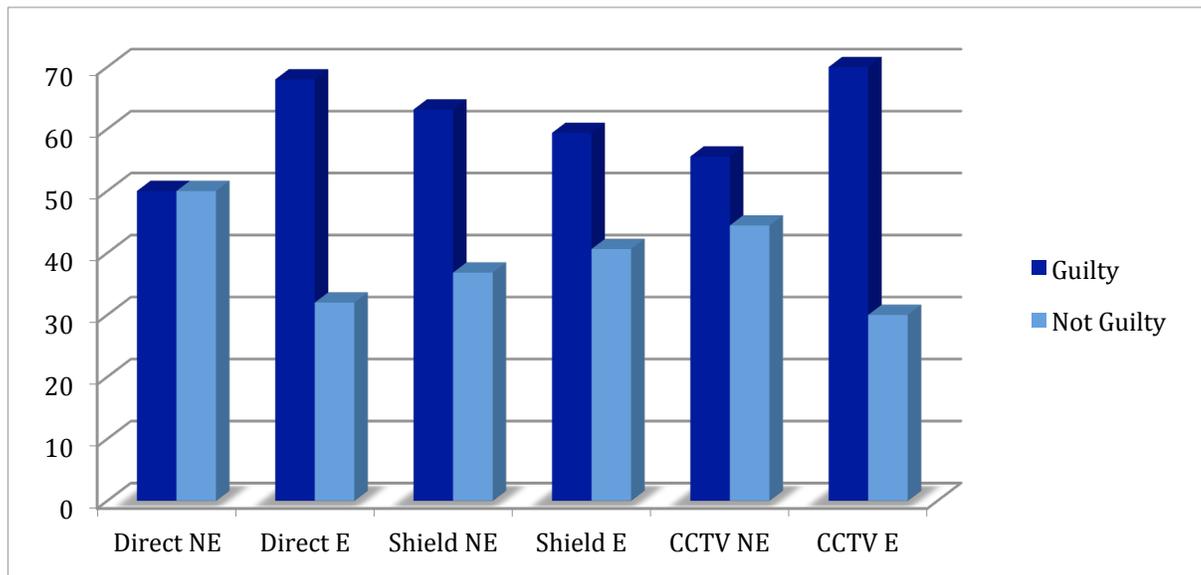


Figure 1. Verdicts (%) rendered across conditions. (“E” designates conditions in which the prosecutor’s closing argument contained the empathy-induction and “NE” designates control conditions without the empathy-induction).

significant main effects for empathy on participants’ ratings of their abilities to “imagine the thoughts running through [the child]’s head,” $F(1, 147) = 5.428$, $MSe = 2.889$, $p = .021$, and “understand what it would be like to be [the child],” $F(1, 149) = 6.841$, $MSe = 3.391$, $p = .010$. Participants who read the prosecutor’s argument with the empathy-induction were significantly more likely to report the ability to “imagine the thoughts running through [the child]’s head” ($m = 5.07$, $SD = 1.66$) than participants who did not read the empathy-inducing component of the closing argument ($m = 4.34$, $SD = 1.73$). Likewise, participants who read the prosecutor’s argument with the empathy-induction were significantly more likely to understand what it would be like to be the victim ($m = 4.43$, $SD = 1.89$) than participants who did not read the empathy-inducing component of the closing argument ($m = 3.65$, $SD = 1.76$). No additional main effects of empathy were discovered (refer to Table 2 & Appendix O for non-significant results)

Table 2

Main Effects for Empathy-Induction on Juror Rated Ability to Empathize

Dependent Measure	Empathy-Induction				<i>F</i>
	Present		Absent		
	<i>m</i>	<i>SD</i>	<i>m</i>	<i>SD</i>	
I felt empathetic towards the child, Benjamin	5.72	1.31	5.54	1.51	0.536
I can really imagine the thoughts running through Benjamin's head	5.07	1.66	4.34	1.73	5.428*
I can experience the same feelings that Benjamin experienced	4.18	1.97	3.66	1.69	2.820
I can take the perspective of Benjamin and understand his fear	5.14	1.66	4.66	1.61	2.704
I can really see myself in Benjamin's shoes	4.34	1.90	3.82	1.74	3.190
I feel like I can easily take the perspective of Benjamin	4.65	1.81	4.15	1.74	2.978
I understand what it would be like to be Benjamin	4.43	1.89	3.65	1.76	6.841*

Note. * $p < .05$, ** $p < .01$, *** $p < .001$. Responses were measured on 5-point Likert scales.

Perceptions of the Child Witness. It was hypothesized that the child testifying directly in court would be perceived in the most positive terms due to the vivid nature of statements made in court. As protective testimonial circumstances (shields and CCTV) are less spatially direct, it was predicted that the child testifying under these conditions would be perceived as less credible, and in less positive terms than the child testifying directly. A series of 2 x 3 ANOVAs were conducted in order to examine the effects of testimony modality and the empathetic closing

argument on juror's ratings of the child witness in terms of credibility and anxiety. There were no significant interactions between testimony modality and empathy-inducing closing argument as they relate to mock jurors' ratings of the child; however, there were significant main effects of empathy on jurors' ratings of the child's honesty and judgments that "the child witness was making up the story". Jurors who were asked to put themselves in the position of the alleged child victim through the prosecution's closing argument rated the child as significantly more honest ($m = 5.71$, $SD = 1.45$) than jurors who were not asked to put themselves in the child shoes ($m = 5.15$, $SD = 1.73$), $F(1, 148) = 1.328$, $MSe = 2.501$, $p = .045$. Jurors who were asked to put themselves in the position of the alleged child victim through the prosecution's closing argument also rated the child as significantly less likely to be making up his story ($m = 2.25$, $SD = 1.42$) than jurors who were not asked to put themselves in the child's shoes ($m = 2.81$, $SD = 1.73$), $F(1, 149) = 4.417$, $MSe = 2.447$, $p = .037$. There was also a significant main effect of testimony modality on jurors' ratings of feeling positively toward the child, $F(2, 149) = 4.405$, $MSe = 1.772$, $p = .014$. Bonferroni post hoc tests revealed that the child testifying directly in court received significantly lower ratings of positive feelings ($m = 4.98$, $SD = 1.33$) than the child testifying from behind a shield ($m = 5.74$, $SD = 1.29$). Ratings of positive feelings towards the child by jurors exposed to the child testifying directly and via CCTV ($m = 5.53$, $SD = 1.35$) were not significantly different. (Refer to Appendix P for non-significant results).

Perceptions of the Defendant. A series of 2 x 3 ANOVAs were conducted in order to examine the effects of testimony modality and empathetic closing argument on juror's perceptions of the defendant in terms of credibility and reliability. There were no significant interactions between testimony modality and empathy-inducing closing argument as they relate to mock jurors' ratings of the defendant; however there were significant main effects of empathy

on jurors' ratings of the defendant's intelligence, such that jurors who were asked to put themselves in the position of the alleged child victim through the prosecution's closing argument rated the defendant as significantly less intelligent ($m = 4.00$, $SD = 1.44$) than jurors who were not asked to put themselves in the child's shoes ($m = 4.63$, $SD = 1.14$), $F(1, 148) = 9.733$, $MSe = 1.745$, $p = .002$. (Refer to Appendix Q for non-significant results).

Juror Demographics. A series of independent samples t-tests were conducted to examine the effects of participant data on judgments of guilt; that is, verdict. Across dependent variables, there was only one significant mean difference. There was a significant mean difference between male and female participants, $t(153) = -2.485$, $p = .014$, such that female participants were significantly more likely to find the defendant guilty ($m = 1.31$, $SD = 0.46$) than males ($m = 1.51$, $SD = 0.50$). Using ANOVA, there was no significant interaction between the child's testimony modality and the presence or absence of an empathetic component in the prosecuting attorney's closing argument on verdicts rendered by jurors. ANCOVA was performed to control for possible effects of juror demographic variables (i.e., gender, marital status, parental status, etc.); however, there were no significant interactions.

Information to Bring to Deliberations. After rendering a verdict, participants were asked an open-ended question prompting them to write down any information that they might like to discuss during deliberations. A total of 145 participants (93.55%) chose to write responses and 10 participants (6.45%) did not provide any written information. Two participants (1.29%) indicated that they were unsure of what they would discuss in deliberation. Responses were broken up into units of information mentioned, which were coded into separate variables. These variables categorized content included within the mock trial (Internal Variables)— Juror Instructions, Testimony Modality, Judge's Instruction, Pediatrician's Testimony, Clinical

Psychologist's Testimony, Social Worker's Testimony, Mother's Testimony, Defendant's Testimony, Child's Testimony, Age of the Child, Prosecuting Attorney, Prosecutor's Closing Argument, Defense Attorney, Defense Attorney's Closing Argument, Legal Definition of Sexual Assault, Burden of Proof Instructions, etc. (refer to Table 3)– in addition to content that was not included in the trial stimuli (External Variables)– Extra-legal Information and Inadmissible Information (refer to Table 4). Variables describing testimony were further divided into specific components of that testimony. For example, the pediatrician testified about his physical assessment of the alleged victim and specifically mentioned anal penetration, tearing, scarring, bruising, and his overall inconclusive findings. Thus, this testimony was broken down into variables of “assault assessment” (which included any mention of the pediatrician's sexual assault assessment of the alleged victim), “physical injury” (which included any mention of scarring, tearing, bruising, or penetration), and “inconclusive” (which included any mention of the pediatrician's inconclusive, or indeterminate findings). Sub-variables were only invoked when participants mentioned them in addition to explicit textual reference to the pediatrician (i.e., the pediatrician, Dr. John Mathers, Mathers, etc.). If “bruising on the child” was mentioned by a participant without a corresponding reference to the pediatrician's testimony, this unit of information was coded under a “physical evidence” variable, as bruising was mentioned by other witnesses and through different case content. Extra legal and inadmissible information variables were divided into a series of sub-components in order to reflect the more specific units of information mentioned by different participants. Each reference to a variable received 1 point. The most frequently cited internal information was the general “pediatrician's testimony” variable, which was explicitly mentioned by 49 participants (31.61%). The second most cited internal variable was the “clinical psychologist's testimony”, which was explicitly mentioned by

39 participants (25.16%). The third most cited internal variable was “physical evidence”, which was mentioned by 36 participants (23.23%). The “prosecutor’s closing argument” was not explicitly mentioned by any participants, nor was the child’s “testimony modality”. Extra legal information was mentioned by nearly half of the sample ($n = 71$, 45.81%); however, the majority of these references dealt with the likelihood that the child would, or could have fabricated detailed allegations of sexual assault ($n = 36$, 23.23%). The second most mentioned extra legal factor was the child’s emotional state while testifying ($n = 9$, 5.81%). (Refer to Tables 3 & 4 for additional findings and statistics).

Table 3

*Internal Variable Information to Bring to Deliberation***Internal Variables**

Variable Name	Participant References	# Citing	% Sample
<i>Pediatrician Testimony</i>	Dr. ’s testimony	49	31.61
• <i>Assault assessment</i>	Dr. ’s assessment of child	2	1.29
• <i>Physical Injury</i>	Scar, tear, bruise, penetration	10	6.45
• <i>Inconclusive</i>	Indeterminate findings	21	13.55
<i>Clinical Psych Testimony</i>	Psychologist’s testimony	39	25.16
• <i>Assault Assessment</i>	Psych assessment of child	3	1.94
• <i>Consistent allegation</i>	Child’s consistent claims of abuse	14	9.03
• <i>Victim Characteristics</i>	Characteristics of sexual assault victims	5	3.23
• <i>Fabrication</i>	Tendency for victim to make-up the story	0	0.00
<i>Social Worker Testimony</i>	Social Worker’s testimony	16	10.32
• <i>Assault Assessment</i>	Social worker’s assessment of child	2	1.29
• <i>Consistent allegation</i>	Child’s consistent claims of abuse	4	2.58
• <i>Frightened Victim</i>	Child’s fear of abuser	0	0.00
• <i>False-Accusations</i>	Tendency for victim to make false accusation	0	0.00
<i>Mother Testimony</i>	Mother’s testimony	19	12.16
• <i>Demeanor Change</i>	Child’s change in demeanor	0	0.00
• <i>Physical evidence</i>	Bruising, poison ivy rash on child	9	5.81
• <i>Belief/Disbelief</i>	Believe/disbelieve son’s claims	7	4.52
• <i>Creative/Imaginative</i>	Son was “creative” and /or “imaginative”	1	0.65
<i>Defendant Testimony</i>	Defendant’s testimony	14	9.03
• <i>Bruising</i>	Bruising on child	0	0.00
• <i>Demeanor Change</i>	Child’s change in demeanor	0	0.00
• <i>Mother Attention</i>	Child wanting Mom’s Attention	0	0.00
• <i>Positive Relation</i>	Defendant-child positive relationship	0	0.00
<i>Child Testimony</i>	Child’s testimony	26	16.77
<i>Testimony Modality</i>	Condition of child testimony	0	0.00

<i>Defense Attorney</i>	Defense Attorney	7	4.52
<i>Prosecuting Attorney</i>	Prosecuting Attorney	0	0.00
<i>Defense Closing</i>	Defense’s Closing argument	0	0.00
<i>Prosecutor Closing</i>	Prosecutor’s Closing argument	0	0.00
<i>SA definition</i>	Definition of sexual assault	2	1.29
<i>Burden of Proof (BOP)</i>	BOP or reasonable doubt	17	10.97
<i>Instructions</i>	Preliminary or post-trial juror instructions	0	0.00
<i>Child Age</i>	Child victim’s age	11	7.10
<i>Physical Evidence</i>	Physical evidence	36	23.23
<i>Psychological Evidence</i>	Psychological evidence	1	0.65
<i>Lack Evidence</i>	Lack of concrete/enough evidence	12	7.74

Table 4

External Variable Information to Bring to Deliberation

External Variables			
Variable Name	Participant References	# Citing	% Sample
<i>Extra-Legal Info</i>	Any type of extra-legal information	71	45.81
• <i>Child Lie</i>	Child’s propensity to lie	36	23.23
• <i>Sex Knowledge</i>	Child’s knowledge of sexual acts	5	3.23
• <i>Child Emotion</i>	Child’s emotional state	9	5.81
• <i>Child Behavior</i>	Child’s behavior	5	3.23
• <i>Child Demeanor</i>	Child’s demeanor	5	3.23
• <i>Child Attitude</i>	Child’s attitude	2	1.29
• <i>Child Suggestibility</i>	Children as suggestible witnesses	1	0.65
• <i>Biological Father</i>	Child’s biological father	1	0.65
• <i>Child Friends</i>	Child’s friends	1	0.65
• <i>Child Boyfriends</i>	Child’s relationships with mom’s previous boyfriends	1	0.65
• <i>Defendant Lie</i>	Defendant’s propensity to lie	5	3.87
• <i>Defendant Behavior</i>	Defendant’s behavior	1	0.65
• <i>Defendant Attitude</i>	Defendant’s attitude	1	0.65
• <i>Abuser Characteristics</i>	Characteristics of sexual assailant	1	0.65
• <i>Time to Report</i>	Amount of time child took to report abuse	2	1.29
<i>Inadmissible Info</i>	Information not admissible in court	2	1.29
• <i>Defendant Record</i>	Defendant’s criminal record	2	1.29

Discussion

The goal of the present study was to examine the legal debate regarding the use of protective testimonial aids by children. In particular, this study attempted to provide insight into whether or not these protective aids bias juror-decision making in a way that is fundamentally at

odds with the “innocent before proven guilty” presumption that is so critical to the American criminal justice system. Although Justices of the Supreme Court, like Scalia, have expressed the opinion that the child’s use of protective testimonial aids may compromise the integrity of a trial by leading the jury to an inference of defendant guilt, empirical research has suggested that this may not be the case. Analyzed comprehensively, research in this field suggests that children testifying under protective circumstances are perceived in less positive terms than children who testify directly in open court (Goodman, et al., 1998; Orcutt, et al., 2001; Ross, et al., 1994; Swim, et al., 1993), thus creating the potential for a pro-defense bias (Golding, et al., 2003; Regan & Baker, 1998; Swim, et al., 1993).

The first question that this study addressed was how testimony modality affects juror perceptions of the testifying child witness. It was hypothesized that the child witness testifying directly in court would be perceived in the most positive terms, and that as testimony became further spatially removed from the jury, the child would be perceived in increasingly less positive terms. In other words, since protective shields and closed-circuit testimony are less spatially direct, it was predicted that the child testifying under these conditions would be perceived as less credible, thus creating a pro-defense bias resulting in fewer guilty verdicts rendered. The study, however, demonstrated results inconsistent with this research hypothesis, in that across conditions there were no significant effects of testimony modality on verdict. Additionally, testimony modality had virtually no effect on jurors’ perceptions of the child witness or the defendant. The one exception was that jurors who were exposed to the child testifying from behind a shield rated feeling more positively towards him than jurors who were exposed to the child testifying directly in court. This finding is interesting in that it is inconsistent with previous research suggesting that children testifying under protective

circumstances are typically perceived as less attractive, intelligent, consistent, confident, accurate, and believable than their directly testifying counterparts (Goodman, et al., 1998).

The second question that this study attempted to investigate was how jurors' ability to empathize with an alleged victim might affect perceptions of that victim, perceptions of the defendant, and ultimate judgments of guilt. Previous research suggests that when individuals are able to empathize with a victim, they are less likely to form disparaging opinions of them and more likely to take an interest in their well-being (Batson, Duncan, Ackerman, Buckley, & Birch, 1981; Batson, Turk, Shaw, & Klein, 1995; Eisenberg & Miller, 1987; Krebs, 1975; Sulzer & Burglass, 1968). Haegerich & Bottoms (2000) also found that jurors who were able to empathize with a defendant, by experiencing their thoughts and emotions, rendered fewer guilty verdicts. Based on this research, it was hypothesized that jurors who were exposed to empathy-inducing closing arguments would be more concerned with the welfare of the child, and perceive him in more positive terms than jurors who were not exposed to empathy-inducing closing arguments because they would have been able to cognitively assume the child's position. In addition, it was projected that participants exposed to the empathy-induction would perceive the defendant more negatively than jurors who were not. However, inconsistent with this hypothesis, participants who read the prosecutor's empathy-inducing closing argument only rated their abilities to empathize with the child as greater than jurors' who did not along two of seven empathy scale variables. Jurors reading the empathy-induction reported that they were better able to "imagine the thoughts running through the child's head" and "understand what it would be like to be the child," compared to jurors in the empathy absent conditions. Furthermore, the empathy-induction seemed to have minimal effects on perceptions of the defendant. Although jurors who read the empathy-inducing closing argument rated the defendant as less intelligent

than jurors who had not read the empathy-inducing argument, there were no significant differences between these groups in their judgments of the defendant's believability, accuracy, honesty, concern for the child, degree of good intention, or degree of victimization.

Similarly, exposure to the empathy-inducing closing argument had few effects on juror perceptions of the child witness. Jurors who read the empathy-inducing closing argument rated the child witness as more honest and less likely to be making up the story as compared to jurors who did not read the empathy-inducing closing argument. There were no significant differences between groups in their judgments of the child witness' level of stress, nervousness, confidence, consistency, attractiveness, intelligence, believability, accuracy, ability to provide testimony based on fact rather than fiction, and misunderstanding of the defendant's actions. In addition, there were no significant effects of empathy-induction on verdict. However, an investigation of the effects of exposure to empathy-inducing closing arguments on level of confidence in verdict rendered, revealed a marginally significant effect, such that jurors exposed to the empathy-induction tended to be more confident in their guilty verdicts than jurors who had not been exposed to the empathy-induction.

The final goal of this study was to explore the potential for an interaction between the child's testimony modality and empathy-inducing closing argument. It was hypothesized that empathy-inducing arguments would have more of an effect on the indirect testimony modalities (CCTV, protective shield), than on the direct testimony modality where there might already be a substantial empathy effect. Essentially, this would mean that the child testifying under protective circumstances would be perceived equally as positively as the child testifying directly in court in conditions where jurors were exposed to the empathy-induction. Inconsistent with this hypothesis, no interactions were discovered. This finding, in addition to those aforementioned,

would seem to suggest that testimony elicited under protective circumstances neither infringes upon a defendant's legal rights, nor compromises character assessments of child witnesses who use them. Previous research indicates that prosecutors tend to avoid using protective testimonial aids, due to real monetary costs and perceived imposition on trial outcomes (Goodman, Quas, Bulkley & Shapiro, 1999). Specifically, prosecutors fear appeals or challenges on behalf of the defense when the protective testimonial aids are invoked. Yet, the current study suggests that protective aids may be an effective mechanism for protecting the psychological well-being of child witnesses without biasing juror-decision making in one way or the other. Even with additional empathy-inducing content within the closing argument designed to cognitively place the juror in the position of the alleged victim, there was no noticeable biasing effect on juror decision-making. Assuming the present study's results are reliable, the knowledge that the child's mode of testimony demonstrated no effect on trial outcome should reduce concerns of prosecutors and defense attorneys alike

However, prudence is required in interpreting and applying the findings of the present study, as it possesses some clear methodological limitations. First and foremost, it is questionable as to whether the experimental manipulations were effective, as they didn't elicit effects in line with previous research. The present study presented the simulated trial online with an estimated completion time of twenty to thirty minutes. However, participants spent roughly eleven minutes to one hundred and ninety-seven minutes reading the fiction case facts and evidence and rendering judgments. Since the online survey presented a rather dense compilation of textual trial information, it is possible that participants who spent a shorter amount of time completing the survey were less attentive to information offered in case facts, testimony, closing

arguments, instructions, etc. Participants who spent upwards of an hour completing the survey may have also been distracted by other tasks.

Additionally, the fact that manipulations in testimony modality were displayed through presentation of various pictures of the child witness may have also made the effect of the modality manipulation less profound. Specifically, Goodman et al., (1998) found that children testifying under protective circumstances felt less anxious about and more comfortable with the idea of testifying than children agreeing to testify directly in open court. Given that the crime in this study did not constitute any kind of heinous or truthfully unlawful act, children in this study “were not nearly as stressed as they undoubtedly would have been in an actual trial” (p. 295). Considering the child’s increased levels of stress and anxiety in actual trials, in addition to the fact that protective testimonial aids quell anxieties to some extent, it seems likely that children testifying under protective modalities would possibly convey a different demeanor and set of emotions to the jury. As the current study used pictures depicting the child witness in a consistent manner across conditions, this is one possible source of limitation. Furthermore, since participants exposed to the prosecutor’s empathy-inducing closing argument were only mildly more likely to report the ability to assume the alleged victim’s position cognitively, it is important to consider that participants in these conditions may have preferred not to imagine themselves as the potential victim of an heinous crime. In other words, participants may have chosen to ignore the empathy-induction, whether consciously or not.

Due to limited resources, the present study lacked ecological validity, especially when compared to Goodman et al.’s, (1998) study. While mock jurors read components of a real trial transcript, real juror instructions, and rendered dichotomous verdicts, deliberations in this case were unconventional. Rather than discussing evidence amongst eleven peers, jurors were asked

to write down what they might like to discuss in deliberation. While these comments provided some insight into what evidence jurors might discuss (e.g., the pediatrician's testimony, the clinical psychologist's testimony, extra legal information), it is impossible to determine how true deliberations might flesh out. For example, although zero participants explicitly mentioned the experimental manipulations in their deliberation considerations, nearly half of participants included extra-legal information in their comments. Had discussion of certain extra-legal factors come up in deliberation (the child's propensity to lie, the child's emotional state) it is difficult to say how integral these factors would have been in determining the defendant's fate.

As absolute conclusions cannot be reached, it is clear that this topic certainly warrants additional investigation. Though further exploration of this topic employing ecologically valid methods certainly will serve to expand knowledge in this area, research with children will always have its ethical constraints.

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Appendix A

Online Informed Consent Form

You are invited to participate in this research study about juror decision-making. The following information is provided in order to help you to make an informed decision about whether or not to participate. If you have any questions please do not hesitate to contact the principal investigator (see contact information below).

This research is being conducted by Rachel Darby, a student at Scripps College, in partial fulfillment of a BA in Psychology and Legal Studies. The purpose of this research study is to identify how people make decisions when they are asked to determine if a defendant should be held responsible for a crime. In particular, Rachel is interested in how jurors use and evaluate a child's testimony in sexual assault cases.

Participation in this study will require approximately twenty minutes of your time. As this study attempts to investigate juror decision-making, it is asked that you do not participate if you do not fulfill the following eligibility requirements: are at least 18 years of age, hold a valid ID, are a US citizen, have never been convicted of a felony, and are not a judge. You will be asked to read a trial transcript, juror instructions, testimony from a child, testimony from other witnesses, and closing arguments. Additionally, you will be asked to answer some questions about the trial. You will then be asked some basic demographic information. The risks of this research are expected to be minimal; however, this study does contain sensitive information involving the sexual assault of a male minor. The information in the criminal trial is similar to what you might see on the news or in a legal or crime drama on TV. In this case, a young boy is anally assaulted. This could create some discomfort for you. If you think reading or answering questions regarding the sexual assault of a minor will bother you in any way, you may want to consider opting out of this study. Furthermore, if you find that the information makes you uncomfortable once you have started the study, you are free to decide to withdraw at any time. In the event of any problems resulting from participation in the study, you can seek counseling through a service to search for counselors provided by the American Psychological Association by visiting <http://locator.apa.org>.

The benefits to your participation in this research include a \$0.50 payment. It is possible that you may experience no direct non-monetary benefit from your participation. However, the information gained from this study will help the field of psychology and law to better understand the factors that individuals use in their decision-making about crimes involving children.

No personally identifiable information will be collected during this study. The information obtained in this study may be published in scientific journals or presented at scientific meetings, but your identity will remain completely anonymous. Results will also be kept in a secure location, which is only accessible to the principal investigator. You will not be asked to put your name on any of the responses you give during the research. Your responses to the questions will be completely anonymous.

Your participation in this project is entirely voluntary. You are free to decide not to participate in this study or to withdraw at any time without adversely affecting your relationship with the investigator or with Scripps College. Your decision not to participate will not result in any loss of benefits to which you are otherwise entitled.

You may ask questions concerning the research before agreeing to participate or during the experiment. If you have any questions regarding this research, you may contact Rachel Darby at rachel.darby@scrippscollege.edu, or at (207)776-0681.

If you have any questions about your rights as a research subject that have not been answered by the investigator you may contact Pamela Rowland, the Administrator of the Scripps College Institutional Review Board at prowland@scrippscollege.edu or at (909)607-3249.

You are voluntarily making a decision whether or not to participate in this research study. By clicking "I agree to the terms above" you certify that you have decided to participate having read and understood the information presented.

- I agree to the terms above
- I will not be participating

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Appendix B

Preliminary Juror Instructions

Your duties are to determine the facts, to apply the law set forth to those facts, and in this way to decide the case... The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice... In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses... and any stipulated or admitted facts... As the sole **judge** of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this study all of the experience and background of your **life**. In your everyday affairs you determine for yourself whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

...

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

Note. Instructions retrieved from ICJI 104 Trial Procedure & Evidence. Words in bold were modified from plural to singular form.

Appendix C

Fictional Trial Transcript

State of Minnesota v. O'Donnell

O'Donnell was **accused** of having criminal sexual contact between August **2010** and July **2012** with the young **son** of the woman whom he was **dating**. The particular incident that led to these proceedings occurred on one **evening** in either November or December of **2010**, when complainant, **Benjamin Porter**, was **eight** years old. On that **evening**, while **Michael O'Donnell** was **babysitting Benjamin for the first time**, he told **Benjamin that he needed to take a shower since he had just come home from soccer practice**. **Benjamin** initially refused, but complied after **O'Donnell** threatened to spank him. **Benjamin complained about taking a shower and stalled for several minutes, occupying himself with other things (including playing with his soccer ball in the living room) before making his way to the bathroom, according to O'Donnell**. **Benjamin claims that he was compliant after hearing the spanking warning, and went directly to take his shower**.

Benjamin claims that he took a quick shower, turned off the water, and opened the shower door to find O'Donnell standing in the doorway between the hall and the bathroom. Benjamin felt uncomfortable being in the nude in front of O'Donnell, so he tried to grab a towel that was hanging on a hook on the wall. When he turned his back to grab the towel, he claims that O'Donnell struck him in the back with such force that he came crashing to his knees on the bathroom's tile floor. Benjamin became very scared and started to cry. When O'Donnell heard his whimpers, he forcefully spanked him and proceeded to tell him to "shut up" and that "mom wasn't here to protect him". O'Donnell proceeded to stroke Benjamin's body and genitals, despite Benjamin's protests for him to stop. Benjamin's screams and cries only resulted in more forceful spankings and hits. Benjamin was too afraid to fight back, and remembers feeling a sharp pain in his anus. When the pain went away, O'Donnell stood up and told Benjamin not to say a word "or else" and to go to bed.

O'Donnell claims that he went into the bathroom to make sure that Benjamin was taking his shower, as asked of him, when he discovered Benjamin inspecting what appeared to be a rash on his inner thigh. O'Donnell, who often worked out in the yard, thought the rash-like spot might have been caused by poison ivy. O'Donnell proceeded to apply Cortisone cream to the irritated area. He claims that Benjamin was very ticklish and seemed startled by the sensation caused by applying the cold cream. O'Donnell claims that it was very difficult to get Benjamin to stand still because he was giggling and hopping around so much. Because Benjamin wasn't standing still, O'Donnell acknowledges that he may have touched Benjamin in the genital region accidentally. However, O'Donnell denies that any further intentional, inappropriate conduct or touching ever occurred. After O'Donnell had applied the Cortisone cream, he claims that Benjamin put his pajamas on, ate dinner, and went to bed.

The mother, Linda Porter, who was working a late nursing shift that evening, indicated that both O'Donnell and her son, Benjamin, were in bed when she returned to the house at

roughly 2:00 am. Over the course of the next few days, Linda noticed that Benjamin was both quiet and very avoidant. She also noticed bruising on his knees and back, but assumed it was from playing outside and roughhousing with friends. Benjamin never complained to her about a poison ivy rash; however, Benjamin often complained that his shorts would rub his thighs during soccer, sometimes leaving a rash. When Linda took [Benjamin] to school at the end of the week she asked him if anything was wrong. Benjamin first responded that he did not know, but ultimately he said that O'Donnell hurt him and did things to him "like he did to [his mother]". The mother then confronted O'Donnell whom she said seemed shocked. O'Donnell told Linda that he did not know what Benjamin meant.

Some time after this incident the mother told her sister of Benjamin's allegations. It was not, however, until several months later, on September 15, 2011, when Benjamin's maternal uncle contacted the St. Louis County Department of Social Services, that the authorities were notified of the possibility of abuse. On the following day, Lynn Halenbeck, a St. Louis County Social Worker, talked to Benjamin at his school. Halenbeck noted that during the course of their conversation, Benjamin informed her that O'Donnell would sometimes come into his bedroom at night and touch him between his legs. Upon further questioning by Halenbeck, Benjamin detailed the manner in which O'Donnell molested him. Halenbeck also stated that she deduced from complainant's statements that... the child could not conceptualize the difference between sexual penetration and contact. On the basis of this information, Halenbeck contacted the county attorney's office, and thereafter obtained a court order removing Benjamin from his home. On October 6, 2011, formal charges were filed against O'Donnell.

Note. Trial transcript modified from original *State v. Myers*, 359 N.W. 2d 604 (Minnesota, 1984) case. Text in bold was not original to the case.

Appendix D

Judge's Instructions

Protective Shield Instruction

The child (Benjamin Porter) in this case will be testifying behind a protective shield. Please carefully read the Judge's instructions regarding the physical makeup of the courtroom in relation to the child witness:

"Members of the jury, it is quite obvious that a screen has been placed in the courtroom in front of **the testifying child**. The legislature of this state recently passed a law, which provides for this sort of procedure in cases involving children. I will caution you now that you are to draw no inference of any kind from the presence of that screen. You know in the plainest of language, that the screen is not evidence of the defendant's guilt, and you should not think that the presence of the screen in the courtroom implies or suggests that the defendant is guilty. It is very important that you keep this in mind."

CCTV Instruction

The child (Benjamin Porter) in this case will be testifying from outside the courtroom. Please carefully read the Judge's instructions regarding the physical makeup of the courtroom in relation to the child witness:

"Members of the jury you will now have an opportunity to hear some testimony through the use of a one way video monitoring system. You will notice that a video monitor has been placed in front of the jury box for you to watch. This will enable you to watch the testimony of the next witness without **him** being present in the courtroom. The one-way monitoring system is designed so that you will be able to see the witness testify, but **he** will not be able to see into the courtroom. The legislature of this state recently passed a law, which provides for this sort of procedure in cases involving children. I will caution you now that you are to draw no inference of any kind from the use of the video monitoring system. You know, in the plainest of language, that the use of the monitoring system is not evidence of the defendant's guilt, and you should not think that the use of this system in the courtroom implies or suggests that the defendant is guilty. It is very important that you keep this in mind."

Note. Instructions modified from Ross *et al.*, 1994. Text in bold was not original to the instructions.

Appendix E

Child Witness Examination and Cross-Examination

Prosecuting Attorney: Can you please tell the court your name?

Child: Benjamin Porter.

[Photo Inserted: Neutral Expression]

Prosecuting Attorney: Benjamin, can you please tell me what your relation to the defendant, Michael O'Donnell, is?

Child: He is my mom's boyfriend.

Prosecuting Attorney: Is he your friend?

Child: No.

[Photo Inserted: Upset Expression]

Prosecuting Attorney: Benjamin, can you tell me why he is not your friend?

Child: He has done bad things to me.

Prosecuting Attorney: What kinds of bad things?

Child: He hurt me.

Prosecuting Attorney: How did he hurt you, Benjamin?

Child: He would hit me if I didn't let him touch me between my legs and in other places.

[Photo Inserted: Distressed Expression]

Prosecuting Attorney: Is that what he did the first night he babysat you?

Child: Yes.

Prosecuting Attorney: Did you ask him to stop?

Child: Yes.

Prosecuting Attorney: Did he stop when you asked him to?

Child: No.

Prosecuting Attorney: What happened when you asked him to stop?

Child: He hit me and told me that my mom couldn't protect me.

[Photo Inserted: Distressed Expression]

Prosecuting Attorney: Did you tell your mom what happened when she got home later that evening?

Child: No.

Prosecuting Attorney: Why not? Why didn't you tell your mom?

Child: I was too scared.

Prosecuting Attorney: Why were you scared, Benjamin?

Child: Michael told me that if I said anything I would be sorry. He said he would hurt me until I couldn't cry anymore.

[Photo Inserted: Distressed Expression]

Prosecuting Attorney: How old were you at the time of this incident, Benjamin?

Child: Eight years old.

Prosecuting Attorney: How old are you now?

Child: Ten.

Prosecuting Attorney: Did Michael O'Donnell ever hurt you, or touch you again after that first incident?

Child: Yes.

Prosecuting Attorney: More than once?

[Photo Inserted: Upset Expression]

Child: Yes.

Prosecuting Attorney: More than twice?

Child: Yes.

Prosecuting Attorney: More than three times?

Child: Yes.

Prosecuting Attorney: Thank you, Benjamin. No Further Questions.

Defense Attorney: Benjamin, how long has your mother been dating Michael O'Donnell for?

Child: A while I guess.

[Photo Inserted: Neutral Expression]

Defense Attorney: Did your Mom spend less time with you when she started dating Michael?

Child: I guess so.

Defense Attorney: Did Michael and your mother do things without you?

Child: They went on a lot of weekend dates.

Defense Attorney: Where were you during those dates?

Child: I usually would sleep over at Matt's house.

Defense Attorney: Who is Matt?

Child: He's my friend.

Defense Attorney: Do you wish that you got to spend more time with your mom on weekends?

Child: I guess so. She's a nurse and she works late at the hospital during the week.

[Photo Inserted: Anxious Expression]

Defense Attorney: What do you do during the week?

Child: I go to school, do homework, and hang out with my friends.

Defense Attorney: What do you do with your friends?

Child: Play sports and video games sometimes.

Defense Attorney: Which sports do you play?

Child: Soccer mostly. I have games every week.

[Photo Inserted: Anxious Expression]

Defense Attorney: Did your mom and Michael ever come to those games?

Child: Yes.

Defense Attorney: How many?

Child: A lot I guess.

Defense Attorney: Do you enjoy playing soccer?

Child: Yeah, it's my favorite sport. I play in two different leagues.

[Photo Inserted: Anxious Expression]

Defense Attorney: Do you ever get injured playing soccer?

Child: I sprained my ankle once and have gotten a bloody nose a few times.

Defense Attorney: Do you ever get bad bruises from playing soccer?

Child: I get bruises on my shins sometimes... my shin-guards aren't very thick.

[Photo Inserted: Neutral Expression]

Defense Attorney: Thank you, Benjamin. No further questions.

Appendix F

CONTRACT FOR ACTING SERVICES

I, [Name Removed], understand and agree that I am being hired to act in the role of an alleged victim of sexual assault in an online, simulated trial for the purposes of psychological research. Rachel Darby, the Principal Investigator, will be taking photographs of me at the witness stand in a mock courtroom setting.

I understand and agree that I will be paid for my participation in this project at a flat rate of approximately \$40.00. My photographs should take approximately thirty minutes to take. The maximum amount I will be paid for my role is \$60.00.

I understand and agree that I will be provided with a full copy (pdf) of the final mock trial product. I understand that it will take some time to manipulate the photographs, and that no deadline for receipt of said copy has been promised to me.

I agree to return to re-take photographs in the event that some modifications to the original photographs are required. If the amount of time required for additional shooting is extensive, I understand that I will be given some additional compensation commensurate with the work required.

I permit the Principal Investigator to release my images for viewing by participants for the purposes of this research project. However, I understand that my identity will never be disclosed and that my photographs will never appear in any physical or online copies of the final study write-up.


Signature of Contractee (child)

2/28/13
Date


Signature of Legal Guardian

2/28/13
Date


Signature of Principal Investigator

2/28/2013
Date

Contact information:

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Appendix G

Additional Testimonies

The defendant, **Michael O'Donnell**, testified at trial, denying the allegations of sexual abuse. When he was asked about the bruising on Benjamin's knees and back that appeared around the time he babysat "on one evening in either November or December of 2010", O'Donnell said that he never noticed any bruising on Benjamin's knees or back, but that he believed the bruises could have been from soccer practices. O'Donnell stated that he attended quite a few of Benjamin's games and that the boys on the team tended to be very aggressive. When asked about Benjamin's disposition, O'Donnell also indicated that Benjamin seemed increasingly unhappy ever since he started to date his mother, Linda, and that despite his attempts to befriend Benjamin, Benjamin was resistant. O'Donnell felt that Benjamin may have resented him for taking some of his mother's attention away from him. He insisted that he "could never imagine hurting Benjamin" and that he didn't understand why Benjamin would raise allegations of sexual assault against him. He wanted to have a healthy, positive relationship with the son of the woman he loved.

Benjamin's mother testified, stating that she had noticed that Benjamin's general demeanor had changed while she was dating O'Donnell. She indicated that he became much more introverted and distant. When she was asked if she had noticed any unusual bruising on Benjamin's knees or back following the alleged babysitting incident, she indicated that she did notice some pretty bad bruising on his body, but was unsure of how the bruises were acquired. When asked if she ever saw a poison ivy rash on her son's thigh, she said she had not. She also agreed that [her son] was a creative and imaginative child, the following colloquy took place:

Q. In regard to Benjamin's allegation that **Michael O'Donnell** has committed the offense that he's been charged with, namely sexual **assault**, can you say as you sit here today that what he says in that regard is absolutely true?

A. Well, I-I don't see how I can answer that. Are you asking me-Do I believe **him**?

Q. That's what I'm asking.

A. Yes. Yes, I would believe my **son**, yes.

Q. Did you believe **him** back in December of 2010?

A. **I wasn't sure if I did.**

Q. **What about January**, did you believe **his allegations of sexual assault** in January of 2011?

A. **Not completely**, no.

Q. Did you believe **him** in February of 2011?

A. **Not exactly.**

Q. March of 2011?

A. No.

Q. What month and year did you first start to believe **him**?

A. Well, in a way I always kind of believed **him**. But I don't know how to answer that one. **I certainly believe him now. I had a hard time thinking that any of this could really be happening.**

The **prosecution** presented the testimonies of Dr. John Mathers, a **pediatrician** who examined complainant on March 1, **2012**, and of Dr. Clare Bell, a clinical psychologist at the Range Mental Health Center, who began treating **Benjamin** on December 11, **2011**. Dr. Mathers testified that his physical examination of **Benjamin** revealed that **he had no signs of anal tearing or any other severe bruising and that he** was otherwise normal for a **boy of his age**. Dr. Mathers further explained that if there had been penetration there would have been scarring, but the absence of scarring was not inconsistent with pushing on the **anus** or very **shallow anal** penetration. **During cross examination, Dr. Mathers restated that his physical examination of Benjamin discovered no clear signs of sexual assault, but that couldn't draw any determinate conclusions.**

Dr. Bell, a clinical psychologist at the Range Mental Health Center in Virginia, who had been awarded her Ph.D. degree in psychology in **2003**, testified that commencing on December 11, **2011**, she saw **Benjamin** on seven occasions in sessions each lasting at least one hour. Dr. Bell stated that in each of these sessions, **Benjamin** related the manner in which defendant abused **him** and that, while **he** continually added information, **his** allegations remained consistent. **Dr. Bell also described** traits and characteristics typically found in sexually abused children and **compared them to** those she had observed in **Benjamin**. Dr. Bell stated that she looked for these more specific individual characteristics: nightmares that have assaultive content, sexual knowledge unusual in a child of the patient's age, and that the child looks and acts older than **he** is. Dr. Bell identified some of those characteristics in **Benjamin**. Finally, Dr. Bell explained that it is extremely rare for children to fabricate tales of sexual abuse and stated that in her opinion **Benjamin** knew the difference between the truth and falsehood and was truthful in **his** allegations.

Lynn Halenbeck, a St. Louis County Social Worker, **who had** talked to **Benjamin** at **his** school, **also indicated that Benjamin's allegations against O'Donnell were consistent and that he consistently expressed that he was very frightened by O'Donnell. During cross-examination, Halenbeck was asked if she had ever worked with or spoken with children who had falsely reported sexual assault. She indicated that she had. When asked if this had happened more than once, she said yes. However she stated that false-accusations were extremely rare in her own experience.**

Note. Testimonies modified from original *State v. Myers*, 359 N.W. 2d 604 (Minnesota, 1984) transcript. Text in bold was not original to the case.

Appendix H

Prosecutor's Closing Argument

You heard **Benjamin's** testimony. **He** told you that for the last couple of years **his mother's boyfriend** had taken sexual liberties with **him**. Rubbing **him between the legs**, going down into **his pants**, these things have happened repeatedly. **He** also tells you that it was nothing for **Michael O'Donnell** to threaten to **hurt him if he ever spoke up about these things**. **On one winter evening in 2010** everything went to a new level. **O'Donnell** came **into his bathroom** and used **his size and strength to take advantage of Benjamin**. **Benjamin** was screaming and hollering. **He** didn't want any part of it. **But, at just eight years old, he was powerless to stop what was happening**. **O'Donnell** went into **his bathroom** and **struck him down onto** the floor, started rubbing **his genitals**, and **penetrated his anus**. **Benjamin** cried for help but **he** could not get out. **As a result of O'Donnell's actions, Benjamin has lived in perpetual terror for the past two-years, petrified that O'Donnell will have his way with him soon again**. You can see, I hope, through **the testimonies of Dr. Bell and Lynn Halenbeck, just how traumatized Benjamin has been. His sexual abuse is real. And so are the physical and psychological impacts**. What you have to understand about sexual abuse is that it's a crime that nobody sees—nobody takes their kids in the front yard or the fairgrounds and sexually abuses them. It always happens behind closed doors. There's no witness. And it just keeps on happening. **In this case, it kept happening to a powerless young boy whose own mother failed to believe in his very real abuse**. *Now, try and imagine what Benjamin was thinking and feeling the night of his assault. Better yet, imagine that you are Benjamin Porter and reflect on what you are thinking and feeling. You are in a hopeless situation. You have been sexually abused by your own mother's boyfriend; someone you would have thought you could trust. Someone you would expect to protect your welfare under all circumstances. But that is not the case. He is becoming more and more abusive. And then, he is out of control. He is screaming at you and using physical force, all in an attempt to molest you. You think, "is this ever going to end?" You know he is going to rape you. You feel that your life is at stake if you resist. You have no escape. You cannot overpower him or run.* You promised that you would uphold the law just as vigorously by delivering a verdict of "not guilty" as you would delivering a verdict "guilty" if the evidence indicates it. When you look at the evidence I hope you're going to decide that the facts indicate that **Michael O'Donnell is unquestionably guilty** and you will **hold him responsible for criminal sexual assault in the first degree**. *You will find him guilty especially after you imagine yourself in this situation. I am sure that you will understand if you emotionally and thoughtfully put yourself in Benjamin's shoes. Thank you.*

Note. Adapted from prosecution's closing argument used by Haegerich & Bottoms (2000). Text in bold was not original to their study. Text in italics was only present in empathy-priming conditions.

Appendix I

Defense's Closing Argument

You have heard Benjamin Porter's testimony and you have heard from his mother, a social worker, a pediatrician, a clinical psychologist, and from the defendant himself. Dr. Mathers testified that his examination of Benjamin "revealed that he had no signs of anal tearing or any other severe bruising and that he was otherwise normal for a boy of his age". If the evidence indicates anything, it is that this case boils down to one man's word against a child's; a child that has been described by his own mother as "imaginative" and "creative". A child whose own mother failed to whole-heartedly believe his accusations of sexual assault. You can see, I hope, through the testimony of Michael O'Donnell, that he was an honest man with no mal-intent. He was committed to developing a positive relationship with the son of his girlfriend and even frequently attended his soccer games to show his support for the child. This case is unfortunate. Benjamin Porter may have cried wolf in hopes of getting more of his mother's attention, but his actions have jeopardized the reputation and character of an honest man. I hope you will uphold the law by finding my client "not guilty". Thank you.

Appendix J

Post-Trial Instructions

You have now heard the facts of this case, in which Michael O'Donnell is being charged with Criminal Sexual Assault in the First Degree. Your job is to assess the credibility of the witnesses' statements and evidence that has been presented to you in an impartial manner. The following definitions and instructions are guidelines that should assist you in your decision-making.

Appendix K

Definition of Sexual Assault in the First Degree

What is Criminal sexual conduct in the first degree?

Subdivision 1. Crime defined. A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

- (a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (b) the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- (d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
- (e) the actor causes personal injury to the complainant, and either of the following circumstances exist:
 - (i) the actor uses force or coercion to accomplish sexual penetration; or
 - (ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:
 - (i) an accomplice uses force or coercion to cause the complainant to submit; or
 - (ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
- (g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or
- (h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and:
 - (i) the actor or an accomplice used force or coercion to accomplish the penetration;
 - (ii) the complainant suffered personal injury; or
 - (iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a

defense.

Note. Minnesota Statutes Annotated. § 609.342. Criminal sexual conduct in the first degree.

Appendix L

Burden of Proof Instructions

The defendant, although accused of a crime in the indictment, begins the trial with a "clean slate" with no evidence against him. The indictment is not evidence of any kind. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against the defendant. The presumption of innocence alone, therefore, is sufficient to acquit the Defendant, **Michael O'Donnell**.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witness called upon by the State. It is not required that the state prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense— the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Unless the State proves, beyond a reasonable doubt, that Defendant **O'Donnell** has committed each and every element of the offense charged in the indictment, you must find Defendant **O'Donnell** not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions—one of innocence, the other of guilt—the jury must, of course, adopt the conclusion of innocence.

Note. Jury Instructions.

Appendix M

Dependent Measures

Verdict:

1. On charges of criminal sexual assault in the first degree, I find the defendant, Michael O'Donnell to be:

- Guilty
- Not Guilty

2. The prosecution proved their case beyond a reasonable doubt

- Yes
- No

3. Please rate your confidence in your decision from “not at all confident” (0%) to “completely confident” (100%)

- 0% -10% - 20% - 30% - 40% - 50% - 60% - 70% - 80% - 90% -100%

4. If you were to deliberate (discuss the facts of the case) with other jurors, what evidence or information might you want to discuss or tell them about? Please write your thoughts in the textbox below:

Perceptions of the Child Witness:

Please indicate your agreement with the following statements on a scale from 1 (not at all) to 7 (completely):

	1	2	3	4	5	6	7
1. <i>The child witness was believable</i>							
2. <i>The child witness was accurate</i>							
3. <i>The child witness was honest</i>							
4. <i>The child witness was making up the story</i>							
5. <i>The child misunderstood Michael O'Donnell's actions</i>							
6. <i>The child was able to provide testimony based on fact rather than fiction</i>							

7. <i>The child was intelligent</i>	1	2	3	4	5	6	7
8. <i>The child was consistent</i>	1	2	3	4	5	6	7
9. <i>The child was confident</i>	1	2	3	4	5	6	7
10. <i>The child was attractive</i>	1	2	3	4	5	6	7
11. <i>The child was stressed while testifying</i>	1	2	3	4	5	6	7
12. <i>The child was nervous while testifying</i>	1	2	3	4	5	6	7
13. <i>I feel positively toward the child</i>	1	2	3	4	5	6	7

Note. Dependent Measures adapted from Goodman *et al.*, 1998.

Perceptions of the Defendant:

Please indicate your agreement with the following statements on a scale from 1 (not at all) to 7 (completely):

1. <i>The defendant's claims were believable</i>	1	2	3	4	5	6	7
2. <i>The defendant's claims were accurate</i>	1	2	3	4	5	6	7
3. <i>The defendant's claims were honest</i>	1	2	3	4	5	6	7
4. <i>The defendant was making up his story</i>	1	2	3	4	5	6	7
5. <i>The defendant was able to provide factual claims</i>	1	2	3	4	5	6	7
6. <i>The defendant was intelligent</i>	1	2	3	4	5	6	7
7. <i>The defendant had only good intentions</i>	1	2	3	4	5	6	7
8. <i>The defendant cared about Benjamin</i>	1	2	3	4	5	6	7

9. *The defendant was the real victim* 1 2 3 4 5 6 7

10. *I feel positively toward the defendant* 1 2 3 4 5 6 7

Note. Dependent Measures adapted from Goodman *et al.*, 1998.

Empathy Assessment:

Please answer the following questions on a scale from 1(not at all) to 7(completely):

1. *I felt empathetic towards the child, Benjamin* 1 2 3 4 5 6 7

2. *I can really imagine the thoughts running through Benjamin's head* 1 2 3 4 5 6 7

3. *I can experience the same feelings that Benjamin experienced* 1 2 3 4 5 6 7

4. *I can take the perspective of Benjamin and understand his fear* 1 2 3 4 5 6 7

5. *I can really see myself in Benjamin's shoes* 1 2 3 4 5 6 7

6. *I feel like I can easily take the perspective of Benjamin* 1 2 3 4 5 6 7

7. *I understand what it would be like to be Benjamin* 1 2 3 4 5 6 7

Note. Empathy Measures adapted from Haegerich & Bottoms (2000)

Trial Authenticity:

Please answer the following questions on a scale from 1(not at all) to 7(completely):

1. *The trial was realistic* 1 2 3 4 5 6 7

2. *The evidence presented was realistic* 1 2 3 4 5 6 7

3. I took my role as a mock juror seriously, considering information as objectively as possible	1	2	3	4	5	6	7
4. The trial was fair to the child	1	2	3	4	5	6	7
5. The trial was fair to the defendant	1	2	3	4	5	6	7

Note. Dependent Measures adapted from Goodman *et al.*, 1998.

Manipulation Checks:

1. The Child Victim testified:
 - Via a television screen that was placed in the court-room
 - From behind a shield
 - Normally in court
2. The prosecution's closing argument explicitly asked me to put myself in the victim's shoes:
 - Yes
 - No
 - I do not remember
3. How old was Benjamin Porter?

Demographic Information:

1. Which gender do you identify with?
 - Female
 - Male
2. What is your age?
3. What is your ethnicity?
 - Caucasian
 - African American
 - Asian American

- Asian Pacific Islander
 - American Indian
 - Latina/Latino
 - Other
4. Have you even been a victim of sexual assault? (You are in no way obligated to answer this question).
- Yes
 - No
 - Prefer not to answer
5. Do you know someone who has been a victim of sexual assault?
- Yes
 - No
 - Prefer not to answer
6. Do you have children?
- Yes
 - No- but I plan to in the future
 - No- and I do not plan on having kids in the future
 - No- I'm unsure if I will in the future
7. Does your occupation include working with children?
- Yes
 - No
8. What is your relationship status?
- Single
 - In a relationship
 - Married
 - Domestic Partnership
9. Have you ever served on a jury before?
- Yes
 - No
10. What's the highest level of education you have received?
- Elementary school
 - Some high school
 - GED or high school diploma
 - Some college
 - College Degree
 - Graduate Level Education (Masters, MBA, PhD, JD, MD, etc.)

Appendix N

Debriefing

Thank you for your participation in this study. This debriefing is given as an opportunity for you to learn more about this research project, how your participation plays a part in this research, and why this research may be important to society. Please do not discuss this study with anyone else who might also participate in the future. Knowledge about the study may influence their responses and, essentially, invalidate the information obtained from them. (For this same reason, it is important that you tell the experimenter if you knew details about this study before participating.)

A child's testimony is often an important part of sexual assault trials, specifically when they are the victims of the crime being contested. Some people argue that children may experience such a great deal of psychological stress and anxiety when confronting their aggressor, that is it necessary to protect them if they testify in court. Some of the ways that courts may protect a child while testifying include allowing them to testify behind a protective shield or through a process called closed-circuit television in which a screen is brought into the courtroom displaying the live examination and cross-examination of the child who is in another room. One of the many things that law personnel and psychologists have been concerned with is how the use of these protective measures might influence the jury in deciding on a verdict. Specifically, the use of these aids may allow the child to provide testimony in a calmer, more collected state. This may affect the emotional immediacy of the testimony delivered, and jurors' overall perceptions of the child witness. In fact, research has shown that when a child victim's emotional display doesn't match juror expectations, they regard the victim as less credible. This could be problematic, as protective testimonial aids serve to protect the child's psychological welfare and shouldn't bias decisions made in the courtroom. The current study first manipulated the way in which the child testified in court (either from behind a screen, through closed-circuit television, or directly in court) and also manipulated the content of the prosecuting attorney's closing argument. As a participant, you saw the child testifying under only one of these three possible conditions and read a closing argument delivered by the prosecution that either asked you to literally "put yourself in the child's shoes" or did not. The purpose of the manipulation in the prosecution's closing argument was to make participants empathize with the alleged child victim and measure the effect of that on their perceptions of the child and the defendant.

It was hypothesized that participants viewing the child directly in court who were exposed to the prosecution's empathetic arguments would rate the child as being the most credible and render the greatest amount of guilty verdicts. This was predicted because testimonies delivered in court are typically more positively perceived by jurors than testimonies that are shielded or removed for the courtroom. The empathy-induction should also increase guilty verdicts and positive feelings towards the fictional child victim, as participants in this condition would have been able to "put themselves in the child's shoes" and really understand his thoughts and emotions. It was also predicted that participants would perceive the fictional child witness to be less credible as he became further removed from the jury. That is, his testimony in the shielded condition would have been perceived more positively than it would have been in the close-circuit testimony, since he was still within the courtroom. However, under the shielded condition, the child witness wouldn't be perceived as positively as he would have been in the direct testimony condition. This was hypothesized since testimonies seem to

lose their emotional immediacy as they become further spatially removed from the jury box. Participants who read the prosecution's empathetic arguments were expected to rate the child as more credible and deliver more guilty verdicts across conditions, because they would have been able to understand the child's alleged trauma and pain better than those who did not hear empathetic arguments.

It is possible that the results of this research will be presented at academic conferences and/or published as an article in a journal. Again, your individual responses will be kept anonymous during this process. If you are interested in the results of this study or if you have any additional questions or comments, please contact Rachel Darby by phone at (207)776-0681 or by mail at Scripps College, 1030 Columbia Ave., Box 0355, Claremont, CA 91711. If you have any questions about your rights as a research participant, please contact Pamela Rowland at prowland@scrippscollege.edu or (909)607-3249.

In the event of any problems resulting from participation in the study, you may seek counseling through a service to search for counselors provided by the American Psychological Association by visiting <http://locator.apa.org>.

Thank you again for your participation!

Appendix O

Non-significant Results:
Effects of Experimental Manipulations on Juror Ability to Empathize

	<u>Main Effect Mode</u>		<u>Main Effect Empathy</u>		<u>Interaction</u>	
	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>
I felt empathetic towards the child, Benjamin	1.122	.321	0.536	.465	0.189	.828

I can really imagine the thoughts running through Benjamin's head	0.645	.526	**		1.091	.339

I can experience the same feelings that Benjamin experienced	0.635	.531	2.820	.095	1.064	.348

I can take the perspective of Benjamin and understand his fear	0.556	.575	2.704	.102	0.502	.606

I can really see myself in Benjamin's shoes	0.461	.632	3.190	.076	0.690	.503

I feel like I can easily take the perspective of Benjamin	0.561	.572	2.978	.086	1.163	.315

I understand what it would be like to be Benjamin	0.674	.511	**		0.755	.472

Note. ** designates a significant result which has been reported in the main text.

Appendix P

Non-significant Results:
Effects of Experimental Manipulations on Juror Perceptions of the Child

	<u>Main Effect Mode</u>		<u>Main Effect Empathy</u>		<u>Interaction</u>	
	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>
The child witness was believable	0.509	.713	1.552	.219	0.084	.920

The child witness was accurate	0.445	.642	0.581	.447	0.082	.922

The child witness was honest	1.929	.149	**		0.219	.830

The child witness was making up the story	1.335	.266	**		0.541	.583

The child misunderstood Michael O'Donnell's actions	0.172	.842	0.165	.685	0.446	.629

The child was able to provide testimony based on fact rather than fiction	0.230	.794	2.483	.117	0.186	.830

The child was intelligent	0.330	.720	0.043	.836	0.495	.611

The child was consistent	0.417	.660	0.609	.436	0.423	.656

The child was confident	1.195	.306	1.587	.210	0.732	.483

The child was attractive	2.243	.110	0.745	.389	1.185	.309

The child was stressed while testifying	2.759	.167	0.002	.964	1.725	.182

The child was nervous while testifying	1.121	.329	0.010	.922	2.153	.120

	<u>Main Effect Mode</u>		<u>Main Effect Empathy</u>		<u>Interaction</u>	

	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>
I feel positively towards the child		**	0.407	.525	0.531	.589

Note. ** designates a significant result which has been reported in the main text.

Appendix Q

Non-significant Results:
Effects of Experimental Manipulations on Juror Perceptions of the Defendant

	<u>Main Effect Mode</u>		<u>Main Effect Empathy</u>		<u>Interaction</u>	
	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>	<i>F</i>	<i>p</i>
The defendant's claims were believable	0.896	.410	0.858	.356	0.410	.665

The defendant's claims were accurate	0.480	.620	1.734	.190	0.313	.732

The defendant's claims were honest	0.664	.516	1.978	.162	1.143	.322

The defendant was making up his story	1.367	.258	1.923	.168	0.718	.489

The defendant was able to provide factual claims	0.771	.464	1.612	.206	2.507	.085

The defendant was intelligent	0.880	.417		**	0.719	.489

The defendant had only good intentions	0.745	.476	0.620	.432	0.328	.721

The defendant cared about Benjamin	0.588	.557	0.567	.453	0.044	.957

The defendant was the real victim	0.965	.383	1.539	.217	0.104	.901

I feel positively toward the defendant	0.594	.553	1.850	.176	0.030	.970

Note. ** designates a significant result which has been reported in the main text.