

“What’s Up?”

Video Testimony by Child Victims or Witnesses

Philadelphia law enforcement authorities recently announced that videotape will be used for interviewing and interrogating adult suspects in homicides and other serious crimes. Will this development lead to in court closed circuit testimony by children or out of court taping of child interviews? We hope so!

Support Center clients are sometimes victims or witnesses to unspeakable violence. They find themselves reluctant to speak again about the events, sometimes adversely affecting the case. In criminal proceedings, we have seen numerous instances where testifying in front of the violent offender has been extremely traumatic for our child clients. Outside the courtroom, tape recordings of a child’s disclosures can help “make the case,” and even prompt a guilty plea.

The state of the art interview for children involves a well trained interviewer asking questions in language the child can understand, without the need for multiple sessions by many different investigators. Around the country, facilities have been created where a child can meet one interviewer in a friendly room, while others—prosecutor, children and youth investigator, police officer—watch the meeting on TV or view it later on videotape. Philadelphia may soon, have a “co-located” facility where law enforcement and child welfare professionals can work together under one roof to ease the scheduling problems and administrative burdens that cause children to be interviewed over and over again. For now, most children are interviewed separately by each agency. No interviews are videotaped.

Once the case goes to court, the United States Constitution establishes the right to confrontation of one’s accuser. The federal standard has been held to allow closed circuit testimony, so that a witness could be questioned at trial without being physically present to the defendant. The

Constitution of Pennsylvania is more strict, and calls for defendants to meet the witnesses face to face. The Pennsylvania Supreme Court held that the use of closed circuit television to transmit the testimony of a child witness infringes a defendant state constitutional right. See *Commonwealth v. Ludwig*, 361 Pa.Super. 361, 531 A.2d 459 (1987) *reversed*, 527 Pa. 492, 594 A.2d 291 (1991).

In response to *Ludwig*, voters passed a referendum in November 1995 amending the Constitution of Pennsylvania to match federal law. The referendum was found to be unconstitutional because of the manner in which it was worded. *Bergdoll v. Kane*, 694 A.2d 1155 (Pa.Comm. Ct. 1997). In *Bergdoll*, the Commonwealth Court found that video testimony actually requires approval of two amendments to the state Constitution. First, the electorate must be asked to change the Constitution to no longer mandate a face to face meeting between witnesses and defendants. A separate referendum must authorize the legislature to create laws about courtroom testimony. Ordinarily, the Pennsylvania Supreme Court has the ultimate authority to regulate the court system.

A revised referendum process began earlier this year. Before being posed to voters, the amendments must be approved by the legislature during two consecutive sessions. According to legislative staff, the referendum is expected to be voted upon by the general population in 2001.