

# Report of the Third Study Commission

2018

This year, the Third Study Commission, which is focused on Criminal Law, studied how courts and judges employ special procedures and protections for certain categories of witnesses who give evidence in court, such as children, persons who require special protection from retribution, victims of abuse, and persons who have mental or emotional issues. Unlike ordinary witnesses, these special witnesses require that the court make unique arrangements in order to obtain useful testimony, protect the interests of the accused, and assure justice.

In order to facilitate our studies and discussions, a questionnaire was prepared and distributed to the IAJ/UIM member organizations. The questionnaire asked for information regarding the procedures used when special witnesses are involved.

33 responses were received. Those countries responding were: Armenia, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Denmark, England & Wales, Estonia, Finland, Georgia, Germany, Greece, Hungary, Israel, Japan, Latvia, Liberia, Liechtenstein, Luxembourg, Morocco, Netherlands, Paraguay, Poland, Portugal, Republic of China (Taiwan), Serbia, Spain, South Africa, Sweden, Switzerland, and the United States.

The Third Study Commission heard presentations on the special procedures used for child and vulnerable witnesses in two countries: UK & Wales and the United States.

Judge Sally Cahill spoke on the procedures and practices with respect to special and child witnesses in UK & Wales. Judge Virginia Kendall described the legal background and procedures used in the United States.

The speakers described the statutory authority for the special procedures as well as particular requirements, such as the right of the accused to confront witnesses. Some of the procedures employ technology to obtain testimony from children in ways that

do not intimidate them while assuring that the accused can know of the evidence against him.

After each presentation, extensive discussion followed, with questions and comparative examples from the various delegates.

We concluded that every country has special rules and procedures for obtaining testimony from children. While some do not allow any testimony from children except in unusual situations where the need is great, others take steps to make child witnesses comfortable and to avoid confrontational problems by allowing such witnesses to speak from a remote location or from behind a screen. The presence of a companion, parent or social worker is often allowed. Testimony is sometimes not under oath or affirmation, but only after the court can be assured that the child witness knows that she must speak truthfully. In some countries, only the judge can question children, not the lawyers.

The same considerations and procedures may be employed in the cases of witnesses who are sexual abuse victims and well as witnesses who have been or may be threatened. Such witnesses may be permitted to give evidence behind a screen or curtain and alternatively may also be disguised in appearance or voice.

In all cases, the goal must be to assure justice. This requires that the accused know of the testimony against him, but it also requires that child and vulnerable witnesses give testimony in a way that draws out from them the truth, without intimidation or fear. For the judge, this means a balancing of interests so that neither side is given an advantage, and neither side is given a disadvantage. In many cases, the skill of the judge is of major importance. The Third Study Commission felt that the presentations and discussions were very useful and will contribute to our abilities as judges to handle special witnesses,

After discussion, it was agreed that next year, the Third Study Commission would undertake the study of "The Media in Criminal Cases: Protecting the Integrity of the Proceedings and Communications with the Media".

At the conclusion of the substantive work, elections were necessary as the mandate of the Third Study Commission President, Judge Charles Simpson of the USA, has expired after two two-year terms.

A nomination was made to elect Judge Dieter Freiburghaus of Switzerland and Judge Lene Sigvardt of Denmark as Co-Presidents of the Third Study Commission, with shared responsibilities. No other nominations having been made, a vote was taken and Judges Freiburghaus and Sigvardt were unanimously elected Co-Presidents of the Third Study Commission for a two year term. In order to keep the number of officers

at three, only one Vice-President was elected. Upon nomination and a unanimous vote, Judge Sally Cahill of the United Kingdom was elected to a two year term as Vice-President of the Third Study Commission.

Please permit me to make a personal statement. On behalf of the Federal Judges Association of the United States, I have been involved with the IAJ/UIM for a number of years. For the past four years, it has been my honor and pleasure to serve as President of the Third Study Commission. I thank you for this opportunity. Over the years, I have found the delegates to this congress to be estimable and dedicated judges who are truly interested and committed to justice and the Rule of Law. In an uncertain world, with many tensions and challenges, I am heartened to know that the courts of law are in the hands of such excellent judicial officers. May you keep striving to make the courts, and the world, a better place.

Respectfully Submitted,

For the Third Study Commission

Judge Charles R. Simpson III

President, Third Study Commission

At Marrakech, Morocco this 18<sup>th</sup> day of October, 2018