National Children's Advocacy Center

Attorney's Questioning of Children (Part 1)

Eliciting Accurate Testimony from Children in Court [1, 2, 3, 4, 5]

Children's testimony in court often occurs long after the event(s) in question and in situations which can be extremely stressful and upsetting. Research consistently demonstrates that much of the questioning conducted by both prosecutors and defense counsel is linguistically complex and commonly exceeds the communicative capacities of child witnesses, resulting in negative effects on both the quantity and quality of the information obtained. Best practice guidelines for questioning children encourages the maximum use of broad, open-ended prompts (e.g., "Tell me everything about going to your aunt's house.") or questions (e.g., "What happened next?"), and prompts or questions that use disclosed details as cues to encourage children to elaborate upon information previously mentioned (e.g., "You said he put you into a truck. Tell me more about the truck." "You said he put you into a truck. What color was the truck?"). Open-ended prompts and questions elicit responses from recall memory, which are associated with higher levels of accuracy and fewer inconsistencies.

By following best practice guidelines, attorneys will maximize accurate information retrieval from all children who testify in criminal, juvenile, or family court.

Why Some Question Types are Better Than Others [6,7,8,9,10]

Open-ended prompts and questions encourage narrative elaboration (multiple word answers) from a child without significant input from the attorney. There are different ways to pose open-ended questions:

- Narrative invitations allow a child to provide accounts that are more reliable, accurate and elaborative (e.g., "Tell me what happened next." "Then what happened?" "Tell me more about that.")

- Cued narrative prompts use a child's own words and phrases to refocus and assist a child in providing further details and elaboration (e.g., "Earlier you mention [person/object/action], tell me more about [...].")

- Wh-questions (who, what, where, when, and how) that incorporate previously disclosed details can cue recall and are designed to elicit missing components in a child's description of an event (e.g., "What color was the bedspread?" "What did he touch you with?")

- Wh-questions which elicit actions are the most productive for younger children (e.g., "What happens when you get a whipping?").

Recognition prompts and questions (yes/no or multiple choice) elicit specific information by offering options to a child. These questions and prompts restrict possible responses and may elicit more inaccurate information.

- Yes/no or multiple-choice questions may introduce interviewer-generated information into the interview (e.g., "Did she hit you with a paddle?" "Was it in the bathroom, bedroom, or someplace else?").

- These prompts generally elicit less information than open-ended questions, because recognition questions do not encourage elaboration.

- A younger child is more likely to provide erroneous information in response to yes/no or multiple-choice questions due to implied response bias or an unwillingness to say, "I don't know."

"Tell me what happened next."

Suggestive prompts and questions imply that a certain answer should be given in response, or falsely present a presupposition as accepted fact. They are used frequently in court settings, but often elicit a disproportionately high number of contradictions or errors into a child's recounting of his or her experience.

- Suggestive questions can result in the child changing details in his or her correct accounting of an event by either incorporating suggested information into the child's memories of experienced events or by the child acquiescing to perceived interviewer coercion (e.g., "You told the police something a lot different, didn't you?").

- Wh- prompts can be suggestive if they presuppose information that the child has not provided (e.g., "What other things did you wear?" - if the child has not mentioned additional clothing).

- Tag questions are a form of suggestive questions. The questioner makes a statement and then adds a short question which invites corroboration of its truth (e.g., "You're lying, aren't you?" "He didn't touch you, did he?"). Additionally, according to Walker and Kenniston (2013), "if the question is a long one, being able to hold in memory all the propositions in the question and check each one for truth before responding to a tag like, 'isn't that true?' is probably beyond the capability of any preteen" (p. 59).

Summary

Best practice, evidence-based guidelines clearly suggest that appropriate questioning can elicit accurate and reliable information from children. Attorneys should use questions which "enhance the quality of the information children provide, improving the likelihood of successful prosecution and intervention when children are maltreated, and protect against the harm of falsely accusing adults" (Brown & Lamb, 2015, p. 253).

REFERENCES

1. Andrews, S. J., Lamb, M. E., & Lyon, T. D. (2015). Question types, responsiveness and self-contradictions when prosecutors and defense attorneys question alleged victims of child sexual abuse. *Applied Cognitive Psychology, 29,* 253-261.

2. Andrews, S. J., & Lamb, M. D. (2017). The structural linguistic complexity of lawyers' questions and childrens' responses in Scottish criminal courts. *Child Abuse & Neglect, 65,* 182-193.

3. Brown, D. A., & Lamb, M. E. (2015). Can children be useful witnesses? It depends on how they are questioned. *Child Development Perspectives, 9*(4), 250-255.

4. Lamb, M. E., Malloy, L. C., Hershkowitz, I., & La Rooy, D. (2015). Children and the law. In R. M. Lerner & M. E. Lamb (Eds.), *Handbook of child psychology and developmental science* (7th edition), Vol. 3*, Social, emotional and personality development* (pp. 464-512). Hoboken, NJ: Wiley.

5. Ahern, E. C., Stolzenberg, S. J., & Lyon, T. D. (2015). The productivity of wh-prompts in child forensic interviews. *Journal of Interpersonal Violence, 33*(13), 2007-2015.

6. Andrews, S. J., Ahern, E. A., Stolzenberg, S. N., & Lyon, T. D. (2015). The productivity of wh-prompts when children testify. *Applied Cognitive Psychology, 30*(3), 341-349.

7. Andrews, S. J., & Lamb, M. E. (2017). The structural linguistic complexity of lawyers' questions and children's responses in Scottish criminal courts. *Child Abuse & Neglect, 5,* 182-193.

8. Newlin, C., Cordisco Steele, L., Chamberlin, A., Anderson, J., Kenniston, J., Russell, A., Stewart, H., & Vaughn-Eden, V. (2015). Child Forensic Interviewing: Best Practices. *Juvenile Justice Bulletin,* NCJ 248749. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

9. Steele, L. C., & Sawicki, M. (2018). *Forensic interviewing: What every prosecutor needs to know.* Washington. DC: Child Abuse Prosecution Project, Association of Prosecuting Attorneys.

10. Walker, A. G., & Kenniston, J. (2013). *Handbook on questioning children: A linguistic perspective* (3rd Edition). Washington, DC: American Bar Association.