

# Attorney's Questioning of Children (Part 2)

1, 2, 3, 4, 5

The courtroom setting is vastly different than where other adult-child conversations take place, thus making testimony especially difficult for children. In an often adversarial system of justice, children may be asked to provide details about negative, emotionally-taxing experiences in a room filled with strangers and the accused. Due to the stress and complexity of the courtroom, children may rely heavily on the structure of attorneys' questions to guide the conversation. However, research demonstrates the majority of questioning, conducted by both prosecutors and defense counselors, is linguistically complex and commonly exceeds the communicative abilities of child witnesses. Listed below are guidelines attorneys may use for posing optimal questions to the child witness to minimize the risk of eliciting erroneous information.



**Sequencing**<sup>3,5,8</sup>: Sequencing prompts or questions (e.g., "What happened next?" or "Then what happened?") cue a child to the order of event elements, and assists with eliciting a complete description of an abusive occurrence. These questions also maintain the current conversational topic and help guide a child's memory recall.



**Dates**<sup>4, 6, 7, 9, 10, 11, 12, 13, 14</sup>: Asking a child to tell when something occurred is especially challenging. Even an adolescent and an adult can struggle when asked to date autobiographical events.

- Temporal terms (e.g., "before," "after," "first," and "last") have multiple meanings and the context matters. A younger child may be able to make temporal judgements of familiar daily activities (e.g., preparing for bedtime), but is challenged to do so when events are non-routine.
- Questions that are inherently ambiguous (e.g., "What time of year was it when [...] occurred?" or "Was it before or after your birthday?") often result in a child responding

with incorrect information. Current research indicates that asking a child to verbalize if an event in question occurred before or after a landmark event (e.g., birthday, holiday, first day of school, etc.) should be avoided.



**Numerosity**<sup>6,11,13</sup>: Asking a child how many times events occurred leads to speculation and is often incorrect. Instead of asking for a number, it is better to ask a child to relay remembered instances, label the events if possible (e.g., "the time at grandma's house"), and elicit details about each event.



**Know or Remember**<sup>2</sup>: Pragmatic failure occurs when a child provides literal responses to, "Do you know or do you remember (DYK/R) questions that implicitly ask for additional information (e.g., "Do you remember if your grandmother came home the night your uncle touched your private?"). A child frequently provides unelaborated "yes" responses and an attorney often fails to clarify, which can lead to serious miscommunication. Because DYK/R questions fail to elicit the totality of a child's experience, the use of such questions should be carefully considered.



**Adding Option**<sup>15</sup>: Forced-choice questions (e.g., "Did the touching happen in the bedroom or bathroom?") are problematic because a child tends to choose a response regardless of whether he or she knows the answer. In efforts to bypass the challenges inherent in forced-choice questions, an attorney may resort to adding "or something else" or "somewhere else" to two other options (e.g., "Did he touch on you in the bedroom, bathroom, or somewhere else?"). Studies indicate the use of the "or something else" option is without scientific support and does not bypass concerns regarding the use of forced-choice questions.



**Clothing Placement Details**<sup>16, 17</sup>: A description of clothing placement is often critical in allegations of child sexual abuse because it facilitates distinguishing abusive touch from non-abusive touch or the severity of abuse if the touch is sexual. When a child is asked wh- questions (e.g., “Where were your clothes?”) rather than yes/no (e.g., “Were your clothes on?”) and forced-choice questions (e.g., “Were your clothes on, off, or some other way?”), he or she provides more elaboration, more detailed clothing information, and is more likely to describe clothing placement that cannot be captured by a single preposition (e.g., on or off).

## Summary

Research consistently demonstrates that much of the questioning conducted in court is linguistically complex and commonly exceeds the communicative capacities of child witnesses, thus negatively impacting the quantity and quality of the information obtained. Best practice guidelines for questioning children encourages: (1) the maximum use of broad, open-ended prompts and (2) prompts or questions that use disclosed details as cues to encourage children to elaborate upon information previously mentioned. These question types elicit responses from recall memory, which is associated with higher levels of accuracy and fewer inconsistencies.

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This project was supported by a grant awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of views or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.