

Asking the Tough Questions: How To Examine a Child Witness in Sexual Abuse Cases

By Roger Arnold and Renee Fields

If all the world's a stage, then surely the most important stage in this world is the courtroom! Lives hang in the balance, people are sent to jail or made to pay restitution, and people are vindicated. Who needs Reality TV? There is nothing more exciting than to be in a courtroom trying a case. We feel good when we are able to wrench a confession or evidence from a witness who was not forthcoming. But it is a case of a different order when faced with a case of the alleged abuse of a child.

There are several valid concerns in making sure the questioning of a child is done properly. The most obvious is to make sure no harm is done to a traumatized child. Also important is the concern for harming any investigation. No one wants an innocent person to be wrongfully charged or have a guilty child abuser to go free to continue to harm children.

A professor of human sexuality once made clear the extreme tension in this situation. He encouraged us to think about describing our most appropriate sexual experience to a room full of strangers. Not exactly the easiest or most comfortable task is it? Then he asked us to imagine being a child who is being asked to describe in detail a sexual crime to strangers. Questioning children who may have been the victim of a sexual crime causes even the most experienced professional to shudder. Parents who suspect their child has been abused do not always ask their child direct questions for fear they may hurt them further. Some report the police have advised them not to question their child, instructing them to "let a professional do it." Even child therapists will refer their patients to a specialist if there is suspected sexual abuse. Let's face it, the need is great, but it is a job no one wants.



One of the most important points to make in advising how to question or interview children is to be aware of how your questions come across to the child. Children perceive that adults' general communication with them is to dominate, lecture or interrogate. Little wonder that every child's fear is that, when questioned, they must have done something wrong. Therefore, choose your words carefully, watch your body language, and use a neutral or matter-of-fact type of vocal delivery. Put yourself on their level.

Understand the Relationship Dynamics

First, an interviewer must know the details of how the abuse came to be suspected. Look specifically at whether the child chose to report or if the "disclosure" was accidental. One eight-year-old girl was found to have Chlamydia, which obviously raised the red flag. Since she never reported the abuse, she initially denied that anyone abused her. When she did report, she named her mother's boyfriend, but continued to deny his touches were under her clothing. An opportunity presented itself to question this girl many years later when there was no longer a court case. As a teenager she reported being untruthful because she believed she would be in trouble for having her clothing off. If the child chose to disclose, under what circumstances did she do so? Did they disclose after being caught in sex play or masturbation? Did they simply tell an adult or playmate about abuse? This history becomes the foundation for the questions that need to be asked of the child.

Knowing in advance how a child feels about the defendant is also important. The child's feelings for the accused could motivate a child to falsely accuse or falsely deny abuse. Ask any non-abusing parent how their child feels about the defendant, understanding the parent may be unaware the child feels a special relationship with that person. Telling the child that, "Some children tell me they know the abuse was wrong but they really liked (the defendant)" may tease out whether or not the child has any positive feelings toward the accused. In a similar fashion, knowing how the parental figures feel about the defendant is also important. Children are likely aware of the feelings their caregiver has for the defendant and may mold their feelings to be consistent with a caregiver. When the accused is a parent to the child, you have to assume that the child has some positive attachment. Children experience incongruent emotions toward a parent who is the abuser. To get at the truth, the interviewer will be more successful if they "match" the child's view of the defendant. An interviewer should not ask questions in such a way that voice, body language or choice of words are in direct opposition to the child's feelings for the defendant, but in a way that 'matches' the child's view. Choose words like "made a mistake" and "needs help" if the child has an attachment for the defendant. If the child dislikes the defendant asking if they have been hurt by them is more acceptable.

Respect the Child's Psychology

Assure the child that telling the truth, no matter what the truth is, will not get them into trouble. If possible, meet with the child and allow them to have a parent or other secure attachment figure with them. Show them the courtroom or make a photo album with pictures. Let them know where they will sit and where the defendant will sit. Help them with strategies such as how to avoid looking directly at or past the defendant. The strategy of discussing a judge in general terms has helped children be more relaxed. Let them know the Judge is part of a family in the most general terms. Children have been put at ease to know the Judge is a parent, husband/wife, brother/sister. Explain they care very much about children.

Use self-disclosure. Research shows that to do some self-disclosure helps another person become comfortable with his or her own self-disclosure. Try to share some neutral issues that demonstrate things you have in common with the child...that you had a pet, that you have kids, what you liked to do when you were a kid, etc. At some point it is important to be able to talk to the child away from the parent if the child is comfortable with the separation. For young children say something like, "Would you like to show your mom/dad where you want them to sit while you and I talk for a few minutes?" It is wise to assume the parent does not know everything about their child's experience on the topic of suspected abuse. One thing a child may hide from their parent is that they may have enjoyed parts of the sexual experience, or some aspects of the relationship they had with that person. Interviewing the child's therapist may help understand these issues. For instance, one teenage victim being prepared for a criminal hearing has stated she does NOT want her parents to be in the courtroom. She has stated that it will be easier for her to report accurately to strangers than to report details with her loved ones listening and reacting.

Let the child know it is okay to cry and okay if they get angry. One ten year-old, who had been ambushed by a man waiting for her to enter her home, believed she should not show emotion. Her testimony was so flat with short answers, she failed to be credible. To help a young child deal with objections in the courtroom, reassure the child that the objection is about the question asked and not about them or their behavior.

Adapt to Child Communication Habits

A more complicated issue is to inform the child that if they don't know the answer it is okay to say, "I don't know" or "I don't remember," – *if* that is the truth. But be aware that these two particular phrases are the primary tools of an avoidant child. On the other hand, some children assume the adult expects them to know the answer and will guess or invent an answer if they are not given permission to say "I don't know." Children live a life of being asked

difficult questions such as, “Who wrote on the wall?” or “Who ate the last cookies?” and have discovered if they answer with “I don’t know” or “I don’t remember”, they are often met with anger and disbelief. Particularly with younger children, this thinking can lead them to a best guess or a false answer that will keep them safe.

A very useful response to an answer of, “I don’t know” or “I don’t remember,” is to follow with the question “Is it true that you don’t know/remember, or could it be that you don’t want to talk about it?” Most children are moral and if given an “out” that helps them remain truthful and keep their dignity, they will take it. If the next response is “I don’t want to talk about it,” clarify with a question such as, “You know the answer, but you don’t want to talk about it, is that right?”

Find out what a child calls certain parts of the body. Very general line drawings are available so that you can point to body parts and ask, “What does your family call this?” The examination will go more smoothly if all parties concerned use the child’s vocabulary.

Structure the Direct Examination

Build Rapport. Like adults, children do better talking about a sensitive topic if time is spent building a rapport before getting to more difficult issues. It may be possible as a prosecutor to do this in a meeting prior to the trial. Ask a child about pets or their best friend. For a teen, ask about a favorite video or computer game, who they text the most often or what they most enjoy doing when they are with their friends. If a meeting prior to trial is not possible, hopefully the Judge will grant leeway for these kinds of questions. A loud objection of relevance will change the mood of the courtroom and be counter-productive to setting the child at ease. Hopefully, helping the child feel at ease is the relevance. It is central for a child to think that if a grown-up is angry, it is their fault.

Ask Neutral, Opinion-based Questions. Begin direct examination with very general questions that potentially bring spontaneous information. A short series of questions that works well is:

- “Who is the nicest child you know?”
- “Who is the nicest grown-up you know?”
- “Who is the meanest child you know?”
- “Who is the meanest grown-up you know?”

Follow up each of these questions with, “What have they done that is nice (or mean) to you?” Another line of neutral questioning that can bring results is to request, “Tell me about a time when you remember being happy.” Follow up with, “Tell me about a time that you were scared.” Then, “Tell me about a time you were angry.”

A child’s answer to neutral questions can cause problems for either prosecution or defense. What if a child has reported abuse by a step-parent, but names a teacher as the meanest grown-up they know? Recency may be a simple explanation: by the date of the trial, the abuse has ceased for more than a year whereas the teacher was mean yesterday. It may also be that the child felt a “special” relationship with their abuser. They have been through a very emotional experience with the abuser and therefore may not feel, as we might, that the abuser should be “the meanest grown-up they know.” It will be helpful to ask the child, “Can you think of anything nice the defendant has ever done?” If the child has an answer make the remark, “Then they were nice sometimes?” The follow-up question would be “Can you think of anything mean or bad the defendant has ever done?” After all, the abuser may have bought them presents or talked mom into letting them stay up late. In addition, children have sensual feelings and can experience enjoyment of the sexual act if the abuser had a gentle approach and “groomed” the child for the abuse. A nine-year-old girl once said of her own sexual abuse, “At first it hurt, but then I got used to it and it was okay. Later, I even liked it.”

Probe For Case Specifics. A good specific question might be, “Do you know the person seated at the table?” and point to the defendant. Find out what the child calls that person. For young children, do not ask multiple questions in the same sentence. For example, don’t ask, “Do you know the defendant, and if so, how do you know them?” Once you are ready to focus on the past event, focus them on the time period being discussed. Pointing out this was a long time ago helps a child feel they are not in trouble. The question might be phrased, “I want to talk about a time, a long time ago when...” If the child shows anxiety, be sure to reassure them they are safe now. No one will hurt them and they are not in trouble. These are points that may be made repeatedly. A child who is clearly fearful could benefit from placing an officer near the defendant, and pointing out the officer to the child. Consider a sequence of questions like the following:



I want you to remember back to a time when you were with [the defendant].

When you were with him, where were you?

Was anyone else there?

Tell me about the things that happened when you were with [the defendant].

Were there things that happened that you liked?

Were there things that happened that you didn’t like?

Did you play any special games with [the defendant]?”

Was there anything that happened that hurt you? (and/or scared you or made you feel you would get in trouble?)

It is permissible to respond to any of the child’s remarks with any number of follow-up questions or remarks. Consider the following follow-up questions:

Is that the real truth or a pretend story?

Did you tell anyone (e.g. Mom, Dad, a named counselor) about what happened? Can you try to remember and tell me what you told them?

How did that make you feel?

What happened next?

When this happened were the (defendant’s) clothes on or off?

Can you point to the parts of [the defendant’s] body that you could see?

Could you see his/her private parts?

Did [the defendant] touch any part of you?

Did you touch any part of the defendant?

Specifically for a male defendant:

Was his (child's word for penis) pointing down or sticking out? This is a question that helps establish arousal.

Did anything come out of the (penis)?

Allow the child to use their own words or point to a line drawing. An important question is “Did this happen once or more than one time?” At any time, ask the child to, “Tell me more about that.” If a child gets emotional, describe the emotion and confirm that is what they are feeling. For example, “You seem to be upset when you talk about this, how are you feeling right now? Can you tell me why you are feeling that way?”

Structure the Cross-Examination

For the purposes of this article, we assume that the defense's dilemma is that the child's testimony represents the greatest weakness in the prosecution's case. The goal becomes casting doubt on the child's reports, or leading the child to reverse previous statements without offending the child in the eyes of the jury. In psychological terms, the goal is to “match and move.” This means to question the child in a manner that the child and the jury perceives you in agreement with (matching) a portion of the child's testimony. When it is evident that the child (and Jury) feels you are in agreement with a portion of their testimony, it is time to “move,” which means to lead the child to give additional information that shows the testimony in a different light, to lead a child to recant part of their statements, or both.

Ask For Additional Information: More than once a defendant has been charged with sexual abuse after a young child has reported someone touched their genitalia and hurt them. The truth turned out to be that the physical contact was for reasons other than sexual gratification. In one such case, it was discovered the child had been experiencing vaginal discomfort and called to her dad when she experienced painful urination. He wiped her, which was painful and caused her to cry. She reported to her mother, who was divorced from her father, that her Dad touched her privates and hurt her. Investigators knew it took place in the bathroom, but never asked questions which would clarify that Dad was trying to take care of his child! The questions which brought additional information to light were, “Did your privates hurt before Daddy touched it?” and, “Did the Defendant touch you with his hand or did he touch you with something that was in his hand?” Remember to guide the child's focus by coaching them to “think back to when ...” Ask the child if a touch was on top of clothes or under clothes. Another way to clarify what happened is to ask, “Did his skin touch your skin or something else?” Children have answered that they were actually touched with toilet paper, a wash rag or cotton with medicine on it and vindicated an accused with such an answer. Admittedly, a sexual touch could be explained by a false need to apply medicine.

Make It Okay to Recant Previous Statements. The greatest chance of leading a child witness to change any portion of their testimony will be if the change is presented in a manner to help the child keep out of trouble and keep their dignity. Ray Hodge, retired Sedgwick County District Judge, once reported that as a judge he would accept questioning a child using the terms “truth vs. pretend” in place of “truth vs. lie.” This meant asking questions in a manner that allows the child to clarify a previous statement as “pretend” or a “made-up story.” The child keeps out of trouble by clarifying on cross-examination that some of their testimony was a pretend story. Once the idea of pretending is introduced, it is acceptable to ask a child if they are aware that what is being talked about today is only the truth. In a series of questions, it is possible to determine a child's understanding of truth. Either counsel might hold up a pen and ask, “If I said this pen was a dangerous snake, would that be the truth or would it be pretending?” It is recommended the test be repeated, such as asking, “If I said I was a big pink bunny, would that be pretending or would that be the truth?” Purposefully reverse the order of “truth or pretending” in the second question, so you say

“pretending or the truth?” The reason for this is children who don’t know the difference and guess are sometimes either “first sayers” or “last sayers.” Reversing the order makes it clear the child knows the difference between truth and pretend.

If a child has made a false claim and you want any chance of them correcting the false claim, offer the child words that reverse their earlier statements but are less judgmental than a lie. “Do you know that today we are talking about the real truth, no pretending or made-up stories or joking?” The idea that someone else suggested the child tell a pretend story might allow the child to recant previous statements. “Do you remember hearing about what happened when other people talked or do you remember seeing it happen with your own eyes?”

A second strategy that allows the child to safely recant is to offer them a chance to admit they made a mistake. A question which normalizes mistakes might be, “I sometimes make mistakes when I answer questions, have you ever done that?” or, “Can you think of any mistakes you made when you answered questions here today?”

If the defense finds it important to directly address the issue of a lie, it could be done following the issues of a mistake. It is advisable to also ask the general question, “Is a lie different than a mistake?” It is acceptable to ask the child witness what happens in his or her family if someone tells a lie. Once the word lie is said, a child can become defensive in a manner that will not help your client. To help avoid this, normalize the idea that people lie with questions such as, “Do you think most people have told a lie sometime in their life?” Choosing words such as, “If you have told a lie today, can you be brave and tell the truth right now?” Such a statement defines the child as brave if they admit the lie. The defense may consider asking the child if they know that if what they have told is the real truth, the defendant will get in trouble.

Consider A Bold Approach. A local psychiatrist once put a 12 year-old victim of sexual abuse into the local hospital to conduct an interview while the child was administered sodium pentothal. This unusual procedure was done because this child, who accused her father of sexual abuse years ago, then later recanted. She was a child who was often caught in lies, and meaningful therapy could not occur without some objective indicator of the truth. In the interview, the child’s brain waves were monitored to keep her very near a state of sleep. In this state it was not possible for her to utilize higher neurological processes needed for making decisions regarding when she should lie or offer up false stories. The result of the interview was that the child repeated a very odd remark she made during her initial disclosure three years prior. She reported that her abusive parent had always told her, “The Chinese did it [incest] and they were going to be Chinese today.”



This experience resulted in the development of a bold approach to questioning children who are suspected of giving false reports of abuse. The child being questioned is asked, “Do you know there is medicine and there are machines that can be used to make sure people are telling the truth?” The child is then asked, “If we place you on this machine (or use this medicine) and you could not lie, would the machine tell us you are telling the truth?” In using this technique, children have answered, “I would say yes with the medicine because I am telling the truth,” while others have given avoidant answers such as, “I don’t know.” One child even made the remark, “Oh, I forgot I made a mistake...” and recanted her accusation.

Conclusions

Revealing the truth in a case involving a child witness requires the interface of several disciplines. A working knowledge of general psychology, child psychology, and communication will add to the legal skills for either the prosecution or the defense. The suggestions above have a pattern of moving from general questions to specific questions and from open-ended questions to closed questions. When there is a need to lead a witness to dispute previous testimony, the skill of “Match and Move” provides legal counsel with their best chance at achieving that goal. Utilizing local professionals in the areas of communication, theatre and psychology can help the legal professional continue to build skills in these related disciplines.

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Citation for this article: *The Jury Expert*, 2009, 21(3), 32-38.

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Editorial Exuberations

Spring is in full swing when it seems like the new calendars just went up on the wall. Our May issue is the biggest we've assembled yet both in size and in the range of ideas/perspectives incorporated. Thanks to your reading and suggestions we are continuing to evolve and expand. *The Jury Expert* is also on [Twitter](#) with daily links relevant to litigation and a few fun things to mull over your morning libations. Keep the feedback, ideas, and suggestions coming!

We are pleased to have a lengthy feature on the controversy about Generation Y and the prevalence of narcissism. We are publishing this issue on the heels of a heated debate in the blawgosphere on Generation Y in the legal workplace (see a summary of that controversy [here](#)). In a departure from our usual style of one author and several trial consultants reacting to the piece--in this case we have two articles (one saying narcissism is on the rise in our young people and the other begging to differ). Three experienced trial consultants with special interests in generational issues provide feedback on the articles and how this controversy relates to litigation advocacy and then both authors respond. This feature doesn't resolve the differences of opinion between the researchers but we hope it gives you a sense of how to use (or not use) generation and/or age in jury selection, case sequencing and narrative.

Our second academic feature is one of which we can all be proud. It's an exploration of just how the process of deliberating on a jury makes us better people and better citizens. How nice to hear something uplifting about the jury process for a change! Two past Presidents of the American Society of Trial Consultants respond to this article (ten years in the making) and then the authors follow-up with additional thoughts.

In addition, we have pieces on a wide range of issues from trial consultants: deception, juror stress, technology in high profile trials, questioning the child witness, using a simple mnemonic to aid you in organization in voir dire, and how to prepare expert witnesses. And of course, our favorite thing (two again this issue). It's a lot to ponder. Come back and visit the website and read to your hearts content! That's why we're here. Use us. --[Rita R. Handrich, PhD](#)



The Jury Expert [ISSN: 1943-2208] is published
bimonthly by the:

American Society of Trial Consultants

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The Jury Expert logo was designed in 2008 by:
Vince Plunkett of *Persuasium Consulting*

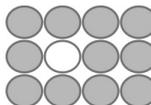
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