Update - Volume 14, Number 6, 2001

# Facilitating Children's Testimony

By Jennifer Massengale, J.D., M.S.W.[1]

Preconceived biases about the credibility and suggestibility of child witnesses are common in the legal system, whether from judges, jurors, or attorneys. These biases partially result from legal hurdles implemented in some jurisdictions, such as taint and competency hearings, which must be passed before a child is allowed to testify. Even when the legal hurdles are met, factual credibility can prove problematic due to linguistic or developmental misunderstandings. As a result, child witnesses present unique challenges to child abuse professionals, particularly in child abuse cases where the child victim may be the only witness.

Despite public misconceptions to the contrary, children can and do make credible witnesses. The key to ensuring the best possible testimony is knowing how to facilitate the child witness' testimony. This article will recommend five simple tactics that any child abuse professional can utilize to assist child witnesses in telling their stories both in and out of court.

## 1) Understand the Importance of Child Development

A basic understanding of child development is an absolute necessity for anyone who works with child witnesses for at least two main reasons. First, studies consistently show that a child's perceived credibility as a witness is directly influenced by the attorney's ability to effectively interact and communicate with the child.2 In other words, a child's performance as a witness depends on whether or not the prosecutor asks age and developmentally appropriate questions.

Second, prosecutors must often educate the judge and the jury about the average child's cognitive development in order to explain how it may influence a particular child's testimony. Recent research demonstrates that adults, even

parents, are far better at predicting physical than cognitive abilities in children, and as a result, assume that a child can do abstract, cognitive tasks sometimes several years before the child actually can.3

For instance, witnesses are generally expected to provide the day, date, and time of a specific event. The typical adult assumes that a child has mastered these skills by five or six, though in fact, the cognitive ability to understand the time concept of ordering days of the weeks or months of the year does not fully develop until nine or ten.4 If not aware of this fact, a prosecutor could risk sabotaging his or her own witness by asking a day or date related question without providing proper preparation or context. For that reason, so much of a child's credibility depends on the type of questions asked and whether the questioner takes the child's developmental level into account.

Child development is a far too expansive discipline for an article of this size to cover in depth, but the following are some basic points to keep in mind.5

- Younger children are very concrete, literal thinkers. The ability to think abstractly does not develop until approximately age ten or eleven, and it is not until the later teens that children are able to describe an event in a detailed and time sequential manner equivalent to an adult.6

- Children, particularly younger children, are highly egocentric. They view themselves as the center of all activities and can only experience and remember events according to their own point of view. They also view adults as omniscient and assume that everyone has the same knowledge and experiences that they do.

- Linguistics can present a major barrier for children, whose vocabulary expands faster than their comprehension of the language.7 For example, while children begin to understand prepositions at around ages four to five, a mastery of pronouns does not occur until ages nine to ten.8 Nor do children fully comprehend space, time, and distance concepts until their early teens.9

The result of these child development factors can be a child victim or witness who has experienced and clearly remembers an incident,

but who has difficulty understanding and vocalizing the experience in adult-appropriate language that follows a logical sequence with dates, times, and places. It is critical to remember, however, that “even very young children can tell us what they know if we ask them the right questions in the right way.”10

### 2) Prepare Child for Court

Another important method for facilitating child witness testimony is by preparing the child for court. Testifying in court can be an intimidating experience for any witness, much less for a child whose only understanding of how courts work may be based on television shows. Common misconceptions of younger children include that only bad people go to court and so they could go to jail if they give the wrong answer, or that adults know everything and therefore repeated questioning must mean the original answer was wrong. In fact, children do not obtain a full understanding of the legal system and the various roles within a courtroom until their teenage years.11

For that reason, all child witnesses should be introduced to a courtroom prior to testifying in order to put the child as at ease as possible. Many jurisdictions across the country sponsor some sort of specialized “Kids in Court” program.12 If your jurisdiction does not have a formal program, it becomes imperative for the prosecutor to take the initiative in preparing the child witness. The formality of the introduction can differ based on the size of the jurisdiction and the number of child witnesses, but minimally, a child witness should be shown an actual courtroom and have the roles of the various participants (judge, jury, bailiff, etc.) explained. During the tour of the courtroom, a child witness should be allowed to sit in different chairs, particularly in the witness stand, at which point the prosecutor should practice with the child by asking non-threatening, non-case related questions.13

### 3) Keep Questions Short and Basic

In any given sentence, adults commonly use double negatives (“Isn’t it true that your dad did not hit you?”), pronouns (“What was he doing when she said that?”), passive verb structure (“Tommy was hit by Dad”), prepositions (before, after, on, over, in, out, etc.), comparisons (as big as…, taller than…, etc.), and tag questions (“You told your mom, didn’t you?”), not to mention multi-syllabic or multi-meaning words. Yet, these types of complex linguistic skills are

generally beyond the understanding of most children under eight, and some, such as tag questions and passive verb usage, are not mastered until the early teenage years.14

In order to prevent misunderstandings based on complex sentence structure, child abuse professionals should follow a “less is more” rule: the shorter the sentence, the less likely that complex linguistics will be utilized. Not only is a child more likely to understand three or four short questions as opposed to one long question, the jury will probably have an easier time following the line of questioning as well.

Questions should also be basic, both in content and in language. Use positive, not negative language (“Was Tom there?” instead of “Was Tom not there” or “Tom was not there, was he?”); use names rather than pronouns (Sue rather than her or she); speak in the present or immediately past tense (“You hit the ball,” not “You had hit the ball”); use monosyllabic words whenever possible (car instead of automobile); and use common, concrete terminology (doctor rather than physician, or touched rather than fondled or abused or molested). It is also important for the questioner to use the child’s terminology as much as possible, once a mutual understanding of the vocabulary has been established,15 as this will put the child at ease, while also ensuring understanding on the child’s part.

### 4) Avoid Abstract Concepts

Child abuse professionals should refrain from using abstract concepts as much as possible. For starters, legalese should be avoided entirely. Terms like “defendant,” “perpetrator,” “allegation,” “penetration,” “intent,” “malice,” and so forth, have no meaning even to older children.

Measurement is another abstract concept with which children have difficulty. Prior to age ten, children have difficulty estimating units of measurement such as height, weight, length, speed, and distance.16 To a young child, all adults are “big” and most distances are “really far.” Likewise, time is a very abstract concept for most children, unless it can be tied to something concrete. For instance, the fact that something happened at 10:00 a.m. may mean nothing to a child, unless it can be correlated to something concrete, e.g. it happened during Barney, or during morning snack.

### 5) Provide Context for Questions

Children depend on adults for providing context when asking questions. In school, teachers will literally tell children “we are done with science and are now going to do spelling,” before switching from science work to spelling work. This signals to the child that he or she needs to shift mentally from science to spelling, while also providing a context when the teacher asks the next question.

Similarly, when a child abuse professional is questioning a child, he or she needs to provide a clear context for the subject questioning: “I have some questions about your family.” The questioner also needs to signal when he or she is switching topics, or is going into more specifics about something the child already said: “You said Uncle John babysat you on a snow day and in the summer. Let’s talk some more about the snow day;” or “Now that we talked about the snow day, I have some questions about when Uncle John babysat you in the summer.”

By providing this type of context, the questioner enables the child to understand what is being asked of him or her, and to focus his or her attention to that subject.

Strong testimony by a child victim is often one of the most successful means of convicting a child abuser. Though facilitating children’s testimony requires skill and knowledge, it is not beyond the ability of any child abuse professional, providing that he or she takes the time to learn the basic nuances of child development.

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1 Staff Attorney, APRI’s National Center for Prosecution of Child Abuse
2 See Judy Cashmore & Kay Bussey, Judicial Perceptions of Child Witness Competence, 20 Law & Hum. Behav. 313, 314 (1996); Bharti Kalra & Wendy P. Heath, Perceptions of a Child as Witness: Effects of leading questions and the type of relationship between child and defendant, 80 Psychological Reports 979, 984 (1997); Karen J. Saywitz & Gail S. Goodman, Interviewing Children In and Out of Court, in The APSAC Handbook on Child Maltreatment 297, 305 (John Briere et al. eds., 1996).
3 See Adrian Furnham & Catherine Weir, Lay Theories of Child Development, 157 J. Genetic Psychol. 211, 213 & 222 (1996).
4 Id. at 216-17.
5 For greater detail, see Jennifer L. Massengale, A Child Development Primer, Update (National Center for

Prosecution of Child Abuse, Alexandria, Va.), Vol. 14, No. 5 (2001); see also Nancy Walker Perry & Lawrence S. Wrightsman, The Child Witness (1991); Sandra K. Hewitt, Assessing Allegations of Sexual Abuse in Preschool Children: Understanding small voices (1999).

6 See Anne Graffam Walker, Handbook on Questioning Children: A linguistic perspective 4 & 10 (2d ed. 1999); See also Karen Saywitz et al., Credibility of Child Witnesses: The role of communicative competence, 13 Topics Language Disorders 59, 63-65 (1993).

7 Walker, supra note 6, at 10-12.

8 Id. at 26.

9 See Saywitz, supra note 6, at 63-65.

10 Walker, supra note 6, at 2.

11 Karen J. Saywitz, Children's Concepts of the Legal System: "Court is a place to play basketball," in Perspectives on Children's Testimony 131, 149-151 (S.J. Ceci et al., eds., 1989).

12 For more details on Kids Court programs, see Martha J. Finnegan, Creating and Administering a Kids Court Program, Update (National Center for Prosecution of Child Abuse, Alexandria, Va.), Vol. 13, No. 5 (2000).

13 See Mary-Ann Burkhart, Preparing Children for Court, Update (National Center for Prosecution of Child Abuse, Alexandria, Va.), Vol. 11, No. 8 (1998); see generally Lynn Copen, Preparing Children for Court: A Practitioner's Guide (2000).

14 See generally Walker, supra note 6.

15 One means to achieve a common understanding of terminology is to have the child identify body parts or other critical pieces of evidence in his or her own words. Another means is to ask the child to use the word in a sentence.

16 See Saywitz, supra note 6, at 63-65.

**American Prosecutors Research Institute**
99 Canal Center Plaza, Suite 510,
Alexandria, VA 22314

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