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**American Bar Association
Young Lawyers Division**

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**The Best Ways to Interview and Deal with
Children in Legal Matters**

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The Young Lawyers Guide to Representing Children 101: Interviewing The Child Client

By Amy Freedman¹

Representing children in court proceedings is a tricky area for the young lawyer. Proper interaction and representation of children is based on thorough instruction and training in child psychology, the juvenile court system and a myriad of sociological and psychological research. For this reason, this article seeks to concentrate in the area of interviewing the child client and serve as a quick reference guide for the young lawyer. It is in no way an exhaustive training text, and the young lawyer who has a definite interest in this area should consult his or her jurisdiction for in depth CLE courses and state and federal guidelines representing child clients. It should be noted that most states have these guidelines and/or laws in place, so a thorough search is in order.

The first rule of thumb to remember is simple: children are not adults. As obvious as this statement seems, it is the most overlooked and abused of the rules. Children do not have the experience level, the judgment capacity, nor the intuition that the average adult has. For this reason, interviewing a child should be done very carefully. In short, they are not "short adults." Second, you should also be alert to other adults, although possibly well intentioned, who will want to question your child client or witness, with or without you present, and who may not observe proper protocol. You, as the attorney, have a duty to minimize this whenever possible. If the child is your client, you have a right to be present at all times when the child is questioned by authorities or other attorneys, which may prove important if you have to break down difficult ideas and re-phrase the questions in "child friendly" speak.

The basic checklist² to remember when interviewing or questioning a child is as follows:

- Establish a rapport. Identify clearly and simply who you are and why you are talking with the child. (i.e. "The judge asks me to get to know boys and girls sometimes. Is it ok if we just talk a little right now?")
- Keep your questions and sentences simple. Use only one main thought per sentence. ("What is your name?")
- Avoid legalese and phrases. An easy way to remember this rule, is to say that no word that cannot be clearly explained should ever be used in questioning a child. (For example: allegation, appear, attorney, counsel, defendant, evidence, hearing, jury, minor, motion, oath, parties, perpetrator, prosecutor...)
- Don't assume that just because a child uses a word, that he understands its meaning.
- Remember that children can be extremely literal in their interpretation of language.
- Remember to frame your questions in terms of a child's experience.
- Aim for simplicity in communication.
- Be alert for possible miscommunication. If a child's answer seems inconsistent with prior answers, or doesn't make sense, look for a possible problem in the 1)way the question was phrased or ordered, 2)with a literal interpretation on the part of the child, or 3)with assumptions the question makes about the child's linguistic/cognitive development or knowledge of the adult world.

- Keep your questioning to a reasonable length. Children tire of questioning easily, especially from a new or unfamiliar adult. Also, it can be psychologically harmful for a child to be hammered with questions repeatedly with no breaks or end in sight, so use great discretion in the length of your questioning.

Overall, remember that you, as an attorney, have a heavy responsibility in dealing with the child. Research indicates that repeated and inappropriate questioning of children in child sexual abuse cases often results in contaminated testimony evidence.³ This repeated questioning can also be extremely psychologically damaging, as well, if done improperly since the child is forced to re-live the abuse over and over for each questioner. Thus, it is extremely important that you have proper training in questioning a child in this context. Because child sexual abuse is beyond the scope of this article, we simply encourage you to seek appropriate, in-depth training if that is an area that you wish to explore in your practice.

In summary, remember that the child client or witness is not an adult. His or her maturity level is greatly diminished compared to your own. Keep your questions clear, simple and concise. Remember that you have a heavy burden to protect this child from improper questioning and from having a severely negative experience in the legal system, which could be psychologically damaging.

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²The majority of the information in this checklist is taken from excerpts of the Handbook on Questioning Children, Anne Graffam Walker, PhD, published by the ABA Center on Children and the Law, 2nd Edition (1999).

³...repeated interviews or interviews employing improper questioning methods can irreversibly taint the evidence, i.e., destroy the original testimony of the child, as early as the second interview. Improper questioning, even if the interviewer is unaware of using improper methods, can also destroy the primary evidence. Any attempt that is made to re-evaluate, re-examine or cross-examine the testimony of the child for presentation to a jury after several interviews may fail, since accurate information may no longer be obtained. The more interviews to which the child has been subjected, the greater the likelihood that the child's testimony has already been contaminated." Institute of Psychological Therapies, Volume 9 (1997).

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Case Scenario #1

Pamela Johnson is eight years old and has been placed in a foster home for the past 10 months. She was removed from the home as a result of her parent's drug use. Her parents have consistently attended drug and alcohol counseling and continue to cooperate with random drug screens. Pamela has had one month of overnight weekend home visits; all parties agree that reunification is imminent. Upon returning from the last home visit, Pamela tells her foster mother that on Friday night she witnessed her mother and father snorting a white powdery substance. Pamela also stated that her parents left the home on Saturday morning and didn't return until Sunday afternoon. Pamela told her foster mother not to say anything because she doesn't want to get her mom and dad in trouble. The foster mother reported Pamela's statement to the ongoing social worker. An emergency hearing is scheduled and the parties have two days to prepare. After receiving the foster mother's report both parents were called in for drug testing; both parents tested positive for cocaine. The agency worker is requesting that unsupervised visits be suspended. Pamela is upset after being told that her foster mother repeated what she shared about her visit and that she must testify at the emergency hearing.

Would you utilize Pamela as a witness at the emergency hearing? Why or why not? If you concluded that Pamela is an essential witness how would you prepare her to testify at the emergency hearing? What questions would you ask during the hearing and how would you ask them?

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Case Scenario #2

The Dawson County Children and Youth Services received a Child Protective Services (CPS) report stating that 9 year old Thomas Carter was brought to the emergency room of the Dawson County Hospital with fractured ribs, a broken arm and multiple contusions all over his body. The child was being held at the hospital for treatment and observation.

While at the hospital investigating the report, social worker, Jenny Lane spoke to the ER physician, Dr. Laura Jones, who stated that when she asked Thomas how his injuries occurred the child responded “my father beat me”. Dr. Jones also stated that the child’s injuries were consistent with abuse. Jenny Lane also visited Thomas to talk about the cause of his injuries and the child said his father beats him every day. Jenny Lane took photographs of Thomas’ injuries. The CPS report was indicated based on medical evidence and the child’s statements; the identified perpetrator of abuse was Thomas’ father, Frank Carter. The Dawson County District Attorney’s Office brought criminal charges against Frank Carter for Aggravated Assault and Endangering the Welfare of a Child.

Jenny Lane learned that Frank Carter is the sole caregiver for Thomas and his two siblings; Sabrina Carter, age 6 and Jesse Carter, age 12. An emergency order was granted, giving temporary custody of Sabrina, Thomas and Jesse to the Dawson County Children and Youth Services. Sabrina and Jesse told Jenny Lane that their father never hits them however they were silent when asked if they have seen their father hit Thomas. Frank Carter denies all of the allegations against him and demands that his children be returned home. Thomas was ultimately released from the hospital and placed with his siblings in a therapeutic foster home. The foster mother reports that 1) Sabrina has been refusing to eat and wets the bed every night and; 2) Jesse is angry and blames Thomas for being taken away from his father. An adjudicatory hearing has been scheduled and the parties have ten days to prepare.

Which children, if any, would you use as witnesses for the adjudicatory hearing and why? If you concluded that Thomas is an essential witness how would you prepare him to testify at the adjudicatory hearing? Are there any other considerations that may affect the way you prepare Thomas to testify at the adjudicatory hearing? What questions would you ask during the hearing and how would you ask them?