

National Judicial College of Australia

Conference: Children and the Courts

Questioning Children



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A four-year-old is asked during cross-examination...

“On the evening of January third, you did, didn't you, visit your grandmother's sister's house and didn't you see the defendant leave the house at 7:30, after which you stayed the night ? ”

*Quoted by Karen Saywitz & Lyn Snyder (1993), p.117
in GS Goodman & BL Bottoms (Eds.), Child
Victims, Child Witnesses. New York: Guilford.
(The child broke down and cried.)*

TOPICS

- Questions addressed by expert witnesses in the Family Court
- Why might judges wish to interview children?
- The development of language competence
- Interviewing children
- General recommendations

Questions Addressed By Experts

- The child's relationships
- The expressed wishes of the child
- The effect of change of residence or relocation
- The child's maturity, adjustment, special needs
- The relative capacity of the parents to provide for the child's needs

Questions Addressed By Experts (*cont.*)

- Denial of contact
- The effect of parental mental illness, substance abuse, personality on parenting
- Exposure of the child to physical or emotional harm
- Allegations of maltreatment
- Each parent's attitude to the child, motivation, and capacity to separate his or her own needs from the child's

When Might A Judge Wish To Interview A Child ?

1.If not satisfied with expert opinion re:-

- child's preference
- child's relationships
- child's views concerning change of residence or relocation
- child's special needs in relation to comparative parental competence
- denial of contact

2.To offer the child a stake in the proceedings

Judges' Satisfaction With Expert Reports

Ministry of Attorney General, British Columbia, 31/3/05

- Survey of 130 Canadian judges
- 8% frequent, 29% moderate, 63% infrequent users of expert reports
- Reasons for requesting reports, in order:-
 - because the evidence is contradictory
 - to obtain the child's views
 - because lawyers request them
 - to facilitate settlement
 - because parties are unrepresented
 - for "in-depth" investigation

Judges' Satisfaction With Report Content

On a scale of 1 (not satisfied) to 5 (very satisfied):-

- Reports address the issues (4.18)
- Reports provide additional information (4.14)
- Reports provide info. needed for decision (4.0)
- Recommendations consistent with evidence (3.9)
- Analysis of facts supports recommendations (3.7)

Features Of Expert Reports Regarded As Particularly Useful

- Views of the child
- Interaction between child and parents
- Views of collaterals
- Recommendations

Judges Interviewing Children

Gardner RA (1987), New Jersey Family Lawyer, 7 : 26ff

In Camera interviews of children may be compromised because:-

- no observation of parent-child interaction
- children may not reveal themselves to strangers
- confidentiality may be breached
- judge may lack interviewing skills
- children in loyalty conflicts ingratiate themselves to both parents

Developmental Considerations

- Children can't date or time events until >10
- Children are concrete thinkers until >10
- Detailed, sequenced narratives not until > 10-12
- Children can't take others' perspectives until > 10-12
- Children master:-
 - prepositions at 4-5,
 - pronouns at 9-10,
 - number / space / time / distance at 12+

Developmental Considerations

- Children may think that only bad people go to Court. Reassure and explain.
- Keep questions brief. Avoid :-
 - double negatives
 - passive voice
 - complex prepositions
 - comparisons
 - tag questions
 - abstract words
 - complex sentences
 - pronouns

Developmental Considerations (*cont.*)

- Provide a context for questions and transitions (eg, *Now I have some questions about your family.*)
- Younger children are more susceptible to suggestive questioning techniques (eg, *Did Sam rip the book with his hands or did he use scissors?... You didn't really see him rip the book, did you?*)

Interviewing Children

- Ask the caregiver to prepare the child.
- Relax the child. No robes.
- Begin with neutral questions (school, family members, activities, interests).
- Use drawings for children 4-12.
 - Draw your family doing something together.*
 - Draw a person.*

Interviewing Children (*cont.*)

- Ask for fantasy:-
 - Dreams
 - Three wishes
 - \$1000,000
 - Desert island
- Open questions:-
 - Tell me about your mother.*
 - Avoid time questions
 - Ask who provides daily care
 - Try to avoid *Why?* questions: too challenging

Interviewing (*cont.*)

- Tell me about what happens when you visit your dad.*
- Do you know why your parents separated?*
- What else would you like to tell me ?*
- Don't ask which parent is preferred.
- Note the signs of parental alienation.

Parental Alienation

- Implacable hostility to the targeted parent
- Enmeshment with the alienating parent
- Guiltless, non-ambivalent rejection of the target parent
- Flimsy reasons for rejection
- Borrowed scenarios
- *Describe your father (mother) to me.*

Parental Alienation (*cont.*)

- *How do you feel about your father's (mother's) family?*
- *Does your mother (father) interfere with your visiting your father (mother)?*
- *Why then don't you want to visit your father (mother)?*
- *Does your mother (father) bother you a lot?*
- Other questions specific to the case.

Meaningful Child Participation ?

- The responsibility for decision making rests with adults,
- But it must be informed by the views of the child.
- Child involvement may help to counter adversarial proceedings.
- However not all children want to be involved.

Child Participation (*cont.*)

- Many judges are hesitant to interview children and lawyers may not want them to.
- Be careful of parental alienation.

Recommendations

- Don't do it if you don't feel comfortable.
- The legal profession should debate the advisability, purpose, pros and cons of judges interviewing children.
- Seek training.

Training Workshops: Goals

- Knowledge of child development
- Child suggestibility
- Interviewing strategies and techniques
- Open and closed questions
- Observation of good models
- Practice, with videotape feedback and discussion
- Booster training

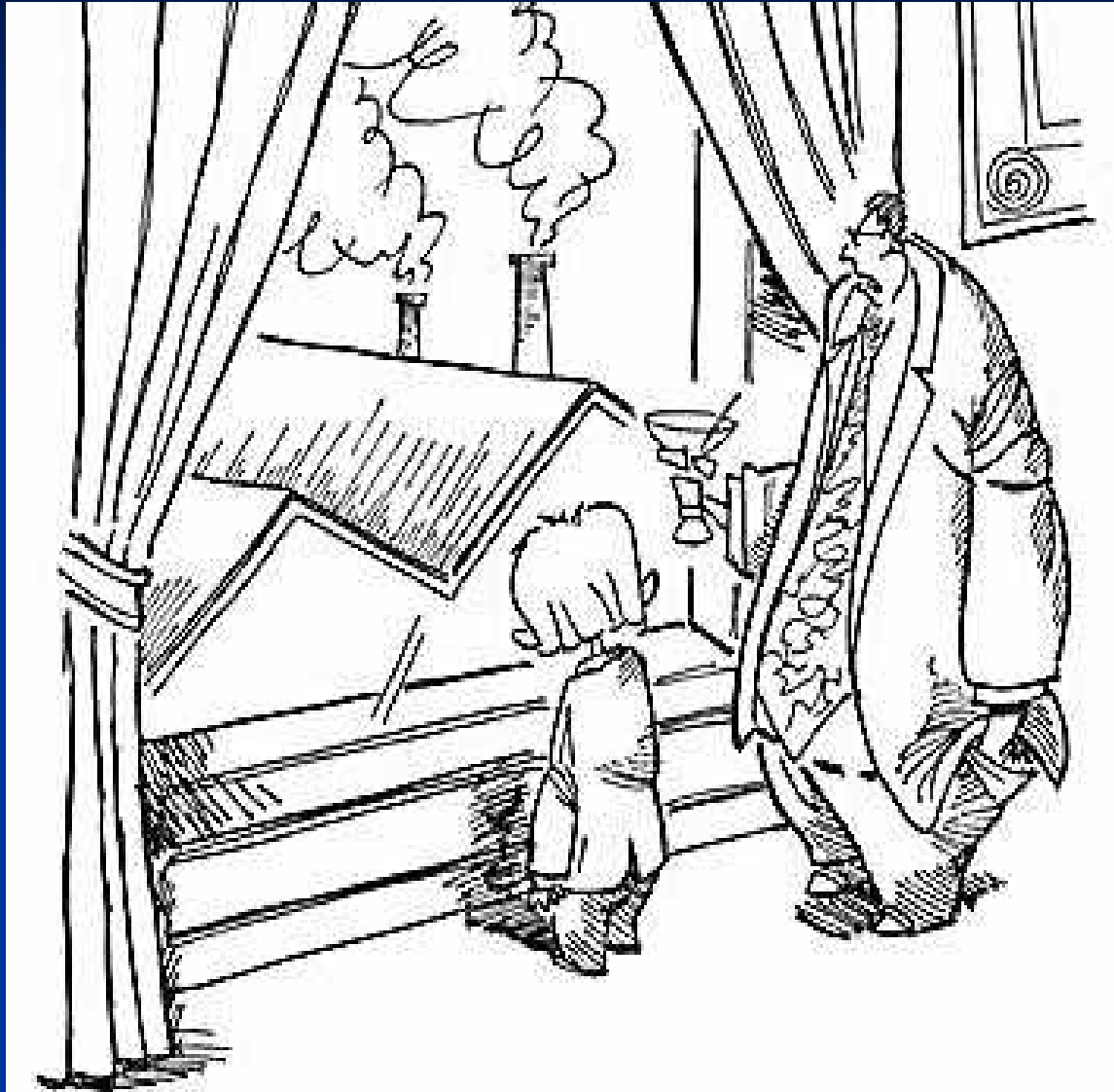
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Division of Property



"Someday, son, 50% of this will belong to your ex-wife."

Conflict of Interest



" There are two reasons why I can't represent you in your divorce. Firstly, I'm representing your husband. And secondly, I am your husband."

Residence & Contact



" I can't promise you custody of your money. But I'll make darn sure you get full visitation rights ! "