

Initial Interviews of Child Witnesses

Introduction:

Nick taught me that law in practice and the processes necessary for its implementation – the HOW of legal education, are of fundamental importance. Nick has taught for many years a clinical Family Law course which has paired students with professionals in order to ground their academic studies. In his Children's Law course, he has always involved professionals as guest speakers so that students can develop a critical understanding of the law as it affects child protection and youth justice issues.

Following his example, I taught for a number of years a course in Client Interviewing and Counselling, since it's been my experience that most law students are unaware that they will spend a great deal of time listening and talking to clients, and that these are skills, like advocacy, that need to be developed. We're here today to discuss child witnesses, and when one thinks about these children, they are facing significant, confusing, frightening events, with little understanding of the processes involved. Children will have little understanding of the interview process, the role of a lawyer, or what they can expect to happen as time goes on in their proceeding. There will likely be delays between stages of the proceeding as it unfolds, and while it will be the job of everyone involved to explain to the child what will happen, the initial interview is key for building trust and setting out a framework that a child can understand.

Often, a lawyer conducting that interview is seeing the child earlier and closer to the event, so that she/he needs to be aware that there will be more than one occasion that the child will be asked about the event and that more than one professional will likely talk to them about it. I had hoped to key in on children who have been victimized by other children, because I see them as having difficult trust issues, but my time is limited. Instead, I want to set out a template for that first interview and to provide a series of practical suggestions and considerations. While many may be self evident, they bear repeating. Many of my points are drawn from a book by Jean Koh Peters on representing children.

So here goes: Points about Interviewing:

- Get to know your client. Age is one of the key indicators in how you approach your client, but general literature on child development is only a starting point. Each child is unique. While they will have limitations based on age, NEVER underestimate their capacity to appreciate what is going on around them – asides to a colleague or associate are being taken in word for word.

- Make them comfortable. Depending on their age, this could involve setting up a meeting in the child's home/foster home, or sitting at a play table in your office. As a general rule, try to sit at eye level with the child and eliminate any physical barriers that would intimidate them. You want to be completely visible and accessible to the child. On the other hand, don't try to step out of your adult persona and never talk down to

them. Accepting the generation difference is a more honest approach than trying out your take on the jargon of the day on an adolescent client.

- There is a built in power imbalance by virtue of you as an adult. While adult clients can be intimidated in a legal setting, you are an authority figure to a child, and they are used to relationships with teachers and parents where they “do what they’re told”. Thus, suggestibility is a huge issue, particularly in interviewing younger kids. Of critical importance, the solicitor client relationship, where the child is to GIVE, rather than take instruction, will need to be fully explained, and consistently reinforced.

- While you need a plan for that first meeting, you need to be flexible – it’s more of a checklist. You’ll start by identifying yourself and what you do. Mainly, however, you want a sense of this particular child and their concerns, remembering that children have a short attention span. Let your client set the agenda. If, for example, you are introducing yourself and your client starts asking when she can leave the foster home, dive right in and be honest and frank with what you know.

- It is listening and communication skills that are key to establishing a relationship of trust with a child. Of the two, it’s listening that is of utmost importance. Kids who are relating difficult information need space to talk and to feel that what they say is heard. Many of the techniques that work with adults will need to be altered in work with children. Active listening is constantly outlined in interviewing literature, but should be used with care, given children’s deference to authority and general suggestibility. By active listening, I mean a response to a client which lets them know you have heard and understood what has been said. Often, “repeating back” to the client is suggested, but with kids, be careful! With adult clients, paraphrasing what you have heard is not as risky, because they will likely correct any misimpression you may have. With children, it’s more likely they will adopt your version as correct even if it’s not accurate, so that care needs to be taken to explain that you’re repeating because you may not have understood, perhaps turning it into a “quiz” where they have to correct you when you are wrong.

- Questioning your client at this early stage will be a delicate exercise in many ways. Since it’s possible to lead children by asking certain kinds of questions, it’s usually recommended that open ended questions be used initially. With many kids, these can be so broad that you get very little in the way of a response to an icebreaker like “how was your day?” so that you will need to refine somewhat. Eg. “what did you do at school – questions which focus the child a bit more.

On the other hand, the literature talks about questions which can lead a child. Pre-schoolers appear to be biased to a “yes” answer to “yes/no” questions – it may be a desire to agree, or that the interviewer’s voice intonation indicates that “yes” is correct. In addition, this form of question can imply to young children that an answer is **required**, even if they aren’t sure. Make sure that they know it’s OK not to know an answer and to tell you that they don’t know.

- Understanding how your child client feels about what has happened is all important. Empathy, NOT sympathy is a key component of showing an honest respect for your client's feelings. It's possible to convey that as an adult, you can imagine that it must have been scary/confusing/sad for them. This is not the work of a social worker or psychologist, but a necessary component of listening to all aspects of your client's story.

- Communication is more than talking and explaining in child appropriate language. Your actions should reinforce what you say. If you tell your client that your conversation is private and confidential, let them know that you will be talking to professional X and what you will talk about, and that you won't tell anything that you and the child have agreed is in confidence. In an article on Youth Satisfaction with their lawyers, Theresa Hughes reports on a survey of young people involved with the court system. They consistently identified good communication as a key factor: lawyers who kept in touch and took time to address their concerns, got top scores.

As I mentioned at the beginning, there will often be a series of interviews, spread over time, with the child. If you establish a relationship of trust and respect with a child client at the outset through proper and fair interviewing techniques, it can set the stage for their perception of the fairness of any further interviews or contacts with professionals.

My lesson learned from Nick:

Children maintain trust in the adults around them if they know what will happen next and who will be doing it. I learned from Nick that family law practice takes place in a network of professionals, from assessors to social workers to judges. It is necessary to understand the role of all the players so you can put your child client at ease about the next step. Nick has always informed his research and teaching by collaborating and working with professionals like Pam and Dan, testing his ideas on people like Joe and presenting them at conferences to judges like Justice Czutrin. He is the consummate teacher/academic, and he has generously shared his wisdom with me and with all of us here today.