

## When dealing with child abuse cases, attorneys need to know how children perceive

Elisa Reiter, Daniel Pollack, and Jeffrey C. Siegel | December 12, 2024



Knowing what time it is at this very moment is not difficult. Just look at your watch. Accurately perceiving time regarding events that happened in the past is not as easy. Yet, this ability is critical in law, and particularly in litigation. Organic, cognitive, and memory processes must function properly. The ability to describe an experience to someone else is a very complex process. Descriptions of “what happened” depend not only on memory, but on the capacity to verbalize what someone recalls happened in words that others can understand. For a child, language acquisition is based on listening, mimicking what was heard and

association of what was heard, with what was seen and the validation received by the child from the person speaking to the child.

In a recent [article](#), “Attorneys’ Questions About Time in Criminal Cases of Alleged Child Sexual Abuse,” the authors note that, “When children testify, they can be asked about several temporal topics, including temporal distance (i.e., how long ago the event occurred), temporal sequence (i.e., what order events occurred in), or temporal location (i.e., when the event occurred). However, providing evidence-based guidance regarding these types of questions is not straightforward, as developmental research provides complex and often contradictory evidence regarding what children can and cannot do.”

Many perspectives need to be considered. Things like the impact of a child’s development, how being interrogated by many individuals, including a parent, a police officer, a trauma-informed trained social worker at a child advocacy center, and in a courtroom, are all in play. Children want to receive a positive response from the person they are talking to. They often do not understand the seriousness of the proceedings. A courtroom is not a setting that a child is typically familiar with. The experience of being in court is stressful. [Bessel van der Kolk, M.D.](#) notes that:

[w]e all know how fickle memory is; our stories change and are constantly revised and updated... Whether we remember a particular event at all, and how accurate our memories of it are, largely depends on how personally meaningful it was and how emotional we felt about it at the time.

When faced with trauma, van der Kolk remarks that it is not unusual for an individual to dissociate: “[t]raumatized people simultaneously remember too little and too much.” Children’s ability to remember and to testify about traumatic events like domestic violence is complex and varies across developmental states from ages 2 to 16. The capacity of recollection is influenced by cognitive development, language skills, the seriousness of the trauma, whether the child observed or overheard a physical or verbal attack can all impact the memory and recollection of trauma.

For [toddlers](#) aged 2-3, memory abilities are quite limited. While they can form and retain memories, their recall is frequently viewed as fragmented and lacking temporal context primarily because of their limited vocabulary. They struggle to provide clear narratives about past events, particularly traumatic events. No one wants to put a toddler on the stand. However, toddlers may find themselves caught in the crossfire of a custody dispute where one parent accuses the other of child abuse or of domestic abuse. The toddler could be questioned by a relative, a daycare worker, a nanny, a physician, a child protection social worker, or a police officer. The questions being asked are often phrased in words the child does not understand. As a result, the child hears questions and assumes their response should include what was asked. Children want to please those that are asking questions. Too many questions phrased in different ways can confuse a child and create problems for the listener, especially if the expectation is the child's response will be simple, direct, and specific.

Therefore, children should be interviewed only by professionals who have received training in proper interview techniques. Do children skew their words based on the reinforcement they receive from those asking them questions? Do they skew their

words when being asked about important people in their lives, parents, grandparents, siblings, etc.? At around 16 months, toddlers usually have sufficient cognitive skills to follow instructions and to exercise some self-control. Nonetheless, a toddler's testimony may be unreliable due to limited language skills and their susceptibility to suggestion.

Children who are preschoolers, aged 3-5, have improved memory, but their temporal reach remains constrained. While [preschoolers](#) may recall specific events, they tend to confuse the sequence and timing of what they have experienced. Imagine that a preschooler has been in the kitchen with a parent helping bake chocolate chip cookies. The parent steps out of the room to take a phone call. When the parent returns, they observe several cookies missing, and the child's face covered in chocolate and crumbs. "Did you eat cookies?" The child shakes its head vociferously, likely because the child understands it was not supposed to eat the cookies yet. Preschoolers tell tales. They may have difficulty in distinguishing between imagined and real events, which can lead to unintentional false reports. Preschoolers can, however, provide some accurate information about events they have experienced, especially those of import.

Elementary-aged schoolers (aged 6-11 years) have advanced significantly in terms of memory function. They typically demonstrate more ability to hold and retrieve certain memories. Their vocabularies have improved and can provide more details and accounts of past events, including traumatic experiences. However, their temporal abilities may still be limited, and they remain vulnerable to suggestion and to memory distortion.

Providing details of a scene is not the same as describing the actions of others in proper temporal order. Questions such as “Are you sure?” and “Is there anything else you want to tell me?” imply the child did not provide the correct details or enough details. This may lead them to add information, not because they really forgot, but because they believe the interviewer is implying they must have forgotten something.

[Adolescents](#) (aged 12-16), have memory ability approaching adult levels. Teens are often able to provide detailed, temporally organized accounts of what they have experienced, including traumatic events. While they can resist suggestion and can distinguish between true and false memories better than younger children, they remain suggestible. Moreover, trauma may impact an adolescent’s memory function and recall, leading to fragmented or incomplete recollection.

Traumatic events like domestic violence – even simply witnessing the events – may impact memory across age groups. Trauma may result in hypermnesia (enhanced memory for certain aspects of the event) or amnesia (an inability to recollect certain parts of the traumatic experience). These can lead to inconsistencies in a child’s testimony.

Children’s memories, particularly of traumatic events, can be influenced by post-event information and repeated questioning, as mentioned earlier. This is especially relevant in custody battles, where a parent may attempt to influence a child's recollection and perception. [Studies](#) reflect that children’s memories may be changed through suggestion, leading to the creation of false memories, or distorting existing memories.

Temporal distortion is a phenomenon that all should be aware of when contemplating a child's ability to testify about traumatic events. Time distortion is often experienced following a traumatic event. Trauma can disrupt the normal processing of temporal information, leading to difficulty in accurately sequencing events or estimating the duration of experiences. We tend to recall traumatic events in a non-linear fashion, out of sync, in bits at a time. Temporal location may be skewed as well. Our ability to describe a season may be far easier than a specific time, day, or month.

[Dr. Benjamin D. Garber](#) and his co-authors of *The Family Law Professional's Field Guide to High Conflict Litigation* opine that:

We know that a very small minority of children who are sexually abused grow up to be perpetrators. We also know that the majority of sexual abuse perpetrators were sexually abused as children. Together, these facts illustrate the view through the funnel: the world looks very different depending on which end you hold to your eye.

As Dr. Garber pithily illustrates, research results vary. Cameron *et al.* reflect on a [2012 study](#), noting that:

Wandrey and colleagues (2012) examined 6- to 10-year-old maltreated children's ability to temporally locate their first or last change in foster care placement and their first or last time visiting court. They found that 48% of the children were unable to recall their age at the time of the events, 75% were unable to recall the season, and 91% were unable to recall the month.

Children may have difficulty creating a timeline with the specificity required for legal proceedings. Asking children leading questions – those requiring a yes or no response or that mandate a certain response – potentially has an adverse effect, risking false data gathering. By contrast, open-ended questions (who, what, where, why, when, and how) net more accurate data from children. Cameron *et al* suggest that young children (aged 3-6) will often be prone to “formal reticence,” giving the shortest response possible, which can lead to inaccurate data gathering. The limbic brain’s tendency to engage in “[fright, freeze, flight or fight](#)” also impacts memory. Suggestibility is a huge factor regarding the credibility of child witnesses. As noted in the [Benchbook in the Behavioral Sciences](#): “children are very susceptible to modifying their story based upon an adult’s post event suggestions. . . . children were even susceptible to suggestions by older children.” The *Benchbook* also notes that “children are far less accurate and more acquiescent when responding to parental inquiry than to inquiry of strangers.”

Parents and practitioners must be cognizant of “source monitoring” error. Once something is “mis-remembered,” false memories of suspicious events are difficult to dispel. The more a given question is repeated, the more often a child tells its story, the more witnesses gain traction in the confidence of their memory. Questions that presume the desired response can be used to manipulate children, causing them to skew their recollection to what they perceive to be the desires of the person who is interviewing them. As Cameron, *et al* conclude:

Attorneys may also benefit from information regarding the developmental abilities of children so they can make strategic, age-related changes to their questions.

The challenges of balancing child protection with justice in domestic violence and custody cases is complex. While children's testimonies can be crucial, their memory limitations and susceptibility to suggestion must be carefully considered. Legal professionals and mental health professions should employ age appropriate, trauma-informed questioning techniques and find ways to corroborate children's accounts with other evidence when possible. Ultimately, a multidisciplinary approach involving mental health professionals, child advocates, and legal experts is essential to ensure both the well-being of child witnesses and the integrity of the legal process.

**Elisa Reiter**, a Senior Attorney with Calabrese Budner, LLP in Dallas, Texas, is Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization. She has served as an Adjunct Professor at SMU. She is also admitted to practice in the District of Columbia, Massachusetts, and New York. Contact: [elisa@calabresebudner.com](mailto:elisa@calabresebudner.com).

**Daniel Pollack**, MSW, JD is a professor at Yeshiva University's School of Social Work in New York City. He was also a Commissioner of Game Over: Commission to Protect Youth Athletes, an independent blue-ribbon commission created to examine the institutional responses to sexual grooming and abuse by former USA Gymnastics physician Larry Nassar. Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu).

**Jeffrey C. Siegel**, Ph.D., ABPP is a forensic and clinical psychologist in Dallas, Texas. In practice since 1981, he has been conducting child custody evaluations for over 40 years in multiple states and has provided court testimony over 300 times.

He also serves as a consultant to attorneys in family law matters. Dr. Siegel is board certified in Clinical Psychology and Family Psychology through the American Board of Professional Psychology and a Fellow of the American College of Forensic Psychology. Contact: [jeff@siegelphd.com](mailto:jeff@siegelphd.com).

Original link: <https://www.law.com/newyorklawjournal/2024/12/12/when-dealing-with-child-abuse-cases-attorneys-need-to-know-how-children-perceive-time/>