



## Research article

# The structural linguistic complexity of lawyers' questions and children's responses in Scottish criminal courts



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## ABSTRACT

In the first study to systematically assess the structural linguistic complexity of lawyers' questions of children in Scotland, we examined 56 trial transcripts of 5- to 17-year-old children testifying as alleged victims of sexual abuse. Complexity was assessed using 8 quantitative measures of each utterance's components (number of questions, phrases, clauses, sentences, false starts, average word count, word length, and sentence length) and a composite measure was used in the analyses. Lawyers did not alter the complexity of questions when prompting children of different ages. Defense lawyers asked more structurally complex questions than prosecutors. Directive questions were the least structurally complex questions, followed by option-posing questions. Suggestive questions, followed by invitations, were the most structurally complex questions. Option-posing and suggestive questions were more complex when asked by defense lawyers than prosecutors. Of suggestive questions, confrontation and tagged questions were more complex than any other question type. Increased structural complexity led to more unresponsiveness, more expressions of uncertainty, and more self-contradictions regardless of which lawyer asked, the question type, or the children's ages. These findings highlight the additional risks associated with asking some types of questions in structurally complex ways and highlight the need for further innovations (e.g., the use of intermediaries) to facilitate the questioning of vulnerable witnesses in Scottish criminal courts.

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## 1. Introduction

In adversarial jurisdictions, such as the United Kingdom, United States, and New Zealand, the cross-examination of witnesses is often deemed an essential factor in protecting the accused's right to a fair trial (e.g., Article 6 (3d), of the [European Convention on Human Rights, 2017](#); [Sixth Amendment to the US Constitution, 2017](#)). Courts have a duty to allow witnesses to give their best evidence ([Home Office, 2011](#), section 5.8) but in adversarial jurisdictions, lawyers aim to undermine the opponents' witnesses, and they question child witnesses accordingly ([Andrews, Lamb, & Lyon, 2015a](#); [Szojka, Andrews, Lamb, Stolzenberg, & Lyon, in press](#),). One major concern is that many of the questions that lawyers ask are linguistically complex, and that children may not possess the linguistic capacity and psychological competence necessary to effectively comprehend and respond to courtroom questioning ([Hanna, Davies, Henderson, Crothers, & Rotherham, 2010](#); [Zajac, O'Neill, & Hayne, 2012](#)). Indeed, children seldom request clarification of grammatically complex and/or nonsensical

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questions (Carter, Bottoms, & Levine, 1996; Zajac, Gross, & Hayne, 2003), perhaps because they have difficulty detecting whether or not they have understood the requests. Such questioning techniques violate guidelines, based on an extensive body of experimental and field research, outlining the best ways to elicit testimony (see Rush, Quas, & McAuliff, 2012; Spencer & Lamb, 2012) and raise serious questions about the extent to which courts ensure both that guilty suspects are convicted and that innocent suspects are not wrongly convicted.

Remarkably, however, there has been no prior systematic research on the linguistic complexity of lawyers' questions and how this affects children's responses in the United Kingdom, because proceedings are not routinely transcribed and are kept confidential by the courts. The current research builds upon an unprecedented collaboration with the Scottish judiciary (a pluralistic system within the UK based on shared common-law principles combined with some unique civil-law principles), which has publicly and privately expressed considerable concern recently about the risks associated with inappropriate procedures in relation to children's testimony, and thus comprises the first study to assess how structurally complex Scottish prosecutors' and defense lawyers' questions are and how children respond.

Operationalizing linguistic complexity is a complex issue in itself. By definition, the complexity of questions is enhanced whenever any lexical, syntactic, semantic, or pragmatic aspect of the question increases processing time (Walker, Kenniston, & Inada, 2013). The majority of previous studies have focused on lexical and syntactical measures of complexity, showing that much of the questioning conducted by lawyers during legal trials exceeds the communicative capacities of children and even adults (Brennan & Brennan, 1988; Perry, McAuliff, Tam, Claycomb, Dostal, & Flanagan, 1995). For example, many children are unfamiliar with or misunderstand terms commonly used in the courtroom (e.g., Flin, Stevenson, & Davies, 1989; Saywitz, Jeanicke, & Camparao, 1990) and this limits their ability to answer accurately (Evans, Lee, & Lyon, 2009; Perry et al., 1995). Other researchers have suggested that children are unable to comprehend many aspects of syntax that are commonly used in legal settings (e.g., Brennan & Brennan, 1988; Carter et al., 1996; Saywitz & Snyder, 1993), and that increased structural and syntactical complexity reduces the accuracy of children's reports (Cashmore & DeHaas, 1992; Zajac & Cannan, 2009; Zajac et al., 2003). Since adding length and additional structural components to questions is likely to greatly increase processing time, the current paper concerns itself with the structural complexity of lawyers' questions and the effects of complexity on children's responses. Specifically, structural complexity was assessed using 8 quantitative measures of each utterance's components (number of questions, phrases, clauses, sentences, false starts, average word count, word length, and sentence length).

Perhaps surprisingly, there is no consistent evidence regarding either the differential complexity of questions asked by prosecutors and defense lawyers or the effects of age on these lawyers' behavior. On the one hand, researchers have reported that defense lawyers tend to be less supportive and ask more complex and developmentally inappropriate questions than prosecutors (Cashmore & DeHaas, 1992; Davies & Seymour, 1998; Flin, Bull, Boon, & Knox, 1992; Goodman et al., 1992; Perry et al., 1995). For example, in a study conducted in New Zealand, Davies and Seymour (1998) found that defense lawyers asked 5- to 17-year-old children more questions involving complex language than prosecutors. Specifically, in comparison with prosecutors, defense lawyers asked more negative rhetorical questions, more multifaceted questions, more questions that lacked grammatical or semantic connections, more tagged questions, and more questions framed in the passive voice. There were no differences in relation to the children's ages, however, suggesting that lawyers did not alter their questioning when prompting children of different ages. Similarly, although Zajac and Cannan (2009) found that adults were asked more complex questions (coded using measures of both structural [i.e., classification and count of linguistic components] and syntactical [i.e., arrangement of linguistic components] complexity) than children, Zajac et al. (2003) found no relationship between age and complexity (both structural and syntactical) in a study of 5- to 13-year-olds. Evans et al. (2009) reported neither age nor attorney type differences in either wordiness or the syntactic complexity of the questions posed while examining 46 4- to 15-year-olds in cases from Los Angeles. Zajac and Cannan (2009) found that 31% of the defense attorneys' questions were complex, but so too were 25% of the prosecutors' questions, a surprisingly small difference. Indeed, Hanna, Davies, Crothers, and Henderson (2012) found that there were differences in the complexity of the questions asked by prosecutors and defense attorneys only in relation to three of the five types of questions examined. Specifically, prosecutors used more passives than defense lawyers, whereas defense lawyers used more double negatives and questions containing two or more subordinate clauses. There were no differences in the lawyers' use of complex vocabulary and difficult concepts.

It is unclear whether the inconsistent findings regarding the complexity of prosecutors' and defense lawyers' questions reflect secular changes in practices, differences between jurisdictions, or methodological differences. In addition, with the exception of Evans et al.'s (2009), all existing studies have involved very small samples, so further research using larger samples and more comprehensive measures of complexity may add clarity to a rather confusing picture.

It is also likely that the linguistic complexity of questions differs depending on the type of question involved. Some question types may be more likely than others to become convoluted (e.g., suggestive questions), as a result of which they could contain components that increase both complexity and the likelihood that children will be unresponsive, inconsistent, or become confused/uncertain. In particular, suggestive tag questions are thought to be especially complex (Gibbons & Turrell, 2008; R v W & M, 2010, EWCA Crim 1926 para 30), requiring the respondent to carry out at least seven cognitive operations to fully comprehend and respond to the question correctly (Walker et al., 2013). As Walker et al. (2013) suggested, "if the question is a long one, being able to hold in memory all the propositions in the questions and check each one for truth before responding to a tag like 'isn't that true?' is probably beyond the capability of any preteen." Indeed, the use of tag questions may not show up in the speech of some children until the early teens (Reich, 1986). No systematic field study has

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