

**Children's Evidence
From a Child Protection Perspective**

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by

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Children's Evidence From a Child Protection Perspective

Although child welfare professionals are as concerned about the accuracy and validity of children's statements, they have a very different perspective on the role and status of the child than their legal colleagues. To begin to understand this difference, it is useful first to look at how children come to tell their stories to child welfare workers.

The Context of Disclosure

Children tend to come to the attention of child welfare workers in a number of ways. Several examples are outlined here. It will become obvious later that the context of the contact with a child welfare worker has relevance in evaluating children's statements.

A child may be identified as possibly needing child welfare intervention by:

- 1) a non-professional third party to whom the child did not disclose;
- 2) a professional third party to whom the child did not disclose;
- 3) a parent or primary caregiver to whom the child did not disclose;
- 4) a parent or primary caregiver, non-professional third party, or professional third party to whom the child did disclose.
- 5) a child who presents themselves to a child welfare agency with a disclosure.

Pre-Investigatory Assessments

Once a child comes to the attention of a child welfare agency, assessment is made to determine if the situation as described is a legitimate child welfare concern. This assessment involves both an initial assessment of the credibility of the referral source and the substance of the concern expressed.

Assessment of the referral source may include considerations such as the relationship between source and child, likelihood that source could have the information shared, possible motives of source, past experience and knowledge of source and child, etcetera. Initial assessment of the substance of the referral will compare the described maltreatment of the child with the legislative definitions that describe a “child in need of protective services” as per s. 22(2)(a)-(m) of the Children and Family Services Act of Nova Scotia.

When referrals are deemed to warrant investigation, the next consideration is to determine how quickly the intervention must begin. It is important to note here that the overwhelming consideration for child welfare officials is the current and future risks presented to the child in question and other children. For child welfare purposes, a child currently in the care of the parents who reportedly slapped them, is a more urgent case than a child who has been raped by a third party but is currently in the care of parents who appear able to protect them from further harm.

It is here that the somewhat divergent interests of Child Welfare and Policing officials seem to begin. Child Welfare begins to focus on the child, hoping to remediate present harm and prevent future harm. Police focus on the alleged perpetrator and the alleged offence hoping to gain sufficient evidence to keep an offender from perpetrating future harm.

Another assessment which must be made prior to the formal investigation is to determine whether the allegation warrants contacting the Policing agency of proper jurisdiction. Although in Nova Scotia, provincial standards and guidelines exist regarding referral to and involvement with Police, each Child Welfare Agency has a written protocol which clarifies and details this relationship. Cases which most often result in joint investigation with Child Welfare and Policing officials are allegations of sexual assault against a child and allegations of intentional physical

assault or serious neglect which resulted in a child coming to serious harm.

The Investigatory Interview

Once decisions have been made to investigate, prioritize and involve Police, the next consideration is the planning for the investigatory interview.

This process is clearly defined in Nova Scotia by Child Welfare Policy. Specifically, Standard 3.34, "Setting Up the Investigative Interview", (Department of Community Services, 1996) outlines the four critical steps:

STANDARD #3.34 - SETTING UP THE INVESTIGATIVE INTERVIEW

Step 1 FOLLOW UP TO THE REPORT

After information has been received at intake and accepted for investigation by the Agency, the case is assigned to a CPS worker for investigation. The worker shall:

Contact Police to develop a coordinated response according to Police/Agency Protocol.

Step 2 TEAM PLAN FOR INTERVENTION

Upon consultation, the Investigative Team shall decide jointly on the proper procedure for interviewing the child as soon as possible.

Initial contact of the parents is the sole responsibility of the team.

Step 3 LOCATION FOR THE INTERVIEW¹

The Investigative Team should exercise extreme sensitivity in meeting with a child at school/daycare, to ensure the child's privacy. The police officer should wherever possible, in both planned and crisis interventions, wear plain clothes.

Under s. 26(2) of the Children and Family Services Act, application to the Family Court is available where the Investigative Team has been refused access to the child.

Step 4 INTERVIEWER SELECTION

The team will decide who should conduct the interview, based on who would obtain the optimal disclosure.

Only when it is absolutely necessary for the comfort of the child should a support person be present for the interview.

¹Consent to a videotaped interview by the non-offending parent(s) should be obtained in advance, prior to the commencement of the videotaping procedure.

Given the diverse manner in which a child may come to the attention of a child protection agency, arranging to have the child at the interview site is often the most difficult aspect of the interview to arrange and the most stressful on the child. Where is the child likely to be at the scheduled time? At school or day care, at a babysitter's or grandparents, in the care of parents? Is the child in the care of a professional or the referral source who is likely to cooperate with the planned interview or is the caregiver likely to be uncooperative or worse, hostile? Is the child in a situation so dangerous that attempts to interview may place the child in even greater danger? Is the child likely to require placement elsewhere after the interview and is such a place available? Are there other children who will be placed at risk by attempts to interview? Will these children need immediate intervention to protect them, will they also need to be interviewed? Will there be the need for immediate medical exam or treatment for the child and is such available? All of these questions and more need to be answered before the interview can proceed.

A best case scenario would be one in which the concerned parent was the referral source, the child was aware of the scheduled interview and brought to the site in a scheduled manner by the same parent. A worst case scenario might include a child who had made no disclosure and was unaware of the planned interview being in the care of a violent and volatile alleged perpetrator who was aware of the scheduled interview. In this second scenario, it is likely that the investigating team (social worker and police official) would arrive with police assistance to remove the child for the interview, our greatest fear being that before being safely extracted from the possible pandemonium of such a scene the child would be subject to further abuse and threatenings, such that to proceed with an interview would be pointless.

Needless to say, whether well-informed or completely unaware, the child is likely to be nervous at least and more likely frightened and distraught. The child who did not disclose may have no idea what the purpose of the interview is until it is well underway. The child who did disclose may approach the interview with the certain knowledge that their whole world was falling apart and they were most assuredly to blame.

The interview, then, must be conducted in such a way as to not only acquire good evidence, but also to minimize the trauma experienced by the child. In Nova Scotia the Step Wise Interview has been adopted as the preferred method of conducting such interviews for just these reasons, this method being drawn from the work of John C. Yuille, University of British Columbia.

3.37 GUIDELINE - A PROTOCOL FOR INTERVIEWING CHILDREN (John Yuille, University of British Columbia)

OVERVIEW

1. The Step Wise Interview has been designed with three distinct goals in mind:
 1. To minimize any trauma the child may experience during the interview.
 2. To maximize the amount and quality of the information obtained from the child while, at the same time, minimizing any contamination of that information.
 3. To maintain the integrity of the investigative process for the agencies involved.
2. The Step Wise Interview is an investigative interview. The procedure encourages and facilitates the child's recall of events. Every opportunity is provided to obtain the child's version. This is done by always beginning with the most general, open phase of the interview, and proceeding to a more narrow form of questioning only when required. The less prompting the better. The interviewer must demonstrate PATIENCE and allow as much of the interview content as possible to come from the child.
3. The Step Wise Interview is part of the fact finding process. If the investigator entertains only a single hypothesis, there exists a chance that the investigation might turn into an effort to "prove" that hypothesis rather than an effort to find the hypothesis that best matches the facts of the case. Not only is this a poor investigative technique (i.e., working against goal number 2), but it goes against the best interests of the child (i.e., working against goal number 1) if that hypothesis is not the correct one. It is important that the investigators generate several hypotheses about the case.
4. The interviewer must be alert to developmental differences in language and memory. Never assume that you know what a child means by the use of a particular word. Always ask if the meaning is not obvious. Similarly, make certain that you are employing words and concepts which the child understands.

Without reproducing the format of the Step Wise Interview in its entirety, I would offer the following description: The Step Wise Interview is a deliberate and structured cognitive interview (Fisher and McCawley, 1995) method designed to obtain good evidence from child victim witnesses while minimizing the trauma associated with the interview. It is a method which is informed by both the social sciences literature regarding the psycho-social developmental needs and limitations of children and the legal literature regarding the admissibility limitations of child witness statements (Yuille et al, 1988).

THE STEP WISE INTERVIEW:

THE FIRST STEP: THE INTRODUCTION

THE SECOND STEP: BUILDING RAPPORT

THE THIRD STEP: INTERVIEW RULES (OPTIONAL)

THE FOURTH STEP: ESTABLISHING THE NEED TO TELL THE TRUTH

THE FIFTH STEP: INTRODUCING THE TOPIC OF CONCERN

THE SIXTH STEP: FREE NARRATIVE

THE SEVENTH STEP: OPENING QUESTIONING

THE EIGHTH STEP: SPECIFIC QUESTIONS (OPTIONAL)

THE FINAL STEP: CONCLUDING THE INTERVIEW

OPTIONAL STEPS -

INTERVIEW AIDS

LEADING QUESTIONS OR SUGGESTION

REQUESTING A REPETITION

THE COGNITIVE INTERVIEW

It is likewise informed by Yuilles' own work regarding child's statement validity analysis, such that the evidence given in this format should be more easily assessed by those professionals familiar with this work (Department of Community Services, 1996).

3.39 GUIDELINE - VALIDATION OF THE CHILD'S STATEMENT - STATEMENT VALIDITY ANALYSIS - ARTICLE BY JOHN YUILLE

STATEMENT ANALYSIS: AN OVERVIEW OF THE CONTENT CRITERIA (JOHN C. YUILLE)

1. **Coherence.**
2. **Simultaneous reproduction.**
3. **Sufficient detail.**

SPECIFIC CONTENTS OF THE STATEMENT

4. **Contextual embedding.**
5. **Descriptions of interactions.**
6. **Reproduction of conversation.**
7. **Unexpected complications during the indecent.**

PECULIARITIES OF THE CONTENT

8. **Unusual details.**
9. **Peripheral details.**
10. **Accurately reported details misunderstood.**
11. **Related external associations.**
12. **Accounts of subjective mental state.**
13. **Attribution of perpetrator's mental state.**

MOTIVATION RELATED CONTENTS

14. **Spontaneous corrections.**
15. **Admitting lack of memory.**
16. **Raising doubts about one's own testimony.**
17. **Self-deprecation.**
18. **Pardoning the perpetrator.**

OFFENSE SPECIFIC ELEMENTS

19. **Details characteristic of the Act.**

Child Statement Validity Analysis

Again, without reproducing his whole work here, I would offer the following description of Yuille's Child Statement Validity Analysis (SVA) work. Yuille's SVA work has grown out of an attempt to answer the legal and clinical question of how to determine the accuracy of testimony provided by child witnesses. Based on the belief that accurate statements differ in their substance from the inaccurate, SVA provides a rationale and a method for assessing statement validity (based on scientific assumption, observation and experimentation) in place of attempting to assess the child's credibility (which is inherently a more subjective process made even more difficult by developmental considerations) (Perry & Wrightsman, 1991).

As important as Yuilles' work is in this field, it is important to note that his contribution of SVA has two major difficulties when applied to the field. First, Yuilles' SVA is a scientifically designed method which depends on highly and very specifically trained interviewers and a very structured method that may not be available in the field. Even in Nova Scotia, in which Yuilles' work is taught and after which our system of interviewing is designed, caution is exercise in presenting oneself as a SVA expert or to offer formal evaluation of child witness statements using the SVA criteria. SVA then is still approached like academic or scientific hypothesis, which aids us in our practice, but is not to be considered in the basis of our practice by any means.

Secondly, the application of SVA commentary to child evidence may have some difficulty being acceptable as evidence in some court jurisdictions. Yuilles' review of the literature on this point includes discussions of U.S. case law in which evidence regarding the psychology of child complainants has been introduced. Four types of expert witness testimony is described:

- 1) Testimony which attempts to diagnose “abuse”;
- 2) Testimony which attempts to establish or comment on child witness credibility;
- 3) Testimony which attempts to explain the psychology of why children may have uttered accusations or recanted; and
- 4) Testimony which attempts to establish the capacity of a witness;

Yuilles’ review suggests that courts are divided in allowing the first category, have tended to reject the second, consistently allow the third and are again mixed on the fourth (Yuille et al, 1988).

Expert commentary on asserting or denying the credibility of a child witness or the validity of a witness’s statements then may create problems in some court jurisdictions. Expert testimony might be more properly left for informing and educating the court about the nature of SVA and the related criteria leaving the actual assessing to the court or jury.

Needs of the Child Victim/Witness versus Clean Evidence

We have seen that throughout the process of receiving, assessing and intervening in a child protection matter that a primary concern for social workers is the welfare of the child. At times, this consideration is in conflict with the need to get good evidence.

Several questions and considerations make this conflict clearer. How much do we tell the child in our efforts to get them to willingly attend the interview? Do we allow a parent or support person to be present during the interview if it appears that the child won’t interview without such support? Do we allow the child to speak of other victimizations they may have suffered, other alleged perpetrators, other potential victims? How do we avoid “treating” the child’s stated fears, guilt, shame during the investigative interview? How long do we delay an interview in attempting

to accommodate the emotional needs of the child victim/witness? How do we skillfully and appropriately introduce leading questions which may yield useful information for child welfare workers yet render the interview useless for criminal proceedings?

The potential conflicts are almost endless, and they do not end with the interview. After the formal interview, the child/victim witness must be dealt with in a manner such that their story is not tampered with until the criminal investigation and prosecution is at an end.

This creates even greater dilemmas for the child welfare/police agency relationship. How do you instruct a foster parent to support and adequately care for a child that has been abused without informing the foster parent about the nature of the abuse or allowing the child to talk about “it”? How do you refrain from treating the child who is in obvious trauma for 18 months while the criminal process drags on?

The first set of questions impact on the investigative protocol between Child Welfare and Policing agencies. The second set seem to have appropriate considerations for those who draft court regulations and rules related to evidence.

Conclusion

From a child welfare perspective, it appears that the work to balance the psychological needs/developmental limitations of the child victim/witness and the need to get and maintain “good evidence” is far from over. It is a work that child welfare and policing agencies engage in annually as they review and update their protocols. In this writer’s view it is a work which must be continually considered at the policy and legislative levels.

It is encouraging to see that this matter is being discussed in some depth at this Atlantic Education Conference.

REFERENCES

Department of Community Services (1991). Department of Community Services, Family and Children's Services Division, Child Protection Services Policy Manual.

Fisher, R.P. & McCauley, M.R. (1995). Improving eyewitness testimony with the cognitive interview. In M.S. Zaragoza et al (Eds.) Memory and Testimony in the Child Witness. (Pp. 141 - 159). Thousand Oaks, CA: Sage.

Perry, N.S. and Wrightsman, L.S. (1991). The Child Witness: Legal Issues and Dilemmas, Newbury Park, CA: Sage.

Savoury, George,

Yuille, J.C., King, M.A., MacDougall, D. (1988). Child Victims and Witnesses: The Social Science and Legal Literatures. Ottawa: Department of Justice, Canada.

Yuille, J.C. (1989). Credibility Assessment: Kluwer Academic Publisher.