

Position Paper on Documenting Forensic Interviews

Introduction

“A forensic interview of a child is a developmentally sensitive and legally sound method of gathering factual information regarding allegations of abuse or exposure to violence. This interview is conducted by a competently trained, neutral professional utilizing research and practice informed techniques as part of a larger investigative process” (Newlin et al., 2015, p.3). While no single protocol (structure/guidelines) for a child forensic interview has been agreed upon, virtually all recognized national and international protocols are informed by current literature and are far more similar than different in their approaches. Much energy, attention, and research continues to focus on improving methods for training, supervising, and supporting professionals who conduct these challenging interviews of children (Lamb, Sternberg, Orbach, Esplin, & Mitchell, 2002; National Children’s Alliance (NCA), 2017; Powell, 2008; Price & Roberts, 2011; Stolzenbeg & Lyon, 2016).

It is widely accepted that competent forensic interviewing is a complex task requiring interviewers to establish and maintain rapport with a child, understand and track information from the child, form appropriate and non-leading questions, and adjust strategies to accommodate the child’s linguistic style and developmental abilities. Information gained from the child’s forensic

interview is vitally important as it serves to inform the work of investigators and influence case decisions. While only one piece of a comprehensive investigation of alleged abuse or a potential crime, the forensic interview is an opportunity for the child to provide her/his unique information and description of his/her experience. For this reason, it is necessary for this interview to be completely and fully documented (Jones, Cross, Walsh, & Simone, 2005; NCA, 2017).

Documentation of Forensic Interviews

Forensic interviews of children, historically, have been documented in a variety of ways including handwritten notes, audio-recording, and electronic or digital video recording, with such decisions often being determined by local preference and practice. However, there is growing consensus nationally and internationally for electronic video recording. Russell (2010) stated, "It is critical that investigative interviews conducted with children are completely and accurately documented to effectively capture the child's statements regarding any abuse allegations, events witnessed or denials of witnessing or experiencing traumatic events" (p. 306). There is no more complete representation of the forensic interview than the interview recording (Cauchi & Powell, 2009).

Benefits of Documentation through Video Recording

A majority of the forensic interviews of children conducted in the United States are recorded through the use of video recording devices (Midwest Regionals

Children's Advocacy Center, 2013), and internationally this practice is widespread. The practice of recording and maintaining electronic documentation of the child's forensic interview has a number of advantages (American Professional Society on the Abuse of Children, 2012; Jones et al., 2005; National Children's Advocacy Center, 2012). "...professionals need to be assured that child witnesses are interviewed in a way that maximizes the quality, detail and accuracy of their account. Such assurance is dependent on accurate documentation of both the questions and the answers in these interviews" (Cauchi & Powell, 2009, p.513). The entire process of the forensic interview is best captured through a video recording of the interaction, which reflects both the verbal report of the child and the interviewer's questions, as well as emotional and behavioral communications. Communication is not only an exchange of words, but includes elements such as pacing, pausing, gestures, inflection, voice tone, hesitancy, refusal to respond to certain questions, and indications of comfort or anxiety on the part of the child. Even verbatim words on paper cannot provide a complete record of all that was communicated (Lamb, La Rooy, Malloy, & Katz, 2011).

Video recorded forensic interviews also facilitate review and skill building practices among forensic interviewers. Research and clinical experience agree that ongoing opportunities to review and reflect on one's practice, receive supervision and support from more experienced interviewers, and participate in peer review are essential for the development and maintenance

of high quality forensic interviewing (Poole, 2016; Powell, 2008; Price & Roberts, 2011).

Challenges with Documentation through Note-Taking

There are multiple challenges to relying on observation and note-taking to capture the complexity and completeness of a forensic interview, particularly given the necessity of comprehensive and accurate documentation. Adult memory for verbal exchanges is not always reliable. Adults and children are more likely to retain “gist” memory for conversations than to recollect verbatim accounts (Brainerd & Reyna, 1993; Bruck, Ceci, & Francoeur, 1999; Lawson & London, 2015). In forensic conversations, the exact wording used by the interviewer and the child can be very important. Under optimal conditions, the typical rate of the spoken word is faster than the rate of the written word (Cauchi & Powell, 2009; Piolat, Olive, & Kellogg, 2005). Segments of verbal exchanges will be lost without the forensic interview being digitally documented. In a systematic comparison of audio-recorded interviews of children with verbatim contemporaneous accounts, Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz (2000) found that “more than half (57%) of the interviewer’s utterance along with 25% of the incident related details were not reported in the ‘verbatim’ notes” (p. 699). Words alone do not reflect the true interaction between the two parties. Non-verbal communication (facial expression, cadence, pausing, lowering or raising the voice, inflection, gestures, demonstration of feelings) is important and may add richness and depth to the spoken word.

When contemporaneous interviewing and note-taking are done by the same person, there will be an impact on the conversation. Rapport may be diminished. The interviewer may miss non-verbal communication from the child, and an artificial flow to the conversation can develop as the child pauses for the interviewer to write. Additionally, some children become anxious about what the interviewer is writing and this can create an unwanted distraction. It is widely recognized that narrative requests are the optimal methods for obtaining information from children during forensic interviews. There is concern that forensic interviewers may be tempted to use fewer narrative prompts as lengthy responses challenge the interviewer's ability to capture the child's response. Even when the designated note-taker is not the primary interviewer, verbatim documentation remains impossible (Berliner & Lieb, 2001; Cauchi & Powell, 2009; Lamb et al., 2000).

Additionally, without a digital recording of the interview it is difficult to evaluate the quality of the interview, the form of questions implemented, and guarantee that notes reflect the verbatim response from the child (Cauchi & Powell, 2009). Opportunities for peer review, which is shown to increase acquisition and adherence to good forensic interviewing practice, is lost (Powell, 2008; Price & Roberts, 2011).

Challenges with Report Writing Following Recorded Forensic Interviews

Some CACs and Multidisciplinary Teams (MDTs) have developed a practice of requiring forensic interviewers to write a detailed report following the recorded interview of the child. This practice, though not widely used, has taken hold in

certain jurisdictions and raises numerous concerns. Firstly, a review of a written report or notes alone without review of the recorded interview cannot provide a full and accurate understanding of the conversational exchange. Failure to review the recorded interview does not allow the observer to note behavioral changes, pauses, changes in inflection, and other significant communication cues. Pressed for time by high case-loads, investigators and prosecutors may be tempted to rely on the written report without the full benefit of knowledge and understanding revealed by observing the forensic interview as it occurs or through the most complete and accurate documentation available. This is also contrary to identified Best Practices. Before any criminal or civil litigation is pursued, the individual initiating this action should have reviewed the recorded forensic interview.

Secondly, completion of a report written by the same person who conducted the forensic interview results in two records of the exchange provided by the same person. When added to other written documentation from law enforcement and child protection investigators who have observed the forensic interview in accordance with best practices (NCA, 2017) the creation of an additional written report increases the opportunity for inconsistencies and confusion.

Thirdly, and perhaps most important is the undue burden placed on forensic interviewers. As stated earlier, forensic interviewing of an alleged child victim or witness is a complex task requiring knowledge, practical expertise, and sensitivity to a multitude of issues. The expertise and time of forensic

interviewers is valuable. A report summarizing a forensic interview takes considerable time to prepare, more time than simply watching the forensic interview, as the report writer must constantly review the recorded interview and the report to insure accuracy. Failure to take time and measures to insure accuracy and completeness of the report results in a document which is not evidentiary, but more of a courtesy for MDT members. Further, it may lead to issues with the case and/or be used against the interviewer (Cauchi & Powell, 2009).

Fourthly, time spent writing reports reduces the forensic interviewer's availability for conducting forensic interviews of children in a timely and expedient manner, obtaining continuing education, or participating in supervision or peer review. Expecting a forensic interviewer to write the detailed report, which is a time intensive activity, sends a message that the forensic interviewer's time is less valuable than others involved in the multidisciplinary response to child abuse. Actual observation of the child's forensic interview allows investigators and prosecutors to gain the information required to generate reports meeting their respective case-specific needs.

The final concern relates to vicarious trauma. There is broad concern that CAC staff and MDT partners work in highly trauma exposed work environments and that the exposure may affect the individual professionals and the organizations in which they work. This observation raises an important question about the potential impact of requiring staff to multiply their exposure by conducting and

then closely reviewing recorded forensic interviews. Perhaps it is better to avoid multiple exposure to the difficult content of forensic interviews.

Conclusion

It is the position of the National Children's Advocacy Center and the Association for Prosecuting Attorneys, that video documentation of a child's forensic interview provides the most complete and accurate record of the child's statement through capturing the spoken words from both child and forensic interviewer as well as behavioral and emotional communication.

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