

INVESTIGATIVE INTERVIEWS OF VULNERABLE PERSONS

SAFEGUARDING THE RIGHTS OF
THOSE WHO MOST NEED PROTECTION



AS SEEN IN



WRITTEN BY

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INVESTIGATIVE INTERVIEWS OF VULNERABLE PERSONS: SAFEGUARDING THE RIGHTS OF THOSE WHO MOST NEED PROTECTIONS

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The release of documentary films such as *Netflix's Making a Murderer* and *When They See Us* have brought nationwide attention to the importance of professional, ethical, and bias-free investigative interviews. This is especially critical in the interview of a subject who may possess an additional level of vulnerability to pressure, suggestion, or desire to please authority figures.

Professional interviewers continually strive to grow their skills to obtain full, accurate and uncontaminated accounts of matter under investigation from those being interviewed. However, there are some circumstances which are beyond the control of the interviewer that may significantly impact the quality and reliability of the interview. The most effective interviewers can effectively identify and manage these circumstances in both the planning stages and in the conduct of the interview itself.

Interviewers must be alert for dispositional risk factors that impact the subject's ability to provide an accurate statement. In worst case scenarios, this will contribute to the possibility of a false confession and unjust adjudication (Kassin, et al, 2009).

Dispositional Risk Factors

Childhood, Adolescence and Immaturity – Children and adolescents are cognitively and psychosocially less mature than adults. This immaturity often results in:

- impulsive decision-making
- decreased ability to consider consequence
- risky behavior
- susceptibility to negative influences (Steinberg, 2005).

Cognitive and Intellectual Disabilities – Similar to factors associated with children and adolescents (Perske, 2004). Additionally:

- heightened susceptibility to influence
- reliance on authority figures for problem solving
- desire to please authority figures
- seeking out friends
- feigned competence
- short attention spans

- memory gaps
- lack of impulse control
- readily accepting blame for negative outcomes.

Personality and Psychopathology – Studies have shown that persons with antisocial personality disorder, or antisocial traits, are more likely to be involved in offenses. Therefore, there are more likely to be interviewed by authority figures. This group may be more prone to lying for short-term gains and are less concerned with the consequence of their behavior. Psychological disorders are commonly accompanied by:

- faulty reality monitoring
- distorted perception
- impaired judgment
- anxiety
- mood disturbance
- poor self-control
- feelings of guilt (Gudjonsson 2003, 2006).

Children and Adolescents

In 2015, the U.S. Department of Justice (DOJ), sponsored a study to develop a system of best practices for child forensic interviewing. The study had a basic definition of a child forensic interview:

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 (DOJ/OJP/OJJDP, 2015).

Interview training programs must consider this definition applicable for any interview of a child or adolescent, regardless of allegations of abuse or exposure to violence.

The DOJ study identified four important ideas for interviewers to consider for improving the quality of their child/adolescent interviews:

1. No two children will relate their experiences in the same way or with the same level of detail and clarity. Individual characteristics, interviewer

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behavior, family relationships, community influences, and cultural/societal attitudes will influence their accounts.

2. Interviewer must strike a delicate balance. Repeated questioning and duplicative interviews can be dangerous. However, some children require additional time to become comfortable with the interview process.
3. Encouraging detailed responses early in the interview enhances the quality of later responses.
4. Interviewers should use open-ended questions. Allow for silence or hesitation without moving too quickly. Don't press children to reach beyond their stored memory.

Interviewers must understand the child/adolescent disclosure process. This is not only critical for investigative purposes but will serve to protect the child as well. Disclosure happens along a continuum, and no single pattern of disclosure is predominant (Lyon and Ahern, 2010). The interviewer's assessment of the child/adolescent subject's likely level of cooperation should take place early in the interview process. The subject's disclosure posture may fall anywhere along the continuum. The technique selected must be informed by the level of resistance offered by the subject.



Although a child's resistance to providing full accounts of events may have some common ground with that of an adult, there are also some factors that are unique to children/adolescents. Once an assessment is made about the child's level of resistance, the interviewer must seek out the reason for this resistance. Potential reasons include, but are not limited to:

- Age of child/adolescent
- Relationship with any offender(s)
- Absence of parental support
- Gender
- Fear of consequences
- Fear of not being believed (Malloy, et al, 2011).

As with adult interview subjects, the way a question is asked is just as important as the question itself. The use of open-ended questions is a proven meth-

od for provoking useful responses and stimulating thoughtful conversation.

Recall prompts – are open-ended questions inviting the child to tell everything they remember in their own words. These questions encourage the child to elaborate without input from the interviewer. It is critical to avoid the introduction of information or offer options (Saywitz and Comparo, 2009).

Recognition prompts – once open-ended questions have been exhausted, it may become necessary to focus the questioning. Recognition prompts should only be used once the child has exhausted their capability for narrative or if they cannot comprehend open-ended questions. This can be risky because it can elicit less accurate responses if the child feels compelled to respond, even if the question reaches beyond the limits of their stored memory (Faller, 2007).

Interview Aids/Media – Experts are divided about the usefulness of media (e.g., paper, markers, detailed drawing, dolls). Those advocating for their use believe they help verbally limited children fully recount their experiences. Concerns include whether their introduction may influence the child's responses. Interviewers should consult their legal advisor and child welfare team members before in-

roducing any media into the interview (Brown, et al, 2007).

The DOJ study referenced earlier developed a series of best practices for interviews of children/adolescents.

Overall considerations:

- Conduct interviews as soon as possible after initial disclosure
- Record the interview electronically
- Hold the interview in a safe, child-friendly environment
- Use open-ended questions
- Consider age, developmental ability and culture.

Building rapport:

- Have a conversation about interests and activities

- Provide an opportunity for the child to describe a recent, unrelated event
- Describe the ground rules for the interview
- Discuss the importance of truth-telling.

Conducting the interview:

- Carefully transition into the matter under inquiry
- Ask the child to describe what they know in detail
- Do not interrupt
- Once the initial account is explored, ask more focused questions
- Mirror the child's wording and model their behavior
- Avoid suggestive questions that could compel inaccurate responses
- Explore other viable hypothesis for the child's behavior or statements
- Consult with any observers about whether to expand questioning.

Ending the interview:

- Ask if there was anything they'd like to add
- Discuss safety
- Provide educational materials (if appropriate)
- Thank the child for participating.

Cognitive and Intellectual Disabilities

Much of what is true with children and adolescents is true with this population. As with children, this population is significantly overrepresented in false confession cases.

Intellectual disability represents a constellation of symptoms, disorders and adaptive functioning. Generally, it is accompanied by a range of impairments including, but not limited to:

- Adapting to societal norms
- Interpersonal communication
- Social skills
- Interpersonal skills
- Self-direction.

In four distinct studies, subjects identified with intellectual disabilities had significant deficits in understanding *Miranda* warnings. In one study 50% of

people with mild intellectual disability could not correctly paraphrase even one of the five components of a *Miranda* warning. This compares to less than 1% of the population at large (Grisso, 1996).

People with intellectual disabilities may also be highly susceptible to suggestion. They may yield to leading questions or change their answers in response to mildly negative feedback.

The Irish National Federation of Voluntary Bodies (2005) developed a set of guidelines specifically designed for use when interviewing people with intellectual disabilities. Although this study focused primarily on interviews connected with research efforts, many of the best practices are applicable in investigative interviewing as well.

Location of the interview – a quiet, distraction-free environment is best. The venue should make the subject feel safe and comfortable. This will make it easier for the subject to answer personal, difficult or awkward questions. They should have no fear that they might be overheard.

The interviewer – a blend of subject-matter expertise and experience in interacting with persons with intellectual disabilities is ideal. A patient, understanding and gentle approach will yield the best results.

Language choices – poor descriptive words can easily offend a person struggling with intellectual disabilities. Terms like "mentally handicapped," "retardation," or "special needs" can be hurtful and counterproductive. Focus on the person, not your concept of the nature of their situation.

Verbal communications – speak directly to the subject while maintaining appropriate eye contact. Do not correct or complete sentences for the subject. If the subject's response is not understood, ask for repetition. Avoid paraphrasing. The subject may be reluctant to correct the interviewer even when the interviewer misstates what the subject offered. Keep your language simple, clear and age appropriate. Be patient. If asked to slow down or repeat a question, do so professionally.

Non-verbal communications – when the interview subject struggles with verbal communications, non-verbal cues become even more important than they normally are considered. Look for signs of stress, frustration, or distraction. It is not necessary to evaluate these cues for signs of truth or deception. Rather, use them as guideposts for any required adjustments to your verbal delivery.

Aids to communication – as discussed earlier (see *Interview Aids/Media*, in Section I, above), researchers are divided on the value of communication aids. Stories, photos and games may facilitate the exchange of information. However, the investigative interviewer must be cautious about avoiding suggestions or providing cues about desired responses. As in the case of children, it is best to consult with subject-matter experts and your legal advisor before introducing such aids.

Dealing with abstract concepts – Terms like “fraud,” “conspiracy,” and “corroboration” are in the investigative interviewers’ daily lexicon and are widely understood. It may be overlooked that these are complex, abstract concepts that may not be well understood by the layman. This becomes even more acute when speaking with people challenged with a developmental or intellectual disability. Use concrete language. Keep sentences short and confined to a single topic. Avoid timeline and quantitative assessments.

Question formulation - as with all other interviewed populations, the structure of the question is just as important as the question itself. Questions must be structured in a manner familiar to the interview subject. Use open-ended questions and phrase them positively. If a question requires options, limit it to two or three choices. Repeat such questions and randomize the choices to preclude the tendency to accept the last option offered.

Response bias – individuals with intellectual or developmental disabilities may have a tendency to bias their responses in one of three ways. *Acquiescence bias* is the tendency to answer all questions in the affirmative. Conversely, *nay-say bias* results in automatic negative answers. *Recency bias* is the tendency to select the last or most recent option. Interviewers can test for these biases through non-relevant questions. It is important to note that if the question itself includes a built-in bias, the danger of a response bias from the subject is exacerbated.

Induced acquiescence – people in this interview population may have a strong desire to please others perceived to be in positions of authority. Consequently, they may not answer truthfully, but in a way intended to satisfy the interviewer. If the interviewer delays in accepting an answer, or expresses skepticism, the subject may feel compelled to modify their response to get positive feedback.

Patience – Stated simply, it will just take more time to build an effective interview with this population. Build the extra time into interview planning. Avoid the tendency to answer for the subject or rush their

responses. In initial meetings, allow some “get-acquainted” time to allow for a feeling of trust and comfort with the interviewer.

Personality and Psychopathology

A wide array of individual factors influence a subject’s decision whether or not to cooperate in an investigative interview. Some studies suggest that interview subjects in law enforcement, loss prevention, asset protection or other situations where a violation is suspected or alleged, are more likely to have antisocial personality disorders or antisocial traits. These individuals are prone to lie for short-term instrumental gains and are less concerned about the consequences for their behavior (Gudjonsson, 2006).

Subjects experiencing a psychological disorder may exhibit signs of:

- Faulty reality monitoring
- Distorted perception
- Impaired judgment
- Anxiety
- Mood disturbance
- Poor self-control
- Feelings of guilt.

Interviewers are not expected to conduct a psychological assessment of the people they interview. However, the interviewer is responsible for making a judgment whether or not the subject is fit to participate in the interview. This not only applies to behavioral concerns. It also includes impairment due to alcohol or other drug consumption.

The professional interviewer always considered the subject’s physical, mental, and social vulnerability. It is incumbent upon the interviewer to assess whether these vulnerabilities may adversely affect the subject’s capacity to cope with the strains that accompany participation in an investigative interview (Grisso, 1986).

In some jurisdictions, courts are considering “fitness to be interviewed” as a factor in the admissibility of statements obtained during investigative interviews (Gudjonsson, 2005). This is specifically intended to protect the interests of psychologically vulnerable subjects.



Innocence as a Risk Factor

Ironically, innocence itself may put innocent people at risk (Kassin, 2005). People falsely accused of a crime or violation may tend to believe that the truth will emerge and justice will prevail. They may believe that their innocence is apparent to interviewers and investigators. With this in mind, they will waive all rights and speak freely to defend themselves against the allegations.

People who fit the description above are driven by the belief that since they did nothing wrong and have nothing to hide, it is fine to cooperate with the investigative interview. Poorly formed, leading questions can contaminate the interview and lead the innocent person to agree to events that may not be accurate.

This risk factor can be effectively managed with advanced training, thorough preparation and comprehensive understanding of the investigative findings to date. Interviewers must continually monitor their own biases and desire to “clear” a difficult or complex case. Anything disclosed during an investigative interview must be independently corroborated to truly be considered valid.

Conclusion

Investigative interviewers have an affirmative obligation to recognize and consider subject vulnerabilities. Only through continual training and an extraordinary level of ethical and professional commitment can the rights of the vulnerable be fully protected. This helps ensure that the pursuit of justice does not come at the price of taking unfair and unlawful advantage of those unable to protect themselves.

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