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Kee MacFarlane

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Diagnostic Evaluations and the Use of Videotapes in Child Sexual Abuse Cases*

KEE MACFARLANE**

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I. INTRODUCTION

Video recording of interviews and testimony by child abuse victims for clinical, legal, and investigatory purposes has become increasingly popular over the past few years.¹ These permanent, first hand records of initial statements are particularly valuable in a field characterized by a high likelihood of later retraction by the child victims. There are, however, a number of pitfalls that can accompany such documentation. This article will examine both the advantages and disadvantages of this form of electronic evaluation, discuss some of the techniques and strategies associated with videotaping and interviewing young children, and offer the reader the

*This material has been condensed, with the permission of the publisher, Guilford Press, from MacFarlane & Waterman et al., *Videotaping of Interviews and Court Testimony and Techniques for Interviewing and Evidence Gathering*, in *SEXUAL ABUSE OF THE YOUNG CHILD: EVALUATION AND TREATMENT* (1986).

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The author would like to express her appreciation to her colleague Sandy Krebs for her collaboration in the preparation of this article, and who co-authored one of the chapters from which it was drawn.

1. Rogers, *Child Sexual Abuse and the Courts: Preliminary Findings*, in *SOCIAL WORK AND CHILD SEXUAL ABUSE* 150-51 (J. Conte & D. Shore eds. 1982).

benefit of considerable experience with both the positive outcomes of utilizing these methods as well as the potential repercussions.

II. PURPOSES OF TAPING

Most of what will be said about videotaping also applies to audiotaping. The following discussion, however, for the purposes of brevity, will only refer to videotape recording. Because sexual abuse is so difficult for children to talk about and to acknowledge, it can be a real advantage to capture visually a child's physical reactions, body language, and facial expressions of fear, pain, anger and avoidance — visual reactions that might otherwise never find their way into words.² When working with sexually abused children, we can learn as much from what they are unwilling or unable to say, as from what they actually tell us.

A. *Reducing Systemic Trauma*

Many agencies and individuals tape initial sessions with children in anticipation of the many problems that children face when processed through our child protective and criminal justice systems. Children are regularly forced to undergo multiple, duplicative interviews by a wide variety of professionals who have a legitimate interest in the children's welfare or in the prosecution of alleged crimes. Each successive interview, whether it is for medical, clinical, or legal purposes, requires the child to retell experiences and feelings which are usually embarrassing, frightening, guilt-involving and anxiety-producing. In addition, with each retelling, children tend to lose the spontaneity and immediacy that is usually apparent in the first disclosure of sexual abuse. In self-protection against what they frequently see as unnecessary and repetitive intrusions into their lives, children learn to mask the emotional content of their feelings. Some children get to the point where they relate their experiences without any emotion which results in statements about abuse that may appear slick and rehearsed. This has been observed among children who testify in court following a lengthy investigatory and pre-trial process.³

2. For example, a child's response to the question, "Did anyone tell you that something bad would happen if you told your scary secret?" might be heard on an audio recording as a pause followed by a soft, "no." The same response on a videotape might show the child physically withdrawing from the interviewer by bringing her knees to her chest, wrapping her arms around her head and saying "no" with her face in her knees.

3. Sgroi, *Child Sexual Assault: Some Guidelines for Intervention and Assessment*, in *SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS* 135 (A. Burgess, N. Groth, L. Holmstrom,

There are additional disadvantages of multiple information-gathering interviews that can affect the outcome of a case. A child's own ongoing descriptions may become contaminated by verbal input and personal reactions of different adults with whom they interact. A child may lose credibility by picking up previously unfamiliar terminology from the adult questioners.⁴ Additionally, the danger that an interviewer will take advantage of a child's potential for suggestibility or need to comply with adult expectations is increased with each interview. Some children become almost matter-of-fact about the interview process itself.⁵

Finally, children do not understand the logic (or illogic) of having to repeat the same information over and over to different adults.⁶ They frequently get angry and frustrated with the process. They may take it upon themselves to put an end to such nonsense by completely shutting down all communication on the subject and refusing to answer any further questions. This lack of cooperation may occur at a time when their assistance is crucial for the development of the case. They may retract their stories in order to rid themselves of the harassment they now associate with their having revealed their experience in the first place.

It is important to realize that preventing multiple information-gathering interviews within a community system requires far more effort than the mere purchase of audio or videotape equipment. If interviews tape recorded by one agency or individual are not recognized as valuable or legitimate substitutes for interviews by other agencies or individuals within the system, they will do nothing to prevent duplicative and traumatic contact with child victims. This issue, which is crucial to preventing systemic trauma to children, has three distinct aspects: one is political, another is legitimate informational needs, and the third is the competency of interviewing skills.

The first aspect of preventing systemic trauma and multiple interrogations relates to the number and diversity of systems which have jurisdictional interests in a case, such as child protec-

& S. Sgroi eds. 1978).

4. For example, by using adult names for body parts or by substituting the word "molested" for the word "touched."

5. For example, children who have undergone multiple interviews have made statements such as, "I know you want me to tell you about the vagina stuff, right?" or "If I put the dolls together the way it was, can we be finished?"

6. Paper presented by Lucy Berliner & Rebecca Roe, *The Child Witness: The Progress and Emerging Limitations*, American Bar Association, National Policy Conference on Legal Reforms in Child Sexual Abuse Cases, Washington, D.C. (Mar. 8-9, 1985) (unpublished).

tive services, police departments, the courts, and the district attorney's offices. There are others who may have health or mental health interests in a case, such as physicians, psychotherapists, and specialized child abuse diagnostic center employees. Despite many common goals, these agencies and individuals frequently are not in agreement as to the kinds of information needed and the process by which it should be gathered. More importantly, they rarely have authority or jurisdiction over one another's activities, and are not individually in a position to direct or coordinate each other's actions, except by mutual consent. They must agree, on a community-wide basis, to work together in order to prevent systemic trauma and multiple interrogations of children.⁷ The agencies and individuals involved may have to give up some advantages in order to gain others, but ultimately their interests will be served because the changes will be in the interests of the children who are the objects of their intervention. Videotaped interviews can be very useful in this regard, but only if the interested parties agree about who will conduct the interviews, what they will be used for, who will have access to them, and what questions will be asked. Dealing with the politics of obtaining mutual consent among systems is one of the biggest hurdles in preventing systemic trauma to child victims.

A second hurdle arises because different agencies often have varying types of informational needs. This dilemma is perhaps the least complex to resolve if the agencies can agree on: a) how to identify needed information and, b) how to obtain information using the fewest number of interviewers possible. This may require cross-staff planning (a good idea in any event) or simply the sharing of interviewing techniques, goal outcomes, and specific types of information shared among a few key individuals within each system.

The third factor in preventing systemic trauma, competent interviewing skills, involves both skill and experience in communicating with young children about difficult subjects (while maintaining a comfortable atmosphere), and knowledge about conducting diagnostic evaluations within the legal framework of potential evidence gathering. The latter is easier to teach than the former, which usually requires experience with children and the ability to

7. For an informative description of a community approach that works, see Cramer, *infra* p. 209 (*The District Attorney as a Mobilizer in a Community Approach to Child Sexual Abuse*, 40 U. MIAMI L. REV. 209 (1985)).

view the world from a child's perspective.

The objective of considering these factors is to develop a method to obtain the necessary kinds of information from a single interview or set of interviews by one person, which can be satisfactorily shared among all of the agencies with responsibilities or interests in the case. Professionals may initially balk at this idea because the various systems appear to be mutually incompatible.⁸ This seems to be particularly true when looking at the difference between law enforcement investigations and psycho-diagnostic evaluations.⁹ It has been our experience, however, that each of these systems or professionals has much to learn from the others regarding the type of information that is useful, and the ways that it can be gathered. Obtaining information for evidentiary purposes does not have to be an impediment to sensitive clinical considerations. Still, if systems that require facts and evidence do not coordinate with those that best understand the needs of children, the intended goals, as well as the children, will suffer.

B. *Enhancing the Therapeutic Relationship*

One of the most straightforward reasons for videotaping an initial interview, particularly for clinical interviewers who will not be providing on-going treatment to a child, is to be able to capture on tape the child's initial reactions, responses, and statements for eventual use in therapy.¹⁰ Not only can it prevent the necessity of asking the exact same questions in successive interviews or treatment sessions, it can also capture a child's first responses before they are affected by the passage of time, other people, and subsequent events. Furthermore, for a child who is entering treatment with a new therapist following disclosure of sexual abuse to another person, the tape can serve as a bridge of information between the child and the therapist, a bridge which facilitates the establishment of a rapport, communication, and a trust that begins with a

8. MacFarlane & Bulkley, *Treating Child Sexual Abuse: An Overview of Current Program Models*, in *SOCIAL WORK AND CHILD SEXUAL ABUSE* 71-72 (J. Conte & D. Shore eds. 1982).

9. Topper & Aldridge, *Incest: Intake and Investigation*, in *SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES* 110 (P. Mzarek & C. Kempe eds. 1981).

10. There are many subjects or questions that may elicit evasive reactions from children. These reactions include a quick change of the subject, asking for "Mommy," trying to get away, or covering their faces with their hands. Such reactions may or may not be related to sexual abuse, depending on their context. In addition, the cause of the reaction is often difficult to determine in one initial interview. Nonetheless, they provide clinical data on the expressed concern of the child that can be explored further during treatment.

shared confidence.¹¹

The therapist can tell the child that he or she has seen the tape of the child's talk with the interviewer. The therapist can then help the child to know that he or she needn't be afraid of a disapproving or shocked reaction by the therapist. Even more helpful, the child and the therapist have the opportunity to sit together and watch the tape. This procedure allows the therapist to observe the child's reactions to viewing the initial interview. It also provides a means by which the child can communicate some of his or her experiences without having to repeat them again to a new person. A child may sometimes offer additional information about the abuse if the therapist stops or "freeze frames" the tape at significant intervals and talks to the child about what they have just seen or heard.¹² The therapist may want to take advantage of that moment for several purposes: a) to obtain more information about what the child was feeling at that particular time, for example, "You looked kind of nervous just then," or, "How were you feeling?," b) to clarify or receive more detailed information about something the child was describing, denying or acknowledging, for example, "What did you mean when you said he was nasty?," c) to give the child an opportunity to reconsider, take back or rephrase anything he or she may not have meant to say or imply, for example, "Was that for real or pretend?," and d) to be supportive or empathetic to something the child did or said at a certain point on the tape, for example, "I know that was hard for you to talk about but you did well answering all those questions."

The therapist should consider the appropriate time in the therapeutic process for using the tape to effectuate these purposes. It might be used as an introductory tool that allows a child to tell his or her secrets to a new person without having to relate them again so soon, or it may be used much later in the therapy of a child who requires a long time to develop enough trust to share such secrets.¹³ It is important in the treatment of sexually abused children that they be able, at some time, to confront and, hopefully, master the trauma associated with their victimization.¹⁴ Sim-

11. Discussion with MaryKay Oliveri, Clinical Director of South Bay Child Guidance Center, California (concerning videotaped interviews of their young clients).

12. As an example, a significant moment might occur when the child discloses something on the tape that was particularly difficult to say, or demonstrates a strong reaction to an action or statement made by the interviewer.

13. Rush, *Forword*, in *I NEVER TOLD ANYONE* 13 (E. Bass & L. Thornton eds. 1983).

14. J. BULKLEY & H. DAVIDSON, *CHILD SEXUAL ABUSE: LEGAL ISSUES AND APPROACHES* 3 (1980).

ilarly, it is important in judicial proceedings that children be able to talk about what happened to them.¹⁵ Interview tapes can be used at varying points in time to facilitate these goals.¹⁶

C. Preventing Retractions

The likelihood that sexually abused children will take back their disclosures of abuse is becoming increasingly well documented.¹⁷ The use of videotaped interviews as a deterrent to such initial retractions is one of the most therapeutic uses of the tapes. Although sometimes children retract their disclosures of abuse because of the disruptive interventions that often follow disclosure,¹⁸ oftentimes they retract as a result of their own projections and anticipation of the reactions of those who are close to them, particularly their parents or caretakers.¹⁹

One of the greatest advantages of showing a videotaped interview to non-abusive parents while the child is present, is the ability of the child to actually see his own parents' non-punitive reaction to the disclosure. Of course, this does not always happen automatically. The adults, if they were not fully aware of the abuse beforehand, should be carefully prepared by the interviewer for what they are about to see and hear on the tape. Nothing should be minimized, and the child's visible reactions on tape (such as consistent avoidance to certain cues) that are typical or indicative of particular feelings should be explained beforehand. Notes taken during the interview by the camera operator or other person are particularly helpful during this process. Because many non-abusing parents may be in some stage of shock after hearing about a child's initial disclosure of sexual abuse, it is important to give them time and support to ventilate their feelings while someone else stays with the child in another room.²⁰ Then, it is important to help pre-

15. Melton, *Children's Competency to Testify*, in 5 LAW AND HUMAN BEHAVIOR 75 (1981).

16. Because one to two years may elapse before trial, tapes containing a young child's initial disclosures can be particularly helpful in refreshing the child's memory, especially if the disclosure followed shortly after the abuse.

17. Summit, *The Child Sexual Abuse Accommodation Syndrome*, in 7 CHILD ABUSE AND NEGLECT 177-93 (1983).

18. Berliner, Canfield-Blick & Bulkley, *Expert Testimony on the Dynamics of Intra-Family Child Sexual Abuse and Principles of Child Development*, in NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION, AMERICAN BAR ASSOCIATION, CHILD SEXUAL ABUSE AND THE LAW 172 (J. Bulkley ed. 1983).

19. *Id.*

20. Mzarek, *The Child Psychiatric Examination of the Sexually Abused Child*, in SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES 149 (P. Mzarek & C. Kempe eds. 1981).

pare them for how they will react while actually viewing the tape with the child.

Most of all, the parents must be low key and supportive of the child, no matter how distraught they may feel inside. Some parents may need to be convinced that they can and will be what their child needs them to be, but most do well with proper preparation. Going over some of their actual responses in advance may also give them more confidence. They should be cautioned against expressions of shock, surprise, outrage, and disbelief.²¹ Neutral statements such as: "It must be hard to tell that secret but I know that what happened to you wasn't your fault," or "I hope you know that you can tell me anything from now on," will not only set a tone of support, but will give the child confidence to continue the dialogue following the initial interview. Parents must control any impulses to bombard the child with additional questions during the tape viewing (the child may interpret it as disbelief on their part and/or may not be ready to provide more information so soon) or to express their disappointment that the child did not confide in them first. Similarly, it is not advisable for parents or interviewers to overly reinforce or reward a child following a first disclosure of abuse or to emote such strong feelings that the child feels overwhelmed or confused.²²

Some adults exhibit certain body language or an inability to physically relate to a child during this time of personal crisis. The result serves to transmit their own anxiety about the situation. It helps to create a setting for tape viewing that promotes physical closeness. Bean bag chairs, or a soft couch or rug where everyone sits together can help induce a feeling of security for children and encourage parent/caretakers to reach out and show their support. Quiet toys, such as puzzles or coloring books, should be available for very young children or for those whose anxiety cannot endure an uninterrupted focus on the contents of the tape. Children who do everything possible to distract their parents from watching the tape often do so because they fear their reaction. In most cases, parents watch the tape while the children watch their parents. Undeniably, this is an important time for children and their families and can be a determining factor in whether the children get over their fear of the consequences of disclosure or retract their statements and return to their previous worlds of silence.

21. See Berliner, Canfield-Blick & Bulkley, *supra* note 18.

22. K. MACFARLANE, PLEASE NO, NOT MY CHILD (1983).

III. USES OF VIDEOTAPES IN COURT

Increasingly, videotapes are being looked to as a vehicle for aiding or supporting the prosecutor in child sexual assault proceedings, or in juvenile court proceedings to protect dependent children.²³ Currently, there is much discussion in clinical, legal and legislative circles with regard to the legality, admissibility, and use of tapes as evidence in legal actions.²⁴ Along with such discussion has come considerable misunderstanding, particularly by the media, of the actual and proposed uses of videotapes in court.

The most common misconception is that videotapes of initial interviews can be used as substitutes for the actual presence of children in court.²⁵ Few such options exist because single interviewers who perform traditional diagnostic evaluations from either a law enforcement or a clinical perspective, do not afford the accused an opportunity to cross-examine or confront the child witness as provided for by the sixth amendment of the United States Constitution.²⁶ Videotaped interviews have been used in place of children in some grand jury proceedings, and some states have legislatively provided for their use in depositions and in trial under specified circumstances.²⁷

Despite the constitutional limitations,²⁸ several state legislatures are proposing and enacting statutes permitting innovative videotape uses in situations involving child victims.²⁹ In the next

23. See J. BULKLEY & H. DAVIDSON, *supra* note 14, at 13.

24. Examples of recent conferences where these issues were discussed include: American Bar Association, National Policy Conference on Legal Reforms in Child Sexual Abuse Cases, in Washington, D.C. (Mar. 8-9, 1985); National District Attorney's Association, Special Procedures in Child Sexual Abuse Cases, in Alexandria, Va. (May 1985); Institute for the Advancement of Human Behavior, National Conference on Child Abuse and Neglect, Washington, D.C. (Sept. 1985).

25. When a child witness is unwilling or unable to testify due to youth, psychological state, or inability to qualify as a competent witness, the child's statements as to the abuse are admissible at trial in place of the child's in-court testimony. See Melton, *Procedural Reforms to Protect Child Victim/Witnesses in Sex Offense Proceedings*, in NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION, AMERICAN BAR ASSOCIATION, CHILD SEXUAL ABUSE AND THE LAW 184, 189 (J. Bulkley ed. 1983).

26. See *Rogers v. United States*, 422 U.S. 35 (1975).

27. See ARIZ. REV. STAT. ANN. §§ 12-2311 to -2312 (1982); FLA. STAT. § 918.17 (1983), amended by 1984 Fla. Laws 84-36, transferred to § 90.90 by FLA. STAT. § 918.17 (Supp. 1984); MONT. CODE ANN. §§ 46-15-401 to -403 (1979) (amended 1983); N.M. STAT. ANN. § 30-9-17 (1978).

28. See Mylniec & Dally, *supra* p. 115 (See *No Evil? Can Insulation of Child Sexual Abuse Victims Be Accomplished Without Endangering the Defendant's Constitutional Rights?*, 40 U. MIAMI L. REV. 115 (1985)).

29. *Rogers*, *supra* note 1, at 150-51. See also CAL. PENAL CODE § 1346 (West 1985) (providing where victim is person 15 years of age or less, people may apply for order that

few years the appellate and supreme courts of a number of states will undoubtedly decide cases that will determine the legality and efficacy of videotapes as devices for the prevention of additional trauma to child witnesses.³⁰ Within the parameters of due process, courts and legislatures are exploring ways in which video equipment can be utilized to aid judicial procedures when children are involved. The following are descriptions of some of those existing and potential uses.

A. *Corroboration of Expert Opinion or Interviewers' Testimony*

Despite the limited use of videotapes as evidence, some courts have permitted introduction of prerecorded interviews as corroboration for clinical or expert opinions that are subsequently challenged in court.³¹ If the defense challenges the prosecution's expert witness and/or the testimony of the initial interviewer, the prosecution may then introduce the videotape as a means of laying the foundation to support the opinion offered.³² In this context, the tape serves as a vehicle for dispute resolution by providing an objective way to counter the alleged bias or inaccuracy of the expert's opinion of the witness. This process may require the consent of both attorneys and usually requires that the defense be permitted to view the tape prior to its introduction in court.³³ Similarly, the defense may introduce interview tapes for the purpose of discrediting or impeaching an expert prosecution witness depending on the content of the tapes.

B. *Corroboration of Motions for Special Courtroom Precautions*

Videotaped interviews might also be introduced as expert testimony regarding the court's need to take special precautions to prevent additional trauma to a child. The precautions might include closing the courtroom to spectators and the press, conducting in-chamber sessions and/or utilizing closed circuit television during the child's testimony.³⁴ The image of a frightened, evasive, or extremely embarrassed child during an initial interview

victim's testimony at preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape).

30. Melton, *supra* note 25, at 185-93.

31. Conversation with Ken Freeman, Deputy District Attorney, Los Angeles, Cal. (June 1983).

32. *Id.*

33. *Id.*

34. Melton, *supra* note 25, at 185-93.

may be more likely to persuade a court to implement special courtroom procedures than the words or observations of any expert. On the other hand, such tapes can be misleading, because the environment of a therapeutic evaluation is usually far different than the intimidating environment of a courtroom. If the evaluator is skilled, sensitive, and puts the child at ease, the reactions of the child may not reflect the child's underlying fear of the perpetrator or anxiety about going to court. In such instances, the tape would not be supportive of the arguments put forth in court or representative of the child's ultimate reaction to the courtroom setting.

In any case, an increasing number of courts are exploring the use of videotapes to corroborate professional testimony. The utility of videotapes is likely to be greater in juvenile or dependency courts than in criminal courts because the former apply a more lenient burden of proof than the latter, and there is a greater tradition of procedural exceptions geared toward the vulnerabilities and developmental needs of children.³⁵

C. *Impeachment of a Retracting Witness*

Because of the high rate of retraction by child sexual abuse victims, taped interviews are being considered as a means of impeaching the testimony of child witnesses who contradict all of their previous statements about abuse and say, on the witness stand, that nothing happened to them. In other words, the reliability of the initial interview statements, made by the child under non-threatening circumstances, may be used to refute later retractions made by the same child in court. It is argued that the intimidating environment of the courtroom, the physical proximity to the alleged abuser, and the succession of negatively-associated events that frequently follow disclosure tend to predispose some child victims to take back initial statements by the time they get to court.³⁶ The prosecution's argument that the child's courtroom retraction is consistent with the child sexual abuse accommodation syndrome³⁷ might be strengthened by introduction of a videotape that contradicts the current denial that an abuse occurred.

Although impeaching their own witness is not a process that most prosecutors relish, documentation of an earlier statement can

35. Berliner & Stevens, *Advocating for Sexually Abused Children in the Criminal Justice System*, in *SEXUAL ABUSE OF CHILDREN: SELECTED READINGS* 47-48 (K. MacFarlane, B. James & L. Jenstrom eds. 1980).

36. See Berliner, Canfield-Blick & Bulkeley, *supra* note 18, at 172.

37. Summit, *supra* note 17.

influence the factfinder's determination of which of the child's statements are the truth. The child's unwillingness to testify to abuse in criminal court may result in the dismissal of the criminal case, but the strength of earlier recorded statements may be enough to obtain an adjudication in juvenile court that provides for the continuing protection of the child.

D. *Monitoring, Licensing, and Post-Adjudication Issues*

Whether or not a child retracts his or her initial disclosures of abuse, statements and allegations recorded on videotape may be useful in legal proceedings aimed at protecting other children from an alleged abuser. These might include investigations by state licensing or investigatory bodies whose responsibilities include the monitoring of public and private child care facilities, as well as schools and state licensing boards of examiners that determine whether or not individuals may be permitted to retain licenses to teach, practice a given profession, or conduct other licensed activities. These legal or quasi-legal investigations may not involve prosecution or criminal sanctions of any kind, but they may lead to administrative hearings where videotaped interviews are deemed admissible, particularly for the purpose of determining whether an administrative action is possible without the potential of traumatizing children with further testimony.

IV. USE OF CLOSED-CIRCUIT TELEVISION IN COURT

Increasing numbers of states are passing new laws or utilizing existing laws to develop innovative ways in which children can testify in court.³⁸ One of the most promising of these approaches allows the child's testimony to be transmitted live via video cameras onto television monitors in other locations. This technique is unrelated to whether or not there are prerecorded interviews of a child. Rather, it permits a child to testify outside the courtroom while being seen and heard on monitors in the courtroom. It can also allow for others to view the child's testimony if the child remains in the courtroom.³⁹

There are a number of logistical options for conducting this type of witness examination. The one most frequently discussed is

38. Goodman, *The Child Witness: Conclusions and Future Directions for Research and Legal Practice*, 40:2 J. Soc. ISSUES 157, 169 (1984).

39. CAL. PENAL CODE § 1346 (West Supp. 1985).

the "isolated child" model.⁴⁰ In this model, the child is isolated from all other participants in the preliminary hearing or trial, and is situated in a room near to the courtroom, sometimes accompanied by a supportive adult. Video cameras, focused on the child, project his or her image onto monitors located in the courtroom. These are viewed by either certain individuals, for example, the judge, jury, defendant and counsel or, when the courtroom is not closed to the public, the image might be projected onto a large screen for all present to see. The child, in turn, would have one or a number of monitors in front of him or her that, at a minimum, would project the image and voice of the prosecutor or defense counsel questioning the child. Additional monitors might be placed in front of the child to project the images of the defendant, opposing counsel, the judge, etc.

Whether or not the child must observe the accused on a monitor is usually determined either by a stipulation on the part of the defendant or by specific legislative provisions.⁴¹ Special provisions aside, the child usually has to "confront" the accused via a television monitor when closed-circuit testimony is permitted.⁴² The advantages of this form of closed-circuit testimony include: 1) the child does not have to face an open courtroom full of spectators,⁴³ 2) the child is less likely to be intimidated by the presence of the defendant in the courtroom, and 3) the child is less likely to be frightened or distracted by other participants in the courtroom such as bailiffs, the court reporter, the clerk, and other personnel. Another advantage is that objections, arguments, and motions by counsel, often very confusing and distracting procedures, could be "tuned out" simply by turning off the monitor during interruptions in questioning.

Disadvantages to the isolated child model might include: 1) increasing a child's feelings of isolation by separating him or her from those with whom the child is communicating and from the room where everything else is going on, 2) the potential distraction

40. Written Recommendations Concerning Testimony of Child Witnesses, *People v. Buckley*, No. A753005 (Los Angeles County Mun. Ct. May 1984) (testimony given at preliminary hearing, Oct. 1984).

41. Melton, *supra* note 25, at 187.

42. For a discussion of the defendant's constitutional right to confront the accused, see Mylniec & Dally, *supra* note 28.

43. The child need not face an open courtroom full of spectators. In a recent California case, the court allowed spectators and the press to observe the entire proceeding via closed-circuit monitors in an adjoining courtroom. See *People v. Buckley*, No. A753005 (Los Angeles County Mun. Ct. May 1984).

or intimidation of the child by the presence of the camera and other necessary electronic equipment and, 3) the child's potential difficulty in concentrating on a face and a voice speaking to him or her from a television monitor over a prolonged period of time.

A variation on this model might be called the "child-centered courtroom."⁴⁴ The principle behind this concept is to create a courtroom environment that is as comfortable and non-threatening as possible for a child, but one that also could accommodate a minimum number of participants involved in the case. This might involve as few people as the judge, prosecutor, defense counsel, and a support person for the child. In this model, the defendant would be situated in another room watching the child's testimony via a monitor. If the proceeding was open to the public but special efforts were deemed necessary to insulate the child, the "mini-proceeding" involving the child's testimony could be conducted in another room or in the judge's chambers (as is frequently done in juvenile court) and the entire proceeding could be beamed back into the courtroom for viewing on monitors.

Consideration has been given to building a large glass enclosure within which the child might testify.⁴⁵ The enclosure would be located in the courtroom and constructed of two-way glass. The glass would enable the child witness to be observed, but prevent the child from seeing outside the enclosure. Inside the glass cube there might be television monitors that permit the child to see whomever the court deems necessary for the child to have in his or her view. Although, to this author's knowledge, no such arrangement has ever been instituted, it has been contemplated in response to arguments by defense attorneys that their clients' right to confront witnesses includes the physical presence of both parties in the same room.

Many of these innovations are still in experimental stages, and involve on-going struggles with logistical and legal issues. For example, while child advocates point out that many children want and expect the judge to be in the same room with them when they testify, advocates seek to limit the number of attorneys and other people who are present during testimony. If those who must communicate with each other during the course of a child's testimony

44. Interview with Daniel Davis (June 1984), (defense attorney in *People v. Buckey*, No. A753005). See also Libai, *Protection of the Child Victim of a Sexual Offense in the Criminal Justice System*, 15 WAYNE L. REV. 1007, 1016-18 (1969) (discussion of effect of courtroom's physical arrangement upon child giving testimony).

45. Libai, *supra* note 44, at 1019.

are not in the same room, then it may be necessary to provide two-way head sets so that they can communicate with each other from their various locations. While this would spare the child from hearing objections and arguments, it would clearly make communication between adult parties more difficult.

As the issues rise to the higher courts in more and more states, and as child advocates and sympathetic prosecutors take increasingly active roles in protecting children within the legal system, attitudes about the sanctity of traditional court procedures are giving way to the recognition of children's special needs. The physical presence of a defendant who is a threatening figure in a child's life, or even a non-threatening defendant about whom a child feels badly for having disclosed sexual secrets, along with the stigmatizing and guilt-provoking presence of the general public, often constitute the primary impediments to a child's ability to testify about sexual abuse. In some cases, they are the sole determinants of whether or not a child sexual abuse case can be successfully brought to trial. The use of closed-circuit television as a means of enabling a child to testify constitutes one measure toward reforming a legal system ill-suited to child witnesses.

A. *Taping Preliminary Hearings*

Some states videotape the court testimony of young children during preliminary hearings and grand jury proceedings.⁴⁶ A primary purpose of taping a child's statements on the witness stand is for potential use at trial should the child, for any reason, be unable to testify again. Some young witnesses become so traumatized from intense questioning, or from fears of having to face the defendant, that they become distraught, or even physically ill, at the suggestion that they must testify again⁴⁷—even when many months have passed between hearings. Some become electively mute as the trial date approaches or burst into tears at the prospect of going back to court. Even when it is physically possible to produce a child witness for testimony at trial, the child's therapist or the expert evaluator may be of the opinion that the child would be psychologically damaged by having to testify a second time.⁴⁸ Such opinions may be based on the child's reactions during or fol-

46. See *People v. Mendibles*, No. A803899 (Los Angeles County Mun. Ct. 1984); *People v. Balcorta*, A803848 (Los Angeles County Mun. Ct. 1984); *People v. Buckley*, No. A753005 (Los Angeles County Mun. Ct. May 1984).

47. Goodman, *supra* note 38, at 167.

48. Melton, *supra* note 25, at 189.

lowing the previous testimony, subsequent regression in therapy, or on the child's psychological response to the prospect of testifying again. If the court found the child to be physically or psychologically "unavailable" to testify, the prosecution might request that the child's videotaped testimony from the previous hearing be introduced in place of the child.

In California, the request to videotape children's testimony at a preliminary hearing must, by law, be granted by the court, regardless of whether or not its use will be permitted at the time of the trial.⁴⁹ Although videotaped testimony can serve as an important aid in preventing additional trauma to young children, and can actually permit a trial to continue in the absence of the complaining witness, a child's testimony on tape is rarely as convincing as the real thing. Prosecutors usually prefer live testimony to pre-recorded testimony unless they are convinced that the child will suffer harm and/or the case will collapse without the substitution of prerecorded testimony.⁵⁰ This use of videotape can prevent both of these occurrences.

V. LEGAL AND ETHICAL ISSUES: THE OTHER SIDE OF TAPING

Many interviewers of alleged victims of sexual abuse initially regarded videotaping as a relatively simple means of recording disclosures while helping to prevent additional trauma and retractions. In some instances, more forethought was given to anticipated logistical problems (setting up a taping room, storing the tapes, etc.) than to problems involving law, ethics, and the conflicting rights of various parties. The problems that have arisen in and out of the courtroom and the many controversial issues⁵¹ that have surrounded the use of videotaped evaluations in the brief span of time that they have been utilized, has caused some interviewers to question and discontinue their use. What caused such a seemingly simple and important concept to be abandoned so quickly by many of the very pioneers who advocated for its development?

Many of the problems of videotaping center around three issues: 1) protecting confidentiality, 2) informed consent, and especially, 3) the use of videotapes by attorneys. When a child becomes a complainant in a criminal case, the defendant and his lawyer have the right to see, and sometimes to obtain copies of, all ex-

49. CAL. PENAL CODE § 1346 (West Supp. 1985).

50. Melton, *supra* note 25, at 189.

51. *Id.* at 188.

isting evidence in the case, including videotaped interviews. This is particularly true if such evidence already has been shared with the police or prosecuting attorney.

The issue of what constitutes privileged communication varies from state to state according to which categories of professionals are designated by law to hold the patient-therapist privilege. Most states only extend the privilege to licensed psychiatrists or psychologists; rarely does it extend to social workers, yet social workers constitute the largest category of professionals that work with sexually abused children.⁵² Even in situations where the privilege exists, it may not apply in some types of criminal and dependency proceedings.⁵³

Unfortunately, an interviewer often does not know at the time of an initial interview whether or not a case will result in a criminal trial. Interviewers should therefore be aware when they videotape initial interviews with alleged victims of child sexual abuse that their tape may be disclosed at a later date. Even if law enforcement authorities have no intention of filing charges on behalf of a particular child because of age or other factors, if that child is one of many alleged victims in a multi-victim case, the videotaped interview may be subject to release under subpoena or other court order.

There are several issues raised during attempts to obtain discovery of videotaped interviews or therapy sessions. The first is the issue of privacy and confidentiality—an area that many parents or caretakers assume will be held sacred if they bring their child to a clinician for an evaluation. Even when a child is interviewed and videotaped by a police officer or a child protective services worker, few parents envision that the videotape may be viewed by the alleged perpetrator, the defense attorney, judges, juries, any number of individuals hired by the defense, and even the public and the press sitting in a courtroom. When parents sign a waiver allowing only law enforcement authorities to view their child's tape in order to prevent further interviews, they may (unknowingly) be waiving

52. In every state, a public social service agency is designated and mandated to investigate all reports of alleged child sexual abuse. These investigators, or caseworkers, are almost universally social workers with either Masters or Bachelors level training.

53. For example, states with statutes pertaining to the reporting of suspected child abuse cases require all mental health professionals to report their suspicions, or a child's disclosures of abuse, regardless of the possible existence of a therapist-patient privilege. Therapists are sometimes required to testify concerning the bases of these reports. Similar requirements may apply with regard to discovery information if the child patient is a complainant.

their right to confidentiality and their ability to keep the tape from the defense and others—even if the child is not a complaining witness. Such was the ruling in a 1984 multiple victim case in California where the judge ruled that the defense would be given access to all interview tapes and their accompanying files where the parents had signed such waivers.⁵⁴

Another potential consequence of releasing interview tapes to the defense is that, when there is a highly publicized trial, copies of the tapes might fall into the hands of the media.⁵⁵ Similarly, when interview tapes are played in an open courtroom during a preliminary hearing or a trial,⁵⁶ the identity of the child is fully visible and the child and the interviewer's statements may be widely quoted. These occurrences can have a devastating impact on the children and families, due to the intensely personal nature of many initial disclosures. Furthermore, it is a source of tremendous concern for parents once they become aware of the issue. An even more painful consequence for child victims whose initial disclosure interviews were videotaped has recently occurred in a multi-victim case in California.⁵⁷ Segments of videotapes showing children's initial denials of abuse were played back to the children on the witness stand in order to impeach their testimony and attack their credibility.⁵⁸ Having to watch their initial interviews, especially in the midst of a courtroom full of people, can bring back all of their memories of initial disclosure and the fears that accompanied the disclosures. The replayed videotape adds to the vividness of the experience.

Obviously, the potential repercussions of using videotapes must be carefully considered. Consent forms must be in proper form, and parents or caretakers should be fully informed of all foreseeable consequences in order to make informed decisions. Unfortunately, parents may find themselves in an uncomfortable double-bind: in order for the parents and the child's therapist to see the interview, they take the risk of giving up some of their own rights to privacy and confidentiality.

54. See *People v. Buckey*, No. A753005 (Los Angeles County Mun. Ct. May 1984).

55. The national televising of the John DeLorean tape is a recent example of what happens when tapes get into the hands of the media.

56. *People v. Buckey*, No. A753005 (Los Angeles County Mun. Ct. May 1984).

57. *Id.*

58. The viewing of a taped segment may be followed by cross-examination such as, "At first you said that nothing happened, now you say it did—when were you lying, then or now? Do you lie a lot?" Such questions are clearly guilt-provoking and intimidating for young children.

The issue of subpoenaed tapes being viewed by alleged perpetrators is more complicated and can be more difficult for children—especially if the alleged abuser is a family member and has threatened the child or made the child promise not to tell the secret. Interviewers often do not know at the time of interviewing whether a tape will be released to the defense, or even if there will be a defense. The decision to prosecute may not arise until after the interview. Some children never know that the tape has been viewed, and may never need to know, because they will never be alone with the alleged abuser again. For others, particularly older children, it comes as a betrayal, a breach of trust by the interviewer and the system. Some interviewers choose to forewarn children of this possibility before taping, although few things are more inhibiting to an abused child. Some try to prepare the child after the interview. Those who are in continuing contact with a child have the difficult task of explaining why they don't have the power to prevent the release of a tape to the defendant and his attorney.

Another major consequence of videotaping initial interviews involves their use by defense attorneys. In addition to using the tapes to discredit child witnesses, defense attorney's often use them to discredit interviewers, the techniques used by the interviewers, and the prosecution's case. When discrediting interviewers, they primarily focus on the approaches and methods utilized to encourage frightened, embarrassed, or avoidant children to feel safe and comfortable enough to reveal sexual abuse if it has occurred.⁵⁹ Very few children voluntarily divulge information, particularly details, of this nature. Asking children to share forbidden secrets (for which they feel responsible) is not comparable to asking them what they had for lunch. They need to know that the interviewer is comfortable and familiar with this subject and that they won't be blamed or rejected for talking about it. Interviewers who remain neutral, non-probing and detached, and who conduct evaluations as though they were in a courtroom or other legal arena, rarely succeed in breaking through to small, frightened children.

On the other hand, those who utilize non-traditional interviewing methods, who ask directed questions and do whatever it takes to get children to talk about what might or might not have happened, may be in for a hard time in court. Their techniques and professionalism will be challenged by the defense and by ex-

59. J. BULKLEY & H. DAVIDSON, *supra* note 14, at 10.

perts hired to view the videotapes and proffer critical opinions. The most common defense tactic involves trying to show that the interviewer led, coached, or played upon the suggestibility of the child and that the child feigned sexual abuse in order to please the questioning adult. Interviewers also have been accused of "brain-washing" children during interviews into believing that they had been sexually abused.

Of course, the absence of videotapes does not preclude "brain-washing" accusations in court. In fact, when videotapes are carefully conducted with children who readily disclose abuse, videotapes can be used to counter allegations that a child was coached by an interviewer. Nonetheless, videotapes can provide ammunition against arguments raised by the defense. Regardless of how convincing a child's disclosures or demonstrations with anatomical dolls may be,⁶⁰ initial interviews with young molested children are usually full of inconsistencies, disclaimers and retractions. If leading questions or reinforcement techniques are also part of the interview,⁶¹ they will be used to discredit the interview and to invalidate the child's allegations.

This is not to imply that such tactics always work or that the power of a videotape will never outweigh its liabilities. Nonetheless, the consequences to individual interviewers and to the outcome of some cases has led more than one interviewer to discontinue the routine practice of videotaping.

VI. CONSIDERATION ON INTERVIEWING AND EVIDENCE GATHERING

Some professionals, especially those in the legal and criminal justice systems, caution interviewers not to ask focused questions, not to suggest that information is already known, not to indicate any expectations of certain responses, and not to support children in any way in their statements or answers to inquiries.⁶² This is generally sound advice regarding the desire to interject as little bias and influence as possible into an interview, especially in those cases that may result in litigation. It is also reasonable advice when interviewing adults. It may even be prudent advice when interviewing a child who is not suspected of having been sexually assaulted and/or threatened not to tell about it. Unfortunately, the

60. Goodman, *supra* note 38, at 163.

61. J. BULKLEY & H. DAVIDSON, *supra* note 14, at 30-34.

62. Office of the Attorney General in Minneapolis, Minn., Report on Scott Co. Investigations (1984).

advice may not be in a child's best interest if a child is young, frightened, and sexually abused.

The controversial issues of children's suggestibility, the effects of reinforcement by interviewers, and the use of leading questions have become a nemesis in the field of child sexual abuse. It is time to recognize that child sexual abuse is not comparable to other types of adult crimes, and should not be investigated as though it were.⁶³ Children who have been frightened into silence about things that they do not comprehend and may not even have the language to describe, represent a special population that demands specialized attention. Questioning a young child about sexual abuse is not comparable to asking a burglary victim to enumerate items that were taken from his or her home. Asking a child what, if anything, unpleasant or unusual happened to him or her during a certain period of time may be an acceptably neutral way of framing a question, but if a child has been molested and told not to tell, it is unlikely that the abuse will be revealed. Such a child might then become one of the thousands of adults who have reported that they never told anyone of their abuse as a child because no one ever asked.⁶⁴

Professionals without legal or law enforcement training sometimes are unfamiliar with the concept of "leading questions."⁶⁵ In the best of all possible worlds, it would be advisable not to ask children leading questions so as to avoid the accusation that children are responding to suggestions, or being compliant and acquiescent to an adult authority figure. But, in the best of all possible worlds, children are not sexually assaulted in secrecy, and then bribed, threatened, or intimidated not to talk about it. In the real world, where such things do happen, leading questions may sometimes be necessary in order to enable frightened young children to respond and talk about particular subjects. Although they may present legal problems later on, leading questions should not be viewed as an illegality on the part of an interviewer. In California, as in many other states, the law specifically acknowledges the difficulty of questioning young children, especially in court, and allows

63. For suggestions on improving interviews from a psychologist's perspective, see Goodman & Helgeson, *infra* p. 181 (*Child Sexual Assault: Children's Memory and the Law*, 40 U. MIAMI L. REV. 181 (1985)).

64. D. FINKELHOR, *SEXUALLY VICTIMIZED CHILDREN* 67 (1979). See also J. HERMAN, *FATHER DAUGHTER INCEST* 129 (1981); D. RUSSELL, *SEXUAL EXPLOITATION: RAPE, CHILD SEXUAL ABUSE AND HARASSMENT* (1984).

65. Communication with David Pettit, attorney with the law firm of O'Melveny & Myers, Los Angeles, Cal. (Jan. 8, 1984).

attorneys to ask leading questions of child witnesses.⁶⁶ Indeed, their questions, which are designed to elicit particular responses, are usually far more leading than those employed by clinicians. Nonetheless, interview settings and play rooms are not courts of law; they are not, and should not be, subject to the same formalities and rules of protocol. They are places where the interviewer begins the slow process of piecing together and ferreting out the truth of a child's experience—not where the interviewer attempts to prove something beyond a reasonable doubt, especially during one initial interview.

At the same time, interviewers in this field have a grave obligation to be responsible in their use of leading questions, and to provide only as much direction as children may need to overcome their fear and resistance to disclosure.⁶⁷ It is a difficult process to articulate, and often requires a fine balance between intrusion and restraint. In addition, an interview style that may serve the best therapeutic interests of a child may have adverse legal consequences. On the other hand, it is essential that information about abuse ultimately come from the child, not the interviewer. "Yes" or "no" responses to directed questions are insufficient for making a complete diagnosis. Again, children usually need time and security before speaking freely. There are no easy answers when dealing with an issue that is both a crime and a mental health problem for children.

In attempts to be evasive, or as part of the developmental stage of concrete thinking, children often tell as little as they can about something while still being responsive. They are also likely to interpret a question in the narrowest, most literal way possible. When an interviewer senses that this may be happening, it is helpful to follow up with a more specific question even if it is non-responsive to the previous question. For example, if a child has been asked, "And did he touch you any place besides your winky?" and the answer was, "no," the interviewer might want to go one step further by asking a more direct question, such as, "What about your mouth? Did anything ever touch your mouth in a way that was yucky?" If the answer is "yes," it does not necessarily mean that the child was lying in his or her first response. Such seemingly contradictory answers on the part of children can be un-

66. Burgess & Holstrom, *Interviewing Young Victims*, in *SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS* 174-75 (A. Burgess ed. 1978).

67. See J. HERMAN, *supra* note 64, at 88.

derstood through a variety of explanations, including children's natural tendency to deny or minimize things about which they are ashamed, afraid, or for which they think they will be blamed.⁶⁸ As with the response pattern we call the "No-Maybe-Sometimes-Yes syndrome," some children may simply need encouragement in order to disclose in small, tentative steps.

For other children, a "no" answer to a general question followed by a "yes" answer to a more specific question may be indicative of the child's own literal translation of the interviewer's words being used. Many children interpret the word "touched" to mean something which is done only with the hand or with the fingers. A child who has been raped may not necessarily describe or think of the behavior as being "touched" in the vagina with a penis. Similarly, she might not think of her mouth as a place that ever got "touched," unless someone put a finger in her mouth. Consequently, it may take more direct questions in order to elicit information about oral sex.

Interviewers may also have communication problems with the use of the word "hurt," for example, "Uncle Jimmy hurt me." Although the first disclosures of many young children are sometimes misunderstood or overlooked because they only use the word "hurt," it should not be assumed that all sexual abuse physically hurts young children or that they even regard all sexual acts as negative or upsetting.⁶⁹ Sexual abuse in the guise of tickling, bathtub entertainment, games, or pretend medical examinations usually does not "hurt," nor does oral sex when the child is the recipient of gentle contact.

Obviously, the best approach is to elicit children's own words and descriptions for what, if anything, has been done to them. If unsolicited descriptions are not forthcoming, however, it is useful to use a wide range of terminology during questioning.⁷⁰ Finding the right words and understanding a child's use of them is crucial to effective interviewing. What may sound like an initial allegation of abuse, for example the statement, "Daddy poked my pee-pee," may be a child's description of an unwanted, but innocent bath time routine. On the other hand, it could be a child's first attempt

68. See Kerns, *Medical Assessment of Child Sexual Abuse*, in *SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES* 133-34 (P. Mzarek & C. Kempe eds. 1981).

69. Mzarek, *supra* note 19, at 151.

70. Examples of terms sometimes used by children are: touching (with various parts), kissing, licking, poking, rubbing, tickling, playing with, messing with, hurting, making a boo-boo (or "ouwie"), putting something inside, or taking naked pictures of private parts.

at describing being raped.

The first step is to try to establish common terminology for acts which a child can either acknowledge or deny. The second step is to understand what the acknowledgement or denial means to the child—what did or did not occur. The last, and most important steps are: 1) to elicit from the child enough of an explanation, description, and/or demonstration of what occurred to identify the people and the circumstances surrounding the alleged incident(s), 2) to determine whether the child could be making a statement at someone else's direction, 3) to assess the feasibility and credibility of the child's statements,⁷¹ and 4) to make a preliminary determination as to whether or not sexual abuse has occurred. As stated previously, the completion of this process is not always possible in one interview, but it should be kept in mind regardless of the necessity of a long investigatory or treatment process.

When children are given permission to answer questions in a variety of ways, they will be less likely to use certain answers, such as "I don't know," as protective mechanisms against things that they are not ready to reveal. To accomplish this, the interviewer can begin by explaining that he or she is going to ask a bunch of questions; some might sound silly or strange or scary, and some will be easy to answer.⁷²

Giving young children these kinds of options not only gives them permission not to know or not to tell certain things that they might otherwise deny or confirm, it also gives them more control over the circumstances of the interview. Helping children feel in control of the way they disclose sexual abuse will assist in counter-

71. A. MAYER, *SEXUAL ABUSE: CAUSES, CONSEQUENCES AND TREATMENT OF INCESTUOUS AND PEDOPHILIC ACTS* 44 (1985).

72. The interviewing process can be explained to the child as follows: a) You have a lot of choices in how to answer the questions; b) The best choice is just to give the true answer, if you know it, or to tell me you don't know the answer if you don't, for example, if I asked you what your mother's favorite color was, and you didn't know—that's okay, I don't know my mother's favorite color either; c) If I ask you a question about something that didn't happen, for example, did anybody step on your foot today, it's fine to say "no," that didn't happen. We never want to say something if it didn't happen; d) If I ask you about something that did happen, or something you know the answer to but you don't want to tell me about it right now, you don't have to say it didn't happen or that you don't remember. It's okay to tell me that you don't feel like talking about it yet, or that it's too scary to talk about, or why you don't like the question; e) It is better not to answer than to say "no" when the answer is really "yes," or "yes" when it is "no." If you get too scared or embarrassed by my questions, just tell me or give me a sign and we'll talk about other things for awhile; f) If I ask you a question that you don't understand, never try to guess the answer or say "yes" just because you think you should. Just tell me, "I don't know what you mean by that."

balancing the helpless feelings engendered by their memories of the abuse. If they have not been abused, their understanding that they have other options besides using denial as a self-protective defense makes the denial more credible.

Most of all, this approach reduces whatever pressure a child might feel to answer questions in a certain way or to say things which he or she may need to contradict later. Offering a "no response" or "decline to respond" option to a child gives the interviewer the opportunity to identify sensitive or frightening issues for the child. Identifying the presence of these issues can be as important as anything the child chooses to tell in an initial interview. Giving children opportunities to confirm that what they've told you is the truth, as well as the chance to examine whether anything they've said is "pretend" or "not really sure," or said for some reason other than because it's true, can both assist the interviewer's level of confidence in what has been said and increase the child's options and feelings of control. It should be done carefully, however, so that the child perceives it as permission to reconsider the validity of all that has been said in the interview, and not as either pressure to recant earlier statements or doubt about the child's honesty.

Although it is frequently necessary to be very specific when questioning extremely young children, words of encouragement should be carefully stated. For example, some children need to hear that it is all right with their parents to talk to the interviewer. In such instances the interviewer might say to a child, "Your mom brought you here because she hopes you will be able to tell me about anything or anybody that's bothering you, and because she knows that you will tell the truth." This is a supportive but noncoercive statement, compared to a statement such as, "Your mom brought you here today because she wants you to tell me about what Uncle Bill did to you." Aside from being leading, the real problem with the latter statement is that it uses the authority and expectations of the child's mother to suggest what the child should say to the interviewer, and adds the inference that the child will be pleasing the mother by doing so.

The initial questions should be as open-ended as possible, and should slowly narrow down, depending upon the answers of the child. It is useful not only to give the child a range of alternatives, but to see whether the child says yes or no to every question. If he or she says "no" to *every* question, especially to those that are not about abuse, it may mean the child has failed to understand the

nature of the questions. Alternatively, it may mean that she is not ready to give an answer and, therefore, it is very important to watch her non-verbal answers to each question. If a child answers "yes" to every question, especially when one "yes" answer contradicts a previous one, you have an indication that the child may be avoiding the entire issue or is simply trying to please you by being agreeable.⁷³ Deliberately including questions whose responses should be contradictory to other answers, for example, asking whether it was cold outside followed by asking whether it was warm, will help in determining some of these issues.

It is important not to move too quickly from answers that appear to acknowledge abuse to questions that imply specific assumptions about the nature of such abuse.⁷⁴ Questions about a specific person or act should be asked only after children have been given every opportunity to describe for themselves what occurred or what they meant by earlier statements.⁷⁵

If general inquiries and open-ended questions yield no information, no response, or a symptomatic reaction indicative of something beneath the surface, more direct questions may be indicated. If, however, direct questions are answered affirmatively, it is still helpful and important to follow them with additional non-direct questions to test their validity. Questions such as: "What was that like?" or "How did that happen?" can help to obtain the details that mitigate the need for more direct questions. But, as stated previously, a frightened child may not divulge details in an initial interview, and therefore, the importance of follow-up treatment or extended evaluation of a child who indicates a history of sexual abuse cannot be overemphasized.

It is one thing to ask a question that is "leading" in the sense that it asks for information about a specific act or person, for example, "Was it Daddy who touched your pee-pee?" it is another matter to ask questions in such a way that they imply or indicate a

73. A. MAYER, *supra* note 71, at 45.

74. *Id.* For example, the question, "Did Daddy touch you on the pee-pee?" is not a question that should immediately follow a statement by a child that Daddy touched him or her someplace. Similarly, the statement, "Somebody touched me on the pee-pee," should be followed with an inquiry about who it was, not with a question that includes the name of an alleged or suspected abuser.

75. Opportunities for children to describe for themselves what occurred include: open-ended clarification questions, for example, "Maybe you can tell me what you mean?"; providing choices, for example, "Was it your head that he touched?—your tummy?—Did it feel nice/tickle/feel weird?"; asking for an illustration of what happened, for example, "Can you draw the person or put an 'X' on the part that got touched?"; or asking for a demonstration, for example, "Can you show me with the dolls how that looked?"

desired response, for example, "It was Daddy who touched you there, wasn't it?." Although the first type of question is frequently necessary in order to obtain or rule out certain specific kinds of information that a child may not volunteer, the second example represents a type of questioning that may be unduly influential. Interviewers should therefore be careful about asking young children questions that either assume the answer, or appear to ask for an affirmative response. An example of this type of question might be, "He put his finger inside, didn't he?" Questions that really sound like statements of fact may lead children to believe that you are asking that they agree with you.⁷⁶

Although such questions may sometimes be heard in courtrooms, the interviewer's role is different from that of a trial attorney.⁷⁷ An interviewer should not try to "prove" whether a child was or was not molested; a diagnostic interviewer gathers data in order to try to determine whether or not sexual abuse occurred.⁷⁸ Sometimes that data takes the form of verbal statements, sometimes the signs are more subtle. In either case, one wants to feel assured that the information is coming from the experience of the child, not from the influence of the interviewer.

VII. CONCLUSION

Conducting assessments to determine whether or not young children have been molested is not a task for the faint of heart or for those who seek immediate results and gratification. A competent and sensitive assessment of a child's condition takes time, and systems that demand immediate results must be countered by interviewers who insist upon being given adequate time and a friendly environment geared to the needs of children, not agencies. On the other hand, we must be cognizant, whatever our professional affiliations, of the various needs for the information that is derived from an interview, and we must try to coordinate our efforts in ways that are protective of children's privacy and their limited tolerance for repeated questioning.

The extent to which we encourage children to disclose abuse must take into consideration: a) their own sense of timing and need to protect themselves and others, b) their parents' need to

76. Mrazek, *supra* note 20, at 147.

77. Sgroi, Porter & Blick, *Validation of Child Sexual Abuse*, in *HANDBOOK OF CLINICAL INTERVENTION IN CHILD SEXUAL ABUSE* 40 (1982).

78. MacFarlane, *Child Sexual Abuse*, in *THE VICTIMIZATION OF WOMEN* (B. Gates, ed. 1978).

know what has happened or not happened to their child, and c) other systems' needs for information or evidence. These sometimes conflicting needs must be carefully weighed against one another, with special emphasis on the child's therapeutic needs at that time. Whatever one's role or primary purpose in interviewing an alleged child victim, it is important to remember that disclosure of abuse and the interview process itself has a psychological impact on a child.⁷⁹ That impact can be important to healthy future adjustment or it can be negative and add to the trauma. If it adds to the trauma, the interviewer may become part of the problem for children who are already in pain.

The question of whether or not to videotape diagnostic interviews, and under what circumstances, is one of the current dilemmas in a field which has already created tremendous ambivalence among those with experience in this area. The potential use of videotapes represents an advancement in the electronic age that holds both great promise and certain pitfalls. One thing seems clear: a decision to videotape an alleged victim of child sexual abuse should not be made on the grounds that the equipment is waiting in the closet and someone is available to operate it. Issues associated with its use, such as: who can or must consent to the taping and to the viewing of tapes; how should the consent form be designed; who owns the tapes and who may have copies; and how the tapes will be protected and used, should be carefully researched. Decisions should be made with full knowledge of the potential consequences that relate to each situation.

Perhaps as more experience is gained in this area, more options and safeguards will be developed for the more effective use of videotapes. To those who might have concluded that the most obvious way to prevent the potential "misuse" of videotapes is to erase them following their showing to selected parties, a word of caution. If there is any possibility that a diagnostic or investigative interview may result in a legal proceeding, especially criminal prosecution, erasure of a taped interview may be regarded as the destruction of evidence. Therefore, as with written information taken under the same circumstances, when in doubt, it is safest not to destroy, give away, or tape over the videotape.

Interviewers are constantly reevaluating and experimenting with different interviewing techniques. One option is not to tape initial interviews when children have not previously disclosed

79. See Berliner, Canfield-Blick & Bulkley, *supra* note 18, at 170.

abuse, where they are initially very frightened, or where there is a likelihood of more than one child victim in a case. Some interviewers have considered taping the third or fourth session on the supposition that after children have had some time to overcome their initial fears or embarrassment, they are less contradictory, not as prone to denial, and do not require as much support or encouragement in describing their abuse. While this idea is far more appealing than repeatedly having to explain or justify the contradictory and evasive ways that children initially disclose sexual abuse, it is still fraught with legal problems and potential accusations concerning what went on during the first sessions and why these sessions were not taped. Other options for preventing multiple interviews and sharing diagnostic information with others include viewing interviews through two-way mirrors, sending a live picture onto a monitor in another room, or using camera equipment without an actual tape in the VCR. None of these options provides the flexibility of videotaping, but they won't come back to haunt the interviewer or the child.

Perhaps the most basic issue at the core of these dilemmas relates back to the purpose of videotaping. Therapeutic goals and legal goals are not always the same, just as that which is in the best interests of child victims is frequently not in the best interests of a court proceeding. Nonetheless, at a time when there is increased recognition of the need for interdisciplinary teamwork on these cases, growing realization of the need to reduce systemic trauma to children, and greater availability of video equipment, it is discouraging to see interviewers turning away from this technique in order to protect their clients' privacy.

Much more needs to be tested in interview rooms and in courtrooms before many of these issues can be resolved. Few would disagree that interviewers should be accountable for what goes on behind closed doors in conversations with young children. Interviewers should be accountable to the children and families they serve, subject to scrutiny by their professional peers, and accountable to those whose lives will be affected by legal actions that may arise from disclosures made during interviews. Certainly, accused persons and their attorneys desire and demand such accountability. The potential benefits from this form of accountability are currently in jeopardy as more and more interviewers see their videotapes being used to discredit themselves and the statements of children, and observe how the tapes are used to undermine the litigation that results from them. Videotaping has so many potential

benefits to children that it can only be hoped that many of these problems can be resolved in ways that are favorable to children. Like so many issues in this complex field, resolution may depend on the responsiveness of our legal systems.

A final thought for interviewers relates to their roles *vis-a-vis* the legal system. As has been mentioned, much of what is said and done in diagnostic interviews has potential legal ramifications that often are inescapable. Along with being sensitive and skilled with children, interviewers must therefore be educated in the many aspects of the legal system. Much can happen following a child's disclosure of abuse; interviewers can no longer afford to be naive to the process. Unfortunately, few individuals who are expert at communicating with small children are also recognized as expert witnesses in courts of law. This is usually reflective of a traditional bias, particularly within the legal system, that expertise derives solely from such things as professional degrees, published writings, and national recognition. Unfortunately, few physicians, authors or national spokespersons are also able or willing to devote large portions of their time to diagnosing and treating sexually abused children, or to spend large amounts of time in court. Even more unfortunate is the lack of formal recognition for the expertise and skills of those who do.

As a consequence of the interviewers' lack of legal knowledge or recognition as an expert in the field, those who tackle the task of evaluating alleged child victims must also be prepared to defend their conclusions and techniques. Since it is usually a more palatable defense strategy to attack the credentials, motives, and methods of an interviewer than it is to attack the veracity of a young child, those who diagnose child sexual abuse, whatever their professional affiliations, may be accused of everything from brainwashing to over-zealous child advocacy. Those who are in fear of the witness stand or who cannot tolerate the vociferous attempts of others to discredit them and their findings should probably seek more gentle career goals. For those who can withstand the process in the interest of ensuring that the voices of sexually abused children are heard, the risks and battles are part of the job.

The rewards in the short run often seem obscure, especially in the context of a justice system whose procedures seem so antithetical to the needs of children, and so hostile to those who speak for them. The need for competent diagnostic evaluations continues to grow, as does the need for more training in this area. By continuing to seek greater knowledge of the problem, and by gaining self-

confidence in the methods necessary to communicate with young children, interviewers will be better able to meet the needs of sexually abused children.