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Interviewing the Child

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Publication Information & Recommended Citation

Duquette, Donald N. and J. Stubbs. "Interviewing the Child." In *Protecting Children through the Legal System*. Washington, D.C.: American Bar Association, 1981.

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PROTECTING CHILDREN THROUGH THE LEGAL SYSTEM



**The American Bar Association
Young Lawyers Division
National Legal Resource Center
for Child Advocacy and Protection**

**National Resource Center on
Child Abuse and Neglect for Attorneys/
Planning for Children in
Foster Care Project**

and

**The National Association of
Counsel for Children**

PREFACE

Our legal and judicial systems have become increasingly involved in cases related to the welfare of children. This manual, which largely consists of papers written for the American Bar Association National Institute, "Protecting Children Through the Legal System," held on June 11-13, 1981 at the University of San Francisco, focuses on a variety of issues critical to the process of assuring the protection of children in cases involving "state intervention" into the parent-child relationship. In particular, this volume presents material on the legal process in child maltreatment cases, the removal of children from their homes, and the ways in which the law and the courts can help assure that child welfare agencies plan to meet the needs for permanence and stability of children in foster care.

We are particularly indebted to the manual's contributors, each of whom volunteered their time and effort. Given a fairly short deadline, the authors have, we believe, produced materials which will benefit many children and parents in the years ahead.

This manual, and the National Institute itself, would not have been possible without the assistance of the Edna McConnell Clark Foundation and the National Center on Child Abuse and Neglect (NCCAN). Their support of the National Legal Resource Center for Child Advocacy and Protection's Planning for Children in Foster Care Project and its work related to child maltreatment has permitted the American Bar Association to begin to make a contribution toward the improvement of the child welfare system.

The ABA has co-sponsored the production of this book, and its accompanying training program, with the National Association of Counsel for Children. NACC is a voluntary, national membership organization concerned with the legal rights and interests of children who are subject to a wide array of judicial and administrative actions. Established in 1977, it has representatives from forty-five states and five foreign countries. We are grateful to the current president of NACC, Richard V. Lohman, and the organization's officers and directors, for making this collaborative project possible.

Finally, we would like to thank certain individuals at the ABA who planned the National Institute and the development of this manual: Robert Horowitz and Mark Hardin, respectively the Resource Center's Assistant Director and Director of its Planning for Children in Foster Care Project, should take primary credit for the quality of this book. Shirley Gravely, who also edits the Resource Center's newsletter, "Legal Response — Child Advocacy and Protection," assisted in the formal layout and preparation of these materials. Bonita Ross and Alice Bishop were also of valuable assistance in typing many of these papers and taking care of other National Institute details. The Resource Center staff would also like to thank the Chairperson of its National Advisory Board, Bruce Kaufman, and the ABA Young Lawyers Division, Jane Barrett, for the support received over the past year.

Both of our programs can assist you beyond this book. We have a variety of materials related to child welfare law and invite you to contact us if we can be of assistance in your work.

Howard A. Davidson, Director
National Legal Resource Center
for Child Advocacy and Protection

Donald C. Bross, Executive Director
National Association
of Counsel for Children

Cover: MOTHER AND CHILD by Gari Melchers (American School 1860-1932)

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KF540
A75P66
1981

Edited by the staff of the **National Legal Resource Center for Child Advocacy and Protection**

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for Child Advocacy and Protection**
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Fifth Printing

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RELATIONSHIP WITH THE COURT

When any community group endorses the idea of a Guardian Ad Litem program and presents that concept to the court, it is wise to have developed a thoroughly researched proposal giving the advantages and disadvantages of a wide variety of concepts, along with a determination of cost effectiveness and what value the court will receive from such a program. A program's success is extremely dependent upon the endorsement and sanction of the chief juvenile and family court judge. Without judicial sanction, the program and its volunteers will have no standing within the court.

A program director's relationship with the judiciary requires special sensitivity. All program directors from this sample group work at the pleasure of the Court as do the Guardians Ad Litem. It should be recognized however that the Guardian's recommendations to the Court must be based on an independent investigation, focusing on the best interest of the child rather than with favor of the Court. This inherent independence of the Guardian Ad Litem role necessitates positive interchange between the director and the judiciary.

Regularly scheduled meetings between the director and the presiding judge are necessary to ensure positive court sanction, and to ensure open exchange of information. When presenting the judge with program policy, goals and objects, an effective format is a legal one. By legal format it is meant that judges are attorneys accustomed to working in adversarial setting, hearing all facts of the situation and then formulating a conclusion. To be an effective negotiator one needs to carefully assess the person with whom one is negotiating. It is essential to determine which system that person uses in their own decision making process, and then to respond and react to them in a similar fashion.

CONCLUSION

To keep an institution alive and well takes love and caring - not just for people, but for the institution itself. John Gardner warns in Self Renewal "A society decays when its institutions and individuals lose their vitality... in the ever-renewing society what matures is a system or framework within which continuous innovation, renewal and rebirth can occur."

INTERVIEWING THE CHILD

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Interviewing the Child

The attorney representing a child needs to gather considerable information about his client. He needs to know the nature of the child's home environment, his present placement, his condition and adaptation to placement if the child is out of the home, his reasonable preferences for placement. He needs to know the age of the child, the child's capabilities and limitations, the number of siblings, the make-up of the family, the circumstances which led to removal, the legal and social alternatives available to the child and his family.

The bulk of the information necessary for the child's attorney is information about the child rather than from the child and may be available from other sources. The child protection worker may have gathered nearly all the necessary data for the attorney. There is some information from the child, however, that is best obtained by a direct interview.

- Who is the child as an individual?
- What is he like?
- What it's like where the child is presently living as far as the child is concerned?
- What are the present needs of the child as the child sees them?

Excerpted from a book in progress: Duquette, Lawyer Advocacy in Child Protection Cases: An Interdisciplinary Approach

- What are the present problems the child sees?
- What happened at home?
- What is the child's version of the incident or incidents in question? (Child as witness.)
- What were the conditions at home according to the child?
- What are the child's present feelings and attitudes about helpers involved?
- What are the child's feelings and attitude about parents? About brothers and sisters? About his foster family?
- What does the child think about going home?
- What does the child think about visits with parents and family?

Who ought to interview the child? The lawyer? A child specialist such as a social worker, psychologist or psychiatrist acting for the child's lawyer? Or the lawyer and child specialist acting together? The special skills and sensitivity required for interviewing children argue for delegating the task to a child specialist. An interview with a child by a lawyer untrained and inexperienced in the art may be misleading for the lawyer, traumatic for the child and not useful in resolving the social and legal questions at issue. One approach is for child attorneys to delegate certain tasks of information gathering about their child clients to the child protection workers and other child specialists. Having gathered as much information as possible from the available sources the lawyer should meet with the young person perhaps alone, perhaps with a child specialist or caretaker to get some personal impressions of him and to gain the important "feel" for the child as a unique person.

Interviewing children is different from most interviewing lawyers do. Some guidance and suggestions follow.

Interviewing the Child

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A questioning session can be traumatic for children and can resurface painful conflicts and feelings. It is not wise to insist on such a session if the child indicates he is unable to handle it. Keep in mind that the specific format of an interview should be modified to conform with a child's age and capabilities.

Basically there are four parts to an interview.

- A. PRE-INTERVIEW PREPARATION
- B. INTRODUCTION TO THE CHILD
- C. THE INTERVIEW
- D. TERMINATING THE INTERVIEW

A. PRE-INTERVIEW PREPARATION:

This is as important as the actual interview and must be carefully planned with the coordinating social worker. It is important for the primary caretaker, or other consistent person in the child's life, to prepare the child for the interview, in order to allay the child's anxiety about what is going to occur. Keeping in mind the child's developmental level and capabilities, a direct and honest explanation should occur between the child and caretaker. This dialogue should include, (1) an explanation of the alleged problem, (2) why there is concern, (3) the lawyer's role in trying to help. The child might be told that because of the recent events

at home (these can be specifically elaborated) the caretaker is concerned about the child's safety and that the child is going to see and talk with a person who will try to be of help in making the best future plan to protect the child i.e., a lawyer. Most children will readily understand this. If there are questions, they need to be answered as directly and honestly as possible.

B. INTRODUCTION TO THE CHILD

The primary goal here is to begin to help the child feel comfortable with you by giving him a reasonable amount of information about who you are and what your plans will be for the time you spend together. This is a time for reassurance and explanation to the child as to his safety. In talking with the child it is not necessary to use an overly effusive voice, but it is important to speak simply and keep at the child's level.

It is best to meet the child in a room with the caretaker, to introduce yourself in an enthusiastic voice and simply and directly describe to the child where you will be taking him, that you will return to his caretaker who will be waiting for him. Ideally the child should be seen alone in a quiet, designated place. For children less than six this may not be possible and the child may need to be accompanied by his caretaker. In attempting to take the child do not ask "Would you like to come with me?" Chances are he would rather not. It is far better to speak in gentle declaratives. While reaching for the child's hand state something like "We are going right down the hall now to another room." In general, at this point, the more dependent and younger the child the more preparation and support he must be given.

C. THE INTERVIEW

The initial goal is to put the child at ease. This is followed by becoming acquainted with the child, and gaining information about him and his feelings and perceptions of himself and his family.

1. Putting the child at ease.

There are numerous individual variations of accomplishing this. This is a time for free exchange. The best rule is to be natural and really attempt to get to know the child as you might a new friend. As you interact more often with children you will probably develop increased sensitivity to their nonverbal cues and be able to become more responsive. Some possible techniques include:

a) Acknowledgement of the child's fears and apprehension

about the interview, Such statements as, "I know it must be very scary to come with me and not be sure of what we will be doing. Most children do become a bit frightened. All we will be doing today is talking."

b) Assurance that the child knows why he has been brought

to talk with you. Despite the preparation they have been given, some children are unable or unwilling to articulate the reason for the interview. Ask the child, "Why are you here today?" Listen to his response and once again clarify the reasons, simply and in the child's terms.

c) Communicate your interest in the child. This can be

accomplished by asking nonthreatening questions about the child's age, school, friends, and interests. Such a question as, "What do you do for fun?", sometimes helps

children break through their discomfort and talk about themselves more freely.

2. Eliciting information.

Children are generally unable or unwilling to verbalize information about themselves, their worries and their preferences for placement.¹

Because of their reluctance, children's responses to direct questioning can be unrepresentative of their true feelings and desires. This is especially true of pre-schoolers who rely minimally on verbalization to express themselves. For school aged children verbal interchange plays a larger role and direct questioning can be effective.²

a) Use of direct questioning. Most children find general open ended questions difficult to answer, so questioning must be concrete.^{3,4} "What happened at home? What is your mother like when she is angry? How did you feel when you were hit?" These are vague questions and will generally not elicit the kind of information you are seeking. While it may go against the grain of good court room lawyering, with children it is helpful to ask "leading" questions in order to help them clarify their responses. Thus if a child says "I felt bad" giving him a choice as to whether he felt angry, sad, hurt or sorry when he was hit may further refine his response.

"Why" questions are extremely difficult for children to answer accurately. The lawyer cannot expect the child to know "why" he was punished. The lawyer must accept the child's often vague and irrational response to "why" questions.

Questioning children about family members must be carefully carried out. Some possible ways to elicit this information directly include statements like the following: "Tell me something nice about your family (mother, father, etc.)." "Tell me something not so nice about your family (mother, father, etc.)." "Tell me what your mother (father, etc.) does when she (he) is angry." If the child insists nothing is not nice about specific family members, it is sometimes helpful to laugh and assure the child you have never met a perfect family (mother, father, etc.). Assure the child that there must be at least one aspect that is "not so nice." If the child insists that his mother (father, etc.) never gets angry, once again assure him that you never met a mother or father like that. The point is, if you let the child know you expect a response and it is not "bad" to have such a response, he is more likely to feel free to express himself.

b) Use of indirect methods. Usually indirect means reduce the pressure of reality, alleviate fears and can be very effective in eliciting children's true feelings and desires, especially in discussion of their relationship to family members. Some effective indirect methods of eliciting information includes: 1) Observation of doll play and 2) Observation of nonverbal spontaneous behavior. Doll play involves utilizing toys or dolls as vehicles for expressing thoughts, feelings and conflicts. The basic assumption of doll play is that children will discharge pent up feelings, usually of

anger, on less dangerous objects than those which initially created the emotions.^{5,6} An example of effective expression of feeling through doll play would be of five year old Susan who has been beaten repeatedly by her mother. When the little girl is questioned directly about her feelings toward her mother, Susan assures the questioner that her mother is "very nice" and that Susan "loves" her. However, in doll play Susan hits and steps on the mother doll in the doll family. The assumption is that the doll mother was "safer" to express anger onto than to express the anger toward the real mother.

Nonverbal spontaneous behavior can also be exhibitivie of true underlying feelings of children.⁷ Young Steven, who was as yet not mature enough to verbally express his feeling, reveals a great deal about his feelings toward his parents through his behavior. When Steven's father left the boy in the room with an observer, Steven approached the somewhat ajar door and pushed it closed behind the father. This was in direct contrast to the boy's behavior when the mother left the room. When the mother left the room the child ran to the door, attempted to open it and became quite frustrated with his inability to do so. This nonverbal behavior suggests dramatically different sentiments of the child toward each parent.

Use of indirect methods often reveal child's perception of his own place within a family or what he wishes his place to be like.⁸ Interpreting the child's response to these

indirect techniques often requires more experience with children than lawyers traditionally have. This is where a child specialist can be helpful.

D. TERMINATING THE INTERVIEW.

Before returning the child to his caretaker, thank him for his participation in the interview, praise him for his cooperation, and ask him if he has any questions. A simple statement, similar to the following one will do. "Thank you for coming today, you did a very nice job of talking with me. I have asked you lots of questions today. Do you have any for me?" Most children will not have questions but on occasion when a question does arise, an honest, simple answer is best. If there are to be any further contacts with the child inform him of them. If there are no plans for further interactions this should be clearly stated to the child.

Lawyers face the bind of needing information while at the same time needing to be sensitive to the fragility of children and to their conscious and unconscious needs. Useful information can be gained from direct interactions with children. But often direct interviewing of children does not lend itself to children disclosing their true feelings and perceptions. There are a number of factors which impede children from direct verbalization.⁹ These include:

A. Conflicts

1. Conflict between allegiance to parents and fear of abusive or neglectful environment.

B. Guilt

1. Guilt about betrayal of loved ones.
2. Guilt about having had 'normal' fantasized hostilities

toward parents. Belief by children that they are justifiably being punished for their 'bad' thoughts about the parents and deserve the abuse.

C. Fear

1. Fear of being abandoned, unloved.
2. Fear that fantasized hostilities toward parents (which all children have) will be discovered if the child directly verbalizes negative feelings.
3. Fear of the uncertainty of the future may be felt as more profound than the impact of the trauma of living with the abusive and neglectful parents.

D. Denial

1. Denial of negative feelings toward parents. Children often believe having negative feelings about parents is wrong. This makes them feel badly about themselves. To avoid feeling badly they deny their feelings and depict parents as "all good."
2. Denial of parental faults. Children believe they are "bad" because people find fault with their parents. They may need to deny parental faults in order to maintain a positive self image.

E. Masochistic Tendencies

1. Through repeated reinforcement, (i.e., attention from parents) and through the process of identification with parents, children can develop a 'need' to be hurt in order to maintain their self esteem.¹⁰

NOTES

1. Chess, Stella, and Hassibi, Mahin, (1978). Principles and Practice of Child Psychiatry, p. 160-161.
2. Ibid., p. 161.
3. Ibid., p. 155.
4. Inhelder, B. and Piaget, J. (1958), The Growth of Logical Thinking From Childhood to Adolescence. New York: Basic Books.
5. Sarason, I. (1976), Abnormal Psychology, 2nd. ed., Englewood Cliffs, New Jersey: Prentice Hall, p. 408-409.
6. Coleman, J. (1976), Abnormal Psychology and Modern Life, 5th ed., Glenview, Illinois: Scott, Foresman and Co., p. 128.
7. Chess, Ibid., p. 160.
8. Ibid., p. 182.
9. Geiser, R. (1973), The Illusion of Caring, Boston: Beacon Press.
10. Coleman, Ibid., p. 575.