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Misleading the Alleged Offender: Child Witnesses' Displays of Competence in Police Interviews

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Professional Reflection by Naomi Dessaur

Introduction

In this chapter, we analyze police interrogations with children who have been witness of a sexual offense. Such interviews are likely to be difficult for the child. The reason for the interrogation is a crisis that often involves an alleged offender who is known to them. The physical setting of the interview is unfamiliar to the children and they have to talk to a relative stranger about potentially traumatic and sometimes taboo events.

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The relationship with their conversational partner is asymmetrical in the sense that the interlocutor determines the agenda and what counts as a good answer. In sum, the children find themselves in an extremely difficult situation. We will demonstrate that children nevertheless turn out to be competent communicators who are capable both of managing the local interaction and of reporting coherently about a difficult situation.

Children as Reliable Witnesses

The question whether children are capable interlocutors is very salient in the context of criminal investigations. For a long time, children were regarded as too unreliable to testify as witnesses (Goodman, 1984). However, research has shown that children can be reliable witnesses, especially if they are interviewed in a way that encourages children to tell their own story and police officers avoid leading and suggestive questioning as much as possible (e.g., Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). This way of interviewing has been put forward in various guidelines, trainings and protocols for investigative interviewing. This holds specifically for instructions for the cases that we will discuss in this chapter, namely interviewing child victims of alleged sexual assault. These guidelines also emphasize the importance of building rapport and being supportive. For example, in case children are quiet or emotional, police officers are encouraged to ask what is happening so that they can help the child (revised NICHD protocol 2014, <http://nichdprotocol.com/>), presumably to address feelings of distress. Relevant guidelines are, for example, the Achieving Best Evidence (ABE) guideline by the Ministry of Justice in England and Wales 2011, the National Institute of Child and Health Development (NICHD) protocol in the USA (Lamb et al., 2007 and its revised version 2014) and the Dutch manual for interviewing children (Dekens & van der Sleen, 2013: 47–48; see for concise overviews: Fogarty, Augoustinos, & Kettler, 2013; Jakobsen, Langballe, & Schultz, 2017). Interviews that follow such guidelines can, therefore, be regarded as

an opportunity for children to tell their story to someone who takes them seriously. In a report by Defence for Children, some children report feeling relieved after the interview (Hokwerda, Veldman, de Graaf, & Rueb, 2015: 66, 71). Research has also shown that investigative interviews can even have therapeutic effects: the child might feel acknowledged when heard (for a brief overview: Jakobsen et al., 2017: 428).

Nevertheless, the interview presents child witnesses with a potentially difficult situation for three main reasons. First, children are expected to talk about a topic that they likely find difficult to discuss, such as sexual violence or other severe cases of violence. It is likely to be even more difficult to talk about these topics with a stranger, despite all efforts to build rapport and be supportive. It may be especially difficult if the alleged offender is someone familiar to the child, as is often the case in sexual violence cases (National Rapporteur, 2014: 78–79). Second, police interviews are not supportive by nature. The institutional goal of investigative interviews is truth finding or fact finding. It is, therefore, the task for the police officer to critically investigate whether something happened that warrants criminal investigation. Hence, police officers need to ask critical follow-up questions and be careful not to go along with the victim's¹ story too quickly (e.g., Antaki, Richardson, Stokoe, & Willott, 2015b: 331; Dekens & van der Sleen, 2013: 71, 100–101; Luchjenbroers & Aldridge, 2013: 309). Some children indeed evaluate this factual approach as problematic afterward, even when they claim to understand why such questioning is necessary (Hokwerda et al., 2015: 81–82).

Third, special measures that aim at ensuring the reliability of interviews with child witnesses can also lead to a less 'friendly' interview for the child, however well-intended the measures may be. For example, police officers are trained to interview children as neutrally and objectively as possible, that is, without being suggestive and influencing the witness' testimony (Dekens & van der Sleen, 2013). Yet, Jakobsen et al. (2017) have shown that such attempts to be neutral sometimes go at the expense of the supportiveness of the interview. The study showed Norwegian police

¹We are aware of voices that advocate the term 'survivor' rather than 'victim', because the former is a more empowering term (Kelly, 1988). However, we will follow the terms 'victim' and 'witness' because that is the usual terminology in the Netherlands.

officers recordings of their own interviews with child witnesses in distress. The police officers regularly commented that they had been so focused on their task to be neutral that this led to being less than optimally supportive. Such lack of support may even come across to some as child-*unfriendly* (Van der Kruis, 2014). Interactional studies of investigative interviews with children have pointed out that there is a tension between collecting evidence in a neutral way on the one hand and being supportive on the other (Childs & Walsh, 2017; Iversen, 2018).

In this chapter, we aim to show how child victims and child witnesses of sexual violence establish being both competent victims and witnesses during the offense and how that contributes to narratives that are robust in the face of damaging kinds of reasoning. Hence these reports can be viewed as one way in which children display being competent interactants, despite the difficulties mentioned above. More specifically, we look at children's reports of misleading the alleged offender.

Saying 'No'

One piece of advice to potential target groups of sexual violence is to 'say no' and to say 'I don't want that'. Kitzinger and Frith (1999) point out that rape prevention programs often include advice to refuse in such direct and explicit ways. The authors argue that this is problematic because the responsibility of avoiding unwanted sex is placed on the victim, rather than on the alleged offender. This is even more problematic because conversation analytic research has shown that the social norm for refusals in everyday life is to produce them as dispreferred turns, that is, *indirectly* and *with* accounts. Often, refusals do not even include the word 'no'. For instance, saying 'I'm very busy now' can accomplish a refusal. Moreover, speakers usually avoid damaging relationships by claiming that they are unable rather than unwilling to comply. The authors suggest that the advice 'just to say no' is not a good advice, as it conflicts with cultural norms (Kitzinger & Frith, 1999: 203).

Kitzinger and Frith (1999; Frith & Kitzinger, 1997) also asked female school and university students in focus groups to talk about how to refuse sex. The participants reported to find it inappropriate and difficult to

just say no. Therefore, the authors argue that this can be taken as a sign of having acquired the cultural and interactional norm that refusals are usually performed indirectly and implicitly, even though ‘feminist and date rape prevention literatures [...] present such refusals as inadequate and insufficiently communicative’ (Kitzinger & Frith, 1999). They conclude that the claim that alleged offenders may misunderstand an indirect refusal of sex is highly implausible, as this is the normal way refusals are done.

Kitzinger and Frith’s (1999) argument is relevant for the topic of children’s reports of having misled or attempted to mislead the alleged offender. It suggests that being indirect in a situation of abuse, for example by misleading the alleged offender, is a display of interactional competence. Additionally, the report inevitably functions within the interactional context of the police interview and thus performs actions toward the police officer (cf. Schegloff, 1997; see also Fogarty, 2010: 310–313). In this chapter, we investigate the interrelated questions of how reports of misleading portray the child in the reported offence and what that establishes in the police interview.

Context: Dutch Police Interviews with Child Witnesses

Dutch police interviews with children take place in special child-friendly interview rooms. These interview rooms have been furnished to make the child feel at ease and they are equipped with cameras and microphones to record both the child and the police officer during the interview (Ministerie van Veiligheid en Justitie, 2013). The main purpose of these recordings is to make the original interview available for the police, prosecutors, lawyers, expert witnesses and, ultimately, judges (Ministerie van Veiligheid en Justitie, 2013). However, police officers point out that prosecutors, defense lawyers and the court usually do not watch the recordings. Instead, transcripts and summaries are made and added to the case file. These documents then serve as the basis for the judge’s verdict. Only when requested or if there is doubt about the interview techniques, parts of the interview may be played in court. Police officers generally try to interview a child only once, in order to minimize the burden on the child

(Dekens & van der Sleen, 2013: 56; Hokwerda et al., 2015) and to reduce the possibility that the interviews change the child's recollection of what happened (Dekens & van der Sleen, 2013: 47, 71, 105).

The interviews in the dataset are one-on-one encounters between a police officer and a child.² Children aged up to eleven years old must be interviewed in a child-friendly interview room (Ministerie van Veiligheid en Justitie, 2013).³ Police officers refer to these interviews as interviews with child witnesses, even though many of them are direct victims of the alleged abuse.

Police officers are trained to interview children according to the 'scenario model'. This model has been developed by the Dutch police academy and is based on the trainers' experience and research (Dekens & van der Sleen, 2013). It aims at avoiding suggestive questioning and suggestion in general. Like other guidelines for investigative interviewing (ABE, NICHD protocol), the model involves several phases: an introduction phase, a phase of giving instructions or ground rules (e.g., that the child should correct the police officer when necessary), a free narrative or free recall phase (when the child does the talking and the police officer listens), a questioning phase (when the police officer elicits more details about the story) and a closure phase (when the police officer thanks the child and gives the child the opportunity to ask questions [but see for a discussion of this opportunity Childs & Walsh, 2018]).

Data and Method

This study is part of a research project to examine how advice literature on police interviews with children and the actual interviews relate to each other (see also Jol & Stommel, 2016a, 2016b). The materials used for this chapter are 30 audiovisual recordings made by the police in two child-friendly interview rooms in 2011 and 2012. The interviews used for the

²Exceptions to this rule are interviews with an interpreter, and very rare occasions when a caregiver can be present.

³Hokwerda et al. (2015) have argued in their Defence for Children Report that all minors (people under 18) who are victims of an alleged crime should be interviewed in the child-friendly interview room by a certified police officer.

analysis were selected on the basis of criteria such as age and gender, the nature of the alleged offense, the year of recording and the absence of an interpreter. We also asked not to include high profile or 'spectacular' cases to avoid interference with such publicized cases and to demonstrate that we were not sensation seeking. For the recordings from one child-friendly interview room, the first author sat together with a police officer to select recordings. For the recordings from the second child-friendly interview room, the first author sent a list of criteria to the police. The police sent a list of interviews that was slightly revised after questions of the first author.

The data are naturally occurring materials in the sense that the recordings were already made for the criminal investigation without intervention by the researchers. The children (eleven boys and nineteen girls) are between six and eleven years old. The materials have been obtained with permission of the public prosecutor's office and with cooperation of the police. Only the transcripts have been anonymized; the videos were only accessible to the authors of this chapter and were stored in a safe. Using materials that were not collected for research purposes raises all sorts of ethical issues. These issues have been discussed in detail with the police, the public prosecutor and with the faculty's Ethics Assessment Committee. This has resulted in approval from the parties involved. A detailed discussion of these considerations can be found in Jol and Stommel (2016b).

It struck us that children regularly produce accounts of their own role in the event that were unsolicited by the police officer. Some of these accounts include reports of resistance by misleading the alleged offender. In this chapter, we focus on accounts of misleading the alleged offender, both volunteered and invited. We are interested in what children establish with such an account, both in the reported event and, consequently, in the interview. We screened verbatim transcripts for children describing their own conduct in relation to the alleged offender in terms that imply that they misled the alleged offender. This included 'trick' (*truc/trucje*), 'to pretend' (*doen alsof*), 'pulling someone's leg' (*in de maling nemen*) and 'making excuses' (*smoesjes*). We also included a few less explicit fragments about children saying or doing something potentially untrue when or because they want to get away from the alleged offender. We identified thirteen instances from eight different interviews, conducted by six different police officers. The fragments identified were transcribed using Jeffersonian transcription conventions for conversation analysis (CA) (Jefferson,

2004) and, when relevant, using transcription conventions for embodied behavior and CA as developed by Mondada (2014). Fragments are presented in Dutch with an English translation that is a compromise between literal translation and maintaining the flow of the talk.

The children in the collection are all girls, in the age of seven (two children), eight (two children), nine (one child), ten (two children) and eleven (one child). All interviews concern an alleged sex crime, but the sexual violence in these instances varies in nature. The collection includes both children who were witness to a single offense (six interviews) or to a series of offenses (two interviews). Producing claims of misleading the offender is not a very common practice because the goals of these police interview do not make such claims relevant, i.e., the police's questions are usually not directed at finding out whether the child misled the alleged offender. Hence, the fact that in eight of the thirty interviews, children make such claims indicates a clear importance of raising this issue from the perspective of quite a few children.

Analysis: Reports of Misleading

In this section, we discuss four examples of children who report how they misled the suspect or attempted to mislead the suspect. In the first two fragments, the report involves a single event; in the third and fourth fragment, the children report strategies adopted in a series of events.

The first fragment is taken from an interview with Jentl (7).⁴ In the fragment, the interviewee reports that she and her friend Wencke (8) were playing outside when an unknown man pulled Wencke on his lap and rubbed her belly. Prior to the fragment, Jentl has reported that the man did so twice: first near the flat where one of the girls lives, and somewhat later on the same day in a nearby park. The fragment is taken from the questioning phase and concerns how the second instance ended. The police officers' speech is indicated with a P and the children's speech is indicated with a K throughout the analysis. Note that the translations are as literal as possible.

⁴Throughout the analyses we follow the convention that ages of the children are indicated by numbers in parentheses.

Fragment 1: Jentl (7) 26 minutes: so she could get off his lap

1 P: =.hh en hoe <st|opt> dat #dan#,
 =.hh and how {does} that stop then,
 2 die tweede #keer#,
 that second #time#,
 3 K: → e:h;
 e:h;
 4 (0.9)
 5 → uhm toen zei ik .h zullen we varen,=
 uhm then I said .h shall we go sailing,=
 6 =en toen zei die .h meneer nog één minuut;
 =and then that .h mister said one more minute;
 7 (0.4)
 8 nog een paar telletjes;
 another few seconds;
 9 → en toen .h zei ik;
 and then .h I said;
 10 → †dan zullen we dan nu gaan?=
 †shall we go now then?=
 11 =en toen .H toen (0.3) zei die men'-
 =and then .H then (0.3) that mist'-
 11 toen toe we bij e:h (.) bij de flat weer waren,=
 when we were near e:h (.) the flat again,=
 13 =zei die niet tegen je ouders vertellen.
 =he said don't tell your parents.
 14 P: okee;=
 okay;=
 15 =.H dus jIJ komt-jij zegt dan op een g'even moment tegen
 =.H so YOU come-you say then at a certain moment to
 16 Wencke;=
 Wencke;=
 17 =zullen we gaan <varen>?
 =shall we go <sailing>?
 18 .h w††Aarom zei je dat †tegen °°Wencke°°;
 .h w††HY did you say that to °°Wencke°°;
 19 (0.5)
 20 K: → omdat ik-
 because I-
 21 (1.2)
 22 → omdat (.) zij dan van die meneer z'n schoot af k.hh kon,=
 because (.) she could go off that mister's lap then,=
 23 → =want ik dacht al aan haar gezicht,
 =because I already thought on her face,
 24 → dat ze- .h dat ze 't niet wou;
 that she- .h that she didn't want it;

- 25 → en dat ze 't niet durfde.
and that she didn't dare it.
- 26 P: ok↑ee,=
 o:k↑ee,=
 27 =.h je dacht,
 =.h you thought,
 28 aan haar gezicht,
 on her face,
 29 aan ↑Wencke gezi- d'r gezicht te zien,=
 on ↑Wencke seen- her face to see,=
 you thought that you could see on her face
 30 =.hh ↓ dat ze 't niet leuk vond;
 =.hh ↓ that she didn't like it;
 31 en dat ze 't °niet°- dat ze nie wilde,
 and that she didn't - that she did not want {it},
 32 .H en daarom bedach jij van;
 .H and that's why you thought of like
 33 (0.5)
 34 te zeggen;
 saying;
 35 (0.3)
 36 zullen we gaan varen .
 shall we go sailing.

Jentl first responds to the police officer's question (lines 1–2) that she proposed to go sailing (she tells elsewhere that her friend Wencke has a small boat) (lines 3–5). She reports that this proposal was not immediately successful: the man did not let her friend go immediately (lines 6–8). She reports pursuing her attempt (lines 9–10) and the juxtaposed phrase 'when we were near the flat again' (line 12) implies that her second proposal was successful. The police officer acknowledges this answer with 'okay' (line 14) and displays reception with a partial answer repetition (lines 15–17). This answer-repetition is then coupled with a *why*-question: 'why did you say that to Wencke?' (line 18). This question establishes that the police officer does not accept the child's story straightaway, solicits a reason and therefore claims that Jentl's reported proposal to go sailing does not make immediate sense. The officer's questions could thus be heard as taking a critical stance (Bolden & Robinson, 2011; see also Sacks, 1995: 4–5, 72–80).

Jentl begins her answer with a delay and 'because I' (line 20), yet she abandons this answer and changes the sentence subject into 'she' after another delay. This downplays her own wishes and present her move as altruistic: she said it to provide *her friend* with an opportunity to get off

the alleged offender's lap (line 23). Moreover, her response reconstructs her previous reported proposal to go sailing as something she said *in order to* help her friend. The account solicitation thus elicits a reconstruction of Jentl's previous report of a proposal to go sailing into an *excuse* to get away from the man. The police officer receives this response as causing a shift in understanding by rising intonation in 'okay' (line 26) the emphatic 'and that's why' (line 32), thus retrospectively constructing the *why*-account as seeking an explanation rather than challenging Jentl's telling as well as treating the child's reported motivation and strategy as important and relevant.

Jentl also warrants her attempt to help by referring to her friend's facial expression (lines 23–25). This portrays her as knowing her friend well enough to understand from a facial expression what she is thinking. The warrant further constructs the proposal she came up with in the face of the alleged abuse, i.e., at the moment she could read in her friend's face that she 'didn't want it and didn't dare it' (lines 24–25). The proposal is put forward as an ad hoc strategy to deal with this particular incident.

In retrospect, then, the police officer's *why*-question enables Jentl to present herself in a favorable way. She assumes a role of a having correctly identified her friend's problem, having acted upon that understanding of the situation and having resisted the alleged offender *in the reported event* by offering her friend a way out of the situation using her wit and knowledge of her friend. She thus establishes having been a capable and helpful friend during the event. Importantly, this portrayal is situated in the ongoing police interview. As such, it contributes to a narrative of what happened that counters other versions of the story (cf. Potter, 1996: 106–108), and particular versions in which she did *not* resist. Such a version would be vulnerable to potential undermining and blame-attributing questions like 'but why didn't you help your friend?' (cf. questions to the alleged victim Antaki et al., 2015a). Hence, the current version of the story "pre-empts and mitigates potential blame implications" (MacLeod, 2016: 108) that might occur later in the criminal proceedings or in the police interview.

The girl in the next fragment, 10-year-old Merel, also constructs a proposal in order to physically exit the situation and close down the interaction with the alleged offender. Different from Fragment 1, this fragment

is taken from the free recall phase of the interview. The construction is produced in an extended turn rather than in response to a question from the interviewer (as in Fragment 1). Therefore, it can be considered unsolicited.

The police officer invites Merel to talk (lines 1–3), and she explains (lines omitted) that she was at her friend's place and her friend, Thijs, was doing something on the computer. The boy's father was there too and invited her to sit. Merel reports that she refused and that her friend's father then puts her jokingly on his lap. The fragment continues when the father starts touching her (line 30). The police officer is writing throughout most of the fragment. The excuse starts in line 42. Non-capital p's and k's in the transcript indicate embodied behavior during the other participant's speech.

Fragment 2: Merel (10) 9 minutes: because I wanted that that father would stop that;

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1   P:  %.hhhh nOU (.) Merelh;
      .hhhh wELL (.) Merel;
      %writes--->
2     (1.0)%
      ---->%
3     wat kom °jij mij° vertellen,
      what have you come to tell me,

      ((26 lines omitted))

30  K:  en (.) toen eerst ging die onder m'n shirt voelen enzo;
      and (.) then first he went feeling under my shirt and stuff
      like that;

      ((8 lines omitted in which K tells how her friend's father goes up
      with his hand and then in her pants, panties and in her crotch))

39  K:  >en toen ging die ook zegmaar<;=
      >and then he also did like<;=
40     =overal voelen enzo;
      =feel everywhere and stuff like that;
41     (0.8)
42     → •pt en: (.) eh daarna vroeg ik aan Thijs:
      •pt and (.) eh after that I asked Thijs:
43     (0.2)
44     → eh zegmaar van;
      eh say like;

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45 → ↓°das mijn %vriendje°
 ↓°that's my %little friend/boyfriend°;=
 p: %nods while writing-->
 47 K: =.hhh% °ehm° van-(0.2) e:hm;-
 =.hhh% °ehm° like-(0.2) ehm;-
 p: ---->%
 48 (0.9)
 49 K: → zullen wij naar bUIten gaan?=
 shall we go OUTside?=
 50 → =want ik wou dat die vader [daarmee] ophoudde;
 =because I wanted that that father that he would stop that;
 51 P: [hmm]
 [hmm]
 52 K: → ↓°maar dat durfde ik niet-niet te zeggen,
 ↓°but I didn't-not dare to say that
 53 .hh
 .hh
 54 (0.3)
 55 •pt enne toen zei die ja: okee ,=
 •pt and eh then he said yeah okay ,=

⁵*Vriendje* is a diminutive of *vriend* ('friend'). In Dutch it is often used as 'boyfriend', but given that they are both children, it can also be used as 'little friend'.

Like Jentl in Fragment 1, Merel reports a proposal to get away from the alleged offender (lines 42–45, 49–50, 52). She accounts for this strategy by referring to a dilemma of wanting the father to stop (line 50) versus being too scared to say so explicitly (line 52). This claim of having been too scared implies that she in fact did not explicitly tell her friend's father to stop and it warrants for not doing so by claiming that she was too scared. She thus orientates to the lack of an explicit request to stop as something that needs explanation. Hence, she treats explicit requests to stop as something that may be expected. At the same time, Merel presents just saying 'no' or 'stop' as having potential (interactional) repercussions (cf. Kitzinger & Frith, 1999).

The reported dilemma between wanting to stop her friend's father and being scared presents her proposal to go outside as produced in order to escape from the situation and, hence, as an excuse *in order to* escape from the situation and, hence, as an excuse. This leads to a narrative again in which the child resisted the alleged offender even though she did not do so explicitly. This counters versions of the story that are vulnerable to

the accusation that she is at fault because she did not provide resistance. Different from Fragment 1, she reports the proposal without a solicitation by the police officer. Her orientation to the norm of resistance is more independently produced than in Fragment 1. This is poignant because apparently the child herself feels the need to make relevant this norm in the context of this police interview, even in the absence of legal or other cues that resistance and blame are an issue. Notice how the fear that is included in the child's account for not directly requesting to let her go (line 52) is sensitive to the same normative orientation. Also note that the police officer could have approved of, or at least acknowledged, Jentl's strategy in lines 53 and 54, but that she remains silent.

Fragment 3 is taken from the questioning phase with Delphine (9). She uses the verb 'pretend to' (*net doen alsof*). This makes her claim explicit that she attempted to mislead the alleged offender. Delphine has asserted in the free recall phase that she has been abused by her father repeatedly and that it lasted for a year and a half. Fragment 3 is taken from an episode in which the police officer invites a narrative of what happened the last time Delphine was abused. The police officer invites the child to continue in line 4, but disrupts her narrative several times to solicit accounts of how Delphine knows (data not shown). The fragment continues with a question by the police officer (line 38) and response by Delphine (lines 39–44). The stretched 'me' (line 44) and the rising intonation, project more talk to come, yet the police officer disrupts her narrative with another request for an account: 'how {do} you know that daddy knows that' (line 45).

Fragment 3: Delphine (9) 51 minutes: so I pretend that I'm in a very deep sleep

((P and K are both looking at a map of child's father's house; K holds map + pen))

- 1 P: maar- okee;
but- okay;
2 papa komt naar je j-die kamer toe: ,
daddy comes to your y-that room ,
3 K: ↑hm↑hm?
↑hm↑hm?
4 P: en hoe gaat ut dan verder;
and how does it continue;
and what happens next;
5 K: .hh dan (0.7) °b:°en ik *d̥i:t, *
.hh then (0.7) th̥is is me,
points with pen on map

((32 lines omitted))

- 38 P: >en% *wanneer WORD JIJ DAN OPGEH̥AALD,
>and%*when ARE YOU THEN PICKED UP,
-->%
k: *pen on paper----->
39 K: nou als Berend- als papah playstation hoort,
well when Berend- when daddy hears playstation,
40 en yet:s,
and yet:s,
41 dan weet ie dat >Berend heeft< gescoord;
he knows that >Berend has scored;
42 met zijn <voetbal>,
with his <football>,
43 .HHH dus.
.HHH so.
44 dan loopt papa naar <m[ij: >,
then daddy walks to <me:>,
45 P: [hoe weet jij dat papa *dat weet?
[how {do} you know that daddy knows
that?
k: *looks up-->
46 (0.5)
47 K: (hh)
48 .hh fomdat ik Berend ookE ↑Y:ES ↓hoor (0.3) [roepen,
.hh fbecause I alsoE hear Berend (0.3) shout ↑Y:ES,
49 P: [aukee;
[okay;
50 K: en dan:* *weet ik,
and then I know,
----->* pen+gaze on paper, writes/draws---->

51 dat papa dat dan (kon);=
 that daddy (could) {hear} that then;=
 52 → =.hh >dus dan doe ik net alsof da'k in diepe slaap ben;=
 =.hh >so then I pretend that I'm in a deep sleep;=
 53 =maar dan maakt ie me wakker<;
 =but then he wakes me up<;
 54 .HHH
 .HHH
 55 dus dan doe ik,--
 so then I do,--
 56 (.)
 57 is ↑dit papa.
 is ↑this daddy.
 58 (0.6)
 59 <nou loo:pt pap°a (0.7) o°ok hierh↑ee:n>?
 <now daddy also walks (0.7) to ↑he:re>

Delphine first deals with the *how do you know*-question in lines 47–48, 50–52, presenting the answer as self-evident, which is reinforced by laughter intonation (line 47) and smiley voice (line 48) (cf. Jol & Stommel, 2016a). She claims having heard her brother and unpacks her inference: if she could hear her brother, so could her father (lines 50–51).

She then resumes her narrative with an inbreath and ‘so’ (*dus*) (line 52) and she claims having consciously attempted to mislead the suspect using ‘pretending’ (line 54). Additionally, Delphine reports having pretended to be asleep in an intensified way, namely a *deep* sleep (Pomerantz, 1986). This suggests that she did not easily show that she was awake and that she made every effort to keep pretending, in spite of possible attempts to ‘wake her up’ by her father. She thus strengthens her claim of resistance and thus counters potential a less favorable hearing by the police officer (cf. Pomerantz, 1986).

Different from the previous fragments, Delphine’s reported strategy concerns anticipated abuse that she is trying to avoid. She presents her strategy as a way of acting upon knowledge about what will happen when her father wakes up using ‘so’ (line 52): he will come to her room, so she pretended to be asleep. She has also reported earlier in the interview (data not shown) that she pretended to be asleep after an occasion of abuse. She claims that her father actually fell asleep, which in turn enabled Delphine to remove herself from the situation. The reported strategy in Fragment 3 is thus closely connected to the predictability of her father’s behavior and to repeated abuse. The child presents herself as having been a competent

victim who anticipated the alleged offender's behavior, even though the strategy was not successful in the end. This, then, pre-empts potential blame-attributing reactions to the story.

The final fragment offers an even more explicit formulation of misleading the alleged offender: the child reports performing a trick. The fragment is taken from the questioning phase of an interview with Dorien (11) about sexual abuse by a family friend named Karel during joint holidays and other social gatherings. After the initial question-answer-uptake sequence (lines 1–4) the police officer asks for clarification whether it happened on the couch or whether she is talking about another occasion now (data not shown). Dorien claims it was another time and then elaborates on those other times: Karel told her to come to his room in the morning. Just prior to line 26 she reports that Karel's wife was in bed too, still sleeping. She then voluntarily reports the trick in line 29.

Fragment 4: Dorien (11) 38 minutes: I have a trick

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1  P:  .hh (.) heb jij iets (.) bij (1.1) <Karel>(1,5) moeten doen;
      .hh (.) did you (1.5) have to do something (.) to (1.1) <Karel>;
2  K:  *e:h      **£ja: ik moest aan z'n* *piemel zitten£*;
      e:h      eyes I had to touch his willy      £*;
      *gaze away*vague smile      * * gaze at P      *
3      (0.5)
4  P:  •hh aan z'n piemel zitten;=
      •hh touch his willy;=

((19 lines omitted))

26 P:  =↓hm↑hm,
      =↓hm↑hm,
      (0.2)
27
28 K:  •hh e:n alleen--
      •hh a:nd only--
29 → *ik heb juist een trucje?=
      I have {juist} a little trick?=
      *smile----->
30 → =de: •hh vorige keren,*
      =the •hh previous times,*
      ----->*
31 → hebbik juist •h fnet gedaan£
      I have {juist} •h £pretended £
32 → alsof ik heel lang (0,2) *d↑oor sl↑ie:p?*
      that I kept sleeping very long
      *gaze on P      *
```

- 33 [•hhh
 [•hhh
- 34 P: [hm↑hm;
 [hm↑hm;
- 35 K: → *terwifij:l 'kgevoon fhelemaal wakker was, f*
 whif:le I was just totally awake, f
 smile----->
- 36 P: [hm↑hm>
 [hm↑hm>
- 37 K: → [*maar-i* (.) ik wou niet naar um toe komen?=
 [*but-I * (.) I didn't want to come to him?=
 *smile *
- 38 → =•hh 's dee ik net alsof ik fslie:pf;
 =•hh so I pretended to be faslee:pf;
- 39 •hh en dan zei die elke ochtend;
 •hh and then he said every morning;
- 40 ja: waarom kwam je nie: ;
 yeah why didn't you come;
- 41 en toe'zei ik;
 and then I said;
- 42 ja;
 yeah;
- 43 •hh sorry;
 •hh sorry;
- 44 → ik was aan't slapen enzo;
 I was sleeping and stuff like that;
- 45 → [terwijl'k gewoon in een boek zat te lezen,
 [while I was just reading in a book,
- 46 P: [(hm;)
 [(hm;)
- 47 [hm↑hm,
 [hm↑hm,
- 48 K: [•hh
 [•hh
- 49 (0.9)
- 50 → e::n dan hoefde ik niet (0,4) (<°daar°>
 a::nd then I didn't have to (0.4) (<that>
- 51 (1)
- 52 → >aan te zitten zeg maar<;
 >like touch {that}<;
- 53 P: °hmhm°;
 °hmhm°;
- 54 ok#ee#.
 ok#ay#.
- 55 .hhh daar gaan we `t ↑daalijk samen over hebben,
 .hhh we are going to talk about that together ↑later,

Dorien launches her report of misleading the alleged offender with an explicit characterization of what she did: it was a trick. This launch has similar functions to story prefaces (Mandelbaum, 2013; Sacks, 1974): it projects that the 'trick' will be elaborated, and hence that more talk is underway, while also indicating what will be required to bring the story to completion (some instance of being smart must be reported) and to the manner in which a recipient might respond (offering compliments or approval). In lines 30–32, she indeed produces an elaboration of the trick. Like Delphine in Fragment 3, she pretended to be asleep. The addition 'the previous times' suggests that the abuse happened more often and that she has used the trick multiple times. This suggests that the trick has proven to be useful over time. The strategy is also presented as something she is proud of with the word 'trick' and an accompanying smile. The gaze in P's direction when the elaboration is possibly complete (line 32) therefore makes relevant an approving uptake by the police officer.

The police officer, however, does not overtly affiliate with the reported instance of resistance. She could have acknowledged the reported trick in line 33, in overlap with Dorien's inbreath. Instead, she produces a minimal uptake. This lack of uptake can be understood as a way to 'doing being neutral' and thus abide by the guideline to be neutral for this type of interviewing (cf. Antaki et al., 2015c). However, Dorien treats the lack of uptake as problematic and emphasizes that it was a strategy that she adopted in order to avoid the alleged offender (lines 35, 37–45) and that there was a discrepancy between what she said (I was sleeping) and what she was doing (just reading a book).

The strategy is reported as successful: not only was it a way to avoid the alleged offender at the time of the intended abuse, she claims that it also provided her with an excuse when he held her accountable for not following his instructions later on (lines 39–40). She presents this success as something she is proud of with a smile (line 37) and a smiley voice (line 38). At the same time, she leaves the assessment to the police officer, thus adhering to the preference to avoid self-praise (Pomerantz, 1978). The police officer, however, again does not provide such an assessment, despite opportunities in overlap with the inbreath or in pauses (lines 38, 39, 47 and 49). Dorien then further elaborates why exactly she adopted this strategy: so she did not have to touch Karel's private parts. The police officer could

have produced a positive evaluation in line 51, anticipating what Dorien projects in line 50. However the police officer remains silent. Dorien then makes explicit what she could avoid by pretending to be asleep, namely touching ‘that’ (line 52) and in line 53. Again, the police officer only produces a minimal uptake (lines 53–54) and then closes this topic, at least for the time being (line 55).

In the fragment, Dorien uses various means to make relevant an approving uptake: the explicit labels of ‘trick’ and ‘pretending’, emphasis, smiles and a smiley voice, and accounts for why she adopted the pretending strategy. She thus presents this strategy as something to be acknowledged and, hence, as the right thing to do. This becomes even more salient by her pursuit of approval. Dorien thus orientates to her own reported behavior as having competently followed a norm of providing resistance. Consequently, Dorien develops a narrative of having well thought out her strategy for managing the abusive situation. This not only counters other, potentially damaging versions of the story, but also constructs her reported behavior as something to be proud of.

Conclusion and Discussion

The analysis shows that, despite several differences, the reports of misleading have in common that they portray the child as having competently and actively resisted the alleged offender at the time of the (attempted) offense. They also manage critical questions (Fragment 1) and are not necessarily taken up in an affiliative way (Fragments 2 and 4). The reports of misleading also present resistance to an alleged offender as something that can be accomplished without overt resistance, by implicit verbal strategies (Fragments 1–2) as well as by embodied behavior (Fragments 3–4). The analysis adds to the argument of Kitzinger and Frith (1999; see also Woodhams, Hollin, Bull, & Cooke, 2012) that even children as young as 7–11 sometimes report the use of other and more face-saving strategies than ‘just saying no’. Fragment 2 in particular shows awareness of potential repercussions of explicit and overt resistance (cf. Kitzinger & Frith, 1999).

Inherently, the reports of misleading the offender accomplish interactional work in the interactional setting of the police interview. In Fragment 1, the girl provides a response to the challenging question why she proposed to go sailing, and in Fragment 4, the girl competently pursues an approving uptake. Additionally, the accounts in Fragments 2–4 are significant in that they are unsolicited, hence volunteered by the child. They thus contribute to the narrative of what happened in a certain way, namely by highlighting their resistance (cf. Fogarty, 2010: 278–313). Like any way of constructing a story or account is tailored to counter other versions of the story (Potter, 1996), the children's versions counter competing versions of what happened that possible undermining lines of reasoning in which the child is at fault because the child did not resist (cf. MacLeod, 2016).

It is poignant that some children in our corpus orient to the norm of resistance, even though they are not to be blamed socially or legally. A possible reason why children may make relevant resistance in their talk, why it is recognizable as a favorable portrayal, and why police officer do not ask for clarification is the ultimate resistance myth (Estrich, 1987). The ultimate resistance myth is the social belief that true victims of sexual violence should provide ultimate resistance (Estrich, 1987), or at least appropriate resistance. Conversely, if the victim did *not* resist according to that standard or cannot provide evidence of resistance, the ultimate resistance myth allows the undermining inference that it is the victim's own fault.

This way of thinking is problematic because it shifts the responsibility and blame for sexual violence to the victim (e.g., Lonsway & Fitzgerald, 1994: 136). Furthermore, it shifts the burden of proof to the victim (Estrich, 1987). Also, this way of reasoning can present resistance as easy (Ehrlich, 2010: 269–270), while victims most likely were too scared of a further increase of violence, so that from the victim's perspective compliance or feigning compliance was the best available option (Ehrlich, 2002: 200–203). To add to the problematic nature of the myth, it has the status of 'common sense' reasoning that is pervasive in talk about sexual violence (MacLeod, 2016). This is also why it has been found so easy for cross-examiners in court to undermine rape victims' stories and present their attempts to resist as not enough (e.g., Ehrlich, 2002: 198–200).

In the data presented in this chapter, the resistance does not include cases of physical resistance, but the fact that in eleven instances children spontaneously give an account of misleading the alleged offender, suggests that there is a norm that makes such an account relevant. It is problematic that such a norm exists and that such young children apparently already orient to it, even without solicitation. Additionally, police officers do not necessarily accept the child's story, nor do they challenge the need to provide an account of resistance (cf. MacLeod, 2016). At the same time, not all vulnerable witnesses are able to pre-empt potential blame attributions. For example, Antaki et al. (2015b) demonstrate how witnesses with an intellectual disability often struggle to delete damaging implications when police officers probe inconsistencies. By contrast, we have seen one way in which children manage to pre-empt such damaging implications and blame attributions, despite the fact that children are subjected to the complex and alienating setting of the police interrogation. This can be seen as a display of interactional competence that is especially relevant given that the norm of resistance that is so pervasive in society.

Professional Reflection: The Dilemma of Working in the Best Interest of the Child in Sexual Abuse Cases and the Legal Process

Naomi Dessaur

Abstract

In my reflection on the findings of the chapter by Jol, Stommel and Spooren, I explicate some of the dilemmas of professionals in the legal field, even though they are committed to take the best interest of the child as a starting point for their work. One of the central dilemmas is how to safeguard the child to tell his/her own story, while also preventing the child from feeling pressured into taking legal steps and prosecuting a suspect. These dilemmatic situations may sometimes result in outcomes opposed

to creating a safe, child-centered environment in which children can tell their story. In my profession, I have seen that children are smart enough to trick their abuser. This should however not be treated as a norm. I therefore want to make a plea for the claim that children are never guilty, whether they actively resist the abuse or not, and whatever the outcome of the legal process.

In article 3 of the UN Convention on the Rights of the Child (UNCRC, 1992) a reference is made to what is in ‘the best interest of the child’ when stating: “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration*”. In this contribution, I want to reflect on what counts as the best interest of the child, when the child is involved in the legal process, as this involvement can pose different types of dilemmas for the actual well-being of the child.

As an 18-year-old volunteer, I was confronted with sexual abuse of children at the Dutch Childline (Kindertelefoon). Most of the abuse was committed by an acquaintance or close relative of the family. At the Dutch Childline you are not supposed to act, give advice or find the truth; the story of the child is the most important and the story as it is told by the child counts as the child’s truth. For me as a volunteer, this was sometimes frustrating (Berliner & Conte, 1995). We were not supposed to advise a child to go to the police or to stop the abuse. I felt that therefore we were not fully able to prevent abuse of other children who possibly could become victims as well. Looking back, 20 years later, on this period I realize that the Dutch Childline is one of the few places where a child can be open about his/her life without any kind of pressure for taking legal steps. This is worth its weight in gold. I always mention the example of the Dutch Childline to professionals for this very reason.

At twenty-two, I started to work as a case manager at the Dutch Child Protection Agency where children are guided in a volunteer framework. I worked with children who experienced sexual abuse and who were also in the middle of a legal process. During the eight years I worked at the Child Protection Agency, my opinion about the legal process, and what it means for children to be part of it, changed. I often felt a tension between what was supposedly in the best interest of the child and the importance of

prosecuting a suspect. At the same time, it remains important to prosecute a suspect since that is the only way to stop the abuse.

As a trainer, I teach professionals how to conduct conversations with children about (suspicions of) sexual abuse and/or other forms of child neglect or abuse. During the training we discuss how there may be different interests at stake for the child when filing a police report and how this may pose dilemmas for the child. There is almost no 'right' choice. Of course the best interest of the child prevails, also at those times, but what does this mean if there are clear signs that the abuse is involving more children? There are no guarantees that the best interest of every single child can be served at those times and what sounds like an important goal to adhere to then seems so much harder to maintain. Consider for example the implications for children who are then asked to take up the role as a witness in an abuse case to strengthen the case against a suspect.

The Effects

To be a witness in an abuse case is often not without negative consequences for children (Vanoni, Lunemann, Kriek, Drost, & Smits van Waesberghe, 2013; Wijers & De Boer, 2010). The legal process is, as the chapter by Jol, Stommel & Spooren also shows, primarily about truth finding, collecting evidence and determining whether the sexual abuse did really happen. It is clear that on the one hand, we need such an objective and impartial process in an attempt to find the truth and to convict suspects. On the other hand there is the best interest of the child and whether that is served in those instances, for example when having to take part in multiple police interviews. I consider this to be another aspect of the paradox, which I cannot totally unravel, but which this chapter also illustrates.

In transcriptions of police interviews we often see that investigators start the interviews with a clear, and neutrally worded question, after which they encourage children to go on by verbal or non-verbal confirmation and by providing short summaries. Golden rules I teach professionals in my trainings are:

- the story of the child has to be taken seriously at all times;

- refrain from using leading questions as these provide suggestions as to which answer is preferred or considered ‘best’ or ‘right’;
- the child is master over her/his story.

I see comparisons between what I capture in these golden rules with what police inspectors who interview children do in practice, but I also often miss empathy and warmth in their method of interviewing (and questioning) children. I’ll come back to this later.

It would be very good if we could find ways to convict suspects without the child, who has been the victim of the suspect, necessary play a role in the prosecution. Children can feel enormous pressure and guilt when a conviction is being made. To establish whether someone is guilty should maybe not depend on the story and experiences of the child. This is even more true when there is (some form of) loyalty with the abuser involved. This is something that is often the case when the abuse has taken place over a longer period of time and/or when there is (or has developed) a personal (family) bond. In those instances, feelings of guilt can even be stronger for the children involved.

The fear children can experience, long after the abuse has stopped must not be underestimated. Threats that abusers use with their victims are often unimaginably cruel and manipulative, which the following examples show. Abusers may say things like: “*I’ll kill your mother if you tell anyone.*”; “*No one will believe you.*”; “*You wanted it yourself so you are also guilty.*”; “*I cut off your fathers ear.*”; “*If you tell anyone, I will harm your brother/sister.*” When fears like these play a role, talking to a police inspector or being involved in a legal process can be terrifying. In some instances, it might result in secondary traumatization and victimization. We speak of secondary traumatization when children are traumatized again by the legal process. In that case the post-traumatic stress reaction may deepen. This risk is especially high with victims of rape, violence or human trafficking. These children need recognition and support, while an interrogation, also in an informative way, can be felt like an attack on their personal credibility (Vanoni et al., 2013; Wijers & De Boer, 2010).

The way children are treated by the police, the influence of reactions of third parties or the attitude of the defense attorney can cause secondary victimization (Verwey-Jonker Institute, 2014: 17). The way children are

treated may be considered too formal, or too much like there would be no difference between talking to children and talking to adults. The needs of the child victim might paradoxically as it seems, be overlooked when children are part of a legal process (Maas-de Waal, 2006).

It would be very good to avoid these risks for secondary traumatization and/or victimization. In Israel, there is a possibility to substitute the child in the legal process by a social worker, who will appear in court instead of the child (Morag, 1992). In cases of sexual abuse it is the social worker who talks with lawyers, police, prosecutor, defense and will also represent the child in court. This might be an interesting example to avoid the burden of telling your story time and again and to avoid involvement in the conviction. In the Israeli case, responsibility is removed from the child and transferred to an adult. However, in this Israeli format the social worker has to be trained to guarantee that the story he or she hears from the child in the first place is genuine and true. We still know very little about the ways in which social workers invite children to tell their story (but see van Nijnatten, 2013 for some of the characteristics of those talks in research conducted in the Netherlands).

Of course there is another side to this as well. Children can be relieved that the (sexual) abuse stops, that their story is heard, the abuser convicted. They may feel proud to be involved in this process. It can even restore their self-esteem. However, even though children might adapt well after such a traumatic experience, the lasting effects of having experienced (sexual)abuse should never be underestimated.

Offering Resistance

During many years of working with children of different ages, it has become clear that every child reacts differently to stressful and traumatic events. Not every child will actively and visibly resist sexual abuse. Some children will freeze (the so-called fight-or-flight response), dissociate or will do nothing, simply because they can't. In my opinion, doing nothing can also be a coping strategy and ensure the abuse to stop or even worse happening.

The question then also arises whether resisting or the lack of resistance should be taken as a decisive factor in determining whether sexual abuse has taken place. Can we talk about compliance or even some sort of compliance if it's based on inequality, which is always the case with sexual abuse of a minor? In the case of sexual abuse I think that a child can never be guilty, whether it actively and visibly resisted the abuse or not. As mentioned above, a child can be completely influenced, terrified by the manipulations, scared or indoctrinated and because of all those reasons, incapable to offer resistance.

Tricks

However, children are also capable to fool an abuser and use tricks. This shows how inventive and self-reliant children can be. I am still surprised how smart children sometimes are, in the circumstances, to deal with certain difficult situations and how they 'protect' themselves. To use the word protection in instances in which the sexual abuse does not stop is maybe an extraordinary term. Preventing or stopping violence and/or abuse are not the only ways to resist and protect oneself. Using tricks are a form of resistance as well, such as the trick that was mentioned in the chapter ('I pretended to sleep,' see fragment 4) or dissociation (an unconscious process, fleeing the situation), or using a pretend mode 'I needed to stay in school longer'. Similar to instances in which children freeze these can all be considered coping mechanism to prevent worse.

Recommendations

The strategies of deception discussed in the chapter by Jol and colleagues demonstrate the seriousness of the situation and the necessity for a coping strategy. The child had to dissociate or use a trick to survive. Resistance does not only show in spoken language.

An experience-expert and colleague who went through multiple forms of child abuse and sexual abuse, and is now working with victims of sexual abuse, said:

I was raped by my father regularly between the age of five and eight. I very much wanted the sexual abuse to stop. I used tricks to make sure I would not utter a word since I was terrified, because my father threatened me with all sorts of terrible things. I literally had no words to tell what was happening. I was not able to give words to what happened with my body nor to convey the stress and fear I felt. How was I supposed to give words to the feeling of feeling completely insecure? At home I was not safe and my body and language also felt unsafe. I was terrified to speak up.

This girl was coping by keeping quiet and building up such muscle tension that she would not shiver and speak after the abuse. She might not have been able to tell her story to a police inspector and her abuser might not have been convicted. On the other side, the evidence was so overwhelming that even with her not being able to verbalize what she had experienced a conviction could have been the outcome. We may begin to see how warmth, support and empathy is an important factor and could have contributed to help this girl to be able to verbalize her experiences. After years of counseling and therapy, my colleague was able to tell her story and use it as an experience-expert.

In the fragments Jol, Stommel and Spooren present in their chapter, the police officers seem not to be warm or supportive. However in my opinion, whether or not they would be supportive probably not have hindered the interrogation. Abused children come from an unsafe environment. It is recommended to create a safe atmosphere before expecting children to tell their story, since telling your story to a stranger is quite unsafe anyway. Police officers may stay neutral, but this does not necessarily mean that they act in an 'unattached' manner. It is possible to be neutral and to be supportive at the same time. Examples I see in my work are giving a compliment, for instance, to express that it takes courage to tell this story. To explicitly state that a child can take the time it needs to say something (or not) or that the child is not to blame, whatever the outcome of the legal process.

I want to conclude by saying that my recommendations from the field are underlined by the policy recommendations by the Council of Europe for a child-friendly justice system and the Lanzarote Convention (2007).

The convention states helpful guidelines for states that are part of this Convention:

Each Party shall take the necessary legislative or other measures to ensure that:

- a. interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;
- b. interviews with the child take place, where necessary, in premises designed or adapted for this purpose;
- c. interviews with the child are carried out by professionals trained for this purpose;
- d. the same persons, if possible and where appropriate, conduct all interviews with the child;
- e. the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;
- f. the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

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