Integrating the NICHD Forensic Investigative Interview Protocol in the Biopsychosocial-spiritual Model of Care for Victims of CSA and CSE

Antero Rosauero V. Arias, Jr.

University of Santo Tomas Graduate School (USTGS), Philippines

Copyright©2016 by authors, all rights reserved. Authors agree that this article remains permanently open access under the terms of the Creative Commons Attribution License 4.0 International License

Abstract Sexual assault on children, whether in the form of abuse, neglect or exploitation, exists globally and is therefore a global concern. Psychological rehabilitation centers that make use of the biopsychosocial-spiritual model do not necessarily incorporate the child victims' need for justice. And although a number of these institutions allow and even support the filing of criminal cases against the perpetrators, they have not incorporated definitive protocols that will ensure the success of the cases and prevent, as well, the inflation and deflation of the accounts of the child victims, including their possible retraumatization. This concept paper proposed the integration of the NICHD Forensic Investigative Interview Protocol that would prepare psychologists and other stakeholders in the various facilities, including those in the administration of justice, to ask the right questions without leading these victims to inflate or deflate their accounts. It would similarly ensure that these stakeholders do the proper documentation of the accounts made by these child victims to serve the purpose of corroborating their court testimonies. The required video recording in the protocol would also bolster the cases of abuse and exploitation and would prevent possible retraumatization. Philippine laws, meanwhile, have underscored the competency doctrine of the child victims as the *stare decisis* in these cases, as these laws have likewise guaranteed the constitutional right of these perpetrators. The use of this protocol balances the equation by guaranteeing the protection of these child victims and by similarly shielding the innocently accused perpetrators from criminal liability.

Keywords NICHD Forensic Investigative Interview Protocol, Child Sexual Abuse and Exploitation, Biopsychosocial-spiritual Model of Care, Retraumatization, Competency Doctrine

1. Introduction

Gap exists in the literature and in the actual treatment, rehabilitative and legal practices for the required standard of care for the children victims of sexual abuse and exploitation in the country. Although psychological treatment facilities, rehabilitation centers, forensic court settings, and other similar institutions in the Philippines have clearly followed the biopsychosocial-spiritual model of care, a number of them have yet to incorporate the child victims' need for justice and vindication. Those that have done so, in the meantime, have not also considered integrating definitive forensic investigative interview protocols that will ensure the success of the cases that have been filed against these child abusers and that will prevent, as well, the inflation and deflation of the accounts of the child victims, including their possible retraumatization.

In instances of sexual assault, Rossetti (1995) pointed out that beneath the façade of sexual gratification is the sexual violator's abusive use of power vis-à-vis the child victim's sense of powerlessness. The World Health Organization (1999) defined child sexual abuse as an act in which an adult uses a child for sexual gratification. Accordingly, the gratification by this adult would come from the child's inappropriate exposure to adult sexuality, his or her direct sexual contact with the child, and his or her act of making the child available to others, directly or indirectly, for immoral or illegal acts, such as through pornography.

In the Philippines, Republic Act Number 7610 (17 June 1992), also known as "The Act Providing A Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Such Other Purposes" defined child sexual abuse or CSA as the act of "employing, using, persuading, inducing, enticing, or coercing a child" to have in carnal relations or lustful conduct. It likewise refers to the molestation, prostitution, or incest with children.

This law, which similarly included child sexual exploitation or CSE, pointed to child prostitution as an example of that act that is committed by an adult, syndicate, or group on “children, whether male or female, who for money, profit, or any other consideration or due coercion or influence” indulge in carnal relations or lustful conduct with these children.

The law then identified who are considered as children by Philippine legal standards to include those individuals who are seventeen years of age and below, and those who are more than seventeen but who cannot take care and protect themselves from possible abuse, exploitation, neglect or other forms of discrimination because of a psychological condition or physical limitation.

Now, most of the psychological rehabilitation centers and treatment facilities and similar institutions in and out of the country have made use of the so-called biopsychosocial model as their standard of care for the victims of CSA and CSE. Brown (2008), for instance, pointed to the three phases of trauma treatment and collaboration for these victims to include: establishing safety, remembering and mourning, and reconnecting with others. Meanwhile, Bhagwan (2009) highlighted the spirituality of children as a pathway to healing, transformation and growth. In practice then, most of these rehabilitation centers and treatment facilities, and other similar institutions have actually employed the biopsychosocial-spiritual model of care for the child victims.

Cody (2010) included a wide range of support services for these child victims. They include basic material assistance, health care, professional psychological services, education and training, and legal assistance, among others. There are many, of course, that have already incorporated all these needs using the biopsychosocial-spiritual model, including the need for legal assistance, whether such need is for punitive or for restorative purposes, Doan (2004) pointed out. The study of Malloy, Brubacher and Lamb (2011) on

what these children expected from their disclosure of sexual abuse revealed that they wanted physiological impairment and deleterious emotional sanctions for their perpetrators. They similarly expected jailing and/or other legal consequences for them.

2. The NICHD Forensic Investigative Interview Protocol

The National Institute of Justice (n.d.) developed the “National Institute of Child Health and Human Development Investigative Interview Protocol” based on the latest empirical knowledge on how to understand the dynamics of the children’s memory. Accordingly, the free recall and the use of prompts to recall information were likely to elicit accurate information from these children.

With the expectation that this protocol would produce a higher quality of extracted information from the child victims, Harris (2010) identified the three phases involved, to include the following: an introduction phase, a rapport phase, and a functional unrestricted recall phase.

In the intro phase, the forensic interview presents himself or herself, sets the ground rules, and identifies what he or she expects from the child. In the establishment of rapport phase, the forensic interviewer asks the child to talk about events that are not associated with the sexual abuse and rehearses the child with the use of techniques that do not require categorical responses, as he or she allows this child to express himself or herself freely. Then in the functional unrestricted recall phase, the forensic interview shifts to the use of an increasingly more focused prompt until the child identifies the targeted event. It is only upon the identification by the child victim of the targeted information that the forensic interviewer prompts the child with cued invitations to obtain incident-specific information.

Figure 1. The Biopsychosocial-Spiritual Model of Care for the Child Victims with the Integrated NICHD Forensic Investigative Interview Protocol

2.1. Competency Doctrine as *Stare Decisis* in Philippine Jurisdiction

There is the so-called presumption of competence on the part of the children victims of sexual abuse and exploitation when they testify before the courts against their perpetrators. Muyot (2004) claimed that the burden of proof rests on the party who challenges the child victim's competency. He added that the child victim is presumed competent to testify against his or her perpetrator because it is very unlikely that this child, in the natural course of things, will ever concoct or invent such story of abuse at a tender age.

Meanwhile, a child victim's statement outside of the court hearing is generally inadmissible in evidence because every accused, including the perpetrator of child sexual assault, has the constitutional right to confront his or her accuser during the trial through the cross-examination that will be conducted by his or her legal counsel on the child victim. In the Philippine jurisdiction, the statement outside of the court is generally considered hearsay and is therefore inadmissible in evidence in any trial court.

But because of the existing doctrine of competency on the part of the children victims of sexual assault, a videotaped or

audiotaped disclosure interview may be admitted in evidence in criminal proceedings. Weiner and Hess (2006), in fact, pointed out that in such cases, a statement of this sexual assault outside of the court hearing by the child himself or herself would serve as the most convincing evidence that could readily be used at hand.

By the same token, Herrera (2008) claimed that the competency doctrine in Philippine jurisdiction posed a great risk because it practically allowed interviews of suggestive nature, including those that are biased, to be admissible. Accordingly, these types of interviews could actually impair the reliability and validity of the child victim's disclosure.

Under the "Rule on Examination of A Child Witness" (21 November 2000), Philippine courts clearly allowed leading questions to be asked from a child victim in all stages of the trial court examination. Consciously or unconsciously then, a forensic interviewer could readily prompt a child to come up with an artificial story of this child's experience to the point that this experience could actually result in being inflated or deflated.

Studies by Heshkowitz and Turner (2007) revealed that the combination of repeated and leading questions (citing

Quas, Goodman, Ghetti, & Redlich, 2000) actually caused more harm to the child's memory. Repetitive interviews in forensic settings then could generate and possibly provide fallacious accounts and spurious details (citing Warren and Lane, 1995).

Krähenbühl, Blades, and Wescott (2010) also supported the findings that question repetitions in forensic investigative protocols only reassure damaging alterations in the trustworthiness of the responses of the children victims. Hughes-Scholes and Powell (2013) then aptly captured the main idea in any forensic investigative interview and that is to get the child to narrate the story in his or her own words with the forensic interviewer refraining from asking leading questions. Accordingly, the forensic interviewer can simply probe using open-ended questions to ferret out the truth. A definitive forensic investigative protocol then, such as the NICHD, which has not been integrated in the biopsychosocial-spiritual paradigm in most, if not all, of these rehabilitation centers, treatment facilities, medical clinics and hospitals, and even forensic court settings, must be integrated.

3. Conclusions

Under Philippine laws and jurisprudence, the doctrine of competency of child witnesses, including the competency of the children victims of sexual abuse and exploitation, to testify in the open court, is quite commendable, as this sits well to approximate the dynamics of power between the child victim of sexual abuse and exploitation and the perpetrator. However, problem in the application of the doctrine sets in when you have a perpetrator who is wrongly accused because of the repetitive leading questions posed by the various stakeholders in the psychological treatment facilities, rehabilitation centers and other similar institutions in and out of the Philippine jurisdiction, and which sort of style and frequency of questioning by them would have made the innocent child believe that an abuse took place when no such sexual abuse or exploitation actually happened.

Without the integration of a definitive forensic investigation protocol, such as the "NICHD Investigative Interview Protocol," this child victim may not actually be protected despite the heavy reliance on the aforementioned doctrine. The ultimate goal to ferret out the truth from the child's traumatic experience and to prosecute the criminal perpetrator of the sexual assault on the child victim will simply be defeated because the method used to do the same does not appropriately and reasonably provide for such avenue. The use of this protocol then balances the equation by guaranteeing the protection of these child victims and by similarly shielding the innocently accused perpetrators from criminal liability.

REFERENCES

- [1] Bhagwan, R. (2009). Creating sacred experiences for children as pathways to healing, growth and transformation. *International Journal of Children's Spirituality*, 14(3), 225–234. DOI: 10.1080/13644360903086497
- [2] Brown, S., Brack, G., & Mullis, F. (2008). Traumatic symptoms in sexually abused children: Implications for school counselors. *Professional Counselors*, 11(6), 368–379. DOI: 10.5330/PSC.n.2010-11.368
- [3] Brubacher, S., Malloy, L., & Lamb, M. (2013). How do interviewers and children discuss individual occurrences of alleged repeated abuse in forensic interviews? *Applied Cognitive Psychology*, 27:443–450. DOI: 10.1002/acp2920
- [4] Cody, C. (n.d.). Recovery services for child victims of sexual violence and their families – What can be offered? Scotland: Council of Europe. Retrieved from http://www.coe.int/t/dg3/children/1in5/WhatWeKnow/Publication_en.asp
- [5] Doan, C. (11 March 2004). Justice for whom? Criminal, civil and restorative responses to child sexual abuse. Western Political Science Association 2004 Annual Meeting, Portland, OR. Retrieved from <http://0-eds.b.ebscohost.com.ustlib.ust.edu.ph/ehost/pdfviewer/pdfviewer?vid=13&sid=592b4823-2dcf-48e0-94f8-30b94c09a047%40sessionmgr113&hid=114>
- [6] Harris, S. (2010). Toward a better way to interview child victims of sexual abuse. *National Institute of Justice*, 267, 12–15. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/233282.pdf>
- [7] Herrera, O. (2008). *Comments on the rule on the examination of a child witness*. Manila: Rex.
- [8] Hughes-Scholes, C. & Powell, M. (2012). Techniques used by investigative interviewers to elicit disclosures of abuse from child witnesses: A critique. *Police Practice and Research*, 14(1), 45–52. DOI: 10.1080/15614263.2012.680716
- [9] Krähenbühl, S., Blades, M., & Wescott, H. (2010). 'What else should I say?' An analysis of the question repetition practiced in police interviews of 4–11-year olds. *Police Practice and Research*, 11(6), 477–490. Milton Keynes: Taylor and Francis. DOI: 10.1080/15614263.2010.497346
- [10] Malloy, L., Brubacher, S., & Lamb, M. (2011). Expected consequences of disclosure revealed in investigative interviews with suspected victims of child sexual abuse. *Applied Developmental Science*, 15(1), 8–19. DOI: 10.1080/10888691.2011.538616
- [11] Muyot, A. (2004). Child sexual abuse and the rule on examination of a child witness. *Journal of the Integrated Bar of the Philippines*, 30(2), 129–148.
- [12] National Institute of Justice. (n.d.). Program profile. NICHD investigative interview protocol. Retrieved from <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=213>
- [13] Republic Act No. 7610. (17 June 1992). An act providing for a stronger deterrence and special protection against child abuse, exploitation and discrimination, and for such other purposes. Retrieved from

www.lawphil.net/statutes/repacts/ra1992/ra_7610_1992.ht

- [14] Rossetti, S. (1995). Child sexual abuse and power. *The Furrow*, 46(12), 684-688. Retrieved from <http://www.jstor.org/stable/27663058>
- [15] Rule on Examination of a Child Witness. (21 November 2000). A.M. No. 004-07-SC. Retrieved from http://www.lawphil.net/courts/supreme/am/am_004_07_sc_2000.html
- [16] Weiner, I., & Hess, A. (2006). Hearsay testimony. In Weiner, I., & Hess, A. (Eds.), *Handbook of forensic psychology*, 3rd ed. New Jersey: John Wiley & Sons.
- [17] World Health Organization. (1999). Guidelines for medico-legal care for victims of sexual violence. Retrieved from http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf