

Invited Talk

Makiko Naka (Hokkaido University)

Makoto Ibusuki

The next speaker is the invited lecturer, the representative of Hokkaido University in the committee for the electronic recording. Professor Naka is going to deliver the speech.

Makiko Naka

Thank you very much. I am Naka with Hokkaido University. Thank you very much for inviting me.

In our place, our group consists of 26 units, 60 researchers to talk about the human science research from the legalistic perspectives. This project is related to the suspect interviews and transparent procedures. I would like to focus on the electronic recording, audio and video recording as well as the indirect effect. The project name is Law in Human Sciences, which consists of 26 units with approximately 60 researchers. In this domain, there are four areas; legal concepts, transparent procedure, lay judge system, and psychosocial work.

In this transparent procedure of the investigational, interrogational procedure, that's something we focus in our research. In the coming 30 minutes, I would like to talk about the importance of the transparent procedure and electronic recording and its pros and cons, and also the past issues which were pointed out in the procedures of the electronic recording.

We are now developing from non-electronic recording set up to the

electronic recording. From the psychologist point of view, I would like to talk about how we see the situation, and depending on interview, not only just electronic recording, the appropriate interview has to be carried out vis-a-vis the suspect or the accused, and that has to be combined together with the introduction of electronic recording.

Now, I would like to talk about how we are able to successfully introduce this. The important thing is of course the group in the police NPA as well as the academy of the police and in the legal-council of the Ministry of Justice, which have undertaken such researches. In our group based on the experimental psychology, the abuse with the children by way of crimes and how we are able to retrieve the information as much as possible from the suspect, and that can be applied to the interview with the suspect we thought.

So based on those researches, I would like to focus on two points. One is the volume and the quality of the information, and second, I would like to also touch upon the perception of interview, what kind of information we are able to extract from the suspect. Originally, I was focusing on the interview with the children, but this can be also utilized for the interview with the suspect.

First, about the pros of electronic recording – by the electronic recording, the correct recording of information and accurate information can be done according to the research. Unless there is recording, about two-thirds of the information will be lost, just taking notes 40%-60% are to be lost. Through the electronic recording, there will be motivation for the better interrogation. We are able to restrain the inappropriate interviews by the interviewer and also the suspects can be protected, and interviewers are also protected, both police and public prosecutors, and of course, for the

staff members interviewing the children, the same thing applies. If there is the result of electronic recording, we are able to analyze and verify for the detection of deception and voluntariness of the confession, and we are able to come up with prevention of miscarriage of justice. If we are able to analyze the various problems, those can be utilized for the future better procedure.

These are the excerpts from the documents of the e-recording in 2010 from the Ministry of Justice. In the beginning, there was the concern of narrowing the use of investigative skill of taking a statement without telling the suspect to make an official document and pursue him to agree to make a statement, that kind of methodology cannot be employed. Investigator tells his own privacy in order to get the information from the suspect, that kind of methodology is not going to be utilized if the electronic recording is to be introduced. Those were some of the concerns.

On the other hand, if there is the electronic recording, investigators are demotivated because they think they are watched, and the suspects feel very shameful and they are very much afraid of the revenge by the stakeholders. Victims and stakeholders do not wish because the suspects' statements might give adverse impact on the privacy of the victims. Those are some of the cons.

Now based on those pros and cons, on the left hand side, I have listed the pros of the introduction of electronic recording. On the right, there are also cons. Of course, they do not correspond on one-on-one basis but on the left hand side, looks like electronic recording can be appreciated because this can present the better precise accurate recording.

Audio and video recording, no matter what kind of lies or what kind of

truth they give, the information can be taken as the data, so they are able to get them and record them by 100%. So information collection approach can be realized through the electronic recording. On the other hand, some people think getting the confession is more important. After only getting the confession, the other information can be retrieved and obtained by the suspects. In order to get the confession, you need to convince them to speak out through the various tricks and get the confession followed by getting the related information. So, there is a concern. There is this possibility in the electronic recording. Because of the presence of the camera, the confession seeking approach is not going to be possible. Accusatorial approach is going to be lessened.

But, if you focus on those pros and cons, there are various problems. In the discussion of the electronic recording, there are various cases, precedents such as Ashikaga and Himi and Shibushi and also the illegal use of postal system for the handicapped 2009 and 2007 and 2010 cases. After all those cases, electronic recording was discussed in the public sector. I joined as the committee member of the research committee for the electronic recording. I had the opportunity to get various opinions and there was an opportunity that I was able to get the opinions and comments from the suspects whose conviction turned out to be false. This is Ashikaga and this is Shibushi case. This is what he has commented. So, even if the investigators try to interrogate, they try to get the confession first.

This is what the suspect told me. The suspect considered as follows, "I was treated as if I was the criminal. I was told to admit. I didn't say anything. I did not say anything. They knocked the wall by their pen. They kicked the desk by the foot. Polygraph was used. I didn't do it, I said. The investigator said look at this. You are telling a lie. If you admit you can go home, otherwise you fall into hell. Admit. Everybody else had admitted." So I

admitted. And I said, "I did it once", "not one – did I do that twice?" "No." "Did I do that three times?" "No." "Four times?" "Yes, you did it four times." So I was supposed to have done that four times. "You received your money, 10,000, no not that small. 20,000, no. 30,000" – "Next week it was 60,000 you received." The investigators continued to feed me with the clues and I was put in a place where I give the false the confession.

As a similar structure, Himi case, I was treated as the criminal. "You understand why you are here? What did you do?" He pounded the desk. He continued to accuse me, full of terror. The third round of the interrogation, didn't listen to me, I fainted. "This is your mother's picture. Are you sure that you didn't do that? Your sister admitted you've done that. Yes." "Don't turn it over, don't say yes or no, and if you do not admit, I will be angry after the arrest." For example, "What color is your bra?" – that was a rape case. "What color was your bra?" "White." "No, it was not." And through the various interrogations, it turned out to be black. "What kind of embroidery did you see?" I thought there was embroidery, and I said "flower," and he said, "Oh yes, that was a flower," because I didn't know because he had given the clues and hints which enabled me to answer those questions, but turned out to be the total miscarriage of justice.

In February 2012, there was another research meeting held in NPA, National Police Agency, with 12 members: scholars, public prosecutors, experts in sociology, psychology, former judges, NPA, metropolitan police department, and attorneys. We had 23 rounds of discussion. On behalf of psychologist area, I attended, and I had commented from the psychological perspective. In February 2012, the final report was prepared. At that time, half of the committee members promoted the introduction of electronic recording. "From the psychological perspective, interrogation skill has to be improved," I said, "if you are going to introduce electronic recording." But

half of the members stick to not to introduce the cameras because they're afraid that that would hamper the investigation methodology.

One month later, in March 2012, NPA had announced the sophistication program of the interrogation and investigation method. You can click on this page, two or four pages documents. I believe this is very important document, which shed the light for the future of the electronic records saying that the use has to be expanded to the various types of the cases, not only the ordinary cases that has to be utilized for the case where there was the denial. And also, the systematization and training of the skill of interrogation based on the psychological perspective are needed, that was commented in this document. Of course, there are lot of research institute and forensic research institute where such researches are still going on.

As a member of the committee, the use of psychology is a must and I believe Professor Bull has written this beginner's guide, the PEACE model, the UK model is easily understood if you read them. I translated that into Japanese and had them read by the members of the committee. Science Council of Japan has also made the proposal as you can see here in the brochure.

We wanted to study more about PEACE model and for 3 weeks we were trained in Sussex, UK. We had presented the result of such training.

So through those interactions, three pages of problems were announced. In December 2012, NPA has also announced the basic approach for the interrogation and interview. This is sort of the guideline. You are also able to download it. Based on the cognitive psychology, they are introducing the cognitive interview. To the suspect, there are more opportunities to speak out and give more information. Also, in May 2013, in the police academy, there is the research and training center for investigative interview

methodology to be given to the executives of the police.

In the Ministry of Justice in the legislative council, there was the report announced by the committee. Through the course of development in the Hokkaido University, we are carrying out the interview training, especially for the victimized children and we try to come up with the best interview method in getting the information from the children. I feel very sorry for those children but that is considered to be the leading question that would create the wrong information. So, we tried to be more open so that we will be able to get as voluntary information as possible.

This shows you the number of people who received training. We studied in 2008. Pink represents social workers. Blue is forensic, meaning the police officers and prosecutors. Together with the arrival of those basic documents, we started to see increase of the forensic people attending in the training, especially in 2012 and 2013. We also had outreach program. This is usually 1-to 2-day training, but the picture showed you we do practice of interviews and reviewed it in order to get the skill to allow interviewee to talk more.

This is the protocol. If the interviewer simply says, "Please talk," the interviewee will not talk. So, we need introduction, and then the ground rule must be explained. "If you don't understand the question, please tell me so. If what I'm saying is wrong, please tell me so." So the ground rules must be given and rapport must be established in order to make an environment in which the interviewee or child feels like talking.

Then the practice of episodic memory. "Today, since waking up to your coming here, what happened to you?" Then the first is the pre-narrative. "Why – what brought you here?" So we ask the interviewee to give a free narrative. On the necessary basis, you give the open question, cross

question, then confirm what's necessary to be confirmed. Then you close the session. This is the protocol. Interviewees here are children. In reality – but after having the training, you see the participant used more open questions.

This is the quantity of words by the interviewer and interviewees. Before the training, the interviewer talked more, but after training, interviewee, the light pink talked more. After looking at that, we conducted an interview, and after the training, the participant can get more of the correct information from the same video. This shows you the amount of information obtained from different kinds of questions, open questions, "Please talk," then "what happened next?" In this way, much information was obtained.

If it's about a 'Wh' question, it's around closed question, "is it A" or "is it B," gets less information and tagged question – "this is what happened, isn't it?" Then the interviewee would simply say, "yes" "well" and that's all. Those are the training of interviews used for by the social workers for children.

In 2011, we started the training for the police officers, dark blue and the prosecutors. 150 in 2012, in 2013 more than 200 of them participated. Those who received training in 2012 are now working back in their police stations, and they have become trainers of the interviewing method. And now, we have more prosecutors coming.

So suspect interview, how we analyze the suspect interview from the psychological perspective is discussed in the training. We often received the request from the forensic to give us some expert ideas. In 3 years, we have these numbers of interviews and I attended in the interview room, in one occasion in 2011 and 2013, I was there to see what kinds of questions are used. And by using a monitoring system, I had online attendance to the interrogation so that I could give comment as a psychologist.

I was in Sapporo in 2013, and five psychologists made a team. If the suspect is intellectually disabled, then the psychologist is always there for the interview so that we can offer the psychological evaluation of interviews being done.

This is the previous results, and please looks at this one. We had only nine cases of suspects from different kinds of offending, like theft and rapes and others. Likewise, we looked at how prosecutors posed questions to the suspect. You can see the information gained from different kinds of questions, for open questions, more information was obtained followed by 'Wh' question and closed question getting less information, and tagged information could get very little amount of information.

This shows you before and after the training. I compared the official documents of the interviews. It's not in the handout – but before the training, the open questions were not used, but after the training, a lot of open questions were used together with 'Wh' questions, and less closed questions were used. This shows you the words spoken by the interviewer and interviewee. Before the training, the interviewers talked more and not so much by the interviewee, but after the training, it's about the same or for some interviews, suspect or the interviewee talked more than the interviewer.

This shows the impact or the effects of training. This shows you a structure of the interview. Before the training, the questioning, interrogation started without any introduction, without any closing, but after receiving the training, the interrogation or interview was started with introduction and explanation of the various rights, and confirmation of the identity of the subject. Then ground rules were well explained, to talk about the truth and tell me so if I am saying is wrong or others, then the substantial part of the

questioning followed by closing. They are not following a particular protocol but on a voluntary basis, the prosecutors or the police officers used this kind of structure after the training.

Using the protocol used for the forensic interview for children, the training given to the forensic people did help them change the way they interview their suspects. Psychologists, clinical psychologists, social workers, and forensic professionals participated in interviews.

We had about 100 in each of the two surveys we conducted. The survey was about "what is the type of information to be collected?" Questionnaire said that you have a case in which the child said that, "Daddy hit me." What are information to be collected and what are questions to be conveyed? In the first survey, we asked the participants to tell the most important seven items to be collected and five items to be conveyed. In the second survey, we asked them to evaluate using the four-point Likert scale. The information to be collected about the daddy: age, job, characteristic of the daddy or intention, event means the name of daddy, time, place, body part being hit, one time or more than once, or the last time of the hitting. More clinically, it can ask about the routine or the feeling of the child, or the child's feeling towards the daddy, how many related information, any needs about food and other basic things.

The information to be conveyed by the interviewee, "tell me what really happened. Tell me so if you don't understand." These are ground rules. "You don't need to talk if you don't want to, or you're not wrong," empathy, these are empathy types. Interviewers comment on daddy. "Your daddy was wrong, what he did was wrong, we're going to give him the punishment. I'm going to keep my promise." Or, interviewer's personal information "I experienced similar things."

We asked the participants of the survey, what are the important information to be collected and to be conveyed. You can see before and after training. Left is daddy information, in the middle is event-related information, and the right is related to the family information, needs, children feeling was increased among the event related questions after the training. Needs and children feeling, of course, they understand it is quite important in terms of the welfare, but as for information to be obtained within the interview, their importance has been reduced.

These are information to be conveyed, ground rules – “tell me so if you don’t understand, tell me everything.” More people said that the ground rules are important. You don’t need to talk about it if you don’t want to; you’re not wrong; empathy, promising, they decreased. This suggests that within the interview, interviewer now realized that they should focus on the information related to the events themselves because they need to confirm the authenticity of those information after the interview rather than showing the empathy; because that kind of information to be collected in the interview is quite important for suspects and also for children.

With this, I would like to conclude my presentation. Thank you very much.

Makoto Ibusuki

Thank you very much, Professor Naka.

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Suspect interviews and transparent procedures: Interviewing skills, recording methods, and human sciences in new era

Effects of video-recording of suspect interviews: Better interviewing skills





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Law and Human Sciences

A01: Legal concepts and education
A02: Investigation [Transparent procedure]
A03: Lay-judge system
A04: Law and Psych-Social work



2

Overview

- Pros and Cons of video-recording
- Problems in 'interrogation'
- A path to video recording and good interviewing skills
 - » National Police Agency Committee
 - » Ministry of Justice Committee
 - » Program and Manual
 - » Training Center
- Training of interviewing
 - » Quantity and quality of information
 - » Perception of interview

3

Pros of video-recording

- Accurate recording ensures quality and quantity of information
 - » Two thirds of information is lost if not video-taped (Cauch et al., 2010; Lamb et al. 2000; Westera et al. 2013)
- Motivation for good interviews
 - » Appropriate interviews protect interviewer and interviewee (Milne & Bull, 1999; Bull and Soukara, 2010)
- Examination possible:
 - » Voluntary, competence, detection of deception, training, examination of miscarriage of justice

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'Cons'


On audio and video recording of suspect interview (Ministry of Justice, 2010)

- Narrowing the use of investigative skills:
 - » Firstly obtain statement without telling a suspect to make an "official document" (chosho), and then pursue him/her to agree to make chosho.
 - » Investigator gives a piece of private information and obtains statement in return.
- Morale of interviewer: Feeling being watched.
- Suspects' reluctance: Shame, revenge
- Victims' reluctance: Privacy of a victim
- Equipment problems

5

Different approaches

- Quality and Quantity
- Good interviews
- Examination
- Narrowing down the use of skills
 - » Statement without telling
 - » Private info for statement
- Moral of investigator
- Suspect's reluctance
- Victim's reluctance



Information gathering approach

Accusatory approach

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Accusatory approach

- Ashikaga case (1990-2009): Acquitted
- Shibushi case (2003-2007): Twelve people (one died) acquitted
- Himi case (2002-2005, 2007): Acquitted after serving the sentence
- Illegal use of postal system for the handicap case (2008-2010): Charge dropped

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A path to video-recording

- 2010.2-2012.2 National Police Agency: A committee to promote the improvement of investigative interviews
 - 12+1 members: Academia (law, sociology, psychology), ex-prosecutors (2), ex-judge, ex-National Police Agency, ex-Tokyo Metropolitan Police, lawyer (3), journalists (1+1),
 - 23 meetings
 - 2012.2 The last report
- 2012.3: Improving program for investigative methods and interview/interrogation (NPA)
 - Increase audio and video recording (for lay judge system and suspects with mental handicap)
 - Improve interviewing skills: training, psychological research, advanced methods used abroad

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- 2012.12: "Investigative interrogation/interview" (Basics)
- 2013. 5: Research and Training center for investigative interview methodology <https://www.npa.go.jp/keidal/keidal-en.html>
- 2014. A committee of Ministry of Justice

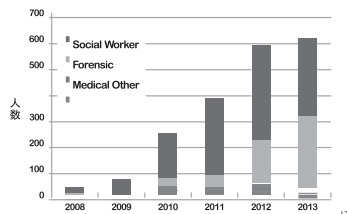


- Free recall
- Focused
- Option posing
 - Context reinstatement
 - Tell everything
 - Different order
 - Detailed memory

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The number of professionals trained



12

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Training for investigative interviews

- Lectures
 - Memory development and suggestibility
 - NICHD guideline
 - Checkable facts and corroborative evidence
 - Difficult questions
 - Reluctant children
- Practice to obtain free narratives
- Planning an interview
- Role plays and review



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NICHD protocol (Lamb et al., 2007) (National Institute of Child Health and Human Development)

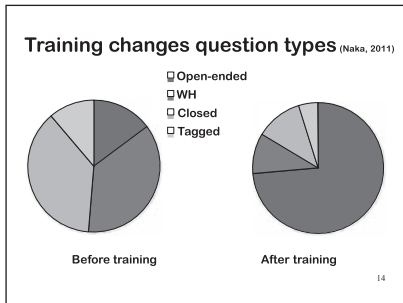
<http://nichdprotocol.com>

3. Rapport building
5. Free narrative (substantial topic)
6. Times
7. Open-ended Q
8. WH Q
9. Break
10. Closed Q
- 11 (Conversation, Eyewitness, Disclosure, Problem)
- 12 Closing

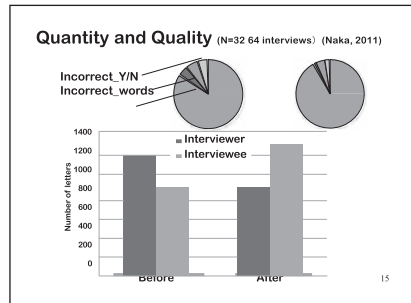


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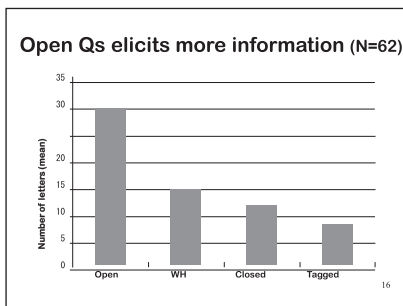
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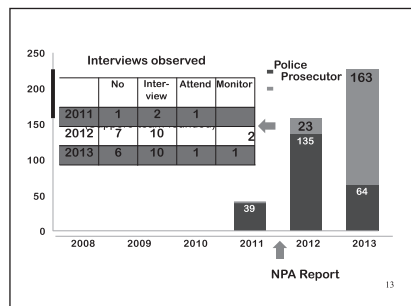
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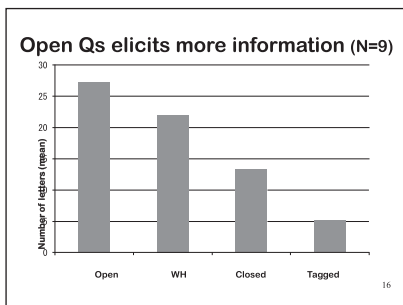
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Information to deal with (Naka, 2014)

- Participants: 87 (study 1) 110 (study 2) professionals
 - » 29/39 clinical psychologist
 - » 35/33 social workers
 - » 23/38 forensic professionals
- Training: 1-2 day training on the NICHD interview (Lamb et al., 2007)
- Questionnaire:
 - » A child said "Daddy hit me."
 - » Information to collect (15): Choose 7 most important items
 - » Information to convey(12): Choose 5 most important items
 - » Four-point Likert scale (4: very important, 3: important, 2: somewhat important, 1: less important)

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| Information to collect | | |
|---|-------|---|
| 1. Daddy's age | | 9. One time or more than one time |
| 2. Daddy's job | Daddy | 10. The last time of hitting |
| 3. Daddy's characteristics (personality, illness, handicap) | | 11. Routine of hitting |
| 4. Daddy's intention | | 12. Child's feeling (sad, fearful, painful) |
| | | 13. Child's feeling toward Daddy (like, dislike, getting out) |
| 6. Daddy's name | Event | 14. Family members |
| 7. Time | | 15. Needs for food, cloths, housing |
| 8. Place (room, outside, et.c) | | |
| 9. Body part being hit | | |

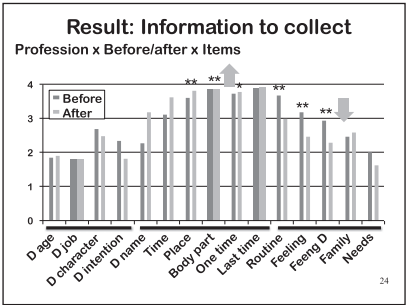
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| Information to convey | | |
|--|--|---------------|
| 1. Tell me the truth. | | |
| 2. If you don't understand, say you don't know [DU]. | | |
| 3. If you don't know, say you don't know [DK]. | | |
| 4. Correct me if I said something wrong. | | |
| 5. Tell me everything. | | |
| | | Ground rules |
| 1. If you don't want to talk, you don't have to talk. | | |
| 2. You are not wrong. | | |
| 3. Empathy, compassion (It must be hard. I am sorry.) | | Empathy |
| | | |
| 1. Interviewer's comment on Daddy (He was wrong. He should have reason.) | | Comments |
| 2. Decision (instruction, punishment) | | Decision |
| 3. I will promise to you that... | | Personal info |
| 4. Interviewer's personal info (family, hobby, similar experience) | | |

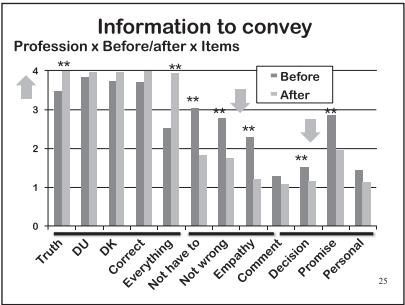
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| Results suggests: | |
|--|--|
| • Professionals are aware that they have to collect episodic memory rather than semantic/script-like memory. | |
| • They convey ground rules but they also take "counseling-like" attitudes. | |
| • Training helps professionals be more focused on the specific event and ground rules. | |
| • Difference between professionals? | |

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| Summary and conclusion | |
|--|--|
| • Pros and Cons of video-recording | |
| • Problems in 'interrogation' | |
| • A path to video recording and good interviewing skills | |
| » National Police Agency Committee | |
| » Ministry of Justice Committee | |
| » Program and Manual | |
| » Training Center | |
| • Training of interviewing affects: | |
| » Quantity and quality of information | |
| » Perception of the purpose of interview | |

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