

II. AN OVERVIEW OF THE CORE REPORTS AND MEMORANDA INCLUDED IN THE REFERENCE

The Report Of The Inquiry Into Child Abuse In Cleveland 1987

13. The 1987 report by Lord Justice Butler-Sloss on child abuse in Cleveland made a number of recommendations about the investigation of alleged offences against children and the conduct of interviews. The Report stressed a multi-disciplinary approach between professional agencies as critical to effective action and provided guidance on the interviewing of children. The multi-agency approach and the Butler-Sloss guidance on interviewing children was adopted by Governmental departments involved in the areas of child abuse.
14. Agreement was reached in the following areas by the child psychiatrist professionals who contributed to the Inquiry:
 1. The undesirability of calling interviews "disclosure" interviews, which precluded the notion that sexual abuse might not have occurred;
 2. All interviews should be undertaken only by those with some training, experience and aptitude for talking with children;
 3. The need to approach each interview with an open mind;
 4. The style of the interview should be open-ended questions to support and encourage the child in free recall;
 5. There should be where possible only one and not more than two interviews for the purpose of evaluation, and the interview should not be too long;
 6. The interview should go at the pace of the child and not of the adult;
 7. The setting for the interview must be suitable and sympathetic;
 8. It must be accepted that at the end of the interview the child may have given no information to support the suspicion of sexual abuse and position will remain unclear;
 9. There must be careful recording of the interview and what the child says, whether or not there is a video recording;
 10. It must be recognised that the use of facultative techniques may create difficulties in subsequent court proceedings;
 11. The great importance of adequate training for all those engaged in this work;
 12. In certain circumstances it may be appropriate to use the special skills of a "facilitated" interview. That type of interview should be treated as a second stage. The interview must be conscious of the limitations and strengths of the techniques used. In such cases the interview should only be conducted by those with special skills and specific training.

15. The main area of disagreement amongst the professionals was as to the desirability of and limits upon the facultative second stage, this disagreement to be resolved in light of subsequent experience.

The Report Of The Enquiry Into The Removal Of Children From Orkney In February 1991

16. In July 1992 Lord Clyde presented his Report into the removal of children from Orkney in February 1991 to the British Government. The Report offered some material to assist with the preparation of guidelines for the investigation of abuse including those of multiple abuse. It stressed the vital distinction between taking an allegation seriously and believing the allegation, and cautioned that all those involved in investigating child sexual abuse must keep an open mind.

The Memorandum Of Good Practice

17. Although drafted in 1992, this Memorandum heralded the need for caution on the part of interviewers if they were to protect the validity of video recorded evidence. Research since this time has confirmed these warning signals of 1992 and placed heavier burdens on those who seek to interview children to observe promulgated guidelines.
18. The 1992 Memorandum itself referred to the importance that any discussions with a child prior to Police involvement should involve, inter alia, listening to the children, rather than directly questioning him or her.
19. The Memorandum also noted the importance of ensuring that an interview should be arranged as a soon as practicable after it became clear that a criminal offence may have been committed in order to reduce, inter alia, the risk of the child forgetting important details or being influenced by others.
20. With regards to the interviewing of children, the Memorandum described four phases, namely Rapport, Free Narrative Account, Questioning, and Closing the Interview.

21. During the Rapport Phase interviewers should consider conveying to the child the need to speak the truth and the acceptability of saying, "I don't know", or, "I don't understand".
22. During the Free Narrative Account Phase only the most general open ended questions should be asked, and the child encouraged to give a free narrative account of events.
23. The Questioning Phase was split into four stages, namely:
 - (a) Open ended questions;
 - (b) Specific yet non leading questions;
 - (c) Closed questions;
 - (d) Leading questions.
24. During Open Ended Questions the Memorandum cautioned against repeating a question soon after a child has answered as this may be interpreted by the child as a criticism of the original response.
25. Before moving to the second stage, namely Specific Yet Non-Leading Questions, the interviewer should consider whether it is in the interests of the child. This stage allows for extension and clarification of previously provided information including gently probing previous inconsistencies and establishing the source of knowledge or language that the child has displayed beyond his or her years.
26. If Specific Yet Non-Leading Questions are unproductive, questions might be attempted that give the child a limited number of alternative responses, namely Closed Questions. If such a question permits only one or two responses then the response may not necessarily be a good indicator of what is in the memory, especially if the child is unwilling to give a "don't know" response and/or the interviewer has not established that as an acceptable reply.
27. If after the Closed Questions an interviewer concludes that further questioning is necessary, leading questions might be appropriate. However, the Memorandum emphasised that responses to leading

questions referring to central facts that have not already been described by the child in an earlier phase of the interview are likely to be of very limited evidential value in criminal proceedings. However, if there is an evidentially relevant response, the interviewer should revert to the "neutral" mode of questioning.

Evidential And Diagnostic Interviewing On Video Under The Evidence Amendment Act 1989: Joint NZCYPS & Police Operating Guidelines (March 1997)

28. The New Zealand Guidelines (1997) serve to demonstrate the progress in scientific research in the area of child interviewing between 1992 to 1997.
29. The Guidelines serve to clarify the principles of interviewing and in particular confirm that the interviews are not be confirmatory exercises of previously unchecked disclosures.
30. The Guidelines noted the importance in "highly complex" cases that thorough consultation takes place with relevant experts, that staff involved have opportunities to debrief and have access to appropriate support such as supervision and counselling.
31. The Guidelines noted, inter alia, the importance of approaching the interview with an open mind, interviewers asking open-ended, not-leading questions wherever possible, interviewers being aware of their responses and their potential messages to the interviewees.
32. The Guidelines warned that anatomically detailed dolls should not be used except in extraordinary circumstances, and that interviewers should normally only conduct one interview and that special circumstances would be required to justify more than one.
33. The Guidelines required the interviewer to talk to the child's parent or guardian before the interview to obtain background information about the child and any allegation made by the child, and to inform the parent of the possibility that the interview may not result in a disclosure. If the parent does not have all the information, the

Guidelines stated that they must not question the child as the child should not repeat disclosure information before the interview.

34. The Guidelines also required the interviewer to pay attention to any signs that a child has been coached by an adult. Interviewer were cautioned to introduce only as a last resort the referral concerns that they have, and to present this information in the least leading way.

The Royal Commission into the New South Wales Police Service

35. On 13 May 1994 the *Royal Commission into the New South Wales Police Service* (the "Wood Commission") was established. By Letters Patent the Honourable James Roland Tomson Wood was appointed as Commissioner to make inquiry into the operations of the New South Wales Police Service and, inter alia, the investigation and / or prosecution of paedophile activity and the nature and extent of corruption within the Police Service. The Wood Commission presented its *Final Report of the Royal Commission Into the New South Wales Police Service* (the "Wood Commission") in May 1997.
34. The Wood Commission's advice, predominantly based on the factual review of Australian mass allegation cases and on hearing expert evidence in the abstract as to special dangers provides warnings that are akin to the dangers identified in the experiences in the United States in mass allegation cases. Relevant details of this are referred to later in these Submissions.

Law Commission. Total Recall? The Reliability of Witness Testimony. A Consultation Paper (July 1999):

35. This paper, prepared by the Law Commission, aimed to educate readers as to the nature of memory and the circumstances in which memories may be reliable or unreliable:

"Broadly, the aim of publishing this paper is an educational one: to counter incorrect perceptions and stereotypes about the reliability of memory; and

to provide an aid to judges, lawyers, and other trial participants about the nature of human memory."⁶

36. The Law Commission stressed that whilst the paper might be of assistance, each case and the reliability of a person's recall must be assessed on an individual basis (at page 1). Of particular relevance within the paper is the chapter entitled "Children's Memories" (chapter four).
37. The Paper noted with regards to children's memory, there appeared to be age differences in quantity, but not quality of freely recalled details.
38. The Paper stated that young children's accounts could be reliably enhanced by cues, at least when the children are interviewed soon after the event, but the methods used to draw out the further information had to be carefully monitored to ensure that they did not compromise accuracy. The Paper cautioned that whilst physical props may be necessary to obtain information, some props (especially toys) may prompt inaccuracy. The use of anatomical dolls remained controversial, especially with young children.
39. The Paper noted that delay had a greater effect on spontaneous recall of young children as compared with adults, and was a factor in increasing suggestibility.
40. Whilst both children and adults could be affected by leading / suggestive questions, ability to resist influence of external suggestion increased with age. Children could also change their account of an event, not because their actual memory of the event had altered or become confused, but because they wished to comply with the suggestion of an adult in authority or because they interpreted an adult's repeated questioning as an indication that their first response was judged "wrong".
41. The Paper cited a number of factors which were said to reduce the risk of suggestion, including:

⁶Law Commission. Total Recall? The Reliability of Witness Testimony. A Consultation Paper (July 1999), at page 1.

- (a) A minimal delay between the event and the reporting of it;
 - (b) That the child does not perceive the interviewer as an authority figure who must be obeyed or pleased;
 - (c) Training to increase the children's ability to resist suggestibility and emphasising that the child is not expected to know all the answers and that the child may say, "I don't know";
 - (d) Repeated use of open ended questions in order to elicit more information;
 - (e) Explicit statements that explain why questions may be repeated;
 - (f) Explicit statements that the child may have received misleading information and not to base recollections of the event on it.
42. The Paper also indicated that suggestive interviews were now being conceived of as a complex mingling of motives, threats and inducements which may appear in the form of misleading questions and which lead to false claims about a wide range of events, such as bodily touching.

Analysis of Child Molestation Issues Report No. 7, A Report by the 1993/4 San Diego County Grand Jury, June 1, 1994.

43. In December 1993 the San Diego County Grand Jury received a number of requests to investigate the prosecution of a man named Dale Akiki who had earlier been tried and acquitted of 35 counts of sexually abusing nearly a dozen children under his care at a church nursery. Whilst Akiki, a 33 year old handicapped man was acquitted there was a perceived societal need to investigate how the prosecution came to be commenced. This Report details that investigation and parallels may be seen with the cases that formed part of the Wood Report's inquiry in that the same constellation of indicators were present when false allegations were found to have been made.