

III. THE IDENTIFICATION OF BEST PRACTICE PROTOCOL

44. Certain fundamental premises underpin the development of Best Practice protocol for the interviewing of children.

Premise 1: Children, even young children, are capable of accurately reporting events and memories.

Supporting Research and Opinion :

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

- "It is important to acknowledge that under certain circumstances children are capable of providing accurate, detailed, and useful information." (Bruck, Ceci and Hembrooke, 1998:146)⁷
- "When children are interviewed by unbiased, neutral interviewers, the number of interviews as well as the number of leading questions are kept to a minimum, and when there is an absence of threats, bribed and peer pressure, then children's reports are at considerably less risk for taint. These are the conditions we must strive for when eliciting information from young children."(Bruck, Ceci and Hembrooke, 1998:146)⁸.
- "A third important implication of studies that emphasise the strength of children's memories is that they highlight the conditions under child children should be interviewed if one wishes to obtain reliable reports. Again, when children are interviewed by unbiased, neutral interviewers, when the number of interviews as well as the number of leading questions are kept to a minimum, and when there is the absence of threats, bribes, and peer pressure, children's reports are at considerably less risk for charges of taint."(Ceci and Bruck, 1995: 236)⁹.

Premise 2: The investigators and interviewers must bear in mind that young children can have difficulty distinguishing fact from fantasy.

⁷Bruck, M., Ceci, S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports: From Research to Policy and Practice, American Psychologist, Vol. 53, No. 2, 136

⁸Bruck, M., Ceci, S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports: From Research to Policy and Practice, American Psychologist, Vol. 53, No. 2, 136

⁹Ceci and Bruck (1995) Jeopardy in the Courtroom

Supporting Research and Opinion :

- The widely held belief that young children may fantasise about or fabricate allegations of a sexual nature is frequently used to cast doubt on their testimony, even though children over six years of age appear similar to adults in their ability to discriminate between events of internal ('imagined') and external ('experienced') origin (Johnson & Foley, 1984; Lindsay & Johnson, 1987; Roberts & Blades, 1995), and the fantasy lives of children and adults are actually much more similar than was previously believed (Woolley, 1997). Children under 6 years of age may have more difficulty with such discrimination (Parker, 1995; Welch-Ross, 1995).¹⁰
- It is also important to distinguish among fantasy, distorted recollections, deceit or falsehood, and instances in which children are the unwitting or witting tools of anxious, manipulative, or vengeful adults. Fabrication and false reporting are unrelated to the ability to discriminate between imagined and real events, although these constructs are frequently confused in popular debates about children's credibility and competence.¹¹
- Fantastic elements seldom appear in children's accounts of abuse (Dalenberg, 1996), and when they do, they are often elicited by the presence of props (such as toys or dolls) usually associated with fantastic play (Lamb, Sternberg, & Esplin, 1994, 1995), or by interviewer suggestions that children "imagine" or "pretend". As a result, forensic investigators have been urged to avoid having such props present during investigative interviews and to avoid using such expressions (e.g., Bruck, in press; Lamb, Sternberg, Esplin, 1995, 1998; Poole & Lamb, 1998).¹²
- A series of recent New Zealand studies have demonstrated that the use of closed questioning, delay and interview repetition can result in fantastic information being included in a child's account, for example:
 - New Zealand based studies (Rawls, 1994 a and b) have supported the finding that 5 and 6 year olds are consistently more accurate in their reporting of events when questioned immediately after the event with open rather than closed questions. In this research the use of closed questions resulted in fantasy information occasionally being provided which did not occur during the open question interviews (pA6).¹³
 - When children were told an innocent "secret" and then were interviewed, those who were interviewed with closed questions were more likely to make errors of "commission" such as making up a story (Rawls, 1994b) (pA6).¹⁴

¹⁰First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, page 13, paragraph 11

¹¹First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, page 13 paragraph 12

¹²First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, page 13, paragraph 13

¹³First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 18 paragraph 4.10.5

¹⁴First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 18 paragraph 4.10.6

- The use of closed questions raises additional concerns about the efficacy of such questions with respect to intrusion of irrelevant information or fantasy (pA6).¹⁵
- In Rawls (1995) where 5- year old children were told a "secret" and then asked open questions immediately accuracy was about 68%. After one week the children's accuracy declined (47%), and by week 2, 3, and 4 very little accurate information was obtained (mean 16%). Accuracy under closed questions was considerably lower (11% after a one week delay; mean of 7% by weeks 2,3 and 4) (pA6).¹⁶
- In this 1995 New Zealand study Rawls found that children do provide false "secrets", especially during delayed interviews. Children during interviews involving delay and closed questioning falsely reported being tickled and undressed by the adult assistant. One child provided more elaborate accounts in closed and open interview sessions of digging under the building, tickling games with the research assistant and the School principle and touching body parts (pA7).¹⁷
- In a more recent study Rawls (1996) found that most 5- year old children produce considerable elaboration's and fantasy under closed and to a lesser extent mixed (open and closed) questions. Elaboration increased as a function of (1) time since event (2) exposure to repeated interviews. Elaboration's and fantasies reported by children include mutual undressing, genital and non-genital touching, tickling, dressing up in elaborate costumes, involvement of other participants, climbing ladders, and rubbing cream onto the chest. Only one of 10 children alleged potentially inappropriate behaviour when asked open questions (pA7).¹⁸
- In answer to the stereotypical question, "how could children say such things unless they had experienced them" researchers would highlight that children are able to, and do, combine existing knowledge into novel scenarios. While it might be argued that young children rely on their knowledge and experience in reporting events, the sources of knowledge and range of experiences of young children today include a wide array of media (for example television and film) which include special effects and toys (some with weapons or 'special' powers) which encourage creative and imaginative activity. Research now points to the ability of children to combine their existing knowledge in unique ways that might give an adult an impression that the child has experienced that novel event, this includes sexual abuse. In a review of the Kelly Michaels case, in which a pre-school teacher was accused of, and imprisoned for, sexually abusing children in her care, Rosenthal (1995) demonstrated that allegations made by the children of being made to eat faeces and drink urine, inserting of knives, forks, and spoons into vaginas and anuses, and adults and children urinating on each other, were generated by children in circumstances of very suggestive, biased, and inappropriate procedures, and demonstrated the

¹⁵First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 18 paragraph 4.10.7

¹⁶First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 18 paragraph 4.10.8

¹⁷First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 18 paragraph 4.10.9

¹⁸First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 18 paragraph 4.10.11

capacity for children to exercise their imaginative and creative talents in ways that can convince a trier of fact that something must have been going on¹⁹.

Premise 3: The interviewer must have regard to the capabilities of the memory systems of children.

Supporting Research and Opinion :

- Memory is not a permanent picture record like a photograph or video-recording, it does not take in everything from a scene for “playing back” at some later time²⁰. The components that are known to relate to the internal processing of memories are: encoding, storage and retrieval.²¹ Encoding of an event may not be complete because not all information reaching the sensory system is attended to or perceived.²² Not all of the information that is encoded is stored for later recovery. Storage does not involve just putting away discrete pieces of information but is a process of assimilation, revision and reconstruction of what is stored and may involve new information being added to the memory.²³ Not everything that is stored is retrieved and the process of retrieving information can be influenced by the many environmental, psychological and physiological processes involved in memory processing.²⁴
- In children, these elements of memory are all at a much lower level of development and integration than is the case for adults. The younger the child and the less the experience or knowledge they have about how to enhance encoding and storage, the lower the level of memory capability and the less effective the use of memory (pB3).²⁵
- When evaluating children’s memory capacities and the ways in which memories are accessed in forensic interviews, the distinction between recall and recognition testing is crucial. If adults and children are asked to describe events from free recall (“Tell me everything you remember...”), their accounts may be brief and sketchy, but are more likely to be accurate. If prompted for more details using open-ended prompts like “Tell me more about that” or “And then what happened?”, children often recall additional details. If interviewers prompt with focused questions such as “Did he have a beard?”, “Did he touch you with his private”, or “Did this happen in the day or in the night,” however, they shift from recall to recognition testing, and the probability of error rises dramatically (Dent, 1982, 1986; Dent & Stephenson, 1979; Oates & Shrimpton, 1991; Peterson & Bell, 1996). Effective interviewers must maximise the reliance on recall memory by offering open-ended prompts so as to minimise the risk of eliciting erroneous information. Recall memories are not always accurate,

¹⁹First Affidavit of Dr Parsonson, tendered to the Court of Appeal at the second appeal hearing, page 33

²⁰(First Affidavit of Dr Parsonson, p8)

²¹(First Affidavit of Dr Parsonson, p8, 9)

²² (First Affidavit of Dr Parsonson, p8)

²³(First Affidavit of Dr Parsonson, p9)

²⁴(First Affidavit of Dr Parsonson, p9)

²⁵First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

of course, especially when the events occurred long before the interview or there have been opportunities for either pre- (Leichtman & Ceci, 1995) or post-event contamination (Leichtman & Ceci, 1995; Poole & Lindsay, 1995, 1996; Poole & White, 1993; Warren & Lane, 1995) but accounts based on recall memory are much more likely to be accurate than those elicited using recognition cues or prompts.²⁶

- If interviewers prompt with focused questions (e.g. "Did he touch you with his penis") the task is one of recognition, not recall and the probability of error rises dramatically.²⁷ With recognition probes the child may have to confirm or reject information provided by the interviewer and thus the child is focused on domains of interest to the questioner and exert greater pressure to respond, whether or not the child is sure of the response.²⁸ In addition recognition probes are more likely to elicit erroneous responses because of response biases (the tendency to say yes or no without reflection) and false recognition of details that were mentioned earlier to the child or the child inferred.²⁹
- Because inaccurate information can be provided in response to open-ended prompts especially where delays are long or there have been opportunities for post-event contamination it is crucial that investigators inquire about all relevant questioning of the child and experiences since the alleged event, documenting the evidential "chain of custody".³⁰

Script Memory

- When events occur regularly children and adults tend to blur the distinctions among incidents and establish a "script" memory which represents the average or typical events.³¹ Accounts based on script memories are likely to contain less detail and the delay between events and recall increases the tendency to rely on such scripts.³² Scripts can help individuals focus on features of repetitive sequences but tend to be brief and may incorrectly incorporate general knowledge into reports of specific events.³³ The research has demonstrated that children aged 5 and 7 years have been demonstrated to embellish restatements of stories with events that were part of their own scripts.³⁴ In investigative interviews children may provide scripted accounts and thus interviewers must communicate to the child that they require narrative accounts of specific incidents and they must motivate the children to be maximally informative witnesses.³⁵
- Scripts (like stereotypes) have disadvantages too, however, because they tend to be brief or skeletal and may incorrectly incorporate general knowledge about a class of events into reports of specific events. For example, the 5- and 6-year-olds studied by Martin and Halverson (1983) remembered incorrectly the gender of a character who played a non-

²⁶First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing.

²⁷(First Affidavit of Dr Lamb, p18, First Affidavit of Dr Parsonson, p9)

²⁸(First Affidavit of Dr Lamb, p33)

²⁹(First Affidavit of Dr Lamb, p33)

³⁰(First Affidavit of Dr Lamb, p36)

³¹ (First Affidavit of Dr Lamb, p20; First Affidavit of Dr Parsonson, p14)

³²(First Affidavit of Dr Lamb, p20)

³³(First Affidavit of Dr Lamb, p21, First Affidavit of Dr Parsonson p14)

³⁴(First Affidavit of Dr Lamb, p21)

³⁵ (First Affidavit of Dr Lamb, p21)

traditional gender role, while 5- and 7-year-olds studied by McCartney and Nelson (1981) embellished restatements of stories with items and events that were part of their own scripts. The tendency to do this generally declines with age (Collins, 1970; Collins & Wellman, 1982; Collins, Wellman, Keniston, & Westby, 1978), and script-based errors can be reduced by pre-interview counselling or instruction (Saywitz & Snyder, 1993). Children also tend to remember unusual events better than specific events that are congruent with their general or script memories (Davidson, 1991). In investigative contexts, children may nonetheless provide scripted accounts because they are unaware of the level of detail needed by forensic investigators. Interviewers must thus communicate their needs for narrative accounts of specific incidents and motivate children to be maximally informative witnesses. When children were abused more than once, interviewers can focus the child on specific events by using questions like "Tell me about the last time" or "Tell me about the time in Peter's house."³⁶

- Research has indicated that whilst from the age of 6 children tend to be able to discriminate between origins of events as well as adults except when they must discriminate between events they imagined themselves performing and those they actually performed.³⁷ In addition, there is evidence that children between 6 and 11 years have difficulty distinguishing between what they have seen and what is suggested they have seen.³⁸ In addition the research indicates that where there is extensive delay (one year) between the event and the interviewing about the event 6 year old children were more suggestible and provided significantly more source mis-attributions.³⁹ In addition, research has indicated that 6 year olds can have difficulty in distinguishing between actual events involving others and imagined events involving others and between events they were involved in and events they imagined they were involved in and that after a brief delay children became more confused.⁴⁰

Touch

- Research has indicated that young children (aged 5 years) have a poor memory for touch with even a brief delay between touch and being interviewed.⁴¹ A recent New Zealand study has found that almost one quarter of 5 year old made errors of commission concerning improper touching, an increase in the incidence of empirical false reports of touching.⁴²
- The findings of Rawls (1996) suggest that young children have poor memory of touch with even a brief delay between touch and being interviewed, that closed or mixed questioning appears to increase accuracy, but this may be an artefact of the use of a question form which also reduces overall accuracy because inaccurate reports also increase with its use, and that children

³⁶First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing.

³⁷(First Affidavit of Dr Parsonson, p10)

³⁸(First Affidavit of Dr Parsonson, p10)

³⁹ (First Affidavit of Dr Parsonson, p11)

⁴⁰(First Affidavit of Dr Parsonson, p11)

⁴¹(First Affidavit of Dr Parsonson, p12)

⁴²(First Affidavit of Dr Parsonson, p12)

exposed to such questioning are more likely to falsely report indecent touches (pB7).⁴³

- In contrast to a study in 1991 by Saywitz, Goodman, Nicholas and Moan which reported that false reports of genital (2.86%) and anal touching (5.56%) among those not touched did occur but were relatively uncommon, Rawls found 24% of five-year-olds made errors of commission concerning improper touching, and Bruck, Ceci, Francoeur and Renick (1995, cited in Ceci & Bruck, 1995), found that 50% of untouched 3-year-olds made such errors (pB8).⁴⁴
- In the latter study, Bruck et al. (1995, cited in Ceci & Bruck, 1995) found that with 3-year-old children interviewed 5 minutes after a paediatric examination (in which half of the children were touched on buttocks and genitals) most did not correctly report touching. Half of the children who did not receive the examination indicated falsely that they had been touched on the buttocks or genitalia. This finding supports that of Rawls in that children provided inaccurate responses when asked direct questions, but it also points to a problem with young children's recent memory for touching, even when prompted by direct questioning and, as was the case here, with the aid of an anatomically detailed dolls to which the interviewer pointed (pB8/9).⁴⁵
- It is also important to distinguish between memory performance and memory capacity. Young children's accounts may be brief not only because their memories are poor or because their limited experiences do not provide a rich network of associations from which to draw analogies or metaphors but also because their vocabularies are much more limited and less elaborate than those of adults and because they may not be motivated to reveal what they do remember.⁴⁶

Source Monitoring:

- Because memory is a re-constructive process, memory for events can become confused, so that either separate experiences become blended in some way or actual experiences and non-experienced information become confounded (pB5).⁴⁷
- Children as young as 6 years are as good as adults in identifying origins of memories, except when they must discriminate between actions they *imagined* themselves performing and those they *actually* performed (pB5).⁴⁸

⁴³First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁴⁴First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁴⁵First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁴⁶First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing.

⁴⁷First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁴⁸First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

- There is also evidence of source misattribution amongst children aged 6-11 years where they are unable to distinguish between what they had seen and what is suggested they had seen (pB5).⁴⁹
- Poole and Lindsay (1995) found that 3- to 4-year-old children incorporated what they had heard into what they had experienced and spontaneously reported confounded information as if all had been experienced (pB5).⁵⁰
- Where more than one child is exposed to a similar description of events that were not actually experienced they may provide a similar account of the description as though it had been actually experienced (pB5).⁵¹
- Ackil and Zaragoza (1995) revealed that 6-year-olds were significantly more likely to make source monitoring errors (i.e., misattribute a non-seen experience as one that was seen) and that 6-year-old children who experienced a 1-week delay in interviewing, compared with those who had an immediate post-event interview, provided significantly more source misattributions and were much more suggestible (pB6).⁵²
- Recent research by Parker (1995) demonstrated that 6 year olds had significantly more problems in distinguishing between actual events involving others and imagined events involving others. Six year olds had similar problems when discriminating between events they were involved in and events they imagined they were involved in. After a brief time delay, the children became more confused (pB6).⁵³

*more relevant?
better word?*

Premise 4: The interviewer must consider the language capabilities of children.

Supporting Research and Opinion :

- Although most children say their first word by early in the second year of life, begin to create two-word sentences by 20 months, and can draw upon an average vocabulary of 8000 to 14000 words by the time they turn six (Carey, 1978), linguistic and communicative immaturity clearly impede forensic interviewing if only because so few interviewers seem to recognise and understand the gradual pace of communicative development.⁵⁴
- In the process of learning words and the rules for combining words into sentences, children are also learning how to participate in conversations and how to structure story narratives (Warren & McCloskey, 1997). As most parents know, children's conversations often lack the logical structure that adults expect, and loose associations and digressions are common.

⁴⁹First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁵⁰First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁵¹First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁵²First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁵³First Affidavit of Dr Parsonson submitted to the Court of Appeal in support of the second appeal in this case.

⁵⁴First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 14

Individual differences are large and developmental changes rapid, however, and interviewers must thus be attentive to the abilities and idiosyncrasies of their conversational partners. The challenge confronting investigators is to obtain accounts that are sufficiently rich in descriptive detail to permit an understanding of the children's testimony. Poole and Lamb (1998) describe a number of concrete strategies that interviewers might adopt to overcome some of the communicative problems that frequently bedevil interviewers.⁵⁵

Language and Communicative Abilities and the Accuracy of Children's Accounts

- As shown in greater detail below, the accuracy of children's accounts is greatly influenced by the linguistic style and the complexity of the language addressed to them by investigators. Interviewers often implicitly and inappropriately ask children to negate adult statements (e.g., "Is it not true that...?"), expect them to understand passive rather than active sentences, use words that are unfamiliar to children, construct syntactically complex or ambiguous compound sentences, ask children questions they are simply incapable of answering, or ask children to confirm multifaceted "summaries" of their accounts (Dent, 1982; Pea, 1980; Perry & Wrightsman, 1991; Saywitz, 1988; Walker, 1993; Walker & Hunt, 1998; Warren, Woodall, Hunt, & Perry, 1996). Roberts and Lamb (in press) showed that when interviewers misrepresent what children say, they are infrequently corrected, and thus if anything the mistaken, rather than the correct, information is recalled later in the interview. In addition, systematic analyses show that, far from being exceptional, inappropriate questioning strategies characterise the vast majority of forensic interviews (e.g., Lamb, Sternberg, Boat, & Everson, 1996; Lamb, Hershkowitz, Sternberg, Esplin, Hovav, Manor, & Yudilevitch, 1996; Sternberg, Lamb, Hershkowitz, Esplin, Redlich, & Sunshine, 1996; Warren et al., 1996).⁵⁶

Children's Accounts of Abusive Experiences

- Saywitz and her colleagues (e.g., Saywitz, Snyder, & Nathanson, in press) and my colleagues and I (Sternberg, Lamb, Hershkowitz, Yudilevitch, Orbach, Esplin, & Hovav, 1997) have shown that it is often valuable to explicitly train young witnesses to provide detailed narrative responses before starting to discuss the substantive issues under investigation. In addition, open-ended questions such as "Tell me everything about that", "Tell me about that from the very beginning", or "Tell me the first thing that happened when you got to [location identified by the child]" encourage children to provide full accounts of their experiences. Interviewers can request additional information by using open-ended prompts such as "Tell me more about [something mentioned by the child] or "And then what happened". Such open-ended questions and prompts can be used repeatedly until interviewers are satisfied with the scope of information provided.⁵⁷

CONTAMINATION

⁵⁵First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 17

⁵⁶First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 18

⁵⁷First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 19