

- The Guidelines are clear that the monitor should avoid seeking to obtain more evidence from a child or young person after the interview.

PARENTS AS INTERVIEWERS:
CONTAMINATION AND CONSEQUENCES

Proposition 20: The presence of a combination of suggestive interviewing techniques is more damaging than the presence of a single suggestive factor.

Supporting Research and Opinion :

- In the first 80 years of this century, most of the research on suggestibility focused on the effects of asking a single misleading question or of providing erroneous post event information on the subsequent accuracy of reports. Now, the study of suggestive techniques includes strategies of repeated interviewing, repeated questioning within interviews, the use of threats and rewards, and other techniques that are intended to put the child at ease and to facilitate disclosure. Suggestive interviews now are conceived of as a complex co-mingling of motives, threats, and inducements, which may appear in the form of misleading questions, but not always. A number of recent studies have examined the influence of a number of the biased techniques just described (for a review, see Ceci & Bruck, 1995). In these studies, children typically participated in some event and then were interviewed by using one or more of the alleged suggestive interviewing techniques listed below. The results of these newer studies show that the suggestive interviewing techniques just described can compromise the accuracy of children's reports. When used in combination, such techniques can be especially detrimental to the accuracy of young children's reports. In some of these studies, children fabricated whole events that never occurred; at times they were led to confuse suggestions with actual events to the point that they later insisted that the suggested events actually occurred. Importantly, these suggestive techniques do not merely influence recall of peripheral, unimportant details, but they lead to false claims about a wide range of events, many of which are personally meaningful, such as bodily touching that could be interpreted by adult interviewers as sexual in nature (page 141-2)¹⁹³.

Proposition 21: Once an account has been contaminated, the effect of the tainting cannot be reversed.

Supporting Research and Opinion :

- Finally, I address the question of whether steps can be taken to ameliorate the situation when there is concern that children's reports have been contaminated. As explained above, contamination can be minimised by

¹⁹³Bruck, 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

interviewing children as soon as possible after the alleged incidents, thereby affording minimal opportunities for contamination of the initial accounts. Once contamination has occurred, it is typically impossible to reverse its effects, and children will be unable - except in rare circumstances unlike those at issue in the Ellis case - to distinguish between details that were 'real' and those which were 'suggested'.¹⁹⁴

- This inability to distinguish among the sources of information reflects basic memory processes, not maliciousness or a conscious attempt to deceive.¹⁹⁵
- The only effective safeguard against contamination is prevention. All alleged victims must be interviewed professionally as soon as any suspicion arises¹⁹⁶.

Proposition 22: Even experts are unable to distinguish accurate from inaccurate accounts given by children, the providing of detail by the child is NOT a hallmark of an accurate account.

Supporting Research and Opinion :

- Although there is not a great deal of research on the characteristics of children's false reports, can professionals reliably distinguish between true reports and fictitious reports developed after a series of misleading interactions with adults? When Ceci, Loftus, et al. (1994) showed 10 videotapes of children from their study to 12 clinical and research psychologists who specialise in interviewing children, the professionals were unable to distinguish between the true and false descriptions. It is difficult to distinguish between true and fictitious reports not because the children's true reports are so impoverished but rather because their false reports often contain characteristics that professionals associate with accurate testimony, such as idiosyncratic details and spontaneous corrections (Bruck, Hembrooke, Ceci, 1997; Ceci, Loftus, et al, 1994). (at page 68).¹⁹⁷
- ..it could be argued that although the accuracy of children's reports may be negatively influenced by a number of suggestive influences, this does not necessarily mean that they will appear credible to others. An intriguing question is whether a juror, a child development researcher, a child therapist, an experienced social worker, or a judge can differentiate children whose reports are accurate from those whose reports are a product of suggestive interviews. The existing evidence suggests that trained professionals cannot reliably tell the difference between these two kinds of children when the children have been subjected to repeated interviewing

¹⁹⁴First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, paragraph 99

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¹⁹⁶(First Affidavit of Dr Lamb, p41)

¹⁹⁷Poole, D.A., and Lamb, M.E. Investigative interviews of children: A guide for helping professionals, American Psychological Association, Washington DC.

techniques that have been conducted over long periods." The authors then cite the results of the Sam Stone study, and state: "when experts, (who included mental health professionals, research psychologists, judges, social workers, and prosecutors) were shown videotapes of children in the Sam Stone study and asked to judge the children's credibility, they were very inaccurate. They judged children whose reports were a product of suggestive interviewing as highly credible and believable, whereas those whose reports were more accurate were often judged to be less believable and credible." (at page 144)¹⁹⁸.

- The recent research of Bruck has been into considering whether linguistic markers exist that can assist in differentiating accurate from inaccurate reports. The results of that work were summarised by the authors: "The results of this study indicate that it is the first narrative that was elicited by nonsuggestive techniques that allowed the clearest differentiation between true and false stories. This is because children mainly denied the false stories, which as a result contained few details during the first narrative. However, with repeated interviews the false stories quickly came to resemble the true stories in terms of the number of details mentioned, the spontaneity of the utterances, the number of new details, inconsistency across narratives, the elaborativeness of the details, and the cohesiveness of the narrative. It is only consistency across tellings that differentiates true from false narratives. A word of caution on this observation is in order, however: It seems likely that consistency across narratives could become a less potent predictor if children are repeatedly interviewed. In addition, when false stories are told as a result of repeated suggestive interviewing they take on additional qualities that make them seem more believable than true narratives. Specifically, after a number of interviews, false narratives contained more descriptive material than did true narratives." (at page 145)¹⁹⁹.
- Research had made clear that even skilled and experienced evaluators of children's testimony have difficulty distinguishing between reports of events that were actually experienced and reports of events or details that have been suggested to the child.²⁰⁰

**LESSONS FROM THE STUDIES OF MASS ALLEGATION CASES: THE
WOOD REPORT (the "Seabeach Case") and THE REPORT OF THE
GRAND JURY (the "Akiki" Case); THE McMARTIN and KELLY
MICHAELS CASES**

Proposition 23: The methodology of investigation in mass allegation cases has to be correct.

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²⁰⁰First Affidavit of Dr Michael Lamb, tendered to the Court of Appeal at the second appeal hearing, at paragraph 98.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:

the methodology of the investigation had to be correct, otherwise false accusations could be produced;

Proposition 24: The effect of the publicity surrounding such allegations is not to be underestimated.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - the existence of intense publicity surrounding the allegations was likely to increase the level of parental anxiety with the consequence that anything in the child that had hitherto been accepted as normal might now be seen as potentially abnormal;

Proposition 25: Children's accounts of events naturally contain an element of fantasy and fiction.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - prior to the age of three and a half years, children cannot talk about past events without adult instructions or guidance, and when they begin to do so there is a naturally occurring admixture of fantasy and fiction;

Proposition 26: Fantasy and fiction elements may become incorporated into accounts of actual events.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:

- children may then incorporate this information into their 'memory' which then destroys their ability to produce an accurate recall;

Proposition 27: A reconstituted memory can be believed by a child and a child can seem persuasive in the genuineness of the memory.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - reconstituted memories in children may result in them appearing to have a clean, sharp and subjectively certain memory for events that never happened;

Proposition 28: Children have limited cognitive capacity.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - children from three to five years have a limited cognitive capacity and cannot think abstractly;

Proposition 29: Children do not begin to understand abstract concepts such as truth until they are aged about 10 or 11 years.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - research supports the propositions that children do not begin to consider abstract concepts such as duty, honour and truth until aged about 10 or 11 years;
 - the declaration in the Oaths Act to tell the truth at all times in the court would have no meaning to three to five year-olds;
- Associate Professor WALKER, the Associate Professor of Behavioural Sciences at the University of Sydney, gave evidence on behalf of the defendants that:

- children of four years of age cannot reason in an abstract way, and do not have a clear working concept of truth, or of right or wrong; and that
- Ms Fay PETTIT, a lecturer in Child Development at the Institute of Early Childhood in Sydney gave evidence on behalf of the defendants that:
 - the "truth" was too abstract a concept for children between the ages of three and five; and that

Proposition 30: Free Recall is the best method of obtaining accurate information from a child.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - the best method of obtaining a truthful statement from a child aged three to five years was to allow the child to produce a statement under 'free recall' - that is, free from pressure, suggestion or leading questions;

Proposition 31: Children are capable of telling stories about topics of child abuse and do conform to adult's interests.

Supporting Research and Opinion :

The Wood Commission.

- Mr Ralph Underwager gave expert evidence on behalf of the defendants at the Wood Commission that:
 - in the Seabeach case it was likely that the children had been unwittingly taught a story, which grew with each telling and conformed more to the adults' interests; and that
 - the tape of discussions between the parent and the child over breakfast illustrated the purpose of the parent which was, unwittingly, highly suggestive and presented the child with forced choice questions.

Proposition 32: To minimise the possibility of a child's account being contaminated the family of the child should not question, or speak in front of, the child about the allegation.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - it was desirable not to have a family interrogate or speak in front of the child;

Proposition 33: Children should only be interviewed in specialist interviewing and examination centres;

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - there should be a specialised unit established where the child can be taken for examination and interview;

Proposition 34: The interviewer should have a very general outline of the allegation and should not be provided with all the details of the allegation.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - the person conducting the interview should have only a very general outline of the matter and not be provided with all the details;

Proposition 35: The child should not be subjected to repeated interviewing.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - the child should not be interviewed and re-interviewed repeatedly, a procedure regarded as a "coaching procedure";

Proposition 36: The interview needs to be even handed and fully recorded.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - the interview process required a very competent, even handed, and fully recorded assessment session;

Proposition 37: Interviews should be conducted by specialist trained interviewers.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - the interview should be conducted by a paediatric psychiatrist, or by a clinical psychologist with specialised training in the sensitive, accurate and non-intrusive interviewing of small children; and that

Proposition 38: The interviewing process should commence as soon as there is a serious concern about the child and before the child is affected by talk and stress within the family.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER gave evidence that while there was no perfect way to obtain untainted evidence:
 - the process should commence as soon as there is a serious worry concerning the child, and before talk and stress within the family has an effect.

Proposition 39: An adults preconception of events, if transmitted to the children, can impact on the reliability of the accounts given by children.

Supporting Research and Opinion :

The Wood Commission.

- Associate Professor WALKER, from her analysis of the material supplied in relation to the Seabeach Case, formed the opinion that