The Child as a Witness - The Use of Aids

DISCUSSION GROUP A

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The investigation of sex offences committed on children is a matter which always causes a deal of anxiety, hurt and frustration to the victim, the families and investigators involved.

This paper will discuss the current laws relating to children giving evidence, methods currently in use by the Child Exploitation Unit and new ideas that may be used in the future in the ever-increasing struggle against paedophilia.

At the present time, Section 23 of the Evidence Act 1958 (Vic) states:

(1) Where, in any legal proceedings, any child under the age of fourteen years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) No person shall be liable to be convicted of any offence upon any evidence admitted by virtue of this section and given on behalf of the prosecution unless that evidence is corroborated by some other material evidence in support thereof implicating him.

(3) If any child whose evidence is received by virtue of this section gives false evidence in such circumstances that he would if the evidence had been given on oath, have been guilty of perjury he shall be guilty of an indictable offence.

Having this section in the statutes can, and indeed, does cause many cases against persons who have committed sex offences on young children, to escape prosecution.

Experience shows that children do not lie to get into trouble - they lie to get out of trouble. Corroboration of a child's story is often difficult if not impossible to find. Offenders know what they can do to a child without leaving any physical trace of their actions. They are also well-versed in the law relating to a child's giving evidence and, therefore, can operate with a degree of safety. It is for this reason that Victoria must review s. 23.
Interviewing Methods in Use

A child who is the victim of a sexual assault suffers a great deal emotionally. This emotional distress occurs not only at the time of the offence, but continues through the court case and beyond.

For a child of tender years to relate their account of events to a stranger is a most harrowing task. For this reason certain measures prior to obtaining the statement from the child must be adopted:

- the interview should take place in surroundings in which the child feels at ease. Ideally this would be in the child's own home and may even extend to the child's own room;
- the interviewer should be dressed in a casual manner so as not to intimidate the child;
- the interviewer must obtain the child's confidence at the outset. This can be done by playing a game with the child or having the child tell a story;
- clear simple language should be used when speaking to the child, not jargon such as 'offender' or 'perpetrator'. It is also advisable to ascertain from the parents of the child what names the child uses for the male and female genitals. It is imperative that the words used by the child are recorded accurately by the interviewer. If the child calls his penis his 'doodle' then this must be used and not replaced by the word 'penis' because the interviewer thinks it more appropriate;
- the interview should take place at a reasonable hour. It is of little value trying to talk to a child who is falling asleep;
- it is usually advisable that the interview take place in the absence of the parents. Experience has shown that victims can talk more easily about the event when the parent is not present. It also prevents the parent from answering questions on the child's behalf.

Use of Counselling Services

In most cases the victim will probably require some sort of counselling from a psychologist, paediatrician or social worker. The degree of counselling will vary from child to child, but the investigator should ensure that the parents are made aware of what counselling services are available.

It should also be remembered that counselling services can be of benefit to the investigator. It may well be that the child has blocked out the events of the molestation from their mind and it will only be after counselling by qualified persons that the child will be able to relate to the investigator the details of what occurred.

The counsellor and parents should prepare the child for the subsequent court case. The child must be made aware of the procedures that will take place and the questions that are likely to be asked.

Prior to the hearing the child should be taken to the courtroom so that they may be shown what actually happens inside. It is also imperative that a conference between the counsellor, parents, child and prosecutor takes place prior to the hearing.

When the child finally does give evidence a parent or the counsellor should be present in the courtroom to give support.
Videotaped Evidence

The use of videotaped evidence of a complainant is not yet admissible in Australian courts. The matter is under review by the Law Reform Commission and it may well be that Victoria will soon have legislation allowing children of tender years to give their evidence through a video.

. . . People remember what they hear better when visual displays accompany the spoken word; after 72 hours people remember only 10 per cent of what they are told, but 20 per cent of what they are shown. When graphic displays are used in the courtroom, however, the retention factor is 65 per cent! (Weis-McGrath).

In a recent investigation by the Child Exploitation Unit a videotape was made of a four-year-old male relating his account to a paediatrician of sexual assaults committed on him whilst he was being looked after by a child minder. The doctor's room was set up with a small table and chair for the child to sit at and several puzzles were placed on the table for the child to play with. Prior to the child arriving at the consulting rooms a remote video camera had been set up. This enabled the interview to be taped without the camera operator being present in the room and without the child's knowledge. The doctor commenced the interview by gaining the child's confidence and then proceeded to questions regarding the suspect. The child described to the doctor what the offender had done to him. After this the doctor introduced an anatomically correct doll into the session and asked the child to describe, using the doll, what had occurred. After the session the doctor stated that he had absolutely no doubts that the child had been abused as described and that he (the doctor) was prepared to give sworn evidence of this fact. In the subsequent interview with the offender, the offender admitted his crime to the police. When he was shown a copy of the video recording he was shaken by the way the child described in detail what had occurred.

A pilot scheme being run by the Metropolitan Police in Bexley, England showed that many offenders admitted their involvement in the offences after being shown a videotape of the initial interview with the child (Police Review, 9 October 1987, p. 2001).

In Colorado, USA the following events occurred. A three-year-old girl was abducted and, after being sexually abused, was dumped through a mountain toilet into the cesspit beneath. After being rescued, the child was treated by a Mr David Jones, Consultant Child Psychiatrist, Park Hospital for Children, Oxford. Mr Jones provided evidence to the court that the child was psychiatrically disturbed as a result of her experience and recommended that her evidence could only be given under special conditions. A videotaped deposition was ordered by the judge. The prosecutor, defence barrister and judge's representative were present at the videotaping session, but were hidden behind a one-way glass. Mr Jones had a micoreceiver in one ear to enable the prosecution and defence barristers to ask questions of the child through him. He also had authority to veto any questions he considered harmful to the child (Jones 1987).

This system is an excellent method of putting the child's evidence before a court. It is fair in that it allows the defence to ask questions of the child through the doctor, but it protects the child from having to give evidence in a courtroom full of strangers.
Screens

Another method that has been used in England is the use of a screen positioned to enable children to give evidence without having to face the defendant. An English judge, Judge Thomas Piggot, stated that: The court must do what they can to protect young witnesses who are giving evidence. The court has a duty to reduce the distress and fear they may experience (Jespersen 1987).

If screens are to be used a visit to the courthouse is essential to work out the best position for these to be set up. To be fair to the defendant the screens should be placed in such a way that all parties to the proceedings can see each other except that the defendant cannot see the child and vice versa (Rockett 1987). Judges and barristers have also removed their gowns and wigs in an effort to put children more at ease.

Uncorroborated, Unsworn Evidence

At the present time in England, the Government proposes to allow juries, in cases of child sexual abuse, to convict defendants on the uncorroborated, unsworn evidence of a child (Police Review, 9th October 1987, p. 2001).

This is pure commonsense. If a jury is satisfied beyond reasonable doubt that the defendant has committed the offence alleged, even though the child has not given sworn evidence, he should be convicted. There is no difference between this evidence and that of a person uttering the words of an oath.

Anatomically Correct Dolls

Anatomically correct dolls have been in use in the United States from the late 1970s (White 1987). Since then the number of manufacturers of the dolls has increased from four to fifteen. Originally Australia had to import the dolls from America but they are now being manufactured here.

Use of the dolls is not as simple as it sounds and indeed, has been the subject of lengthy debates in the United States on their use and effectiveness. Anyone using the dolls in interviews should have the background and training to do so. They should have basic child interviewing experience, know the field of sexual abuse, understand child witness issues and be conversant with the applicable statutes relating to the offences (White 1987).

The behaviour of two groups of children were observed and recorded in their play with anatomically correct dolls. One group had been victims of sexual abuse and the other group had not. The findings showed that significantly more children who had been victims of sexual abuse demonstrated sexual behaviour with the dolls than the group who had not been exposed to abuse (Jampol & Weber 1987).

It can be seen from this that anatomical dolls can play an important part in the investigation of child sexual abuse. The dolls are an excellent aid during an interview in that victims can demonstrate to the interviewer exactly what took place between the offender and themselves without having to use complex explanations. Although it would be difficult for a psychologist to prove to a court that their observations of the victim playing with the dolls was proof that the child had been sexually abused, it does provide further evidence of the allegations being made by the child and could prove to be the necessary piece of evidence for the jury.

It is a common experience that the more stressed and nervous a child is during an interview, the more difficult the interview becomes and the higher the anxiety level of the interviewer. Most children relate well to dolls. Dolls often have a calming effect on them, which creates a more relaxed atmosphere with less strain on everyone. It is also easier to demonstrate rather than explain what happened and more information is gathered in less time.
and with fewer tears. In addition, if dolls are visible as the child enters the room, they can create a softening effect and give the area a 'child-oriented appearance' (Freeman & Estrada-Mullaney 1987).

Dolls, properly used, reduce stress and aid in establishing rapport, help establish competency and reduce vocabulary problems (Jampol & Weber 1987).

**Conclusion**

Child sexual abuse is a worldwide problem which must be fought with all available weapons such as the video recordings, screens and dolls mentioned.

New ideas must be tried and tried again. If a technique does not work in one case it should be tried in another one, and other techniques adopted. It is only with sustained and combined effort by police, social workers, doctors and the judiciary that the war against child abuse can be won.

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**Summary of Group Discussion**

Although the theme of this discussion included dolls, drawings and robots, the use of video recording was the subject that commanded the attention of all participants in the group. Intense discussion took place on this subject and could probably be a topic of its own seminar.

All persons in the group took an active part. Some of the issues to come out of this discussion were:

- Will the use of videos increase ammunition available to the defence thereby increasing the trauma of the child?
- What is to happen to the videos after court? Who is going to have access to them?
- Should videos used in therapy sessions be used in court?
- Would videos effectively spare the child an appearance in court in practice or would the defence be continually recalling the child to further cross-examine?

As can be seen from these points, there was a lot of negative response to the use of videos in court and to quote a social worker in the group: 'They do have benefits but obviously they also cause dilemmas. They are not the ultimate answer they are cracked up to be. We should not rush headlong into it.'

It is also interesting to note that there are three distinct areas for the use of videos, these being:

- for use in an interview situation with the suspect;
- for use as evidence in court;
- for therapeutic purposes.

The use of a video in these three areas is different, but the problems already mentioned exist for each area.

A point that raised a deal of discussion was 'Should the child be entitled to either give or refuse consent for a video recording to be made?' The group was somewhat divided on this issue, and even after much discussion there were still two schools of thought on this matter.

It is obvious that problems already exist with videos and more shall no doubt come to the fore as we progress. However, videos can play an important role in the area of investigation and prosecution of child sexual assault. Obviously, care must be taken in the
use of videos and persons using them must be properly trained. But remember, videos are a powerful tool when used in an interview with a suspect and if the results of other countries using videos can be achieved here, there will be many more pleas of guilty, thereby keeping the child out of the court - 'a victory in itself'.

A video recording is a statement in a different form and, as was clearly stated in the group, videos are not a magical answer to the problems of children giving evidence, but rather, simply an aid.

References

Weis-McGrath, Using Graphics in Court: An Art in Itself, 22 Trial no: 177.