

# PRACTICE SYMPOSIUM

What Happened? Evaluating Testimony in Child Sexual Abuse Cases

Clarendon Room F

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# WHAT HAPPENED? EVALUATING TESTIMONY IN CHILD SEXUAL ABUSE CASES

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WE WOULD LIKE TO ACKNOWLEDGE THE  
TRADITIONAL OWNERS OF THE LAND ON  
WHICH WE MEET TODAY. WE WOULD ALSO  
LIKE TO PAY OUR RESPECTS TO ELDERS PAST  
AND PRESENT.

# STRUCTURE OF SYMPOSIUM

- The nature of equivocal sexual abuse allegations
- Important considerations when investigating child sexual victimization
- The importance of competent investigative interviewing in cases of child sexual victimization
  - Requirements of a good investigative interview
  - What can be gleaned from interviewing techniques used with eyewitnesses or clinical forensic interviews with offenders?
- Considerations with child witnesses and victims
- Investigative interviewing of children in Victoria (Australia)
- Case study

## FOUR OBSERVATIONS

- Where sexual deviance and the sexual victimization of children is concerned, anything is possible
- A lot of misery can remain hidden from view, sometimes for long periods of time
- For an innocent suspect, a sexual assault allegation is a traumatic experience, even if their innocence can be proven afterwards
- It is relatively easy to criticise with hindsight

# EQUIVOCAL SEXUAL ABUSE ALLEGATIONS

- Allegations in which the details of the alleged offence(s) are uncertain
- The circumstances surrounding the offence(s) are ambiguous
- There is limited evidence
- It is unclear how the investigation should proceed

## ASSESSING SEXUAL ABUSE ALLEGATIONS

- Very emotional subject matter
- Often limited or no corroborating evidence, great value is placed on statements
- Legal framework meets public opinion and ideology
- Serious potential consequences for all involved
- Who deserves to be called a victim?



# PRESUMPTION OF INNOCENCE OR GUILT

“In the current climate of (rightly) supporting and empowering victims it can seem that even ‘questioning the veracity of allegations can be seen as a betrayal of the victim’” (Corteen & Steele, 2018)

- ‘Victims’ versus ‘witnesses’, ‘complainants’ or ‘accusers’
- ‘MeToo’; debate around sexual assaults on campus: concept of endangerment over agency; moral panic?
- Serious issues with mandating a mind-set, rather than expected behaviours (Beckley, 2018)

**A man who made false claims about a VIP paedophile ring has failed to win a reduction in his 18-year prison term.**

Carl Beech was jailed at Newcastle Crown Court in July 2019 after being convicted of 12 counts of perverting the course of justice and one of fraud.

The 52-year-old from Gloucester said he was abused by politicians and other public figures in the 1970s and 1980s.

The Court of Appeal said his actions had a "devastating impact" on the victims, and their friends and family. Beech's actions led to a £2m Metropolitan Police investigation called Operation Midland which ended in 2016 with no arrests or charges being made.

He had falsely accused former chief of the Armed Forces Lord Bramall, who died aged 95 last November, as well as the late home secretary Lord Brittan and former Tory MP Harvey Proctor.

Lord Bramall's wife died in 2015 before she heard her husband had been cleared, while Lord Brittan died during the investigation without being informed that police had concluded there was no case against him.

<https://www.bbc.com/news/uk-54795942>

# INVESTIGATING CHILD SEXUAL VICTIMIZATION (LANNING, 2010)

- “The law-enforcement perspective investigates criminal activity and carries out legally defensible fact-finding. The process must, therefore, focus **more on**
  - Admissible evidence of **what** happened than on emotional belief that **something** happened
  - The accuracy than on the existence of repressed memory
  - Objective than on subjective reality
  - Neutral investigation than on child advocacy” (p. 138)

## INVESTIGATING CHILD SEXUAL VICTIMIZATION (LANNING, 2010)

- “The child victim should be carefully interviewed. The information obtained should be assessed and evaluated, and appropriate investigation should be conducted to corroborate any and all aspects of a victim’s statement. The investigator should always be an objective fact-finder considering all possibilities and attempting to determine what happened with an open mind... in a valid case, the best and easiest way to avoid child-victim testimony in court is to build a case so strong the offender pleads guilty. Most children, however, can testify in court if necessary” (p. 138)

## CREDIBILITY FROM A POLICE PERSPECTIVE

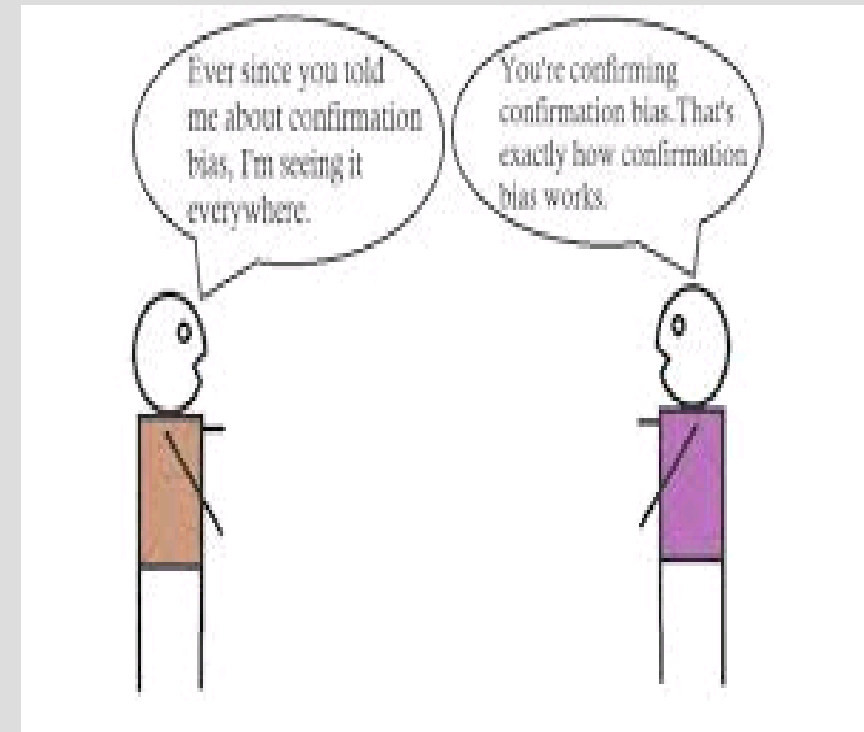
- I believe it happened
  - I believe the victim
  - Do you believe his/her story?
  - I don't doubt his/her statement
  - I don't believe any of it!
  - Can you determine the credibility of this statement?
- > None of this is relevant

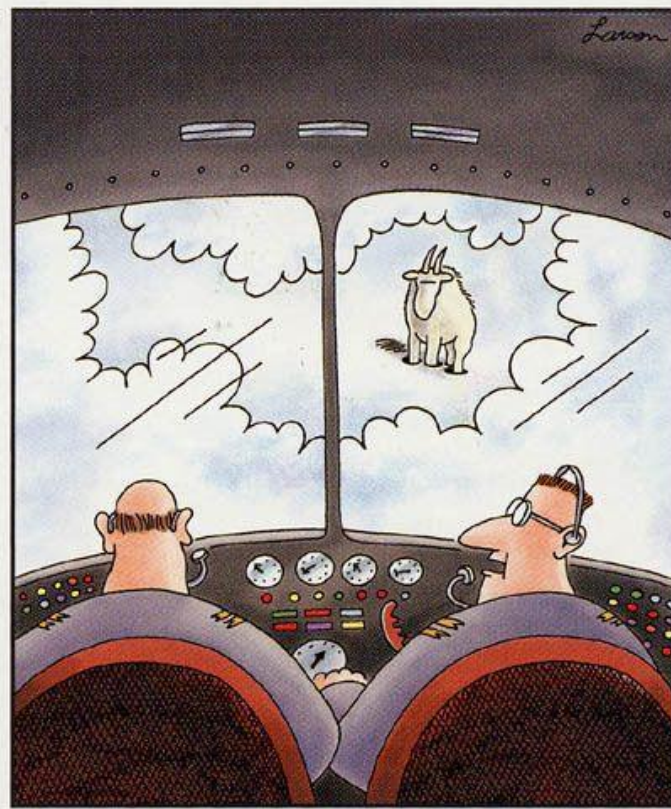
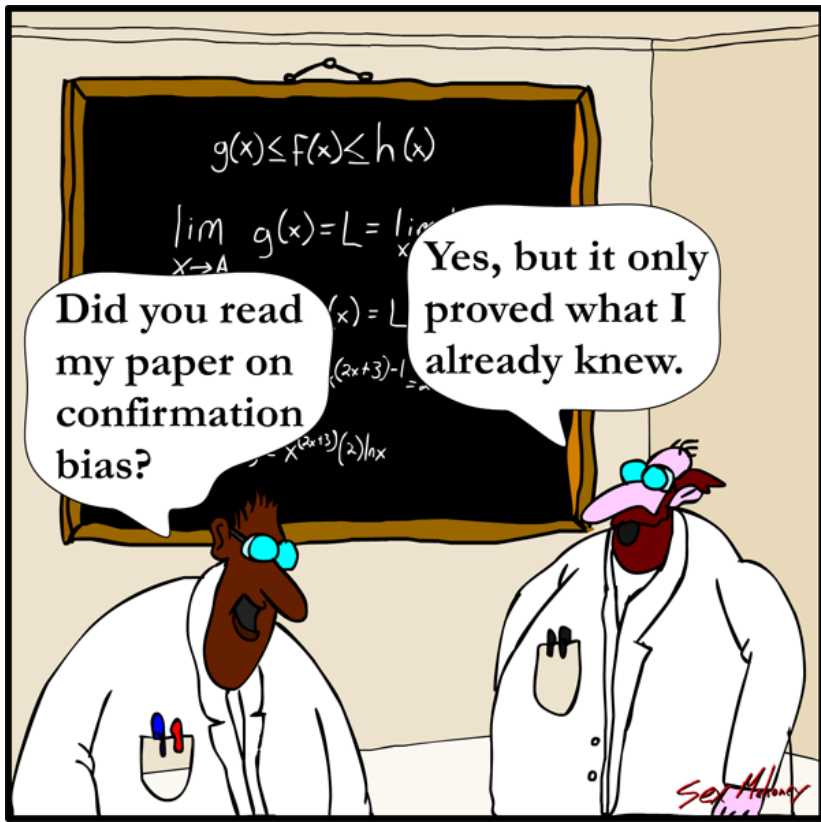
## EMOTIONS CAN BE MISLEADING

- Some complainants can appear terribly upset, crying, etc., only for investigators to discover they have lied about everything and no assault took place.
- Sometimes a child who is interviewed will say nothing about sexual abuse, whilst recovered images show that there can be no doubt that abuse took place.
- Beliefs about how a 'typical' victim/offender/wrongfully accused *should* react can have a significant impact on how their statements are perceived > 'credibility' can backfire both ways.

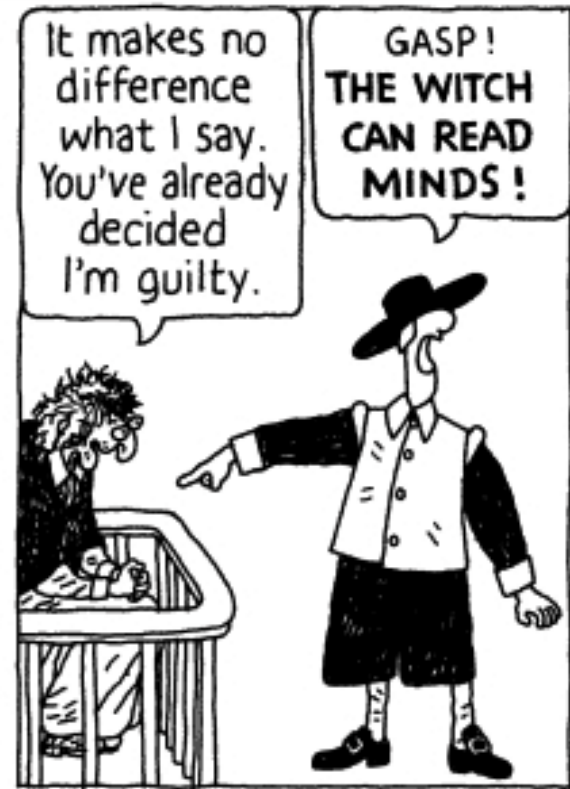
## THE RISK OF 'FEELING, BELIEVING'

- Confirmation bias: only paying attention to information that confirms your beliefs or fits in with your preconceived ideas
- *“The human understanding when it has once adopted an opinion draws all things else to support and agree with it.”*  
(Francis Bacon)





"Say ... what's a mountain goat doing way up here in a cloud bank?"



## EMOTION VERSUS REASON

(LANNING, 2010)

- “For some no amount of training and education can overcome emotion and zealotry. Some people seem to be incapable of becoming objective fact-finders in some sexual-victimization-of-children cases. Investigators must evaluate this tendency in other interveners and minimize it in themselves by trying to do their job in a rational, professional, and objective manner” (p. 138).

**THE IMPORTANCE OF INVESTIGATIVE  
INTERVIEWING IN  
CHILD SEXUAL ABUSE CASES**

# REQUIREMENTS FOR GOOD INTERVIEWING PRACTICE

1. Evidence-based framework
2. Opportunities for skill development (training adequacy)
3. Quality assurance for interviewer and organizational performance (individual and organizational)
4. Reliable method of recording verbal evidence (ideally: audio-visual)

(Westera et al., 2019, The Routledge International Handbook of Legal and Investigative Psychology)

# EVIDENCE-BASED FRAMEWORK

- Narrative detail:
  - Open-ended questions
  - Non-leading questions
  - No cues or props (dolls, drawings, etc.)
- Relevant content:
  - Relevant details
- Most police organizations use some form of evidence-based framework, particularly when it comes to interviewing vulnerable witnesses (children and people with cognitive impairments).

# WHITE PAPER ON FORENSIC CHILD INTERVIEWING: RESEARCH-BASED RECOMMENDATIONS BY THE EUROPEAN ASSOCIATION OF PSYCHOLOGY AND LAW (2024)

## KEY RECOMMENDATIONS

- “Forensic child interviews should be conducted by specialised professionals.”
- “Interviews ... should be conducted according to evidence-based interview protocols, ...”
- “...conduct the interviews following the general principles of phasing the interview (introduction, ground rules, practice interview, substantive part, closure)...”

## KEY RECOMMENDATIONS

- “It is essential that the interview is electronically recorded, to see how the child’s account has evolved, assess interview quality as well as for evaluation purposes.”
- “It is recommended that only the child and interviewer are present in the interviewing room during the interview, ...”
- “...take cultural aspects into account, ...prepare the interview jointly with the interpreters ... [who] should have specialised training in child interviewing.”

# WHITE PAPER ON FORENSIC CHILD INTERVIEWING: RESEARCH-BASED RECOMMENDATIONS BY THE EUROPEAN ASSOCIATION OF PSYCHOLOGY AND LAW (2024)

## KEY RECOMMENDATIONS

- “The use of dolls or props is not recommended in the interviews, and doll play or drawings should not be used to make interpretations of possible abusive experiences by the child.”
- “Online interviewing shows promising results..., but more research is warranted...”

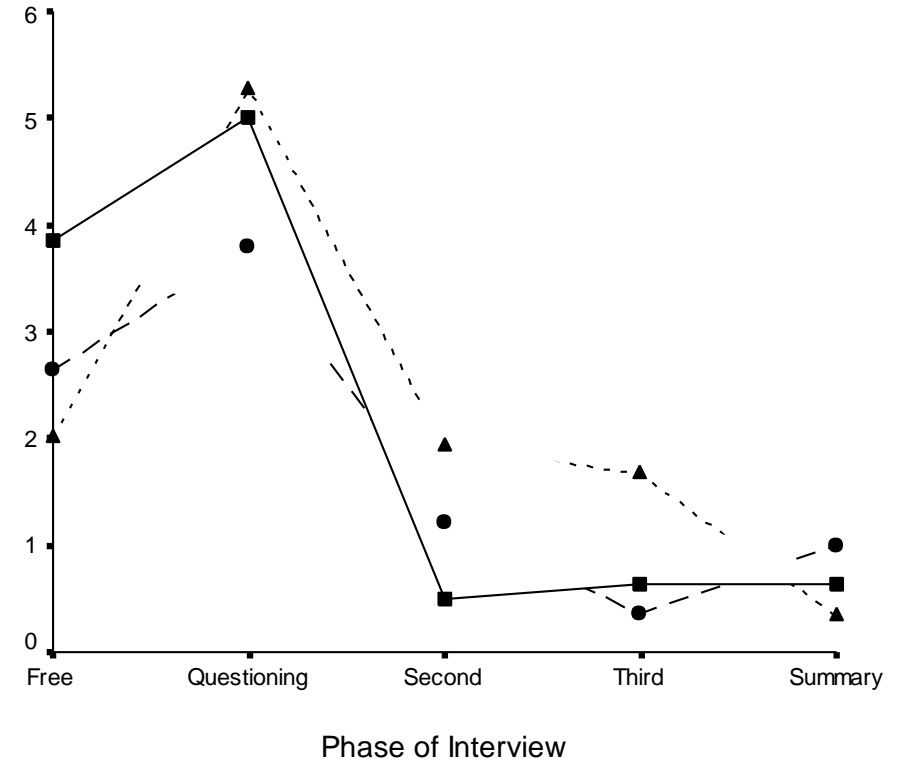
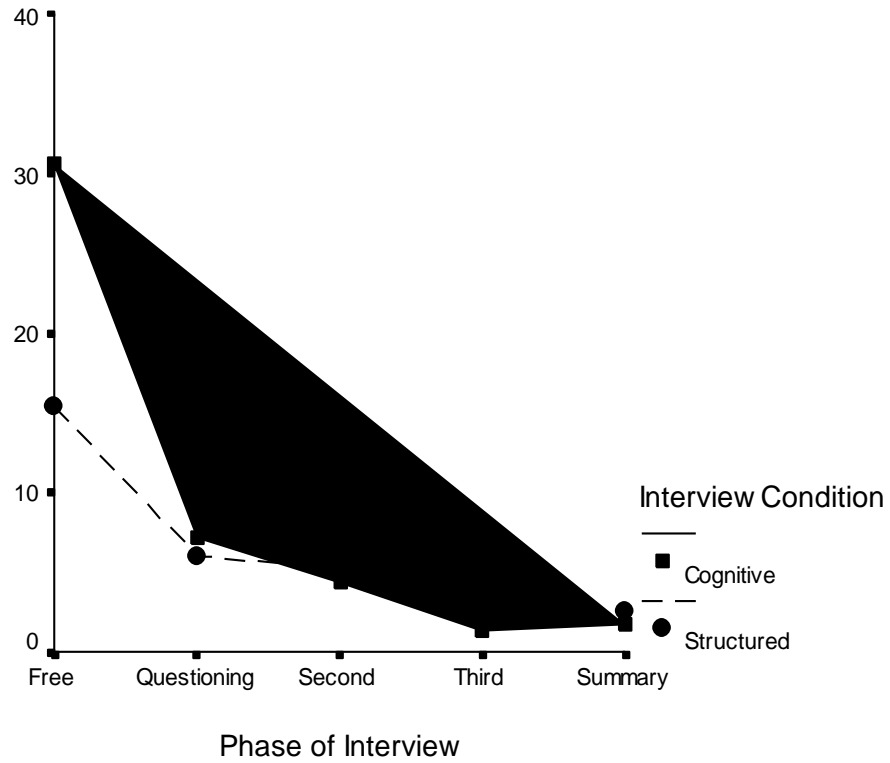
## KEY RECOMMENDATIONS

- “Interviewers should receive specialised training, including continuous assessment and feedback on their interviewing style for quality assurance.”

## FEATURES OF OTHER INVESTIGATIVE INTERVIEWS MAY ALSO BE HELPFUL

- Enhanced Cognitive Interview (for witnesses)
  - Mental reinstatement of context
  - Uninterrupted free recall
  - Guided questioning with visual imagery
  - Reverse order recall
  - Recall from different perspectives

(Fisher & Geiselman, 1992)



(Davis et al., 2004, 2005)

# ADVICE FROM FORENSIC CLINICAL INTERVIEWING (LOGAN, 2013; COOKE & LOGAN, 2018)

- Questioning Style
  - Characteristics of poor interviewers (Shepherd, 2007)
    - Talk too much
    - Don't pay sufficient attention to what the interviewee says
    - Follow their own agenda rather than one agreed to with the interviewee
    - Limit the interviewee's ability to contribute to the interview
    - Interrupt the interviewee
    - Make pre-emptive assertions
    - Assume and even tell the interviewee they know the answer
    - Fill gaps in the conversation
      - You must sit with silence and see what happens!
    - Change topics unpredictably and rush through questions

# ADVICE FROM FORENSIC CLINICAL INTERVIEWING (LOGAN, 2013; COOKE & LOGAN, 2018)

- Questioning Style
  - Good interview style
    - Open questions where possible
    - Avoid leading questions
    - Phrase questions in a way that reveals little of what you know
    - Avoid negatively worded questions
      - “Did you expect her to be there?” not “you didn’t expect her to be there when you arrived?”
    - Use pauses and eye contact to extract a response
    - Keep interview as slow/moderately paced as is practicable

# ADVICE FROM FORENSIC CLINICAL INTERVIEWING (LOGAN, 2013; COOKE & LOGAN, 2018)

- Questioning Style
  - Good interview style
    - Incorporate reviews into sessions
      - “Okay, we have just been talking about X. Is there anything important I forgot to ask you about that?”
    - Do not be personally confrontational
      - Keep tone of voice soft and relatively quiet or match the tone of the client
    - Use positive feedback
      - “thank you for helping me to understand things from your point of view”

# ADVICE FROM FORENSIC CLINICAL INTERVIEWING (LOGAN, 2013; COOKE & LOGAN, 2018)

- Listening
  - When uncertain or nervous, or when trying to understand, we can find ourselves talking too much
  - However, this explicitly controls the interview
    - Need to strive for a more collaborative interview
  - Aim to talk less than 50 percent of your interview time (ideally less than a third)

## UNCONDITIONAL NEUTRAL REGARD (WILLSHIRE & BRODSKY, 2001)

- “Although some therapists aspire to show (unconditional positive regard) for the person but not for the behaviour, this therapeutic posture is difficult. Many therapists in forensic settings do have substantial personal reservations or judgements about their clients, and the disparity between such aspirations and realities leaks through to impair therapy. Unconditional neutral regard is perhaps a more reasonable and attainable goal, not unlike the Buddhist notion of acceptance with equanimity” (p. 157)

## CHILD WITNESSES

- “Our studies provide compelling evidence that not only can the content of conversations about the past intrude into later memory but that such exchanges can prompt the generation of entirely false narratives that are more detailed than true accounts of experienced events. Further, our work show(s) that deeper and more creative participation in memory sharing dialogues can boost the damaging effects of conversationally conveyed misinformation”

(Principe & Schindewolf, 2012, p. 205)

## CHILD WITNESSES

- “Even very young children can provide accurate and useful information if the adults know how to interview them effectively... the free recall of children is accurate. If the child is interviewed carefully and leading questions and suggestions avoided, the child can provide forensically useful information.”
- “Therefore the task of the interviewer is to tap into a child’s accurate free recall by encouraging the child to tell in his or her own words what has happened... the problem is not that children cannot give reliable information, but rather adults do not know how to get it from them” (Hakefield & Underweger, 1994, pp. 238-239)

# THE DISCLOSURE/REPORTING CONTINUUM

(LANNING, 2010)

- Important to consider prior to conducting an interview of a child victim
- The continuum ranges from:
  - Children who have already made voluntary and full disclosures to one or more people
  - Children who have voluntarily decided to disclose but it appears they have only made incomplete or partial reports
  - Children whose sexual victimization was discovered rather than disclosed
  - Children whose sexual victimization is only suspected

## ASSESSING AND EVALUATING THE EVIDENCE

- Investigators should apply the “template of probability”
  - “Accounts of child sexual victimization that are more like books, television, movies, or the exaggerated fear-mongering of zealots... and less like documented cases should be viewed with skepticism, but **thoroughly investigated**. It is the investigator’s job to consider and investigate all possible explanations of events. In addition the information learned will be invaluable in counteracting defense attorneys when they raise alternative explanations” (Lanning, 2010, p. 145).

INVESTIGATIVE INTERVIEWING OF  
CHILDREN IN VICTORIA (AUSTRALIA)

## VISUAL AUDIO RECORDED EVIDENCE (VARE)

- Persons under the age of 18 or persons with a cognitive impairment who have been victim of or witness to certain offences (sexual offences, family violence, etc.) can be interviewed by a member of police who has successfully completed the VARE training course.
- Guidelines are okay(-ish) and seem to adhere to best practice, but have not been reviewed since 2012 (!) They are pretty brief and there is an odd fixation on talking to people about 'truth' and 'lies'.
- Whilst training and guidelines require regular updating to remain aligned with best practice, the main issue is with supervision, refresher training and quality control > no process/protocol

CASE

# THE REFERRAL

- A 72 year old grandfather (Harry) has been accused of sexually abusing one of his granddaughters (Jenny) when she was between the ages of 6 and 8.
- The accused denies the alleged offending and we were retained by the defence, who asked us:
  1. Was the interviewing of the child accompanied by any leading or suggestive questioning? If so, please identify how the questioning was leading or suggestive?
  2. Was the use of 'objects' - in this case the use of malleable putty - during the interview appropriate? Can the use of such objects during interviews be leading or suggestive? Should such objects be used in these types of interviews? What risk, if any, accompany the use of such objects?
  3. Are there any other features of the interview that raise any concerns as to the appropriateness of the questioning of the complainant?

## POTENTIAL ISSUE I

Asking the wrong questions or not understanding what you're asking

Reliability means something different to psychologists than it does to legal professionals

- Reliability versus validity:
- Prosecutors and solicitors often ask experts to assess the reliability of a statement, by which they essentially mean 'is it truthful'? Reliability in a psychological sense, however, simply refers to consistency. A statement can therefore be reliable and yet completely untrue.
- Technically, they are asking about the validity of the statement. That is not a question an expert should answer, given it is the judge or jury who rules on the ultimate issue.
- Experts should evaluate the quality of the interview and the process by which it was obtained.

## THE ALLEGATIONS

- The alleged abuse happened on at least 3 occasions between March 2016 and March 2018 and consisted of Harry getting Jenny to touch him after he had showered.
- Harry is not alleged to have touched Jenny at any time, nor did he ejaculate on any of the occasions, although the prosecution brief states that he had an erection on 2 occasions.

## CASE INFORMATION

- Jenny has an older brother (2 years older). Both her parents work and the grandparents, Harry and his wife, take care of the children on a very regular basis. They will come to the parents' house and spend the night there to help get the children ready for school in the morning, be there when the children come home from school and help get the children ready for bed in the evenings.
- Jenny has Autism Spectrum Disorder.
- The alleged abuse came to light while Jenny was in the bathroom while her brother was in the shower.

## CASE INFORMATION

- While Jenny was in the bathroom, she tried to touch her brother's penis and said something to the effect of 'if you hold it, it will get bigger and feel good'.
- Her brother told her she shouldn't touch his private parts.
- The children's mother came in, overheard the comment about the penis getting bigger and feeling good and asked Jenny who had told her this, to which Jenny replied 'Grandpa'.

## CASE INFORMATION

- Jenny's mother immediately left the bathroom, told her husband what Jenny had said/done, and tried to call Jenny's psychologist. When she couldn't reach the psychologist, she called a friend who is a social worker who advised her to go to the police.
- Jenny's mother immediately went to the police station with Jenny.

## POTENTIAL ISSUE 2

Not paying (enough) attention to the disclosure

- From the information we received, it is entirely unclear exactly what happened and what was said during the 'bathroom incident'.
- Neither Jenny's behaviour nor her remarks about penises in and of themselves indicate potential sexual abuse.
- It's not clear what Jenny's mother asked and how she talked to Jenny. It's also not clear why and how Jenny brought up 'Grandpa.' It could have been a knee-jerk reaction to her mother's questioning, but even if Harry told her about what happens to a penis, why would that immediately lead to thoughts of abuse?

## POTENTIAL ISSUE 3

Not interviewing relevant witnesses

- Jenny's mother told her husband about what Jenny had said in the bath immediately after it occurred.
- The husband wasn't interviewed, because 'he wasn't present at the disclosure' and police felt he wouldn't have anything relevant to add.
- Jenny's aunt (who works for police) and the social worker friend were also not interviewed, again, because they weren't present at the disclosure.
- Interviewing these people would have provided more information about what was said around the time of the disclosure and why there was such a drastic reaction to what could also be an innocent remark.

## CASE INFORMATION

- Jenny's mother immediately took her to the police station where she spoke to two police officers from the local sex offence team.
- Jenny's mother gave a brief statement about the 'bathroom incident' and police then held a 'disclosure interview' with Jenny.
- *“An initial disclosure interview should be considered prior to a VARE to provide information about the nature of the offence/s and assist to familiarise the witness with police and VARE processes. Apply the principles of investigative interviewing.”*

## CASE INFORMATION

- The disclosure interview was not recorded on body worn camera or otherwise, there are five pages worth of notes of the disclosure interview.
- The officer conducting the interview used a drawing of a 'gingerbread man' to illustrate body parts.
- Jenny was questioned very extensively and in great detail.
- The touching of grandpa suddenly makes an appearance in the disclosure notes, it appears as if Jenny spontaneously mentioned grandpa asking her to touch his 'private parts'.

## CASE INFORMATION

- Jenny's mother made a brief statement to police when she took Jenny to the station just after the 'bathroom incident'. She made no mention of Jenny having said anything about touching grandpa's 'private parts'.
- Jenny's mother later makes a second statement to police where she claims Jenny did talk about having to touch Granddad's 'private parts' during the bathroom incident, but says she 'forgot to mention it during her first interview'.

## POTENTIAL ISSUE 4

Not understanding what a disclosure interview is

- A disclosure interview is meant to be brief. It is intended to familiarise the witness with police and police procedures and determine if a potential crime has been committed.
- If the interview is not recorded at all, it is not transparent, which is all the more reason to keep it very brief and to the point.
- Extensively interviewing a child when no investigation has yet taken place is like putting the cart before the horse, how do you know what you are meant to be talking about to them?
- Jenny has an Autism Spectrum Disorder, but this was not taken into account by police at all. The officer who conducted the interview said she 'felt very comfortable talking to autistic kids'.

## CASE INFORMATION

- The police officer who conducts the disclosure interview with Jenny says that *“it was quite clear to me that the accused had sexually assaulted his granddaughter.”*
- She shared these beliefs with Jenny’s parents and told them they could pursue a criminal case against Harry if they so wished.

## POTENTIAL ISSUE 5

Confirmation bias

- Making up your mind about what has happened based on very little information in the very early stages of an investigation will influence what that investigation subsequently looks like.
- Police are meant to be trying to find the truth of the matter, which means taking into account alternative scenarios and understanding the difference between facts and opinions.
- By immediately sharing their conviction that Harry had sexually assaulted Jenny with the parents, police effectively also cut off any other avenue the family might have wanted to explore (the criminal justice system is a very blunt instrument!)

## CASE INFORMATION

- Six days after the disclosure interview, Jenny participates in a VARE interview.
- There is no free recall and the interviewer launches into: *“So I heard that you were in the bathroom the other - was it last week, I think it might have been - with your brother and something was said about his private part. Did that happen?”*
- Little to no preparation seems to have gone into the interview, Jenny’s diagnosis was not taken into account, instructions were not given adequately, there are many leading questions and information is introduced by the interviewer on multiple occasions.

## POTENTIAL ISSUE 6

Being trained in something doesn't mean  
you're good at it

- Just because someone has completed the necessary training to conduct VARE interviews at some stage during their career, doesn't mean that they are actually competent interviewers.
- Going into the interview with preconceived notions makes you more likely to ask leading questions and ignore information that you consider irrelevant.
- It is left to the supervising officer in charge of the local station to determine whether officers' capabilities are up to scratch or whether they need additional or refresher training. Police are perpetually understaffed, which means training is not a priority.
- Also, there is no quality control system and (most) prosecutors seem unable to assess the quality of an interview.

## CASE INFORMATION

- The putty...
- During the interview, Jenny has putty in her hands that she is continually squeezing. When asked repeatedly about Harry's penis, she eventually moulds the putty into a very rudimentary penis-like shape, which the prosecution described as 'an adult erect penis'.
- We concluded *"the fact that Jenny appears to mould a very rudimentary penis from putty confirms nothing other than that she has at some point in her life seen a penis."*



## POTENTIAL ISSUE 7

Props are not a good idea, they don't increase children's ability to report information and they elevate the risk of erroneous reports

(see Poole, Bruck, & Pipe, 2011; Poole & Bruck, 2012)

### Savage Chickens

by Doug Savage



www.savagechickens.com

“Because props elevate the risk of erroneous touch reports, interviewers need to reconsider the belief that props are developmentally appropriate in forensic interviews”  
(Poole et al., 2011, p. 11)

## OUR CONCLUSIONS

- Poor quality police investigation
- Clear police bias from the start
- Very problematic that the actual disclosure remains unclear
- Extensive and poorly executed disclosure interview
- Poorly executed VARE
  
- Due to these factors it is impossible to determine what may or may not have happened and the evidence cannot be relied upon.
  
- Remarkable how little of the “best practice” principles of both interviewing children and investigating allegations were followed.

## POTENTIAL ISSUE 8

Police and prosecution are too reliant on guilty pleas

Sex crimes investigations are often heavy on statements, but light on any actual investigating and even basic fact-checking

- Police and prosecution service seem to rely heavily on the fact that many people plead guilty to avoid a lengthy court process, regardless of whether they have committed the crime they are being accused of.
- This can lead to poor quality investigations, where a few statements are being relied upon with no evidence to back them up.
- If there has been no additional investigation, and the statements are compromised, there is nothing left.
- This is problematic either way, if nothing happened the accused is not properly exonerated and if something did happen, the victim isn't getting justice.

## CASE INFORMATION

- The prosecution retained an expert to comment on “*the reliability of the VARE interview*”.
- The expert in question is a child clinical and forensic psychiatrist, who has no expertise in cognitive psychology, memory, police practice, or investigative interviewing.
- She has suggested that we are accusing Jenny of ‘lying’ and ‘making false allegations’ and has concluded that Jenny’s behaviour in the bathroom (trying to touch her brother’s penis) is sexualised behaviour indicative of sexual abuse. Moreover, the moulding of the penis should be considered a ‘non-verbal disclosure of abuse’.
- Completely missing the point that we have no opinion as to whether the abuse did or did not occur. We have simply stated that the evidence was not reliable.

## POTENTIAL ISSUE 9

Not everyone who claims to be an expert is  
one

- If the opposing expert lacks the necessary expertise to argue about the actual issues, they may attack the other experts' credibility or even moral standing.
- There do not appear to be consequences to commenting on issues well outside the scope of your expertise (other than the report and/or testimony hopefully getting questioned in court).

# QUESTIONS / DISCUSSION

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# Morning Tea, Exhibition and Poster Viewing

Auditorium Foyer

