

**ROYAL COMMISSION INTO INSTITUTIONAL  
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Roundtable - Criminal Justice  
MEMORY OF CHILDHOOD SEXUAL ABUSE AND THE LAW**

Hearing Room 2  
Level 17, Governor Macquarie Tower  
Farrer Place, Sydney

On Friday, 31 March 2017 At 9.30am

1 MS SANDERSON: I will start by acknowledging the  
2 traditional custodians of the land on which we meet today,  
3 the Gadigal people of the Eora nation. I pay my respects  
4 to their elders both past and present.

5  
6 Welcome to the roundtable discussion convened by the  
7 Royal Commission into Institutional Responses to Child  
8 Sexual Abuse.

9  
10 I think I have introduced myself to a number of people  
11 already, but my name is Leigh Sanderson. I am special  
12 counsel at the Royal Commission and I have had carriage of  
13 the criminal justice policy work for the Commissioners.

14  
15 The Chair of the Royal Commission and the  
16 Commissioners have asked me to give their apologies for not  
17 being here today. They are all sitting on the bench for  
18 the last day of the public hearing into the nature, cause  
19 and impact of child sexual abuse, which is happening on the  
20 other side of this floor today in the hearing room.

21  
22 They are taking a great interest in this issue and  
23 they will, of course, have the benefit of the transcript  
24 and the final research report to consider, but they are  
25 sorry that they couldn't be here for the roundtable  
26 discussion today.

27  
28 I also have an apology from Dr Rachel Zajac, who  
29 unfortunately was met with some ill-health and some fog  
30 yesterday and couldn't make it today, so she's sorry she  
31 can't join us.

32  
33 For everyone who is here today, all participants,  
34 thank you for agreeing to contribute to the roundtable.  
35 I particularly acknowledge those who have travelled from  
36 New Zealand and from interstate to join us today, thank  
37 you. I also acknowledge the time that all of you have  
38 already put into the roundtable today in reading the draft  
39 report and in providing the feedback forms. Thank you for  
40 that. Obviously between you, you have extensive research  
41 and clinical experience in the issues for discussion, and  
42 the Royal Commission greatly appreciates your willingness  
43 to contribute.

44  
45 We are transcribing today's discussions and we will  
46 publish a transcript of the roundtable early next week, so  
47 you should treat today's discussions as public. Because

1 today coincides with the last day of the public hearing, we  
2 are not actually opening the roundtable to members of the  
3 public; it's open to participants only. We are not  
4 expecting to be joined by the public.

5  
6 We are, however, joined by Mr Sho Mukai, who is from  
7 the Saitama District public prosecutor's office in Japan.  
8 He is visiting the ANU College of Law undertaking research  
9 on investigative interviewing of children, and he has  
10 accompanied Associate Professor Mark Nolan for today's  
11 roundtable. Welcome.

12  
13 You would have noticed that we circulated the draft  
14 research report for today without naming the authors but,  
15 as you can probably see from the seating arrangements, the  
16 Royal Commission engaged Professor Jane Goodman-Delahunty  
17 and Associate Professor Mark Nolan to undertake this  
18 research project, and Dr Evianne Van Gijn-Grosvenor is a  
19 co-author of the report.

20  
21 I am just going to make a few introductory remarks to  
22 give some context for this research from the Royal  
23 Commission's perspective, and then I will hand over to  
24 Jane, Mark and Evianne.

25  
26 In September 2016, the Royal Commission published the  
27 Criminal Justice Consultation Paper. In preparing that  
28 consultation paper, it became apparent that there was  
29 really no clear readily available guidance material  
30 summarising the contemporary psychological understanding of  
31 memory that was relevant to our work at the  
32 Royal Commission in relation to a number of criminal  
33 justice issues in child sexual abuse. And, of course, the  
34 Royal Commission's focus is particularly institutional  
35 child sexual abuse.

36  
37 The Chair of the Royal Commission, Justice McClellan,  
38 has spoken on a number of occasions about the importance of  
39 obtaining research evidence about how people behave, rather  
40 than relying on judge's assumptions, which might of course  
41 be wrong. The Royal Commission hopes that the report we  
42 are discussing today will draw together the research  
43 evidence about memory that is particularly relevant to  
44 issues in the criminal justice response to child sexual  
45 abuse. We identified that understanding how human memory  
46 works and how it might be affected for both child and adult  
47 complainants of child sexual abuse is likely to be

1 important to inform a number of the issues that were raised  
2 in the consultation paper.

3  
4 Those include how police should interview child and  
5 adult complainants of child sexual abuse; what particulars  
6 child or adult complainants should reasonably be expected  
7 to be able to provide about abuse when they are being  
8 interviewed; whether features such as inconsistencies in  
9 accounts given by a complainant over time are a good  
10 indicator of unreliability, as they are sometimes assumed  
11 to be; and also the issue of what assistance juries might  
12 need to be given in relation to understanding a  
13 complainant's evidence.

14  
15 The Commissioners will be settling their final report  
16 and recommendations on criminal justice issues in the  
17 coming months, and we anticipate that this research will be  
18 able to inform a number of those issues and help feed into  
19 the recommendations.

20  
21 What this research says about matters relevant to  
22 criminal justice issues will be an important input in  
23 considering whether any reform should be recommended.  
24 However, Commissioners will also need to take into account  
25 other factors, perhaps most obviously the criminal justice  
26 system's requirement to ensure that the accused can receive  
27 a fair trial. So this isn't the only input, but it's a  
28 very important input. That is really just a brief outline  
29 of where we see this work fitting in for the  
30 Royal Commission.

31  
32 In terms of how today will run, I think everyone's  
33 been given a slightly refocused agenda, and I think that's  
34 been refocused to take account of the feedback that you've  
35 already provided. Jane, Mark and Evianne might say more  
36 about that shortly. I should warn you that you have also  
37 been set a test. It's actually a series of propositions  
38 about memory. We will take a quick break shortly so that  
39 people can complete that. The idea is to help identify  
40 where there is consensus and where there isn't. You  
41 haven't got that yet, but it will be handed around shortly.

42  
43 We do need to take the morning tea and lunch breaks as  
44 scheduled because they have been timed to fit in between  
45 the public hearing breaks. So I will be insisting that we  
46 take our breaks.

1           The other thing I should flag is that the microphones  
2 are directional, so please make a point of speaking into  
3 them when you are speaking, or you might be told that you  
4 can't be heard.

5  
6           During the discussions today, I'm down as chairing  
7 this, but I have no training or expertise in psychology, so  
8 I intend to take a back seat. I will hand over to Jane,  
9 Mark and Evianne, but I'll certainly be jumping in with any  
10 queries or points of clarification from the  
11 Royal Commission's perspective.

12  
13           Thank you for that, that's the end of my introduction  
14 and I'll now hand over to Jane, Mark and Evianne.

15  
16 PROFESSOR GOODMAN-DELAHUNTY: Thank you, and welcome from  
17 all of us. I want to say what a privilege it is to have a  
18 chance to hear from all of you and we appreciate very much  
19 your contributions to make this an evidence-based type of  
20 process.

21  
22           I want to say a little bit about the kind of process  
23 that we have been engaging in and how we see today's  
24 session fitting into the shaping of what will become the  
25 final report submitted to the Royal Commission on our  
26 behalf and on your behalf.

27  
28           Clearly Leigh has outlined some of the policy and  
29 practice objectives that we want to focus on after lunch.  
30 We have divided the agenda, reshaping it a little bit to  
31 focus in the morning, before lunch, more on some of the  
32 memory-related research issues that came back from all of  
33 you in terms of the feedback.

34  
35           This is a little bit like, for those of you who are  
36 familiar with it, the Delphi process where groups as large  
37 as this, and sometimes larger, are sent some idea papers,  
38 or topic papers for some feedback. I think we have gone  
39 through round one of that. Then what we need to do is use  
40 that feedback, which we have done, by crafting some of the  
41 statements that you will see, and you may recognise many of  
42 your own among some of the issues that we are going to be  
43 following on with shortly.

44  
45           Today's discussion will be further input from the  
46 transcription to try to continue to shape and fill in gaps,  
47 where there were gaps, in the concept and topics from the

1 draft that you received. So it's not really necessary for  
2 you, in the discussion today, to make any reference at all  
3 to the report document, because the transcript is going to  
4 be the focus of the next phase. In fact, some of the  
5 amendments that we have been working on continuously to  
6 different sections of the report have already been  
7 implemented, so those particular pages and paragraphs  
8 probably won't appear in any ultimate record at any stage.  
9 The purpose of today's discussion is really to move into  
10 the next phase, rather than to go back over some of the  
11 intricacies on which you already provided some input.  
12

13 We are very appreciative of all of the careful reading  
14 and attention to that document, but that has really  
15 assisted in moving us forward, I think, and we want to  
16 focus on areas where there are gaps and where there are  
17 controversies in today's discussion.  
18

19 If you look at the agenda, you'll see there is quite a  
20 bit to be covered in each session, and probably the most  
21 orderly way to do this is for us to allocate approximately  
22 ten minutes per dot point. We will try to manage the  
23 discussion by perhaps asking some of you to start off the  
24 discussion on a particular topic and we might suggest some  
25 questions, as can you, and then after one or two people  
26 have begun talking about it, we will certainly allow others  
27 to add to that. There is a finite amount of time to devote  
28 to quite a series of issues, so we probably will not be  
29 able to go in depth extensively on any or all of them in  
30 the course of the time that's allocated that we have  
31 together here today. But we would like to cover those  
32 points that are on the agenda in some respects. There will  
33 be opportunities later on for follow-ups to fill in gaps,  
34 and other areas that may occur to you after the discussion  
35 and how that unfolds.  
36

37 We will be probably turning to some of you who have  
38 made some specific comments that we'd like you to elaborate  
39 on, to go ahead and do that, but if you haven't had a  
40 chance yet to provide any feedback to us and you have other  
41 thoughts, you shouldn't feel in any way estopped from  
42 contributing. We are very pleased to have everyone's  
43 participation here orally, outside of any response to any  
44 pieces or sections of the report.  
45

46 I don't know if there are other points that you would  
47 like to add?

1  
2 ASSOCIATE PROFESSOR NOLAN: Good morning, and welcome and  
3 thank you to everyone. One point just to remember, of  
4 course, is that when the transcription of today's  
5 roundtable appears on the website of the Royal Commission  
6 on Tuesday, none of the public readers will have read the  
7 draft report as you have. So, again, the comments that you  
8 are making can be comments about the topics that we'll  
9 invite you to discuss, without you having to make  
10 references to paragraph numbers that the readers on the  
11 internet will not have access to. That's all I wanted to  
12 add. Hopefully we can keep to time and get the benefit of  
13 the wealth of experience and knowledge and research  
14 expertise in this room.

15  
16 PROFESSOR GOODMAN-DELAHUNTY: In terms of procedure, since  
17 many of you know each other very well and will probably  
18 find it very awkward if we refer to each other by last name  
19 and title, there is no need to do that. Please feel free  
20 to refer to each other by first name today, and the court  
21 reporters will be able to cope with that.

22  
23 MS SANDERSON: We will also put the list of participants  
24 up on the website, so anyone reading the transcript will be  
25 able to relate first names to full titles and full names.  
26 Don't worry about formality, that's not required at all.

27  
28 DR VAN GIJN-GROSVENOR: In the pack that you have  
29 received, which is on the desk, there's one sheet in there  
30 which is the general guidance survey about the signs of  
31 memory of child sexual abuse.

32  
33 ASSOCIATE PROFESSOR NOLAN: It's being handed out now.

34  
35 DR VAN GIJN-GROSVENOR: The survey was actually designed  
36 as a way to provide guidelines on issues related to memory  
37 of child sexual abuse as they are raised in a legal  
38 setting. The statements are actually similar to the  
39 psychological society guidelines which were published in  
40 2010.

41  
42 The statements focus on the general understanding of  
43 memory. All difficult terminology has been removed from  
44 the statement in order to make it accessible for any  
45 non-memory expert. The statements will be discussed in the  
46 report and they will also form the basis of an informed  
47 understanding of memory for those involved in legal work.

1 The statements will be analysed and the results will  
2 hopefully be presented after the lunch break.

3  
4 PROFESSOR GOODMAN-DELAHUNTY: If you could take five to  
5 ten minutes and record "yes", "no" or "don't know" by  
6 circling whatever you agree with for each statement. Then  
7 we'll collect those from you when you are done and someone  
8 will add up the total so that we can use that in focusing  
9 on areas of disagreement and consensus later today.

10  
11 ASSOCIATE PROFESSOR NOLAN: Thank you very much. We have  
12 members of the staff from the Royal Commission doing a  
13 frequency tally of "yes", "no" and "don't know" and we'll  
14 revisit that after lunch. Some form of provocation.

15  
16 The next form of provocation, discussions that we'll  
17 have in ten-minute blocks for the first six dot points  
18 until 11 o'clock's morning tea will be very briefly  
19 introduced by Jane, myself or Evianne, and then, as Jane  
20 foreshadowed, we'll try to call on one, if not two, people  
21 within the scope of those ten minutes to give an answer or  
22 some reaction to the topics that we introduce.

23  
24 The first one we are going to talk about is the  
25 variability in responses that survivors have to child  
26 sexual abuse.

27  
28 This is of interest to the Royal Commission as well as  
29 interest to us as we looked over some of the available  
30 research and we thought that we might call on, firstly,  
31 Chris Lennings, if possible from a clinical perspective, to  
32 talk about the variability that you may have witnessed in  
33 response to abuse of different survivors and then possibly,  
34 if there's time, perhaps Dale Tolliday would be interested  
35 in also commenting on this. Could we hand over to you  
36 first, Chris?

37  
38 DR LENNINGS: Thank you for that. I think it is  
39 complicated because of the fact that for some children they  
40 don't necessarily recognise they're being abused at the  
41 time. Secondly, in some cases the abuse may even appear to  
42 be pleasurable to them, or the abuse may in fact be  
43 associated with threat or trauma, and so the variability in  
44 reactions to abuse is going to be a function of age,  
45 understanding of what's actually happening to them and the  
46 context in which the abuse is taking place.



1           There is enormous variability and that has  
2 implications then for how the children remember and how  
3 they report and how they talk to others about that abuse  
4 over time after the events have occurred.

5  
6 ASSOCIATE PROFESSOR NOLAN: Thank you for that comment.  
7 Dale, would you like to make a comment as well following  
8 that?

9  
10 MR TOLLIDAY: Yes, I would. The variability is broad.  
11 The first thing that came to my mind was what are we  
12 talking about with the time of report? Is it proximate, is  
13 it some time later? What's the developmental capacity of a  
14 person at the time and at the time of making the report?  
15 What are the circumstances in which a report is being made?  
16 Has there been discovery, disclosure by the person that has  
17 been spontaneous or triggered by some other process?

18  
19           The children who I have worked with and continue to  
20 work with now are subject to a whole range of relational  
21 impediments and putting them into a bundle as a headline,  
22 really look at those strategies and tactics that the person  
23 who harmed them has engaged in recruiting the child to the  
24 process and presenting a picture of that experience and the  
25 meaning of that.

26  
27           The further amplified issue in that is how has that  
28 person who has engaged the child in sexually harmful  
29 behaviour influenced people crucial to the child's  
30 wellbeing and safety?

31  
32           So if the story is coming forward at a time when the  
33 child is not secure and able to be safe in telling the  
34 story, if there has been a process that has disengaged  
35 other protective or otherwise protective adults from the  
36 child, so typically in interfamilial sexual abuse, which is  
37 my main area, mothers have been undermined, described as  
38 non-protective, described as the non-offending parent.

39  
40           The mothers have been very forthright with me that I'm  
41 not to say things like, "I'm not a non-offending parent,  
42 I'm a mother. I'm not going to be defined by what somebody  
43 else has done", but at the time of making the report the  
44 non-offending parent may be subject to a whole range of  
45 strategies and tactics that develop a story about the child  
46 and the truthfulness of the child, the possibility that the  
47 child's story could be correct and believable.

1  
2 They weigh heavily on the victims being able to give a  
3 clear account. On the whole, the accounts given by the  
4 children have been quite measured at the first instance and  
5 less than the whole.  
6

7 ASSOCIATE PROFESSOR NOLAN: Thank you. I think the  
8 process that we'll follow is that following those two  
9 statements from one or two of the commentators, there might  
10 be some questions that I can direct back to those speakers,  
11 but then we may have some time for others around the circle  
12 to also comment here. Could I maybe start, first, with a  
13 couple of comments here.  
14

15 Of course, the variability, as we've just discussed,  
16 is variability in responses by individual complainants to  
17 the abuse that they've suffered. I suppose what we've also  
18 just touched on too is the variability between the  
19 responses that adults in the context of this abuse are  
20 having, which is variability, and varies from the  
21 experience of the complainants or the reaction of the  
22 complainants.  
23

24 There are a couple of interesting comments there to  
25 follow up. The relational impediments that Dale referred  
26 to, would you like to say a little bit more about that for  
27 us? We talked about the non-offending mother, the  
28 non-offending parent having a particular set of reactions.  
29 What are the other things that you might want to say about  
30 relational impairments, perhaps also in the context of  
31 institutional child sexual abuse?  
32

33 DR LENNINGS: Part of the process is often of the child  
34 internalising in anticipation that the consequence of the  
35 disclosure is going to have negative effects for others  
36 around them. Perhaps in the context of institutional  
37 reporting, it may even be for the person causing harm.  
38 They may have been put into a position of having to  
39 anticipate what it is going to mean for the person who has  
40 both harmed me but provided me with other elements that I  
41 have experienced as being positive or okay and not having  
42 the full frame of reference about the abusive experience.  
43

44 Internalising those generally has a track back to the  
45 way in which it has been represented and presented by the  
46 person who has been harming the child, but it can take some  
47 time for the child to be supported to understand how that

1 has evolved.

2

3 ASSOCIATE PROFESSOR NOLAN: Could I follow up on that as  
4 well. What consequences would that have on the apparent  
5 memory performance of a child who is anticipating the  
6 relational consequence of disclosure and report when  
7 they've given an initial measured report, as you described  
8 it, and, either Dale for Chris, you might want to comment  
9 on one of the consequences there for the apparent memory  
10 performance of a child who is disclosing, reporting in this  
11 way, anticipating the relational consequences of the  
12 report.

13

14 MR TOLLIDAY: I will say this one thing - I am happy to  
15 throw to Chris after that - the apparent memory  
16 performance, the interesting concept for me is where  
17 significantly the children or the adult survivors are  
18 wrestling with a profound sense of shame and elements of  
19 self disgust and to bring the story forward to overcome  
20 that, for example, in one case, somewhat recently, a young  
21 person who was sexually harmed by her father over a long  
22 period of time gave quite a particularised account, but had  
23 what became confirmed later as some errors in terms of  
24 placement of people at different times, but I am talking  
25 about six years of repeated harm.

26

27 At the time, the father was engaged in a process where  
28 he had an opportunity to have a protected disclosure in a  
29 pre-trial process. He detailed a whole array of material  
30 that the child had not detailed

31

32

33

34

35

36

37

38 ASSOCIATE PROFESSOR NOLAN: Thank you. Chris, would you  
39 care to comment on apparent memory performance in the  
40 context of a varied response?

41

42 DR LENNINGS: What Dale raises is an important issue  
43 because there's a difference between memory performance and  
44 reporting performance. What may take place in terms of  
45 relationship stuff, and particularly the sense of guilt and  
46 shame that may impact on the person, may not actually  
47 impact so much upon what they remember as what they're

1 prepared to report.

2

3 I think that that has implications because people may  
4 then have formed views about credibility, and those kinds  
5 of things, about a person without recognising that their  
6 reporting is actually taking place within a matrix of  
7 relationships which people have to consider. They are  
8 long-term relationships not only with the offender but with  
9 other members of the family and people who may be important  
10 to them.

11

12 I think that the other thing that happens is that if  
13 you are in a position where there is a lot of emotion going  
14 on while you're trying to remember things, it does impair  
15 your memory and it does have an impact upon the ability  
16 then to be clear and to be able to sequence that memory in  
17 a way that other people can have some confidence in it.

18

19 I think that the relationship aspect gets involved  
20 with the emotional and the stress aspect of having to  
21 actually report on the memory itself and that can then, as  
22 I said, lead to credibility issues, particularly in areas  
23 of trials.

24

25 ASSOCIATE PROFESSOR NOLAN: Thank you for those comments.  
26 We may have some further comments.

27

28 PROFESSOR GOODMAN-DELAHUNTY: I would like to just follow  
29 up because I think you're very clearly talking about  
30 emotion that is impacting the reporting or the retrieval  
31 and recall phase and I just want to return for a second to  
32 questions about the extent to which trauma is present at  
33 the time, really, of the event and encoding and ask  
34 generally about what I think has been probably a  
35 presumption on the part of many adults and people who are  
36 not well acquainted with this area of research, that all  
37 children are traumatised at the time of the sexual abuse,  
38 and I would like to hear some comments from people who do  
39 have expertise in that area about whether that's true. Is  
40 that a misconception, for example, that needs to be  
41 addressed and conveyed to police, courts, judges and  
42 juries, or is it a fair summary and presumption?

43

44 PROFESSOR THOMSON: Jane, just a matter of clarification  
45 I had to wrestle with is in terms of sexual abuse the  
46 report did distinguish between, in a sense, traumatic abuse  
47 and that abuse that occurs almost where grooming has

1 occurred, naturally, but all of those ones have to do with  
2 abuse done to a child. What about, for example, exposure  
3 to situations? Is that part of this reference group too as  
4 well? I am thinking of situations where nothing is  
5 actually done physically to the child, but the child is  
6 exposed to what we'd consider abusive sexual situations.

7  
8 I ask that question just for clarification in relation  
9 to a distinction that was made in the report between when  
10 something is done to the child and observations in terms of  
11 the memory research and I just want a bit of clarification  
12 here.

13  
14 ASSOCIATE PROFESSOR NOLAN: One way of clarifying that  
15 might be to go to Leigh and clarify what the definition of  
16 abuse is that the Royal Commission is using, sexual  
17 assault, indecent assault, and here does it include  
18 exposure to sexualised behaviour which may be age or  
19 experience inappropriate.

20  
21 MS SANDERSON: The Royal Commission has had a very wide  
22 definition of child sexual abuse across all of its work and  
23 that would certainly include being exposed to inappropriate  
24 sexual behaviour, for want of better terminology.

25  
26 For our criminal justice work we are most interested  
27 in abuse that will constitute criminal offences against the  
28 child. Depending on the definition, that will sometimes  
29 capture things that are done in the presence of a child  
30 rather than to the child, so I wouldn't want to preclude  
31 the discussion because it is part of what we're doing, but  
32 our greater focus is probably on offending against the  
33 child.

34  
35 PROFESSOR THOMSON: So it does have implications for  
36 memory?

37  
38 MS SANDERSON: Yes.

39  
40 ASSOCIATE PROFESSOR NOLAN: Thank you for that. In the  
41 interests of time, we might let that question about  
42 different reactions to abuse, whether it is traumatic or  
43 not initially, to the after morning tea session where we  
44 will be talking about trauma a little bit more deeply.  
45 Thank you for being involved in the first attempt at the  
46 first dot point treatment. I think we're going okay for  
47 time. Can I hand over to Jane then for the next dot point.

1  
2 PROFESSOR GOODMAN-DELAHUNTY: Given the breadth of the  
3 definition and some of the instances of abuse that have  
4 been discussed, I think you can see that it is an issue in  
5 terms of development of children across different age  
6 ranges and so we wanted to spend a little bit of time just  
7 talking about notions of memory and what exactly is  
8 infantile and childhood amnesia and what the implications  
9 of that might be for the criminal justice system.

10  
11 Probably, I think it would be good if perhaps  
12 Karen Salmon and Brett Hayes could take a bit of time to  
13 talk to us about these areas within their expertise and  
14 perhaps if I can ask you, Karen, to start off with some  
15 discussion about, really, why infantile amnesia or  
16 childhood amnesia might be important to consider in cases  
17 of reported childhood sexual abuse?

18  
19 ASSOCIATE PROFESSOR SALMON: The notion of  
20 infantile amnesia is a longstanding and quite strongly  
21 empirically supported finding that as adults it's very rare  
22 for us to remember experiences occurring under about the  
23 age of three and a half, approximately, and memories,  
24 in fact, up to five, six or even seven, from that period,  
25 still tend to be relatively less coherent or more  
26 fragmented than other memories. That said, the conclusion  
27 from that really is that memories of one's own birth, for  
28 example, or very early in life are unlikely to be accurate.

29  
30 There is relatively recent research looking at the  
31 fact that has found that children can remember experiences  
32 from before the age of three and a half. If a child,  
33 for example, was asked, or at the age of four or five,  
34 perhaps, was able to discuss or demonstrate even  
35 behaviourally and put into language an experience that  
36 happened before that time, that may be a reliable memory.

37  
38 There are a couple of different ideas about why this  
39 might be a process rather than an absolute cut off, one of  
40 them being that the rates of forgetting slow with age, but  
41 there is also the fact that young children find it hard to  
42 date memories and that research too is suggesting that we  
43 may in fact be able to remember earlier than that three and  
44 a half year period, but as we get older we're less good at  
45 dating those memories. Generally, there is a kind of grey  
46 area, but I think that the longstanding conclusion remains,  
47 unless a child discloses an experience, in which case it

1       may be reliable.

2

3       PROFESSOR GOODMAN-DELAHUNTY:    Would be fair to say that  
4       the terms "infantile amnesia" and "childhood amnesia" are  
5       used interchangeably in the literature?

6

7       ASSOCIATE PROFESSOR SALMON:    Yes.

8

9       PROFESSOR GOODMAN-DELAHUNTY:    Perhaps, Brett, if you could  
10      talk a little bit about what might be some important  
11      features of infant memory, because although later on people  
12      have trouble recalling what happened in those early years,  
13      during the time that infants and children are very young  
14      they're not without memory and it might be important to  
15      consider ways that they can communicate experiences that  
16      might be abusive or sexual even without language ability  
17      and so forth.

18

19               It might be helpful to discuss a little bit about what  
20      are some of the features of memory of young children or  
21      infants and how those differ from those of adults and how  
22      they might communicate experiences, given the lack of  
23      development of some of the memory features of adults.

24

25      PROFESSOR B HAYES:    There is a longstanding discussion  
26      about how similar are the memories of infants to the  
27      memories of older children and adults. My take on that is  
28      that if a memory, by and large, operates according to the  
29      similar principles of memory throughout the rest of the  
30      lifespan but it might differ quantitatively rather than  
31      qualitatively, and that means that babies probably forget a  
32      little bit more quickly than older kids, they take longer  
33      to encode information, to get information in memory, and  
34      one of the particularly important features are the kinds of  
35      content of memory, so clearly, below two and a half, three  
36      years of age the vocabulary of kids is quite limited, so as  
37      they're encoding memory, they're not necessarily going to  
38      re-code that in terms of language as most of us do when we  
39      experience things, we think about it in terms of how we  
40      might describe it.

41

42               That means that a lot of the early memories they're  
43      there, but they exist, essentially, in terms of images, of  
44      kinds of motor interactions with the rest of the world with  
45      the things that the kids are doing, which, as Karen says,  
46      makes it a little bit harder for those memories to be  
47      retrieved later on, they might be there but they're just

1 harder to access, but a key finding, again, as Karen  
2 mentioned, is that it is sometimes possible to get those  
3 memories, particularly if you quiz children about their  
4 infant memories rather than adults and particularly if you  
5 can work out some way of getting the children to express  
6 those memories in a way more similar to the way they were  
7 laid down. If they're laid down as actions rather than  
8 words then if you can get the child to re-enact something  
9 about that early event, you may get some access to that  
10 memory.

11  
12 PROFESSOR THOMSON: Could I just make the point, a  
13 theoretical one, about a thing called encoding specificity  
14 principle, Brett would have heard it before. The point  
15 there is that things may remain in memory, but the way we  
16 structure the world now is different and so we don't have  
17 the right retrieval cues, whereas if we could, in fact,  
18 present the retrieval cue or the assessment in a fashion  
19 that was consistent with the child's understanding of the  
20 world at that time, one may well achieve a higher level of  
21 recall than one does: that's Thomson and Tulving, 1973.

22  
23 DR SEIDLER: I am just thinking of a client that I saw  
24 recently that comes back to this issue of memory. She was  
25 sexually assaulted under the age of four and the only  
26 memories that she had of the abuse were physical and she  
27 would describe it as pressing weight on her chest, which  
28 was [REDACTED] leaning on her, and it wasn't until many,  
29 many years later that people understood, when she would  
30 describe feeling pressure on her chest, as what actually  
31 that meant. One of the issues might be around training  
32 people to recognise that when children talk about  
33 experiences in those particular ways, that actually we  
34 might need to question some of what that means because  
35 people didn't understand what she was talking about until  
36 she was about [REDACTED], and in fact no linguistic memories  
37 or visual memories ever surfaced for her of that abuse, it  
38 was all visceral, and mainly about her chest and feeling  
39 weight on her chest. That is an interesting description  
40 from a survivor's account that wasn't recognised by the  
41 adults that she was talking to.

42  
43 PROFESSOR GOODMAN-DELAHUNTY: Do you think that very young  
44 children who have not yet developed verbal skills, who are  
45 really at a pre-verbal stage, can communicate memory of  
46 child sexual abuse?  
47



1 DR SEIDLER: Yes.

2

3 ASSOCIATE PROFESSOR SALMON: Young children can  
4 demonstrate their experiences, of course, non-verbally, but  
5 in the legal system, clearly, it is a verbal account that  
6 is really critical.

7

8 PROFESSOR POWELL: This behaviour can be interpreted in  
9 multiple ways.

10

11 ASSOCIATE PROFESSOR SALMON: In multiple ways, yes.

12

13 DR BLACKWELL: And this is where I think we need to  
14 educate prosecutors and police when they're formulating  
15 charges so that if they have charges that relate to - most  
16 frequently the ones I see are where the charges will say  
17 look at from about two up to 14 years of continuous,  
18 repeated abuse, and they will have these charges related to  
19 a child or someone as an adult saying, "I was two", and  
20 generally, in view of the literature about infantile  
21 amnesia, it can be suggested that perhaps those charges  
22 relating to those earlier ones need to be dropped because  
23 of that. Rather than then giving expert evidence to the  
24 jury about infantile amnesia, I think it is better to have  
25 legal people sort that out ahead of time.

26

27 PROFESSOR GOODMAN-DELAHUNTY: Thank you. I think we need  
28 to move on to our next dot point and so I am going to turn  
29 to Evianne.

30

31 DR VAN GIJN-GROSVENOR: Thank you. I would like to  
32 introduce the third point of the first session, which is on  
33 reverse developmental facts, which is discussed in the  
34 literature. I would like to introduce Brett Hayes to talk  
35 more about the reverse developmental effects, and  
36 particularly, do children become more suggestible with age?

37

38 PROFESSOR B HAYES: It seems to me a key point here is  
39 that there is more than one type of so-called false memory  
40 and the different types of false memory operate in  
41 different ways developmentally. The type of false memory  
42 that historically has been studied quite a lot is so-called  
43 post-event suggestions, post-event misinformation, where a  
44 survivor or a witness has experienced something and then  
45 somebody has given them a leading question about that  
46 experience which might conflict or change their memory in  
47 some way.

1  
2           There is I think pretty much no doubt, if you look at  
3 the literature on this in terms of post-event suggestion,  
4 how susceptible are kids to misleading suggestion. The  
5 answer is it's either stable across the lifespan or  
6 suggestibility does decrease somewhat, particularly if  
7 you're comparing very young kids to older kids. I would  
8 argue the stability argument, that we're all susceptible to  
9 misleading suggestions under the right circumstances.

10  
11           The more recent work on the so-called developmental  
12 reversals is looking at a different kind of animal. It is  
13 looking at what you might call spontaneous false memory.  
14 The example I usually give is let's say somebody is being  
15 questioned about the appearance of a perpetrator and the  
16 question is whether they were wearing a scarf in a  
17 particular situation.

18  
19           In spontaneous false memory you might have lots of  
20 cues to whether or not that person is wearing a scarf.  
21 You might remember it was cold on the day, they were  
22 wearing a coat, but you don't actually remember the scarf  
23 one way or another. But because of all these other cues  
24 you might say, "Oh, yes, okay, they were wearing a scarf",  
25 and in some cases that may not be true, so that's a  
26 spontaneous false memory. Nobody has suggested that to  
27 you, it's the context in which the event occurred that cues  
28 it. In those situations there is evidence that adults and  
29 older children are more likely to join the dots and make  
30 those kinds of spontaneous inferences.

31  
32           Having said that, even young kids are susceptible to  
33 this. If it is a highly familiar situation that has been  
34 repeated then young kids will also sometimes spontaneously  
35 make those inferences, but it is true that it is more  
36 common in older kids and adults.

37  
38 DR VAN GIJN-GROSVENOR:   Could I just ask, actually, Karen  
39 as well to comment?

40  
41 ASSOCIATE PROFESSOR SALMON:   Actually, could I hand over  
42 to Deirdre, because I think Deirdre has done quite a lot of  
43 specific research exactly in this area, so I feel she has  
44 greater expertise than I do?

45  
46 DR VAN GIJN-GROSVENOR:   Yes.  
47

1 DR BROWN: Thanks, Karen. We are currently doing a  
2 program of research looking at how well we can generalise  
3 findings from the kinds of tasks that Brett is talking  
4 about, more limited sorts of memory paradigms where we're  
5 looking at how well younger and older children will draw  
6 associations between items in a picture, items in a story,  
7 items on a wordlist, and how well that lines up, whether  
8 they make those errors when they are talking about  
9 something that they've personally experienced.

10  
11 We are still in the preliminary stages of our  
12 analysis, but our work is premised on the notion that when  
13 we talk about something that is a personal experience, it  
14 differs in many ways and across many layers from memory  
15 for, for example, groups of words or items or even if  
16 they're linked in a narrative, or in a visual scene, the  
17 degree of personal involvement will differ, the way in  
18 which the narrative is constructed, the outcomes of the  
19 event. There are many, many ways in which these things  
20 differ.

21  
22 I think there is a lot of research that supports this  
23 notion of a developmental reversal in false memories, but  
24 it's grounded very much in these very restricted, highly  
25 controlled laboratory tasks which are very useful for  
26 giving us a sense of mechanisms and how memory develops,  
27 but I think there is still a lot of questioning about how  
28 well we can generalise from that to the kinds of things  
29 that we're likely to see in a courtroom, and preliminary  
30 data so far from our work suggests that these two kinds of  
31 remembering don't line up very well at all.

32  
33 We also heard at some recent conferences from studies  
34 with adult memory that there is very little correspondence  
35 across even adults' recall from post-event misinformation  
36 tasks, wordlist memory tasks, implanted entire false memory  
37 tasks, and I don't think we're at a stage yet where we can  
38 confidently draw from one body of literature to another.

39  
40 DR VAN GIJN-GROSVENOR: I just want to refer to Kay,  
41 actually, as well to comment.

42  
43 ASSOCIATE PROFESSOR BUSSEY: I am afraid I don't think  
44 I have much to add to that, actually. Again, I would be  
45 looking more at the reporting issue and how that might be  
46 influenced by the social factors associated with  
47 suggestibility rather than anything else. Again, taking

1 Brett's point on board in terms of not much change  
2 developmentally across times in terms of suggestibility,  
3 certainly, younger children are quite vulnerable when  
4 they're interviewed by an authority figure or somebody else  
5 who allegedly knows more about the event than they do, as  
6 often comes across in interviews, then children are much  
7 more susceptible to suggestibility.

8  
9 I would be arguing that as well as the memory  
10 factors - the memory factors are influenced - are the  
11 reporting factors which are inextricably linked by the  
12 social and emotional factors.

13  
14 PROFESSOR THOMSON: Can I make a comment to about some of  
15 the literature reported. For example, if you take a  
16 measure that looks at total accuracy, then you do find with  
17 age measures of decline. In other ones, they do find that  
18 accuracy increases with a function of age, which is saying  
19 that while there may be greater faults, obviously, as you  
20 get older, the proportion of correct items also increases  
21 at a higher level.

22  
23 DR BROWN: I think it's important to draw distinctions  
24 between how well we can generalise across these tasks in  
25 terms of the content of what children are being asked to  
26 remember and what they choose to report, but also the way  
27 in which the memories are elicited.

28  
29 In these memory-based tasks we tend to have very  
30 constrained assessment techniques to ask for the responses,  
31 and they are very different in themselves from the kind of  
32 exhaustive and elaborated interviewing that would occur  
33 about an event. I think structurally, in many different  
34 ways these tasks are very different. Any one of those  
35 things might mean that we can't generalise very well.

36  
37 DR BLACKWELL: Would that differ, again, if you looked at  
38 the different cross-examinations - again, that adds another  
39 layer.

40  
41 DR BROWN: Another style of questioning, yes.

42  
43 ASSOCIATE PROFESSOR NOLAN: Thank you very much for that.

44  
45 Our next point relates to the capacity of children to  
46 encode, retain and retrieve and report temporal information  
47 about events. I know a number of people in the room have

1 done some research on this and have some interesting things  
2 to say. Could we perhaps start with Stefanie, and maybe  
3 also Penny, and then there are others that we can naturally  
4 turn to as well, maybe Martine, on this issue of the  
5 temporal knowledge of children and how it is reported.  
6 If we could have some comments on that issue, that would be  
7 great.

8  
9 DR SHARMAN: I have done research with Martine and a  
10 number of other people looking at children's memories for  
11 repeated events. Usually this is when children experience  
12 four events and have to recall one of those events. What  
13 we know from this research is that children are able to  
14 remember details from these particular events, but they  
15 often have trouble determining which particular event those  
16 memories are from. So they have difficulties with the  
17 temporal sense of where that information came from.

18  
19 If they experience more than, say, four events, they  
20 experience a number of events, even if we ask them to  
21 report on the frequency of those events, they often have  
22 difficulty. They can say they have done it once, that's  
23 really easy, but if they have done it more than once, then  
24 they often have trouble estimating how many times they  
25 participated in those events. Usually they'll say they  
26 have done it a number of times, but they can't actually  
27 tell you specifically what number that was.

28  
29 I think, obviously, as children get older they are  
30 better at recognising which particular event some  
31 particular detail belongs to, but the younger children  
32 struggle with temporal information.

33  
34 ASSOCIATE PROFESSOR NOLAN: Does it make some sense to go  
35 to Martine to elaborate on that discussion?

36  
37 PROFESSOR POWELL: I'd like to add one point. Often  
38 identifying the time, as with adults, it is often elicited  
39 with contextual information - "I was in grade three". This  
40 contextual information is better remembered than temporal,  
41 per se, if you are looking at dating the occurrence.

42  
43 Also, when children report a narrative account, often  
44 content details can arise that would allow that  
45 interviewer, or someone evaluating an interviewer, to then  
46 with further investigation determine the time of that  
47 event.

1  
2 If the child mentioned the content detail, like there  
3 was something good on television at that time, that can be  
4 used. They might not be able to provide the language or  
5 the ability to actually provide precise information using  
6 adult terminology, but interviewed in an open-ended manner,  
7 you can often see that some of the temporal information is  
8 there, but it wasn't directly in response to that question.  
9

10 ASSOCIATE PROFESSOR NOLAN: Can I ask whether you think  
11 that the context of being a survivor of child sexual  
12 assault makes this particular issue even more important or  
13 more difficult?  
14

15 What types of questioning by police or what types of  
16 support in an investigative interview would help get that  
17 temporal information out, not just when you are recalling  
18 an event, but when you are actually recalling a child  
19 sexual abuse event?  
20

21 PROFESSOR POWELL: I think what is probably potentially a  
22 more important issue is not the trauma, per se, but the  
23 nature of the event and whether it was repeated. As the  
24 law requires, that we identify occurrence, or multiple  
25 occurrences of repeated events. That is a tremendously  
26 difficult task. Most traumatic experiences often are  
27 repeated, so you compound that. I think we need to  
28 distinguish those two issues.  
29

30 The question you had was about nature of the  
31 questioning - definitely an open-ended questioning, and  
32 interviewing early, because temporal information decays a  
33 lot more rapidly than content information.  
34

35 ASSOCIATE PROFESSOR NOLAN: Thank you, very much. Penny,  
36 what would you like to add here? We probably have another  
37 ten minutes on this topic if we need it. If we don't, we  
38 can give it to the next topic.  
39

40 DR VAN BERGEN: I guess underpinning some of those  
41 difficulties in reporting temporal detail in children is  
42 that children actually have a poor understanding of time  
43 full stop. I think it's maybe important, when looking at  
44 children's memory relative to adult's memory, to know that  
45 children aren't necessarily able to think of things in  
46 terms of particular days of the week or particular months  
47 of the year. That ability develops later. So scantness in

1 that regard is not a sign of inaccuracy of the memory.

2

3 I think the risk would be for someone that didn't know  
4 that work to think that if you are unable to temporally  
5 date something or say exactly when it occurred, that must  
6 mean that it's not a good memory, but the research would  
7 suggest that that inability is actually related to  
8 conceptual development rather than the quality of the  
9 memory itself. So children may emerge first with times of  
10 the day that they can relate, in terms of context to things  
11 like around breakfast time or when they go to sport, rather  
12 than specific time periods that adults would use. That  
13 ability develops later.

14

15 DR BROWN: Some recent work has come out, building on what  
16 Penny says, showing that young children have potentially a  
17 linear perspective of time, particularly with respect to  
18 calendar months, rather than a cyclic perspective on time.

19

20 Often interviewers may try and use a landmark event to  
21 connect another event to it. For example, "When is your  
22 birthday? Did that happen near your birthday or was that  
23 before or after your birthday?" Studies that have come out  
24 recently have shown that children adopt a prospective view  
25 on time with that landmarking. They might agree that  
26 something is near their birthday if it's in the three  
27 coming months, but not if it was in the three preceding  
28 months. They are not viewing the calendar as a cycle, but  
29 they are viewing it in a linear way.

30

31 I think that also could be a source of potential  
32 inconsistency or challenge in a child's testimony that  
33 reflects more about developmental principles rather than  
34 the reliability of their dating.

35

36 ASSOCIATE PROFESSOR NOLAN: One question in my mind here  
37 is whether social familial culture impacts upon  
38 development, whether it actually impacts the temporal  
39 knowledge that exists. Following on from Penny's point  
40 here, are there ways in which interviewing or working with  
41 survivors from particular cultural groups or familial  
42 experiences means that it's more difficult to get the  
43 temporal information? That's another overlay here. I  
44 wonder whether some of the literature on cross-cultural or  
45 other social variables helps us understand temporal  
46 knowledge even more so.

47

1 DR VAN BERGEN: There is research both within western  
2 cultures and cross-cultural research in a family context,  
3 for example, which demonstrates the way in which parents,  
4 typically mothers, talk about different content in their  
5 memory, and how it will influence what children are able to  
6 develop.

7  
8 It's not necessarily just for that event that they  
9 talk about, but they become narrative skills that they  
10 develop. So where particular people might emphasise  
11 emotional content with their children, then children  
12 develop the ability to include emotional content more  
13 quickly. The same effect is found with contextual detail.  
14 Where that's influenced in those family narratives, then  
15 the child develops the ability.

16  
17 When children are learning about how to tell a memory  
18 story, they are learning how to tell that narrative, what  
19 becomes part of a memory. The research suggests that that  
20 is kind of a process that is influential both at including  
21 and retrieval. The children are developing essentially the  
22 skills to tell a memory.

23  
24 ASSOCIATE PROFESSOR NOLAN: We will return after the break  
25 to the parent/child reminiscence work that you have done,  
26 which is relevant here. I suppose the question is whether  
27 you have actually looked at temporal knowledge in the  
28 context of that improvement for autobiographical memory  
29 when you are actually using the parent/child reminiscence  
30 support.

31  
32 DR VAN BERGEN: I have not. We do have unpublished data  
33 at the moment from educators and children which  
34 demonstrates that some of the temporal language that  
35 educators use is included in children's narratives as they  
36 are talking together. We'd suggest from that that that  
37 would go forward. We have research from others in other  
38 contexts that each of that sort of specific content becomes  
39 influential.

40  
41 Potentially the challenge in cases of child abuse  
42 would be that these aren't events that are being talked  
43 about necessarily, so they are not being scaffolded. For  
44 younger children, particularly, these are things that  
45 children develop over time, the ability to include in their  
46 independent narratives, but there are things where, when  
47 children are quite young, the support of an expert adult in



1 bringing out that detail is important.

2

3 ASSOCIATE PROFESSOR NOLAN: Do you have another point you  
4 wanted to make?

5

6 DR VAN BERGEN: No.

7

8 ASSOCIATE PROFESSOR NOLAN: Great. We have five minutes  
9 for others to contribute on this point in particular, if we  
10 need it.

11

12 MS SANDERSON: Can I ask a question. I know when we are  
13 talking temporal, initially we are probably talking about  
14 how to particularise an offence.

15

16 One of the things I think that we have seen come up in  
17 a number of the cross-examinations that we have looked at  
18 is the favourite question from defence counsel about how  
19 long a particular part of the abuse lasted, in terms of was  
20 it seconds, was it minutes. Is there anything the research  
21 can say? The answers often sound like they are someone  
22 trying to say what they think it must have been, with no  
23 real memory at all, but it is sort of the minutiae of  
24 temporal. I know it's not really about months, but is  
25 there anything the research tells us about that concept of  
26 time?

27

28 ASSOCIATE PROFESSOR NOLAN: The duration of an abusive  
29 event?

30

31 MS SANDERSON: Or a part of an abusive event - "How long  
32 did this bit go, and for how long was that done?"

33

34 PROFESSOR BRYANT: This is not an answer in relation to  
35 children, because there hasn't been a lot done on this, but  
36 there has been more in adults, both in the context of  
37 trauma and non-trauma. Essentially, the more arousal that  
38 I'm experiencing at a time, that will impact on my  
39 perception of time. There are different models, but  
40 essentially if it's aversive, what I'm going through, to  
41 put it simply, the more I'm waiting for the bad thing to  
42 finish, that can impact on how long I think it's happening.  
43 So it certainly can moderate how we estimate time.

44

45 PROFESSOR THOMSON: Can I make a point, too. A phrase a  
46 French psychologist did a fair bit of research on was  
47 "time estimate", quite a few years ago. The interesting

1 point he talked about was the paradox of time is that if  
2 when we are experiencing an event and we have nothing to  
3 do, time seems to hang and seems to be a long time, whereas  
4 if we have got lots of activities, and we are engrossed in  
5 it, we tend to think time goes quickly. That's then  
6 perception.

7  
8 In memory what he found was the paradox, when looking  
9 back to estimate time, the time which you were busy doing  
10 things or things were happening, then tended to be seen as  
11 a longer period of time than the time when you were bored.  
12 He argued that we structured on the basis of things that  
13 are done during that time. That was what he called the  
14 paradox of time.

15  
16 ASSOCIATE PROFESSOR NOLAN: Thank you. Without further  
17 invoking Einstein, what else can we say about this issue?

18  
19 PROFESSOR POWELL: I'd just like to make the point that  
20 the ability to use time words in a child can precede their  
21 understanding of these. So a very young child could say,  
22 "It was 100 minutes" and then be surprised by a laugh, a  
23 reaction. It's an important point. If we force them to  
24 utilise adult terminology, it's going to create more  
25 errors. Oftentimes people describe time, or young children  
26 will describe time in terms of the feeling or the impact or  
27 events that occurred rather than the time.

28  
29 PROFESSOR BREWER: This relates to Leigh's question. It  
30 is a completely different paradigm, so I'm not sure how the  
31 findings were generalised, but certainly when we conduct  
32 things in an eyewitness identification paradigm, one of the  
33 things we might do in certain studies is question people  
34 about how long they saw the person for and how close up  
35 they were. This is with adults, not with children.

36  
37 The really important point to emphasise is the  
38 variability in those estimates are just staggeringly big.  
39 There is variability in all directions - overestimations,  
40 underestimations, and so on. So if you had to come up with  
41 one sentence in conclusion about what adults do when they  
42 are looking at something, this is really unreliable  
43 information. Some of them will be right, of course, but  
44 the variability will be enormous.

45  
46 ASSOCIATE PROFESSOR NOLAN: Are we through with that  
47 topic? Yes. We can move on to the next.

1  
2 PROFESSOR GOODMAN-DELAHUNTY: I wonder if we could ask  
3 Richard to follow up a little bit on some of the directions  
4 of the phenomena that you were talking about.

5  
6 PROFESSOR BRYANT: I think a crude summary of the  
7 literature is that it's confused. We don't know a lot  
8 about it. I think that's probably the most accurate way to  
9 reflect it. There are about three major models that try to  
10 explain it. There's an avoidance model, there's a model  
11 which actually links it to one's heart rate - we have got  
12 an internal clock and how we judge external events relative  
13 to our internal events, which is impacted by our internal  
14 arousal, and hence fear.

15  
16 When you actually look at the data, it's actually a  
17 rather small field. I wouldn't want the take-home message  
18 here to be that we actually know, but I think the take-home  
19 message is, in a decision-maker, that any judgment of time  
20 should take into account the fact that we do know that the  
21 threat a person is experiencing and the psychological state  
22 of that person at that time will impact on their perception  
23 of time quite markedly, and also the memory thereafter, how  
24 I recall it.

25  
26 PROFESSOR POWELL: I think that often children can define  
27 time in qualitative terms, and that's likely to be more  
28 accurate than quantitative terms. "It was about as long as  
29 it takes me to walk home from school", or "about as long as  
30 the Simpsons show" is going to be more reliable than a  
31 quantitative response.

32  
33 ASSOCIATE PROFESSOR NOLAN: Thank you for those  
34 discussions, particularly the examples that you have given  
35 in your answers.

36  
37 PROFESSOR GOODMAN-DELAHUNTY: We are going to turn to the  
38 last dot point there, which is about various sorts of  
39 memory errors that we are all subject to. I think we can  
40 all agree that memory errors are common, and that some of  
41 them are so common that psychologists have given them  
42 specific kinds of names. Some of the names of errors that  
43 are more common are reality monitoring errors or source  
44 monitoring errors. Sometimes those terms seem to get used  
45 in somewhat overlapping ways and they do overlap somewhat,  
46 those concepts, but they also are distinct.

1 It is a topic that surfaces quite a lot in the  
2 literature on children's memory of childhood sexual abuse,  
3 so I wanted to call on a few people to talk a little bit  
4 about that. I think perhaps some of you who have done some  
5 memory work in situations even outside of children's memory  
6 may have some relevant information to share here. Perhaps  
7 if we could hear from Helen, certainly Martine, I think you  
8 have worked with a number of people on issues to do with  
9 some of the source monitoring questions, and Richard Kemp  
10 as well, perhaps, Don and others.

11  
12 I think one of the first questions I'd like to start  
13 with is really to say how those errors might bear on issues  
14 of child sexual abuse. Are they equal problems or equally  
15 serious?

16  
17 If you look at reality monitoring, that's an issue  
18 that comes up in this literature, and so does source  
19 monitoring. Do they deserve equal treatment? Those are  
20 the kinds of questions I think we should be discussing  
21 here.

22  
23 Helen, would you like to start?

24  
25 DR PATERSON: Something we know in adults as well as  
26 children, that people can forget the source of the  
27 information they received. Sometimes they will remember a  
28 bit of information, but remember it as it was told to them.  
29 So my research, for example, looks at how witnesses can  
30 discuss an event with one another, and if they hear  
31 information from a co-witness, they can again include that  
32 bit of information into their own version of the actual  
33 event, when they perhaps did not experience it or did not  
34 personally remember it.

35  
36 In this way they can have a source monitoring error,  
37 where they attribute to their own memory when they actually  
38 heard it through someone else. So they can unintentionally  
39 report hearsay evidence. To them, they believe it to be  
40 their true memory of what happened, but it was something  
41 that was told to them by somebody else and they made that  
42 source monitoring error and attributed it to the actual  
43 event when it was not part of the event, this is  
44 information they heard from somebody else.

45  
46 PROFESSOR GOODMAN-DELAHUNTY: In cases of child sexual  
47 abuse, I think especially where there are repeated events

1 is where some of these errors seem to be more common.  
2 Perhaps, Martine, would you like to speak to that?

3  
4 PROFESSOR POWELL: With a repeated event, memory for  
5 detail that occurred consistently in the same way, there  
6 are very few errors, and that's because there's no real  
7 need to make a source judgment because it's reflecting more  
8 a general knowledge of what usually occurred. Also, there  
9 are other reasons why these memories are more stable.

10  
11 A few of the things that affect the likelihood of  
12 error is that the more times you experience an event and  
13 the more times those experiences change from time to time,  
14 the harder it is to remember what happened at a particular  
15 time.

16  
17 I'm going to enjoy deferring this to Don to see if he  
18 has anything to add.

19  
20 PROFESSOR THOMSON: The issue there with children is, as  
21 Martine's outlined, as Neil would know in terms of  
22 identification, too, beware of the source, particularly  
23 with temporal source and events that occur in a similar  
24 timeframe. To able to make that distinction, particularly  
25 for a child, is extremely difficult.

26  
27 So where there is, in a sense, a distinctive aspect of  
28 an event that allows it to be quite distinguished from  
29 others, there isn't that problem, but when there's a  
30 similarity of events, and that's the problem that one's  
31 talking about, to be able to recall which happened where  
32 and when is extremely difficult. The source of an event is  
33 quite often difficult to identify.

34  
35 I can just give, as evidence in terms of the problem,  
36 an anecdote. I was embarrassed once when I was telling  
37 someone a joke and then realised later that they had told  
38 the joke to me previously. I had forgotten the source of  
39 that particular interaction.

40  
41 PROFESSOR POWELL: It's a very complex issue, remembering  
42 source depends on the circumstances, too. Identifying the  
43 time and the contextual details around that is very  
44 different from remembering one episode of an event. In  
45 that, in a narrative form, you are going to have some  
46 aspects where there are going to be gaps and you are going  
47 to fill in those gaps. Adults do this as well.

1  
2           What they do, when they fill in the gaps, most people  
3 don't make an error of commission, which is something that  
4 never occurred. They fill in the gap, even if they are  
5 conscious of this or not, with a detail that was likely to  
6 have occurred. So it may have occurred, if it's an error,  
7 it's something that occurred in close proximity, or it was  
8 something that occurred frequently, or it was something  
9 that could logically have occurred.

10  
11           If it's proven that that didn't occur in a particular  
12 time, people often make the assumption that everything else  
13 must have been wrong, that this is just a normal memory  
14 process. It's very rare, we are seeing in research, for a  
15 detail to be provided that didn't happen at all. When you  
16 have a repeated event, you have a fairly good idea of the  
17 sorts of things that have happened and the content details  
18 can be quite stable, even though you might insert the wrong  
19 detail from another time into that occurrence.

20  
21           But this is a very different process to identifying  
22 when did that happen and identifying the time in your life.  
23 As I said, contextually, "When my mother was pregnant", or  
24 "It was in this grade", are going to be more stable than  
25 identifying a date or a month.

26  
27 DR DEAR:   From a practitioner's point of view, I'd be  
28 interested in what the researchers have to say about this,  
29 but something that comes up a lot in my practice is where  
30 children have had multiple conversations with family  
31 members, even with child protection workers. I think it's  
32 a resourcing issue, but they'll have an initial  
33 conversation, and then say whether it should go to trained  
34 interviewers or not, and they have further conversations.

35  
36           Children say a lot, "After talking to Mrs so and so,  
37 I went and talked to my mum and she told me it's really  
38 important to think a lot, really hard, to try to remember  
39 much more about what happened." It's that introduction of  
40 imagining what might have happened which I think creates  
41 another level of vulnerability for source monitoring  
42 errors. It's something that's so easily preventable  
43 because it almost always occurs in between the need for an  
44 investigation being realised and the proper interviewing  
45 actually happening.

46  
47 PROFESSOR GOODMAN-DELAHUNTY:   Are there some researchers

1 who would like to comment on this further?

2

3 PROFESSOR KEMP: In relation to that point, I think these  
4 errors are really, really easy to induce in  
5 adults - incredibly easy. It's just so straightforward.  
6 Time matters.

7

8 But I would have thought where they are particularly  
9 relevant in our consideration here is in historical  
10 reporting of child sexual abuse, where you have long  
11 periods of time and will have been exposed to enormous  
12 amounts of information and will have engaged in the kind of  
13 imagination you're thinking about - media reports and all  
14 sorts of things. It will become incredibly hard to  
15 separate out the original then from all of that stuff in  
16 that kind of situation.

17

18 PROFESSOR GOODMAN-DELAHUNTY: We have a few minutes  
19 further in the session before we take a break. We can open  
20 up the session to other comments, perhaps going back to  
21 earlier topics where you didn't have a chance to contribute  
22 thoughts that you wanted to add.

23

24 DR VAN BERGEN: Could I just add that with regard to  
25 infantile amnesia, we know that the average is around three  
26 and a half when adults are remembering backwards, but there  
27 are cultural differences as well, and individual  
28 differences, so it may be in some context with some people  
29 who are being interviewed that that memory would be  
30 younger again.

31

32 DR VAN GIJN-GROSVENOR: What's the background? What are  
33 the causes for why there are some differences?

34

35 DR VAN BERGEN: They are theoretical explanations, but  
36 there is, for example, evidence that Maori adults may  
37 remember a little bit younger than Pakeha, or white  
38 New Zealand kind of equivalents. The explanation relates  
39 to the oral tradition that encourages sharing of memory  
40 stories. There's a little bit of evidence that Chinese  
41 participants may have slightly later kind of average age of  
42 first memory and the explanation is that there may not be  
43 as elaborative and expanded conversations about the past,  
44 the conversations often about the past. The conversations  
45 about the past often have a slightly different purpose in  
46 more eastern collectivist cultures than western  
47 individualistic cultures. But there would be broadscale

1 cultural differences and I think, more importantly, when  
2 you're talking about an individual's memory, there can be  
3 that variability.

4  
5 PROFESSOR THOMSON: Is that an issue because they  
6 developed memories earlier because of this linguistic  
7 differences between cultures, or is it because the parents  
8 have shared these memories and these memories have now  
9 become the memories of the child?

10  
11 DR VAN BERGEN: It's difficult in the data that's  
12 collected to distinguish those, and Karen may know more  
13 than me, or may remember better than me, but the studies  
14 are typically asking people to remember back.

15  
16 A lot of the research with infantile amnesia is based  
17 on self report of memory, so determining whether those were  
18 stories that have been adopted over time, even whether the  
19 estimate of age at the time is an accurate one is a little  
20 bit slippery. So, again, I think it's important not to  
21 draw really strong conclusions about it other than that  
22 there is that variability.

23  
24 DR VAN GIJN-GROSVENOR: Some of this discussion really  
25 points to some of the exciting innovations in the area of  
26 autobiographical memory, as opposed to just event memory or  
27 episodic memory on its own. Perhaps some of you who are  
28 doing research on autobiographical memory might have some  
29 comments that you'd like to add to the record about those  
30 implications for child sexual abuse matters?

31  
32 ASSOCIATE PROFESSOR SALMON: I think there are some  
33 studies on infantile amnesia which have enabled, to some  
34 extent, the bypassing that problem of always reflecting  
35 back.

36  
37 I completely support what you are saying about the  
38 variability, but the critical take-home message from my  
39 perspective is really that to have a degree of trust of  
40 those memories, you need to be dealing with children rather  
41 than adults, the memories from about the age of three and a  
42 half. Adults' memories at that time aren't reliable.

43  
44 I have a lot I could say about autobiographical  
45 memory, but perhaps in the later sessions.

46  
47 DR LENNINGS: It came up in a recent case where an adult



1 alleged something happened when they were around three and  
2 a half, or four, but what they have got is a series of  
3 interviews or disclosures they have made across their life  
4 span. They are now an adult. The question arises as to  
5 the reliability of their recall of the event as an adult,  
6 given the opportunity for repetition of the event at  
7 various points along their childhood and adolescent years.  
8 The question then is the potential for insertion of false  
9 memory, for distortion of memory, versus the reliability of  
10 that memory.

11  
12 ASSOCIATE PROFESSOR SALMON: I would ask how those  
13 conversations or interviews were conducted.

14  
15 DR LENNINGS: They were largely informal conversations.

16  
17 ASSOCIATE PROFESSOR SALMON: There is the potential, of  
18 course, for an insertion of false details, whether or not  
19 that alters the essential aspects of the evidence, I guess,  
20 is unclear, but the detail will be more malleable.

21  
22 DR LENNINGS: That's the uncertainty of it all. It gets  
23 down to cross-examination about it. It's uncertain.

24  
25 PROFESSOR THOMSON: I had a similar case, Chris, where the  
26 child who was interviewed initially at five years of age,  
27 said that she had been assaulted anally and was quite  
28 definite about that. The person now at 25 years of age is  
29 saying, no, it was vaginal assault. So, on the one hand,  
30 you've got an interview that took place soon after the  
31 alleged event, with quite a young child, and now you have  
32 this person 25 years of age, perhaps more adept with  
33 language, now asserting that it was vaginal penetration. I  
34 don't know what you do with that.

35  
36 MS SANDERSON: We will take a break now for half an hour.  
37 There is some morning tea just outside the room.

38  
39 **SHORT ADJOURNMENT**

40  
41 MS SANDERSON: We might get underway again. I do think  
42 this might be the best roundtable group we've ever had in  
43 terms of people coming in at the appointed time, sitting  
44 down and being ready to start, so congratulations.

45  
46 Just before we get into the next topic, there was just  
47 one question that struck me that I wanted to clarify and it

1 was coming out of a comment I think from Richard Kemp about  
2 the issue of the source monitoring errors and I think you  
3 made a comment about it being perhaps particularly an issue  
4 with historical abuse reports where perhaps there has been  
5 media coverage and other sort of sources of information  
6 than a memory.

7  
8 I just wanted to clarify is that something that you  
9 are saying might lead to errors in detail where perhaps  
10 someone reports historical abuse and they attribute it say  
11 to a particular year thinking they remember it, but in fact  
12 they've read the year in media coverage, or is it an error  
13 that's in a sense so fundamental that they're actually  
14 reporting abuse that didn't happen?

15  
16 PROFESSOR KEMP: That is a difficult question and it  
17 depends what you mean by "abuse that didn't happen". I can  
18 imagine a situation where you might get to the point where  
19 you'd have a misinterpretation of an event, for example,  
20 I think that would be possible. Whether you would expect  
21 someone to remember an event which has no basis at all in  
22 fact, I think is less likely.

23  
24 DR VAN GIJN-GROSVENOR: Welcome back after the tea break.  
25 Trauma psychopathology has already been discussed a little  
26 bit earlier in the first session and I actually want to ask  
27 Richard Bryant, and then after Richard Bryant, Deirdre, to  
28 talk about this topic. Can you talk about psychopathology  
29 and influence on children's memory?

30  
31 PROFESSOR BRYANT: Yes, in one minute that's real easy.  
32 There are a couple of points. Following trauma, we know  
33 that people will have variable responses, as we have heard  
34 this morning, psychologically. Even after childhood abuse,  
35 we do need to remember that a lot of people are resilient  
36 and we should not jump to the conclusion that all trauma  
37 leads to psychopathology, even childhood trauma.

38  
39 Having said that, we know that a big predictor of  
40 traumatic stress response, which doesn't need to be PTSD,  
41 it could be depression, it could be a lot of other things,  
42 the more often you have it, the more prolonged it is and  
43 the more interpersonal it is, it really markedly increases  
44 the risk of those negative effects persisting over time.

45  
46 How those responses impact on memory? I will stick to  
47 the retrieval aspect of memory rather than the encoding

1 because we talked about that earlier. We do know that  
2 mainly in the field of PTSD, which is where most of the  
3 work has been done, people retrieving trauma memories from  
4 the past, that is influenced by the level of post-traumatic  
5 stress that they have. This sort of comes down to some  
6 points a couple of bullet points down. Even though it  
7 impacts how people remember these events, it can impact on  
8 the accuracy of these memories in some ways, but to be  
9 honest, in terms of the field as we know it, most of the  
10 research is we actually don't know what happened at the  
11 time.

12  
13 There is a lot of research that tells us about the  
14 patterns of retrieval and the patterns of memory and the  
15 qualitative features of those, we know it is fragmented, we  
16 know that it is changing over time, we know that it is  
17 dynamic and like all autobiographical memory these memories  
18 change as the person's current psychological state and  
19 context changes. How that relates to accuracy we really  
20 don't know a lot because we can't do those sort of designs.

21  
22 The last point I would make in terms of a mistake  
23 I think a lot of people make about trauma memory is that a  
24 lot of the memories that people read about are the pristine  
25 flashback memories that people have of trauma; these are  
26 very vivid, compelling, perceptually rich memories. They  
27 often assume that they are hardwired memories and that they  
28 are more accurate and in fact we know that that is not the  
29 case. We know that they also are dynamic and they change  
30 over time and even though they are spontaneous,  
31 overwhelming and rich memories, they could be equally  
32 flawed as any other intentional memory.

33  
34 DR BROWN: I don't think I am the right person to speak to  
35 this bullet point. I am sure there will be other people in  
36 the room who would be better able to do that.

37  
38 ASSOCIATE PROFESSOR SALMON: Yes, I would quite like to  
39 speak to this point. The point I would like to make,  
40 following on from Richard, and it does dovetail with some  
41 of the points later, is, firstly, children who have  
42 experienced child sexual abuse have often also experienced  
43 multiple other very significant stresses in their lives,  
44 physical maltreatment, there's relatively high levels of  
45 overlap, chaotic, impoverished family households and so on,  
46 and all of those factors will converge to influence how  
47 they remember and report their experiences, not only the

1 trauma in and of itself.

2

3 The second point I would like to make is that with  
4 some of the issues around the types of autobiographical  
5 memories that children or adults have experienced, trauma  
6 and depression and so on that they have experienced, or  
7 lacking in specific memory detail, there is research  
8 showing that if people are interviewed under non-timed  
9 conditions, that those memory difficulties don't appear.

10

11 My comment about the state of the research is really  
12 that we need to be doing more studies where children who  
13 have experienced maltreatment, who will have potentially  
14 all of the memory biases associated with depression,  
15 anxiety, post-traumatic stress disorder and all sorts of  
16 other difficulties in reporting their experiences,  
17 nonetheless, we need to do research on which those children  
18 are actually interviewed because it may well be the case  
19 that under conditions of good interviewing they can still  
20 provide enough accurate detail. There is some evidence  
21 that that is the case.

22

23 PROFESSOR POWELL: Can I make a point? We have a roomful  
24 of memory experts here and we mustn't lose sight of the  
25 fact that abuse, particularly neglect and physical abuse,  
26 has a big impact on language development when it occurs in  
27 the younger years and of course it's the language in which  
28 we report our memories. With children from maltreated  
29 backgrounds sexual abuse tends to be less associated but,  
30 as Karen pointed out, abuse co-occurs.

31

32 There are interventions that can occur to make it  
33 easier to retrieve these, but it is a major impact and of  
34 course that hasn't been represented in a lot of the memory  
35 research which is done in the laboratory. If anything,  
36 these errors, or things that we were talking about, are  
37 more likely to happen in these children who are reporting  
38 these types of incidents.

39

40 ASSOCIATE PROFESSOR NOLAN: Would you like to give some  
41 examples, then, Martine, about the ways in which abuse  
42 survivors can actually report those memories? We talked a  
43 little bit about non-verbal reporting when we were talking  
44 about children and very young children, but do you want to  
45 just elaborate there and give some examples of how an  
46 interviewer might be trained to use a different approach?

47

1 PROFESSOR POWELL: Yes. What I would like to say is an  
2 issue that I have is a lot of the onus is put on the  
3 interviewee - what is their developmental order, the fact  
4 that are children poorer or better at this. We know that  
5 in certain situations children can be more prone to error  
6 and I think we need to put the onus of responsibility on  
7 the interviewer and for this reason: if you're looking at  
8 accuracy, which is paramount in these types of interviews,  
9 individual differences due to vulnerabilities, cognitive  
10 reasons, language reasons, have negligible differences when  
11 asked open-ended questions. There are some key  
12 publications that can provide more detail around that.

13  
14 When you are asked more narrowly focused questions or  
15 questions that focus on specific details, error rates are  
16 compounded, the individual differences are compounded in  
17 response to those questions. I think while there is a lot  
18 of discussion around limitations of various individuals,  
19 I think there should be more onus put on the interviewer.

20  
21 ASSOCIATE PROFESSOR NOLAN: Thank you.

22  
23 ASSOCIATE PROFESSOR BUSSEY: Just following up on that,  
24 I think the important thing to think about is the kids who  
25 have been abused and particularly young children.  
26 Open-ended questions are fine but they don't provide  
27 sufficient information and so that's why they're asked more  
28 questions and that's where the questions become  
29 problematic.

30  
31 If you look at some of the interviews that occur with,  
32 say, four or five-year-olds, you're often struck by the  
33 lack of coherence of many in their statements, so they are  
34 not monitoring or there is not engaging in a lot of  
35 self-reflection about the coherence of their stories, and  
36 so, again, that's where the interviewer is really quite  
37 crucial in coming in and helping the child to structure and  
38 to scaffold it. It doesn't mean that the child doesn't  
39 have the memory there, but they're not able to report it  
40 because they're actually not self assessing what their  
41 capabilities are and again, their self-reflective  
42 capabilities up until five or six are fairly minimal.

43  
44 PROFESSOR THOMSON: Could I follow on with Kay's point  
45 there. Many of the cases I've had, I've looked at the  
46 interviews and the interviewer is simply following a  
47 mechanical process and appears to have no rapport with the

1 child, responding to the child what the child is saying at  
2 that time; it is as if the next question, the next question  
3 and the next question.  
4

5 PROFESSOR BRYANT: And where this dovetails with the issue  
6 of psychopathology is particularly the more complex  
7 reactions to childhood abuse. We know that they have a  
8 great deal of difficulty in regulating emotion, which is  
9 one of the core dysfunctions. If they're in an interview  
10 situation and it is obviously activating very unpleasant  
11 memories for that person, that's going to be creating a lot  
12 of arousal, it's going to be activating neural circuitry  
13 that actually is going to make it difficult both to  
14 regulate those emotions for those particular people - and  
15 we know that - but those are very similar ones that  
16 actually interact with memory function as well. The  
17 capacity for someone to be able to provide the optimal  
18 responses is just particularly compromised in these people  
19 because of their psychopathology.  
20

21 DR VAN GIJN-GROSVENOR: Thank you. I think we need to  
22 move on.  
23

24 ASSOCIATE PROFESSOR NOLAN: And we will return to  
25 individual differences issues, including intellectual  
26 disability and we'll return to some other issues on  
27 fragmentation and overgeneralised autobiographical memories  
28 as well.  
29

30 Could we now give Penny and Karen a chance to talk  
31 about the parent-child reminiscence work they have been  
32 doing, in the context of how to support complainants  
33 generally when they're making reports of childhood sexual  
34 abuse and memory issues. Over to you, Penny, about the way  
35 in which your research, as you mentioned earlier, gives us  
36 an understanding of improving the skills needed for  
37 autobiographical memory maintenance and reporting.  
38

39 DR VAN BERGEN: Yes. I think I probably should also note  
40 a caveat with this research which is that when we're  
41 focusing on parents and children constructing stories about  
42 the everyday past, it often doesn't matter who contributes  
43 what to the story and in a sense accuracy is not the  
44 primary focus in these kinds of narratives that we're  
45 focusing on in this research and I think Karen can probably  
46 get at some of those issues better than I can.  
47

1           We do know from the research looking at everyday  
2 discussions between parents and young children that the  
3 support that the parent offers the child is critical in  
4 eliciting a kind of elaborative account of the past and in  
5 a couple of ways so the parent is able to scaffold the  
6 particular content that might be interesting, but they're  
7 also able to use techniques, like open-ended questioning,  
8 that offer more grounds for both motivating the child to be  
9 part of that conversation, but also offer them the ability  
10 to elicit events from memory themselves that they wouldn't  
11 necessarily have touched on without that parental kind of  
12 scaffolding and parental guidance.

13  
14           The support that is offered by that adult is critical.  
15 There is also research to suggest that what we'd call  
16 autonomy support is also important, so responding to the  
17 child's own contributions and allowing for the narrative to  
18 evolve in a way that the child is comfortable with and the  
19 kind of things that they want to talk about in that  
20 research field supports the production of more elaborative  
21 memories as well.

22  
23           Obviously, in a court case, or something like the  
24 Royal Commission, then there are competing interests there  
25 in terms of what information is required and how to support  
26 the child in bringing out some of those events, but I think  
27 Karen might be better placed to talk about those specific  
28 instances.

29  
30       ASSOCIATE PROFESSOR NOLAN:    I wonder if it would help  
31 Karen if I could just ask a direct question. Legal systems  
32 don't like it all that often, as we know as researchers,  
33 where you get collaboration between memories. Helen's and  
34 Richard's work on co-witness raises red flags and alarm  
35 bells for the legal system about when people collaborate on  
36 autobiographical memories or episodic memories. In some of  
37 the research that I've read that you've been doing you show  
38 increases in shared memory performance and accuracy, but  
39 not necessarily in individual memory accuracy for the  
40 child, if I'm understanding your research findings well  
41 enough.

42  
43           I just wonder how to actually make this concept of  
44 parent-child reminiscence and co-memory activity palatable  
45 to a legal system that worries about that all the time?

46  
47       ASSOCIATE PROFESSOR SALMON:    Yes, I understand the concern

1 about that. I have a couple of things to say. Firstly,  
2 it is a normal, typical developmental process that parents  
3 ideally lure their children into becoming skilled  
4 rememberers over time. Where that doesn't happen and it  
5 may well not happen and, in fact, it probably doesn't  
6 happen in the families of many children who have been  
7 sexually abused or physically maltreated or neglected or  
8 whatever, then that may be one factor that contributes to  
9 why some of these children find it difficult to provide a  
10 coherent narrative because that structuring is really  
11 important.

12  
13 The issue of the unreliability of co-constructive  
14 narratives is of concern in a legal context. A parent can  
15 help a child reinstate a memory, interpret it and  
16 consolidate that memory in a coherent way which means it is  
17 more enduring and if that's appropriate and so on, then  
18 that memory will last over time. If it is not, if the  
19 parent has their own agenda or the adult or the caregiver,  
20 or whoever has their own agenda, if they talk selectively  
21 about aspects of the experience rather than others, if they  
22 don't talk about it at all, then that's going to have  
23 implications for how it is remembered by the child; so yes,  
24 there is a concern.

25  
26 DR BROWN: Can I pick up on that and Martine will be able  
27 to probably follow on here to. There is some work showing  
28 that some of the processes that Karen and Penny have been  
29 talking about can actually be re-created within an  
30 interview by a familial adult, conversational partners, by  
31 doing a practice interview first about something that's  
32 unrelated to the investigation and in many ways it mimics  
33 some of these processes by placing the child at the centre  
34 of the interaction, empowering them to lead the process but  
35 with scaffolding and cues from the interviewer around the  
36 kinds of information that they are signalling to the child  
37 that it's useful to include in their report, the kinds of  
38 questions that they will encounter later when they're  
39 actually asking them about the event in question, and so in  
40 a very micro way some of these processes can actually be  
41 implemented and the research shows that they are valuable  
42 in children who experience a practice narrative if it is  
43 conducted with open-ended scaffolded narrative oriented  
44 kinds of questions, it will go on to produce more detailed,  
45 more coherent and often more efficient accounts so the  
46 subsequent interview often may take less time than when  
47 children aren't prepared in that way.



1  
2 I think it has value, but in some ways some of the  
3 concerns that the court might have about a co-constructed  
4 narrative would be less if that co-construction is  
5 happening within the interview via a practice interview  
6 about a different topic.

7  
8 ASSOCIATE PROFESSOR SALMON: That may also address the  
9 issue that Richard was raising, to some extent, which is  
10 the high levels of arousal of child sexual abuse.

11  
12 DR BROWN: And facilitate rapport as well, yes.

13  
14 ASSOCIATE PROFESSOR SALMON: Yes, by facilitating rapport,  
15 yes.

16  
17 PROFESSOR THOMSON: There has been some research done in  
18 Finland, the authors are Corkman and Santilla, and what  
19 they're proposing is who made the disclosure and in that  
20 particular study a group of parents across the whole of the  
21 jurisdiction, various ones, had actually recorded their  
22 interview of the child when they suspected sexual abuse by  
23 the ex-partner and these recordings were being given to the  
24 prosecutor to assist the prosecutor in a prosecution.  
25 Analysis of those recordings indicated that most of the  
26 allegations were coming from the parents and not the child.  
27 I think that that paper is a very informative paper.

28  
29 ASSOCIATE PROFESSOR NOLAN: Thank you. We have opened up  
30 a big issue here on co-constructed narratives.

31  
32 PROFESSOR THOMSON: You did.

33  
34 ASSOCIATE PROFESSOR NOLAN: Yes, I did. Richard might  
35 want to say something finally, Penny probably has a lot  
36 more to say too. Do you have anything, Helen or Richard,  
37 that you would like to add here? I know it is not exactly  
38 the same as the paradigm that you use in co-witness  
39 contamination research.

40  
41 DR PATERSON: A lot of the research I did focuses on the  
42 negative effects and that if somebody introduces a novel  
43 item that somebody hadn't originally remembered, this can  
44 change their memory to include that. I think also that we  
45 need to realise that it is because of the methodology that  
46 we're focusing on the negative aspects, and also that  
47 I think it can actually be helpful as well, and we need to

1 consider that, to co-remember with somebody else and  
2 I don't think that the legal system appreciates that  
3 enough.  
4

5 I know that I've interviewed police officers who have  
6 said yes, it is important that you separate witnesses and  
7 instruct them not to discuss, because civilian witnesses  
8 are different, they think, to police officers. They say  
9 for themselves they find it actually quite useful to talk  
10 about their events and collaborate when they're writing out  
11 their statements together.  
12

13 There is this contradiction here, I think, that people  
14 are not appreciating that it can actually be helpful to  
15 discuss with others and cross-cue memories and so forth.  
16

17 ASSOCIATE PROFESSOR NOLAN: Any final thirty second  
18 comments, Penny, on double standard or contradiction that  
19 might be apparent there?  
20

21 DR VAN BERGEN: No, but I just wanted to go back to one of  
22 the earlier points to clarify the research finding, because  
23 I think you referred to a specific finding about shared  
24 memory not necessarily translating to independent memory  
25 later on in that study that Karen and I conducted.  
26

27 ASSOCIATE PROFESSOR NOLAN: Shared memory. Yes.  
28

29 DR VAN BERGEN: I think there were a couple of contextual  
30 factors that are important there. We were conducting an  
31 intervention study where we were to trying to determine  
32 whether it's possible to shift the way in which parents  
33 reminisce and we found that it was. It didn't relate to  
34 children's independent narrative six months later, but  
35 there is separate research from 12 months later,  
36 particularly with children with a high self-awareness at  
37 that young age where it does translate to independent  
38 memories and that was based on hypotheses from a lot of  
39 observational work showing relationships between that kind  
40 of more high elaborative style than independent memory  
41 later as well.  
42

43 ASSOCIATE PROFESSOR NOLAN: Thank you. Fred, quickly?  
44

45 PROFESSOR SEYMOUR: Yes, quickly. Research where parents  
46 and young people have been interviewed about their  
47 experience of the whole process, from disclosure through to

1 reports, reveals that parents are often involved in terms  
2 of advice given as to what they should and shouldn't or can  
3 or can't speak about with their child. It is important to  
4 be aware of the influence they might have on their child's  
5 memory and report, but what I'm really suggesting is part  
6 of the way that they're dealt with when a disclosure is  
7 being managed should include some consistent advice to  
8 parents, for whom it is a crisis; disclosure is of course a  
9 crisis.

10  
11 ASSOCIATE PROFESSOR NOLAN: So complainant support thought  
12 of broadly there to include --

13  
14 PROFESSOR SEYMOUR: Complainant support for the  
15 non-offending parent. The focus becomes very much the  
16 child and parents tell us in New Zealand and other  
17 countries that they are lacking in support through this  
18 process.

19  
20 DR HENDERSON: I would second that as an ex-prosecutor and  
21 a Family Court lawyer where there is sexual abuse going on,  
22 it is so hard for the parents, they're in crisis and they  
23 get no assistance as to what they should be saying, other  
24 than from people like me who don't actually know. All we  
25 really know is that there is a hint of collusion or  
26 coaching, that's it.

27  
28 DR DEAR: In the middle of writing up a paper, actually,  
29 when we have interviewed mothers of young children where  
30 there is no history of abuse about what they think would be  
31 the important things to say, or the important way to  
32 respond to that disclosure, and particularly, their  
33 understanding of what investigators might need, and I can  
34 tell you, this was just an exploratory qualitative study,  
35 they haven't got a clue what investigators need and those  
36 who think they know are basically 180 degrees in the wrong  
37 direction, pointing in exactly the wrong direction as to  
38 what they think on the basis of television programs that  
39 investigators need from them.

40  
41 ASSOCIATE PROFESSOR NOLAN: We must move on I think to  
42 betrayal trauma and what should be written there is  
43 "institutional betrayal trauma theories".

44  
45 PROFESSOR GOODMAN-DELAHUNTY: There are a number of themes  
46 that seem to emerge in the literature that perhaps are  
47 related here. One we didn't talk about when mentioning the

1 reminiscence issues was attachment style and that  
2 definitely surfaces in quite a lot of memory studies, and  
3 another set of literature that has emerged is that under  
4 the label of "betrayal trauma" or "institutional betrayal",  
5 and some of that really does seem to address issues of  
6 intimate abuse or interpersonal abuse, or is framed along  
7 those lines.

8  
9 I would like to get some feedback from some of you  
10 here who may have looked at that literature as to how you  
11 think it fits with some of the memory issues that we have  
12 been delving into, and I thought perhaps, Greg, that we  
13 would call on you to talk a little bit about this, drawing  
14 perhaps on some of your past work with intimate abuse in  
15 domestic violence situations, or others, and whether there  
16 are lessons that come from that.

17  
18 Some of this abuse might be violent, some of it might  
19 be non-violent and then the issue that seems to be raised  
20 in the betrayal literature is whether this is unique or  
21 whether this is different from lots of other strands of  
22 discussion about trauma from interpersonal interactions as  
23 well and Richard Bryant mentioned some of those as a  
24 particular focus as well.

25  
26 Could we start with you, and perhaps there might be  
27 others to contribute, perhaps Katie, Kay, Chris, some of  
28 the others who have had experience dealing with people who  
29 might have these kinds of claims to address.

30  
31 DR DEAR: I'm not sure that I have anything more to say  
32 than what was said in the document.

33  
34 PROFESSOR GOODMAN-DELAHUNTY: Let me ask you this  
35 question: I think some people have regarded that as quite  
36 a controversial line of theory, and we haven't received a  
37 lot of feedback about that topic, so perhaps you can  
38 indicate whether you think it fits in alongside others, is  
39 it the same as or is it different?

40  
41 DR DEAR: Well, reflecting on my practitioner's  
42 experience, I think that the betrayal issue is certainly  
43 huge in what people talk about, particularly within  
44 familial abuse, domestic violence, neglect, whatever, or a  
45 whole range of events, like in the family court. It  
46 doesn't have to be abuse or illegal behaviour, it can just  
47 be the way that family members treat each other.

1  
2 I am not sure that I can add anything in terms of the  
3 impact on memory processes, other than to say memory is  
4 already a constructed process, as we all know, and part of  
5 what is reconstructed is the meaning of events. I suspect  
6 that's where the whole betrayal, and the relevance of "why  
7 this upsets me", or "how I make sense of it", might be an  
8 important issue.

9  
10 PROFESSOR POWELL: The concept of betrayal is related to  
11 grooming, isn't it? It's that insight into how you could  
12 be within a situation where you've almost been complicit to  
13 certain behaviours, and that you haven't reported.

14  
15 Others might be able to correct me if I am wrong, but  
16 I can't see that the process of grooming differs very much  
17 from somebody within an institution or someone within a  
18 family. Small behaviours grow and then develop into  
19 situations. It happens equally, whether it be a teacher or  
20 a caregiver in an institution, that sense of betrayal. I  
21 think it's also very much linked to age. Younger children  
22 don't seem to be able to recognise the impact and how that  
23 grooming has unfolded compared to, say, adolescents when  
24 you start to get more socio development. The emotional  
25 impact of realising this is more profound in an older age.  
26 It can have a major impact on willingness to report and how  
27 somebody chooses to report.

28  
29 DR BLACKWELL: I think it goes back to what we were  
30 talking about before morning tea, the sense of complicity.  
31 I think that's often a really big barrier to reporting  
32 sexual abuse, because people think that because they seem  
33 to agree with it, and often they were asked whether it was  
34 nice, or they felt they had some control over it at times,  
35 once the grooming process went through, that enormous sense  
36 of shame, embarrassment, and self blame.

37  
38 PROFESSOR POWELL: I have heard in the data when I was a  
39 clinician, people say, "I now understand what that was. I  
40 never saw it as sexual abuse when I was younger".

41  
42 DR BLACKWELL: Yes. Again, that's how a memory that  
43 wasn't necessarily traumatic to start off with has become  
44 associated with a lot of emotional trauma when it's  
45 reported subsequently.

46  
47 DR DEAR: That's what I was trying to say before, when I

1 say it's how people put a new meaning or interpretation on  
2 memories at a later point in time.

3  
4 MS SANDERSON: Can I perhaps just add one thing. I guess  
5 just thinking about the various private sessions and  
6 accounts that I have seen, I can certainly understand the  
7 sort of observation of betrayal coming out of a report or  
8 an account of abuse where there's been grooming.

9  
10 I guess the other very strong strand I think that we  
11 see is where betrayal is particularly in a situation of a  
12 child being removed into state care and it's almost a  
13 betrayal at the legal level rather than necessarily around  
14 the abuse, in the sense that they were taken from a family  
15 and put in an institution and not kept safe, or perhaps in  
16 a faith-based institution, where there's an element of  
17 grooming, perhaps more in the nature of the family space  
18 than necessarily grooming the child.

19  
20 I think we see a variety of accounts where betrayal is  
21 a very strong theme, and where it seems to be particularly  
22 influential in very delayed reporting.

23  
24 DR LENNINGS: I don't know whether I am going off track  
25 here, but one of the things that sits in my mind from the  
26 time when I worked in institutions was that the institution  
27 tends to protect the staff member, even when the staff  
28 member may have done wrong. So you get a kind of adult  
29 betrayal system. The person not only gets groomed or  
30 abused by a person within the organisation, but then the  
31 organisation tends to close ranks and it makes it much more  
32 difficult for the person then to trust outside that  
33 organisation, because their experience is that power  
34 protects power. That becomes a very problematic obstacle  
35 for a lot of young people when they are trying to deal with  
36 what do they do next, what do they do now about what's  
37 happened to them.

38  
39 DR SEIDLER: I think that was my point, that I don't think  
40 it affects memory, but it definitely affects reporting. I  
41 think the difference between the individual grooming that  
42 you were talking about and the institutional betrayal is  
43 that the effects of that grooming become magnified and  
44 transferred out because of the institutional response to  
45 the complaint, which is often, as Chris said, to protect  
46 the abuser.

1 But also, even if the institution does not respond  
2 that way, from the survivor's perspective or the  
3 complainant's perspective when they look at the power the  
4 person has within the broader institution, that can serve  
5 to silence the complainant from making a report because  
6 they perceive this person having this power - all these  
7 people adore them, everybody looks up to this person. Even  
8 if the response isn't to silence or to sideline or minimise  
9 the victim's experience, the actual presence that person  
10 has within the institution can be quite powerful.

11  
12 What happens is that betrayal generalises to other  
13 institutions as well - "I can't trust the authorities,  
14 I can't trust the police, I can't talk to child protection,  
15 because these people have failed to protect me, so I shut  
16 down from those institutions". I think it's a much broader  
17 issue of betrayal.

18  
19 DR HENDERSON: I had a client who never entered an  
20 Anglican Church again, when she got out of the institution,  
21 ever.

22  
23 PROFESSOR POWELL: In the studies where I have interviewed  
24 victims, often the justice procedure, the way in which they  
25 were treated was more important. In a way, how they were  
26 treated by the system is actually more important than the  
27 outcome. You could have someone who says, "It's a shame  
28 that he wasn't put away for what he did to me, but at least  
29 I was heard and believed." I think the three most  
30 important things to victims is that they are heard and  
31 understood and not judged.

32  
33 DR SEIDLER: And believed.

34  
35 ASSOCIATE PROFESSOR BUSSEY: And believed. I think belief  
36 is a big issue. Lots of people try to tell. Disclosure is  
37 a process. They often get up the various forms of linkage  
38 and they are not believed and they are not believed in the  
39 system, and they feel powerless. So what can they do?

40  
41 DR SEIDLER: "They are not that kind of person, he  
42 wouldn't do that, so it can't be true".

43  
44 ASSOCIATE PROFESSOR BUSSEY: That's exactly right, so it  
45 undermines any credibility that the child has.

46  
47 PROFESSOR SEYMOUR: The concept of betrayal links the

1 relationship between the perpetrator and the victim. The  
2 focus should be much wider than that, in the context of  
3 what happens next, what level of support is provided that  
4 matters. That broader contextual view is more relevant.

5  
6 DR HENDERSON: And the presence, as you say,  
7 acknowledgement and apology coming from the head of the  
8 institution can be transformative to a degree that is just  
9 extraordinary.

10  
11 PROFESSOR GOODMAN-DELAHUNTY: Thank you. I think I have  
12 one last question that might lead us into the next topic as  
13 well, and that's really whether the sequelae in outcomes of  
14 betrayal-type trauma or institutional betrayal are likely  
15 to be different, or as severe. Certainly, can the kind of  
16 traumatic psychopathology that is sometimes associated with  
17 child sexual abuse be expected in institutional or betrayal  
18 trauma claims, equivalently? I have seen there have been  
19 arguments about more fragmentation of memory, more PTSD and  
20 so forth associated with it. Perhaps, Richard, you'd like  
21 to comment on that?

22  
23 PROFESSOR BRYANT: I wouldn't say there's more memory  
24 fragmentation, et cetera, associated with that sort of  
25 trauma. That's just associated with trauma.

26  
27 I think it's more about when the trauma occurs and for  
28 how long it occurs, and I think the point that's been made,  
29 if I am raped for ten years within my nuclear family versus  
30 I am abused for ten years within an institution, really,  
31 what is the critical difference there? Where the field is  
32 at the moment, it's about when does the abuse occur and for  
33 how long. What we are now learning is that if abuse occurs  
34 before certain ages of neural development, it can have  
35 life-long, long-term impacts on one's brain and that  
36 impacts on my emotional state, my cognitive state, on how I  
37 can remember things and how I deal with that information.

38  
39 That's really a critical difference in terms of the  
40 post trauma psychopathology, the duration and onset of it,  
41 as distinct from was it in an institution or not in an  
42 institution, because a lot of the common factors occur in  
43 both.

44  
45 DR SEIDLER: Except if you are in a institution, the  
46 perception of the survivors is, "The entire institution  
47 supported that person's abuse of me." So that abuse



1 becomes much more legitimate in their minds, much more  
2 sanctioned, much more supported by a wider range of people,  
3 which can have challenging effects.  
4

5 PROFESSOR BRYANT: But that's a scale thing. A lot of  
6 people we see, they see that within their wider family.  
7 I deal with a lot of indigenous communities and the  
8 childhood abuse is rampant - "Everybody in this community  
9 is raped, all the time, and everyone accepts it". It's not  
10 just in these institutions; it's in certain communities,  
11 it's in certain subcultures.  
12

13 MR TOLLIDAY: With the institutional betrayal, in my mind  
14 there's a difference with institutional betrayal if the  
15 institution is an institution that the child has gone to on  
16 the basis of being betrayed, or not getting what they are  
17 due or should have in their life. So if they are moved  
18 into an out-of-home care situation, they have got a  
19 pre-existing set of events, usually traumatic, so they are  
20 not on the same basis of having a unique trauma of the  
21 child sexual abuse.  
22

23 Sometimes the betrayal is experienced as something  
24 that goes as fundamental as to survival, as opposed to  
25 undermining a relationship, or undermining a capacity to  
26 connect with a chosen institution or belief system or  
27 spiritual sort of betrayal. So it's not singular, but it  
28 actually could be amplified by the contents and what the  
29 history of the individual child has been.  
30

31 DR VAN GIJN-GROSVENOR: The next topic is fragmentation,  
32 over generalised autobiographical memories. Actually, I  
33 would like to invite feedback from Fred, followed by Neil,  
34 and Richard, perhaps. Can fragmentation of  
35 autobiographical memory be assessed and what are the  
36 features?  
37

38 PROFESSOR SEYMOUR: I think there are other people more  
39 qualified to speak on this.  
40

41 PROFESSOR BRYANT: I think Karen made this point correctly  
42 earlier: we know that PTSD and depression and suicidality  
43 is associated with over-general retrieval of  
44 autobiographical memories.  
45

46 PROFESSOR GOODMAN-DELAHUNTY: Sorry, for the record, can  
47 you elaborate what that is? I think some people,

1 especially, who might be reading this, won't really  
2 understand what we mean by "over-general autobiographical  
3 memory".  
4

5 PROFESSOR BRYANT: If you ask somebody to retrieve a  
6 memory from their personal past, can you actually retrieve  
7 the specific details - "It happened on a particular day at  
8 a particular time, maybe a particular person was there",  
9 that level of detail. In things like PTSD, and including  
10 survivors of childhood abuse, we know that's characterised  
11 by people having more difficulty in doing that.  
12

13 I think the point that Karen made is correct, that  
14 it's not that they can't do it, they are just slower at  
15 doing it. They don't do it as spontaneously. If you give  
16 them more time or you give them prompts, they often can do  
17 it. I think we just have to keep that in mind. Often it's  
18 a simplistic notion relative to healthy people they do have  
19 that relative deficit, but it's not that they can't do it.  
20

21 The other thing I think we need to remind ourselves of  
22 is the specificity of the memory. That doesn't speak to  
23 the accuracy. If you look at virtually all of the  
24 specificity literature, it is just, "Am I recalling a  
25 specific memory?" We don't care if it's false or true and  
26 we know it changes over time. I think we have to remind  
27 ourselves of that.  
28

29 In terms of the fragmentation, we know that in most  
30 cases of trauma, that is how that memory will get encoded,  
31 because of the very high arousal. It won't be in a neat  
32 narrative. We'll have a bit of this, a bit of this and a  
33 bit of this. The greater the arousal, the more likely it's  
34 going to get encoded that way.  
35

36 When I put it together, repeatedly over time, it tends  
37 to get created into a coherent narrative. We know that  
38 through therapy contexts and other cognitive interviewing  
39 contexts.  
40

41 DR VAN GIJN-GROSVENOR: How can fragmentation of  
42 autobiographical memory be assessed? How is that possible?  
43

44 PROFESSOR BRYANT: Normally we would just ask the person,  
45 you know, "Tell me about your memory." If I can give an  
46 example, we might have, say, a police officer come in and  
47 they might just say they just have images of red blood,

1 that's all they can remember of a scene, nothing more - no  
2 story, no narrative. If you keep asking them that, they  
3 will start to put the pieces together. We don't prompt  
4 them, we don't guide them, but when they start to rehearse  
5 it, hopefully they can start to put the pieces together.  
6

7 We do need to understand that the more we get people  
8 to repeat, we have to be careful about guiding them,  
9 because it is very easy, when you do have gaps in memory,  
10 and this happens in therapy - unfortunately, too  
11 often - people will guide somebody in a particular  
12 direction and it takes a particular shape, and that's not  
13 necessarily what happened. A narrative can exist between  
14 the interviewer and the interviewee that that is what  
15 happened, but that's actually a narrative truth rather than  
16 an historical truth. I think we just have to keep that  
17 caution in mind.  
18

19 DR DEAR: You raise an important point about therapy.  
20 The point of therapy is not to assist people to be more  
21 accurate in what they remember, it is to be therapeutic in  
22 what they remember, in a sense. So the aim in therapy is  
23 actually to get people to be able to have an understanding  
24 that allows them to put things aside and move on with their  
25 life and not be troubled by it. Almost by design, accuracy  
26 is irrelevant to therapy.  
27

28 DR VAN GIJN-GROSVENOR: What are the processes in  
29 children? Could you elaborate on children?  
30

31 PROFESSOR BRYANT: I would leave that to other experts in  
32 the room, to be honest, the nature of fragmentation and  
33 overgeneralised autobiographical memory in children.  
34

35 PROFESSOR BREWER: I won't speak to that. I claim no  
36 expertise in that side of it. I was welcoming listening to  
37 Richard.  
38

39 ASSOCIATE PROFESSOR SALMON: I have recently done some  
40 longitudinal research on the development of over-general  
41 memory in adolescents, and the only thing I'd like to add  
42 to what Richard said is that I find that over  
43 general-memory and conflicts are problematic, and secondary  
44 to Richard, other than problematic, strategies such as  
45 avoidance.  
46

47 PROFESSOR POWELL: Over-generalisation is a phenomena with

1 repeated events as well.

2

3 DR VAN GIJN-GROSVENOR: Can you elaborate?

4

5 PROFESSOR POWELL: If you are asked to remember an episode  
6 or an occasion on which a various repeated event happened,  
7 you tend to go for the things that were consistent across  
8 all times. We remember the routine of going to a  
9 restaurant, but we might not be able to remember the  
10 restaurant we went to on 12 July. It's consistent with  
11 general in the sense that those things are fixed, the gist  
12 as opposed to the detail.

13

14 DR BLACKWELL: Greg said something about accuracy in terms  
15 of therapy is not important. I just wanted to clarify that  
16 you meant that some of the details weren't important,  
17 perhaps?

18

19 DR DEAR: Yes.

20

21 DR BLACKWELL: I think that one of our jobs as therapists  
22 is to get some reality about it, because I think it is very  
23 damaging for someone to believe that they have been  
24 sexually abused, for example, if they have not. I just  
25 wanted to clarify that you meant about details.

26

27 DR DEAR: Exactly. The meaning or the reconstructed sort  
28 of memory of events that a person might develop across the  
29 course of therapies is in order to assist that person to  
30 live with what happened and move on, not with the intention  
31 of making things more accurate.

32

33 DR BLACKWELL: Yes, I understand.

34

35 DR DEAR: I take your point. There are many occasions in  
36 therapy where reality is an important therapist device as  
37 well.

38

39 ASSOCIATE PROFESSOR NOLAN: Can I continue some of the  
40 themes that we have got here in the ten-minute span between  
41 us and your lunch. We wanted to cover some of the  
42 discussions in the literature about avoid and coping  
43 strategies, in particular, and their impact on memory.  
44 Again, drawing on what Suzanne might want to say here about  
45 therapeutic approaches, and even the understanding of  
46 coping strategies and whether someone is naturally or  
47 otherwise, being avoidance in their coping and its impact

1 on memory, to continue the conversations that we already  
2 have. Maybe the other clinicians, even Chris or Greg want  
3 to talk about that.

4  
5 We also wanted to cover individual differences in the  
6 intellectual disability issues. Maybe Suzanne and Deidre  
7 can comment on that. That's a lot of people to talk in ten  
8 minutes.

9  
10 DR BLACKWELL: I'll be very brief. I'm sure that Richard  
11 would comment on this, too, that we know that people with  
12 post-traumatic stress disorder often avoid in terms of  
13 thinking about it and avoiding anything that reminds them  
14 of some of the experiences that they have had.

15  
16 Therefore, they will, by their avoidance be exposed to  
17 this abuse that might remind them of an event. Over time I  
18 think those memories can become eroded until such time as  
19 there may be something that, again, cues them, and  
20 depending on the strength of that, the memory may be  
21 reactivated, if you like.

22  
23 ASSOCIATE PROFESSOR NOLAN: Thank you for that. Richard,  
24 would you care to say something? Greg or Chris?

25  
26 DR LENNINGS: I think one of the things that you do when  
27 you are working with trauma clients is that you have the  
28 kind of understanding that some memories are safe to start  
29 looking at now, some memories you need to delay coming out,  
30 and you don't necessarily change the accuracy or  
31 reliability of the memory, but you help the person stage  
32 the way they access their memory, so that they are not  
33 overwhelmed or paralysed by it all happening all at once  
34 and experiencing in it in an uncontrolled fashion.

35  
36 I think it's important, when you are looking at  
37 psychological processes towards coping, that you don't try  
38 to change the memory, but you try to give the person  
39 control over how they access that memory.

40  
41 ASSOCIATE PROFESSOR NOLAN: Thank you. Susan, if we start  
42 to talk about individual differences and intellectual  
43 disability in this context of trauma and memory, what would  
44 you like to --

45  
46 PROFESSOR S HAYES: I think it's important to say children  
47 with developmental disabilities are more than likely to be

1 the subject of sexual abuse and other forms of abuse. So  
2 there's a large proportion. Of course, if you conflate  
3 that with the fact that they might be in out-of-home care,  
4 or in some kind of institution, then we are really getting  
5 into a situation where there are large numbers.  
6

7 Memories, of course - and we have discussed the  
8 encoding of memory, the use of language and so forth - with  
9 people who have very limited language, it's even more  
10 difficult to encode that in a meaningful way for them.  
11 Therefore, the interviewing techniques probably will need  
12 to be different and, in some instances, where a person is  
13 non-verbal, for example, and might have a communication  
14 board at the front of their wheelchair, basically the  
15 questions might all be closed-ended questions because you  
16 are looking just for one concept. So the notion of them  
17 presenting a narrative is just not going to occur.  
18

19 At the other end, first of all, you also have  
20 difficulties in disclosure because the person who is the  
21 abuser might be the only person that that child can  
22 communicate with, and therefore get the message out to the  
23 wider world that they are being abused.  
24

25 I think at the other end of the sequence that we are  
26 looking at, you are also possibly looking at a very  
27 vigorous cross-examination because of the aggravated sexual  
28 assault charges which are going to be sometimes utilised,  
29 where the person has a cognitive impairment. In other  
30 words, if the accused is facing a far more draconian  
31 sentence because of having this aggravated sexual assault,  
32 then the type of questioning that the child might be  
33 undergoing in the courtroom would be far more vigorous.  
34

35 I think, really, we can't conflate it. We can't say,  
36 "Oh, people with intellectual disabilities or children with  
37 intellectual disabilities, we just have to kind of think of  
38 them as being younger than they are. Instead of being  
39 eight, we'll think of them as functioning at three",  
40 because it doesn't work like that. You just can't take  
41 those extra years off and treat it as if that's a  
42 reasonable thing to do. Different memory encoding,  
43 different questioning techniques, different forms of  
44 disclosure all have to be regarded differently.  
45

46 ASSOCIATE PROFESSOR NOLAN: There are people in this room,  
47 not only Deirdre, who has done some work on interviewing

1 complainant's with intellectual disability, but Stefanie  
2 and Martine have as well. Would you like to say something?

3  
4 PROFESSOR POWELL: I do want to emphasise the extreme  
5 caution in using closed questions with people with an  
6 intellectual disability. The lower encoding, storage and  
7 retrieval actually makes them less prone to error with  
8 certain types of suggestions. If a person suggests  
9 something, if they are less likely to encode, store and  
10 retrieve that, they are less likely to repeat that in a  
11 subsequent interview. So we have repeatedly found low  
12 errors of that kind with people or children with  
13 intellectual disability, but they are more likely to  
14 acquiesce. They are more prone to saying "yes", and that's  
15 probably associated with their poor ability to encode and  
16 store and retrieve what's been said.

17  
18 We have tried, in the past 12 months, using various  
19 types of interview protocols and question types with people  
20 with profound language impairment, and often we could not  
21 get those people without intellectual impairment as well.  
22 I must emphasise that it's a very, very small group of  
23 people where open-ended questions were not useful in  
24 eliciting detail. That's the sort of people with very  
25 limited language, two to three words. I think you made the  
26 point, too, that if somebody has the language level of a  
27 4-year-old, then these questions are useful in eliciting  
28 information.

29  
30 I mentioned before that individual differences were  
31 minimised in terms of accuracy. They are less likely to  
32 provide detail, but with carefully crafted questions that  
33 use their own cues, their own information, cued to  
34 elaborate on that account, you can get extensive detail.

35  
36 ASSOCIATE PROFESSOR NOLAN: Thank you. Deirdre?

37  
38 DR BROWN: I found very much what Martine has found,  
39 although I will say that the studies that we have done  
40 don't encompass some of the groups that Susan was talking  
41 about. The children we have worked with have selected out  
42 children that have more complex developmental patterns, so  
43 we are not capturing children who have profound  
44 intellectual disabilities, or who are completely non-verbal  
45 or only minimally non-verbal. So I'll restrict my comments  
46 to children with non-specific developmental delays that  
47 mean they have a level of intellectual functioning in the

1 mild or moderate range of impairment.

2  
3 Across a number of studies and looking at all sorts of  
4 different variables - completeness, accuracy, coherence,  
5 suggestibility, credibility - no, credibility was slightly  
6 different, I'll come to that in a minute. We found a very  
7 similar pattern such that the children with mild levels of  
8 impairment were indistinguishable from typically developed  
9 children that that were matched for developmental level or  
10 mental age. Whereas children with more severe levels of  
11 impairment, those in the moderate group, were different  
12 even from the children matched for mental age.

13  
14 But, as Martine said, all of the children were able to  
15 respond meaningfully to very broad, open-ended questions,  
16 although the children with intellectual disabilities did  
17 benefit from more support and scaffolding with the  
18 questions. The children with intellectual disabilities, as  
19 Martine said, were particularly inaccurate with very closed  
20 and leading questions, more so than the typically  
21 developing children.

22  
23 The credibility issue was an interesting one and I  
24 think it relates somewhat to what Susan was saying about  
25 the difficulties of saying, "Let's just approach this child  
26 as if they were a younger age", because, of course,  
27 physically they are not presenting in that way. They may  
28 in fact be employing language that suggests greater  
29 competency than what they have. They might use words that  
30 it seems they understand and it's only with careful  
31 follow-up questioning that you realise they don't.

32  
33 I think the credibility challenges we don't understand  
34 as well, because it's very difficult, I think, for  
35 interviewers, but also potentially for jury members, to  
36 look at a child presenting as a 12-year-old who has some  
37 degree of verbal ability, and actually try to look at them  
38 through the lens of perhaps being 5 or 6. That's really  
39 difficult, even if in our studies we are able to pass that  
40 back and say, "Hey, look, they are equivalent here". So it  
41 becomes very complex.

42  
43 But I would say that our results showed a remarkable  
44 picture of competency and one that perhaps is  
45 under-estimated, and challenges some of the notions that  
46 you must inevitably use, a very focus and closed-down style  
47 of questioning, although it may be that you need to



1 supplement your open-style with some of those questions to  
2 clarify comments that are made.

3  
4 ASSOCIATE PROFESSOR NOLAN: Thank you. Finally, because  
5 we are at the time for lunch, there were comments made  
6 about cross-examination, which is something we'll return to  
7 after lunch as one of the dot points, not only in this  
8 context of complainants with intellectual disability, but  
9 also just generally outside of that individual difference  
10 variable. We will come back to cross-examination.

11  
12 PROFESSOR POWELL: As to the point you made about people  
13 matching for mental age, in some of the work I have done,  
14 some of the children with intellectual disability performed  
15 even poorer than their mental age matches. I think what  
16 that is reflecting is the different types of experiences  
17 they might have to more typically developing children.  
18 Their perception of themselves as an informant and their  
19 experiences in being the informant and people relying on  
20 them to provide that information. I think that's what  
21 those results show, in the social context, that has a big  
22 impact, which again puts more onus on interviewers to  
23 provide them that practice, the confidence, to speak out.

24  
25 ASSOCIATE PROFESSOR NOLAN: Thank you very much. We'll  
26 call lunch at that point.

27  
28 MS SANDERSON: Yes, if we can come back at 1.30. For the  
29 first half hour of the lunch break the public hearing is  
30 still on. The second half of the lunch break will overlap  
31 with the start of the public hearing break, so you'll have  
32 to share the floor for the second half hour.

### 33 34 **LUNCHEON ADJOURNMENT**

35  
36 DR VAN GIJN-GROSVENOR: Welcome back, everyone, after the  
37 lunch. I hope you have had a good lunch and are ready for  
38 the next part of the day today. I am just going back to  
39 the test that you were filling in in the beginning of the  
40 day. As I said earlier, I was going to come back with the  
41 results of this test. I just want to discuss a couple of  
42 the items on the survey.

43  
44 I won't go much into the statements which had more  
45 "I don't know". We are assuming that perhaps this is  
46 because of expertise in different areas, but I would like  
47 to mention the ones where there was a disagreement on.

1  
2           Going to the first, you should all have the survey.  
3 The second statement, "Most people have continuous memories  
4 of child sexual abuse", roughly 50 per cent said "No" and  
5 roughly 50 per cent said "Yes", so this one was quite  
6 different.

7  
8           I just wanted to discuss this, why might people have  
9 continuous or why might they not have continuous memories  
10 of child sexual abuse. Also, I think perhaps it's in the  
11 way this question is phrased. The problem with all these  
12 questions is that all the terminology was taken out of  
13 these questions and I think that might be a bit of a  
14 problem and perhaps when we were phrasing this question, we  
15 were thinking a little bit about the repressed kind of  
16 memories. We just wanted to talk a little bit about that,  
17 why this might not cause continuous memories or why it  
18 does.

19  
20 PROFESSOR POWELL: I had difficulty with the wording.  
21 I didn't know the degree to which you meant most people  
22 have been abused, repeatedly, or most people that have been  
23 abused have suffered repeated abuse, for instance.

24  
25 DR VAN GIJN-GROSVENOR: Yes.

26  
27 DR DEAR: I wasn't sure what you meant by - and I am not  
28 saying you. I wasn't sure what was meant by "continuous  
29 memories". Are you talking about unchanging or that they  
30 always have some memory? I can't remember what I answered  
31 either.

32  
33 PROFESSOR BRYANT: Why don't you tell us what you actually  
34 meant?

35  
36 DR VAN GIJN-GROSVENOR: We were more referring to people  
37 who have repressed memories who don't have any memory of  
38 the abuse or people who have perhaps always had memories of  
39 their abuse.

40  
41 PROFESSOR POWELL: Is the memory ever inaccessible?

42  
43 DR VAN GIJN-GROSVENOR: Exactly, yes.

44  
45 ASSOCIATE PROFESSOR NOLAN: I think the AGS likes us to  
46 call them "previously unreported memories".  
47

1 DR VAN GIJN-GROSVENOR: Unreported, yes.  
2  
3 ASSOCIATE PROFESSOR NOLAN: Don't you agree?  
4  
5 DR VAN GIJN-GROSVENOR: Yes.  
6  
7 PROFESSOR SEYMOUR: The traumatic memories. I think it  
8 has "trauma" in the term --  
9  
10 PROFESSOR GOODMAN-DELAHUNTY: Which one are we talking  
11 about now?  
12  
13 ASSOCIATE PROFESSOR NOLAN: Item 2.  
14  
15 PROFESSOR SEYMOUR: -- which made an assumption that it  
16 was going to be experienced in the original event as  
17 traumatic, so I thought the term was inappropriate.  
18  
19 PROFESSOR THOMSON: It is now "memories of previous  
20 traumas". When people have had traumas it is talking about  
21 if they have memories of them.  
22  
23 DR VAN GIJN-GROSVENOR: What might be ways or mechanisms  
24 that people might not have those continuous memories or  
25 recall?  
26  
27 PROFESSOR KEMP: It goes to the changing nature of that  
28 memory, doesn't it. You may have some awareness of an  
29 event, but your interpretation of that event might change  
30 dramatically over time. I don't know whether you count  
31 that as continuous memory or not.  
32  
33 DR DEAR: That was my confusion with the term as well.  
34  
35 ASSOCIATE PROFESSOR NOLAN: Are we hearing here that the  
36 actual word, the actual label "continuous" is not helpful?  
37  
38 DR DEAR: That's correct.  
39  
40 DR VAN GIJN-GROSVENOR: So what would be another term  
41 that we could --  
42  
43 PROFESSOR BRYANT: "Unchanging", maybe. If you mean  
44 "unchanging" then --  
45  
46 DR VAN GIJN-GROSVENOR: "Unchanging", okay, yes.  
47

1 DR DEAR: Is that what you mean?  
2  
3 PROFESSOR POWELL: Do you mean from "unchanging" to  
4 "inaccessible"?  
5  
6 PROFESSOR B HAYES: From your description, my  
7 interpretation of the question now is most people have  
8 continuous access to memories of child sexual abuse;  
9 I thought that's what you were asking.  
10  
11 DR VAN GIJN-GROSVENOR: That's what we're reflecting, yes.  
12  
13 PROFESSOR B HAYES: Yes. I think the consensus is "No".  
14  
15 PROFESSOR S HAYES: I interpreted it to mean like a  
16 videotape as opposed to snapshots, so I'm completely out of  
17 step with everybody.  
18  
19 DR BLACKWELL: I couldn't figure out whether it was most  
20 people or where the most were --  
21  
22 PROFESSOR BRYANT: If you're asking in relation to  
23 repressed memories, if that was your intention, it might be  
24 better to route the question in that so people can agree  
25 with that or disagree with that.  
26  
27 DR VAN GIJN-GROSVENOR: Right. We were just concerned  
28 about the audience, that it might not be clear what  
29 repressed memories are, so that was more --  
30  
31 PROFESSOR BRYANT: If you actually don't go down that  
32 route, though, you'll get into a very nuanced argument  
33 about avoidance, normal forgetting, non-rehearsal, and then  
34 it becomes very --  
35  
36 DR BROWN: Non reinstatement, yes.  
37  
38 PROFESSOR POWELL: Yes.  
39  
40 PROFESSOR THOMSON: And suppression.  
41  
42 DR BROWN: Yes, and suppression, exactly.  
43  
44 PROFESSOR SEYMOUR: Most people can access memories of  
45 child sexual abuse --  
46  
47 DR VAN GIJN-GROSVENOR: Yes.

1  
2 DR BLACKWELL: If it has occurred.  
3  
4 PROFESSOR SEYMOUR: -- in their lifetime, or whatever.  
5  
6 DR VAN GIJN-GROSVENOR: I guess that would be probably the  
7 best way forward. Just moving on to the next item, which  
8 was number 18, this was, "Most retractions of reports of  
9 child sexual abuse are due to external pressure." About  
10 two thirds said "Yes" and about one third said "No". Just  
11 to get an idea of what could be other reasons that were  
12 considered --  
13  
14 ASSOCIATE PROFESSOR SALMON: Internal pressure.  
15  
16 DR PATERSON: Internal pressure?  
17  
18 ASSOCIATE PROFESSOR NOLAN: Yes.  
19  
20 DR BLACKWELL: And it is perceived external pressure which  
21 may not be direct, but, like, "I'm going to break the  
22 family up", even though no-one has actually said that to  
23 them.  
24  
25 DR DEAR: I am starting to sound pedantic, but that's  
26 probably a good thing in a room full of scientists. What  
27 does "most" mean? Do you mean 51 per cent or do you mean  
28 the modal category, which might be 20 per cent but it's  
29 more than any other category?  
30  
31 DR VAN GIJN-GROSVENOR: Okay.  
32  
33 PROFESSOR THOMSON: In answer to one of your questions  
34 there, one of the reasons why people might recant is they  
35 have now interpreted the event yet again. There is a whole  
36 range of possibilities that I have to say I circled "Yes",  
37 but that was because I assumed "most" meant over  
38 50 per cent.  
39  
40 DR VAN GIJN-GROSVENOR: Yes. And then number 25, which  
41 was, "Trauma leads to vague autobiographical memory", that  
42 was around fifty-fifty as well.  
43  
44 DR BLACKWELL: "Vague" is a difficult, vague word.  
45  
46 ASSOCIATE PROFESSOR NOLAN: As Evianne explained, we were  
47 trying to strip the jargon out of it. We didn't want to

1 use "overgeneralised" or "fragmented" necessarily.  
2  
3 DR BLACKWELL: "Fragmented" would have been a good word.  
4 Perhaps we could find another word that is more simple.  
5  
6 DR VAN GIJN-GROSVENOR: Yes, what would be most  
7 understandable in terms of --  
8  
9 DR BLACKWELL: "Fragmented".  
10  
11 ASSOCIATE PROFESSOR NOLAN: Vague is pejorative, isn't it,  
12 it is a negative word.  
13  
14 DR VAN GIJN-GROSVENOR: Yes.  
15  
16 DR BLACKWELL: But we are not talking about it all being  
17 vague because we're talking about bits of it might be very  
18 vague and non-existent and bits might be sort of okay and  
19 so on, whereas that implies that the whole memory is vague,  
20 which is not what you're asking, I don't think.  
21  
22 DR VAN GIJN-GROSVENOR: No.  
23  
24 PROFESSOR SEYMOUR: "Incomplete"?  
25  
26 DR VAN GIJN-GROSVENOR: Yes.  
27  
28 PROFESSOR BRYANT: Also, do you mean autobiographical  
29 memory of the trauma or just autobiographical memory?  
30  
31 DR VAN GIJN-GROSVENOR: Yes, both, yes.  
32  
33 PROFESSOR BRYANT: I actually personally said "No" because  
34 I just thought by saying "No" it was actually endorsing the  
35 idea that trauma generally leads to a poor memory and on  
36 balance, it doesn't in terms of if you had to force me into  
37 a "Yes" or "No".  
38  
39 DR VAN GIJN-GROSVENOR: Yes.  
40  
41 ASSOCIATE PROFESSOR SALMON: And I think that there are  
42 many other factors that could obviously lead to the child's  
43 memory in addition to trauma as well, so I found that  
44 really difficult too.  
45  
46 ASSOCIATE PROFESSOR NOLAN: I was just going to say what  
47 if we changed that to something like "trauma leads to

1 incomplete autobiographical memory of the trauma". That's  
2 not --  
3  
4 PROFESSOR BRYANT: Again, that is a great  
5 overgeneralisation.  
6  
7 ASSOCIATE PROFESSOR NOLAN: Yes, they all are.  
8  
9 DR BLACKWELL: "Can lead to".  
10  
11 DR BROWN: You didn't have an "It depends" column.  
12  
13 ASSOCIATE PROFESSOR NOLAN: We also tried to strip away  
14 the "can", "may", "perhaps" type language, but maybe  
15 that's --  
16  
17 ASSOCIATE PROFESSOR SALMON: I don't think we can draw  
18 that conclusion, in that case.  
19  
20 PROFESSOR BRYANT: Could I also ask why you need to retain  
21 every statement?  
22  
23 ASSOCIATE PROFESSOR NOLAN: We don't need to.  
24  
25 PROFESSOR POWELL: We don't need to, no.  
26  
27 PROFESSOR BRYANT: I think some statements like that are  
28 probably better to lose because --  
29  
30 DR BLACKWELL: They're misused.  
31  
32 PROFESSOR BRYANT: -- they're not constructive to actually  
33 have them there, when you've got some other ones further  
34 down that actually do convey the more nuanced meaning.  
35  
36 PROFESSOR GOODMAN-DELAHUNTY: They're not all equivalent,  
37 in a way, at all. The other point I want to just ask about  
38 with respect to trying to convey some of the complexity of  
39 the terminology related to what we've called here "trauma",  
40 is that itself a difficulty? In other words, if you use a  
41 word like "trauma" without qualifying it in one of five or  
42 more different ways, does that lead to absolute confusion  
43 with stress? Is it too non-specific or is it a helpful  
44 construct for a people who might be non-psychologists?  
45  
46 PROFESSOR BREWER: Can I make a general point? It may be  
47 not a useful comparison, but in my field of eyewitness

1 memory there have been a couple of studies published, one  
2 in a very, very good journal, where the methodology says,  
3 "N Experts were given a survey", which looks much like  
4 this, and then they report, "72 per cent of eyewitness  
5 memory experts believe Y" and "26 per cent believe", and  
6 that goes on getting quoted for years and years and years.

7  
8 When you go and read the paper really closely or talk  
9 to some of the people who are involved, sometimes you find  
10 out some of the experts actually weren't experts at all,  
11 they were just peripheral people in a lab, or things like  
12 that, but one of the things you realise if you work right  
13 smack-bang in a field of a particular question, is you say  
14 to yourself, "I think this question is completely  
15 inappropriate." Now, there might be some exceptions to  
16 that.

17  
18 I responded "Don't know" to just about every thing on  
19 there, largely because I don't know and you probably could  
20 have worded it any way, but you could have shifted my  
21 reporting criterion by saying, "You're going to lose your  
22 house", or, "You'll have to walk home to Adelaide if you  
23 don't go with 'Yes' or 'No'", so you would have shifted me  
24 in a certain direction; but whether "Yes" meant "No, that's  
25 100 per cent the case", it wouldn't have meant that.

26  
27 Depending on what the use of these things is, if I was  
28 ever a journal editor or a reviewer who got another one of  
29 these in my field, I would probably reject it without  
30 reading it because I --

31  
32 PROFESSOR GOODMAN-DELAHUNTY: I wonder if there would have  
33 been a difference for the Likert Scale rather than "Yes",  
34 "No".

35  
36 PROFESSOR BREWER: Yes, possibly.

37  
38 PROFESSOR GOODMAN-DELAHUNTY: We'd certainly consider  
39 it --

40  
41 PROFESSOR BREWER: But I think there are so many  
42 ambiguities in every question - and it's not just this,  
43 it's in other things I've seen like that - and then the  
44 response options don't allow for you to express what you  
45 think and that was the word just used, "nuances". I think  
46 that they're potentially a major problem. What worries me  
47 in my field is when you see testimony in a US court where



1 someone stood up and said, "85 per cent of eyewitness  
2 memory researchers believe blah" and you think, "Here's  
3 this judge thinking that and yet, if he had the capability  
4 of understanding the study, he would realise this was a  
5 pretty ordinary study." Anyway, that's just my view.

6  
7 ASSOCIATE PROFESSOR NOLAN: Good point.

8  
9 DR VAN GIJN-GROSVENOR: So then with regard to number 28,  
10 "Children who experienced repeated events reliably report  
11 who, what, where information", I think what we were trying  
12 to refer to here was actually gist, so gist information, so  
13 probably we'd have had different answers. I don't know if  
14 that's --

15  
16 PROFESSOR POWELL: Yes, I would call that just tapping  
17 episodic information, not gist.

18  
19 DR VAN GIJN-GROSVENOR: Right, okay.

20  
21 PROFESSOR POWELL: They are classified as specific  
22 questions. They're targeting specific details at a  
23 particular time and place. And what ones are gist, what  
24 happened, or what usually happens.

25  
26 DR VAN GIJN-GROSVENOR: Right.

27  
28 DR DEAR: Were you meaning to ask about gist?

29  
30 DR VAN GIJN-GROSVENOR: Yes, we were. We were thinking  
31 about --

32  
33 DR DEAR: Okay. Well then, yes, I think Martine's point  
34 is critical, but you didn't ask about gist, yes.

35  
36 DR VAN GIJN-GROSVENOR: Right, okay. And then, actually,  
37 with regards to number 40, "Trauma at the time of abuse can  
38 impair the ability to form any memory of abuse", we were  
39 actually referring here to a very specific, a highly  
40 specific audience which were people who had peritraumatic  
41 experiences, so more kind of like out-of-body experiences,  
42 disassociations at the time of the events, which led to  
43 impaired ability to form or to encode the memories.

44  
45 DR BLACKWELL: You used the word "can" there, which  
46 I thought was useful.

1 PROFESSOR SEYMOUR: It is one of the very few examples of  
2 us being --  
3  
4 PROFESSOR BRYANT: This is Question 40?  
5  
6 DR VAN GIJN-GROSVENOR: Yes.  
7  
8 PROFESSOR BRYANT: Yes. You don't need the word "any",  
9 but the fact that it can affect memory.  
10  
11 DR VAN GIJN-GROSVENOR: Okay. Thank you.  
12  
13 PROFESSOR KEMP: Can I just pick up on Neil's point, with  
14 which I agree entirely, and just point out that there is a  
15 sense in which the results of this survey will be published  
16 in that the transcript is going up. I wouldn't want anyone  
17 to misinterpret the results that have just been read out.  
18  
19 ASSOCIATE PROFESSOR NOLAN: Sure, and I think it is an  
20 important point for the record, but an important thing to  
21 reassure you all of now, that you're not being held to your  
22 comments here in a way --  
23  
24 PROFESSOR THOMSON: But it's out in the public arena.  
25  
26 ASSOCIATE PROFESSOR NOLAN: -- that would find its way  
27 into the public domain or the legal domain in a way which  
28 is not useful for --  
29  
30 PROFESSOR BRYANT: Well, maybe to clarify, what's going to  
31 happen with this?  
32  
33 PROFESSOR GOODMAN-DELAHUNTY: What we were interested in  
34 trying to do was to see whether there was a way to take  
35 some of the technical phrases out of some of the articles  
36 and some of the feedback that we received from people to  
37 see whether those might become useful ways to convey  
38 findings to people who are non specialists.  
39  
40 I think you're giving us very useful feedback in terms  
41 of what kinds of statements are working in that regard and  
42 which are too muddlesome and confusing based on the way  
43 that they've been phrased, so that they're clearly not  
44 going to be of instrumental value in doing that, so they  
45 need more work, but this was sort of a first step in trying  
46 to winnow down and refine some of the detail out of some of  
47 the literature into statements that might be useful for

1 police or for courts or for jurors to know about memory.

2

3 ASSOCIATE PROFESSOR NOLAN: You may be familiar with the  
4 British Psychological Society's attempt to give their  
5 2008-2010 guidelines on memory, in general, where they do  
6 have a box section that has 10 statements which is  
7 attempting to be accessible like this and to somewhat  
8 summarise the literature that probably goes up to 2008 in  
9 their report.

10

11 They are definitely not saying this was all based on  
12 80 per cent of the author-in-committee believing that this  
13 is an accurate statement. They are associating each of  
14 those comments to the literature reviews that are behind  
15 those guidelines being promulgated in the first place.  
16 There is controversy around what they've done, but they're  
17 definitely not doing what Neil is worrying about.

18

19 PROFESSOR KEMP: The point I was raising was more that you  
20 told us the transcript of this discussion will appear on  
21 the website tomorrow or the day after, or something. I am  
22 simply concerned that someone listening to that may  
23 interpret what they've just heard as reflecting the opinion  
24 of people here. I think what is coming out is that it  
25 turns out that terminology is there for a reason.

26

27 PROFESSOR POWELL: There is potentially more consensus  
28 than the responses to this, even if we're not identified.

29

30 PROFESSOR KEMP: Absolutely, yes. We use the terminology  
31 for good reason because it is a shared understanding.

32

33 MS SANDERSON: I think it might be worth saying, too, just  
34 in terms of one of the sort of applied outcomes of this  
35 discussion, of course, if you're looking towards perhaps  
36 guidance to judges or even forms of directions that judges  
37 might give juries, the sorts of ones that we've seen  
38 recommended and the ones that have been adopted in  
39 New Zealand are rarely making definitive statements  
40 because, I think as you're identifying, it's hard to  
41 actually make definitive statements about a lot of this.  
42 They might be directed at counterbalancing, in a way, or  
43 counteracting each of the myths or misconceptions that  
44 might be drawn on in cross-examination, so that it won't be  
45 saying - to choose something that's not necessarily related  
46 to memory. It won't be saying all complainants delay  
47 reporting, but it might be saying many complainants delay

1 reporting and there are a variety of reasons why that might  
2 happen.

3  
4 I think some of the statements are probably more  
5 directed towards perhaps counteracting some of the lay  
6 opinion that's not informed by the research, but then that  
7 might run the risk of not doing enough to accommodate the  
8 technical precision that experts will bring to the  
9 propositions. I don't think we were particularly intending  
10 to publish the list of propositions on the website or  
11 anything like that. Anyone who has persisted in the  
12 transcript will get a good sense of how people have  
13 answered the questions and some of the complexity around  
14 it.

15  
16 DR BLACKWELL: But am I to understand that you don't  
17 intend to publish something which says of 20, or however  
18 many people, X number said "Yes" to this and "No" to that  
19 and whatever?

20  
21 MS SANDERSON: No.

22  
23 ASSOCIATE PROFESSOR NOLAN: Especially in light of the  
24 comments that we've received and especially in light of the  
25 comments of the fact that no-one reading the transcript  
26 knows what we're talking about, I mean in terms of the 40  
27 statements that are in there. Does anyone else want to add  
28 to the record any other comment along those lines?

29  
30 DR DEAR: I have just one more comment. If part of the  
31 purpose of this was to tease out or to identify areas where  
32 there was a consensus that can be articulated in lay  
33 language for judicial officers, or for whoever, then that  
34 might be something that on reflection of our feedback, and  
35 all the rest of it, and this conversation, that you could  
36 probably email out to all of us and those areas where we do  
37 have some expertise on we could say, "A better way to word  
38 it might be this", or, That's something that I think is a  
39 good lay articulation of an accurate summary", or whatever.  
40 If that's the outcome you're trying to achieve, to my mind,  
41 I think it's a really, really important one.

42  
43 DR HENDERSON: As one of the laypeople, non scientists, in  
44 the room, I think it is a great goal, but I don't think you  
45 need to make it as short as this. I think that, actually,  
46 as a layperson, I found this very confusing and I would  
47 prefer the sort of more nuanced description that you were

1 giving, Leigh, and I reference the New Zealand court,  
2 because we can cope with it and I think people will  
3 actually find it more helpful to get a more complex  
4 version. You don't have to break it down to words of one  
5 syllable and less.

6  
7 PROFESSOR THOMSON: And even when you've got agreement,  
8 there's still a problem there, as people may well have read  
9 this and said "Yes" or "No" for very different reasons.

10  
11 DR HENDERSON: Yes, because we're interpreting it  
12 differently, so give us a little bit more, I think, would  
13 actually be more helpful to laypeople.

14  
15 PROFESSOR GOODMAN-DELAHUNTY: Yes. Thank you.

16  
17 ASSOCIATE PROFESSOR NOLAN: We need to move on, I think.  
18 They're very good comments and that might be the nature of  
19 the New Zealand list, the BVS list, whatever might happen  
20 here.

21  
22 The next dot point is on memory for relationship  
23 evidence. There are a couple of motivations for actually  
24 having a conversation about this now. The Consultation  
25 Paper on Criminal Justice that the Royal Commission  
26 released last September has a number of different ideas for  
27 new offences. In the context of institutional sexual  
28 abuse, for example, corporate criminal responsibility style  
29 crimes against the institution themselves, where they would  
30 have responsibility at the corporate level or the  
31 institutional level for what has gone on within their  
32 institution, that requires a specific type of evidence that  
33 may not have often been welcomed into the courts as much in  
34 the past.

35  
36 Persistent sexual abuse where you don't have to prove  
37 all the incidents of the abuse but some indicative typical  
38 examples of the abuse or the abuse relationship, I suppose,  
39 too, in our work, looking across the frameworks for  
40 interviewing, this is definitely one of the dimensions of,  
41 the whole story approach that you should be talking about  
42 relationship evidence as being important for driving the  
43 choices that you have as an interviewer.

44  
45 In that context, maybe people who have worked with  
46 both the offenders as well as the complainants, Katie,  
47 might want to talk about this issue of relationship

1 evidence and the memory people have for the relationship as  
2 well, and we thought maybe another clinician might want to  
3 add to this, I don't know whether it's Greg or someone  
4 else, but do you want to start that conversation, Katie?

5  
6 DR SEIDLER: Yes. I think there are a couple of things to  
7 say there. One is that as somebody who has been working  
8 with accounts of crime for several decades, I think the  
9 context behind a crime is always more useful in terms of  
10 getting information about the why behind the what, if that  
11 makes sense.

12  
13 I think that Dale made the point earlier about the  
14 relationship context between a perpetrator and a victim and  
15 particularly also the grooming that is often engaged in as  
16 part of that and again, Dale made the point that that  
17 grooming is not only about the victim, often it's about the  
18 people around the victim as well, so if we're talking about  
19 an institutional perpetrator, it might be the victim's  
20 family, for example, if we're talking within the family, it  
21 might be the non-offending parent, for example.

22  
23 Also, we know from memory that the contextual  
24 information often aids memory as well. Even if somebody  
25 finds it difficult sometimes to talk about the specifics of  
26 the abuse that they might have experienced, often if we're  
27 asking them about the relationship context that they had  
28 with the person who perpetrated that abuse or who is  
29 suspected to have perpetrated that abuse, will elicit  
30 really good information about grooming, manipulation  
31 tactics, sexualised communication, for example, that sets  
32 the context often for abuse to occur.

33  
34 The courts are increasingly recognising types of  
35 offences that might be perpetrated within that context,  
36 including using technology mediums for that to occur as  
37 well. I think there's a greater recognition about the  
38 steps before an offence that happened, particularly with  
39 children, that's much more likely than it is with adult  
40 victims, and I think if we can be interviewing, obviously,  
41 perpetrators but also victims about that contextual  
42 information, we'll get much richer information than to be  
43 following up and getting greater accounts that are  
44 hopefully more richer and accurate.

45  
46 DR BLACKWELL: Yes, I would say I think that's really  
47 important for juries because if we just relate on event and

1 there are gaps in the narrative that the jury hears, what  
2 we know, from some research that I carried out, is that  
3 they plug the gaps with their own misconceptions about  
4 things that are at total variance with the actual facts  
5 that are known but not before the jury. I think there's  
6 much contextual evidence about things that are really  
7 important for juries to understand evidence.

8  
9 DR SEIDLER: I think it also helps people understand why,  
10 then, a complainant didn't come forward at that time or why  
11 they only came forward with this information and not that  
12 information and why not for 20 years, that helps explain  
13 some of those questions. People often ask, "Well, if this  
14 was so bad, why didn't you come forward before?" That's  
15 helpful.

16  
17 ASSOCIATE PROFESSOR NOLAN: Could I ask what the issues  
18 may be around memory for relationship contexts --

19  
20 DR SEIDLER: In terms of --

21  
22 ASSOCIATE PROFESSOR NOLAN: -- and whether that's  
23 different to memory for particular incident detail?

24  
25 DR SEIDLER: I think sometimes people don't understand the  
26 specifics of those contextual variables, if that's what  
27 you're alluding to. Sometimes you can ask questions about  
28 things where you might have an understanding about grooming  
29 behaviour, for example, but the child who was abused may  
30 not understand grooming behaviour. They may not be able to  
31 identify particular events or particular interactions or  
32 particular comments that were made that were significant in  
33 terms of the perpetrators setting up the abuse of that  
34 child.

35  
36 In terms of memory, you're probably less likely to get  
37 spontaneous recall of some of those factors because they  
38 may not have salience in the child's mind as being relevant  
39 to an abuse that might have actually happened even years  
40 later in some situations as well. Is that kind of what  
41 you're referring to?

42  
43 PROFESSOR POWELL: Then it's no different to any other type  
44 of memory detail. If it's a fixed detail and it always  
45 happens in the context of certain cues, they're going to be  
46 very well remembered, but if those things varied, you get  
47 an ice cream one day, you get something else another day,

1 they're not as memorable. I would have thought they're  
2 subject to all the factors that affect memory, just like  
3 anything else.  
4  
5 DR DEAR: Is your question about to what extent do people  
6 remember relationship dynamics and interactions and the  
7 nature of the relationship with a person?  
8  
9 ASSOCIATE PROFESSOR NOLAN: If it included, for example,  
10 manipulation tactics of a groomer in the context of a  
11 relationship that the complainant had with that groomer, is  
12 that more difficult to remember than what happened on that  
13 occasion to you when the abuse was perpetrated against you?  
14  
15 DR DEAR: That's a question I'd love someone to give a  
16 definitive answer to. I know from experience it's a lot  
17 easier to get a narrative account of a describable event  
18 like behaviour --  
19  
20 PROFESSOR POWELL: Actions.  
21  
22 DR DEAR: -- actions than experience and --  
23  
24 PROFESSOR THOMSON: Or emotions.  
25  
26 DR DEAR: -- emotions and relationship dynamics.  
27  
28 DR BLACKWELL: I think also because a lot of those  
29 behaviours might have been totally normalised, they're not  
30 remembered very well because they're just part of the  
31 wallpaper perhaps.  
32  
33 DR SEIDLER: It might just have been somebody being nice  
34 to a child.  
35  
36 DR BLACKWELL: Yes, which of course may be a perfectly  
37 normal, good thing to do.  
38  
39 PROFESSOR POWELL: Relationships are very abstract things,  
40 but it can be defined by actions  
41  
42 DR DEAR: Yes, that was I think the point I was trying to  
43 make. If you can reduce it down to specific behaviours and  
44 describable events, or actions, I wouldn't expect it would  
45 be any different than any other memory, but I don't know,  
46 just - you tell me.  
47



1 PROFESSOR GOODMAN-DELAHUNTY: I think it is helpful to  
2 look at some of the changes in the law that have happened  
3 in Queensland with respect to what are called persistent  
4 child sex offending, or some of it is called an ongoing  
5 sexual relationship, where no longer is the child or the  
6 victim required to specify dates, times and places at all,  
7 that's not part of the offence --

8  
9 PROFESSOR POWELL: You still have to remember discrete  
10 occurrences.

11  
12 PROFESSOR GOODMAN-DELAHUNTY: The question then becomes  
13 "Can you remember at least perhaps two sexual acts or acts  
14 involving sexual contact, or something sexualised, within a  
15 period", and the period might be quite broad. It might be  
16 five years, it might be unlimited.

17  
18 So the question for a memory psychologist is really  
19 whether changing the offence in that way places different  
20 demands on the interviewers and on the person's recall that  
21 might change the way that those sorts of persistent  
22 offences are prosecuted.

23  
24 As we heard earlier today, it's very difficult not  
25 just for children, but for anyone, to remember the details  
26 of events that are similar and repeated, whether they  
27 involve abuse or not, to distinguish them is difficult.  
28 That is a requirement for the pleading for the offence.  
29 It's a very different burden and one of the reasons why  
30 many cases fall out of the legal system.

31  
32 One option is to change the nature of the pleading  
33 entirely and make it memory of ongoing relationship, and  
34 that might be framed differently in different legislature,  
35 but the question then is memory of different sexual acts.

36  
37 DR HENDERSON: Can I ask Leigh, is that the representative  
38 offences that we do in New Zealand, and have done for  
39 years?

40  
41 MS SANDERSON: It's not exactly a representative offence.  
42 All jurisdictions have some kind of offence that is  
43 designed to target persistent abuse, and they all say you  
44 can give fewer particulars. You have to be able to give  
45 enough that the accused can have a fair trial, but you  
46 don't have to give the sort of particulars you might have  
47 to for an individual sexual act offence.

1  
2 The Queensland approach, rather than focusing on  
3 proving two or three or more particular acts, and therefore  
4 finding the ongoing abuse offence, focuses on the offence  
5 itself is maintaining the unlawful sexual relationship. So  
6 that's what the jury has to find has been done. That  
7 requires more than one sexual act, so you will still be  
8 particularising a couple of events, but some of the  
9 Queensland cases suggest that when complainants have been  
10 giving evidence, they'll give evidence about events that  
11 have been specified in the indictment, and the jury may not  
12 be convinced beyond reasonable doubt that those particular  
13 events happened, but because they are giving evidence about  
14 an entire relationship, there may be other events in there  
15 that involve a sexual offence - whether it's grooming, acts  
16 of indecency, so it might not be the penetrative abuse  
17 that's been particularised - and that may be sufficient to  
18 satisfy a jury that the offence is proved beyond reasonable  
19 doubt, even if they can't agree on a particular  
20 particularised event.

21  
22 Sometimes you'll have admissions of some sort of  
23 relationship that are not sufficient to support a  
24 particularised occasion, or you might have some child  
25 exploitation material involving the complainant. So there  
26 is material there that enables the jury, perhaps, to be  
27 satisfied that there was an unlawful sexual relationship,  
28 even if they can't be satisfied to the criminal standard of  
29 a particular occasion of abuse.

30  
31 So it may be a bit about how you can expect  
32 complainants to give evidence; how you can expect them to  
33 give an account of what happened. This is a style of  
34 offence that is in addition to the other offences, so it's  
35 not instead of, and then of course Victoria also has a  
36 course of conduct charge specifically, which is perhaps  
37 more the representative charge style, where you say it's  
38 charging this offence, but that was just one of many  
39 occasions.

40  
41 DR HENDERSON: You are going to need counter-intuitive  
42 evidence.

43  
44 ASSOCIATE PROFESSOR NOLAN: As it's call in New Zealand.  
45 Yes, that's what this dot point was about, the fact that  
46 not only does some interviewing framework suggest that  
47 grooming evidence or relationship evidence is important to

1 elicit in the interviewing context, but there is a  
2 prosecutorial reason, currently or on the horizon, to  
3 elicit more relationship evidence, if there is going to be  
4 offences that continue or are changed.

5  
6 PROFESSOR THOMSON: The problem with relationship  
7 evidence, "What was your relationship with your father,  
8 your mother", and so on, is it's like gist evidence - over  
9 time you form a relationship, you don't remember  
10 necessarily all the details that led up to that.

11  
12 So, "Yes, he was a nice guy, and I can't remember  
13 precisely why I decided he was a nice guy, but he did lots  
14 of nice things for me". It seems to me that relationship  
15 evidence, as such, or defining a relationship, is an end  
16 product of lots of behaviours.

17  
18 ASSOCIATE PROFESSOR NOLAN: Which is the point we have  
19 made about relationships being reduced down to memory for  
20 actions, or memory for features of the relationship, which  
21 is a really intriguing way to think about it.

22  
23 MS SANDERSON: I think it is using relationship perhaps in  
24 a slightly different way, in that you won't see a  
25 maintaining of sexual relationship offence charged with  
26 every single kiss, every single unlawful touch, every  
27 single grooming activity particularised on the indictment.  
28 You'll get a few specific things that perhaps the  
29 complainant has been able to give an account of in the  
30 interviews, but when they are describing other interactions  
31 that haven't made it on to the particulars in the  
32 indictment, some of that will be other activities that are  
33 sometimes called the non-charged acts, but it will be  
34 revealing other offences. So it's not relationship at the  
35 level of an impressionistic, "Was the person nice, was the  
36 person not nice"; it's more relationship in the sense of  
37 other interactions, other acts, if you like, that haven't  
38 made it on to the particularised parts of the indictment.

39  
40 It is not a sort of broad impression; it is, "Well,  
41 when I'm telling you about this occasion where this  
42 particular abuse was the culmination", there might also be  
43 some acts of indecency, some photographs, some kissing,  
44 some other things that go to establishing an unlawful  
45 relationship.

46  
47 DR DEAR: That's still a series, or a collection, of

1 specific actions, though. Correct me if I am wrong, but I  
2 don't think you can get away from looking at it in that way  
3 because that's all you can get reports of.

4  
5 MS SANDERSON: Maybe what's emerging is that, in a sense,  
6 the way you structure this offence perhaps isn't so much  
7 reflecting differences in memory, because I get the sense  
8 that you are saying it will be no different whether it's  
9 the particularised act or whether it's a non-particularised  
10 act, you still have the same issues with memory. So  
11 perhaps choosing a different offence isn't so much about  
12 memory, but it's more about how it works in the prosecution  
13 process and, in terms of cross-examination, a questioning,  
14 and it's not really something that's actually driven that  
15 much by the memory process or memory research.

16  
17 DR DEAR: That would be my stance, but perhaps the  
18 researchers can correct me.

19  
20 I think it would also be a matter of how children are  
21 interviewed and the sort of information that interviewer  
22 seeks the child to elaborate on. The context that I do  
23 those interviews in is a family court, and in family court  
24 assessments, when I am interviewing children who are the  
25 subject of family court disputes, it's the information I  
26 need in order to be able to build a picture of quality and  
27 nature of relationships.

28  
29 The specific actions that children might be asked to  
30 report about might be, "My older sister, dad would always  
31 buy her an icecream, but he wouldn't buy myself and my  
32 brother an icecream, he was always saying we were naughty  
33 kids, but she was special because she was a lot nicer". It  
34 still comes down to specific actions that collected  
35 together will form one impression rather than another.

36  
37 PROFESSOR POWELL: I think we need to keep in mind the  
38 police interviews are also evidence-in-chief, so that's  
39 dual purpose, and is relevant here.

40  
41 I think any form of contextual information, whether  
42 it's relationship information or otherwise is extremely  
43 important, in numerous ways. One is from the investigative  
44 stage, getting cooperative information. The account is  
45 more believable when it's put within a context, and I think  
46 it also gives a sense of procedural justice.

1 I think even for interviewing a suspect, it will also  
2 increase the likelihood to get a confession, because a lot  
3 of offenders have a warped understanding of what they have  
4 done. They want to explain and put that in context because  
5 they think there is a legitimate reason. I think this  
6 contextual information is most important for that process.

7  
8 Its usefulness is dependent on whether it makes sense  
9 and it isn't riddled with inconsistencies, and whether it  
10 can't be disproved. That depends on the way in which it is  
11 elicited. If it's elicited with a bunch of highly focused  
12 specific questions with no heightened error, it's going to  
13 be constricted to the low conviction rates sexual offences  
14 have. A large proportion of the cross-examination focuses  
15 on the inconsistencies for these minute details that were  
16 elicited using specific questions.

17  
18 If it comes out in the context of a coherent narrative  
19 in response to very broad, open questions that follow and  
20 build on the account that is already given, then it will  
21 serve all those purposes, otherwise it doesn't.

22  
23 ASSOCIATE PROFESSOR NOLAN: I'll go back to you, Katie.  
24 How do you think perpetrators would react to more context  
25 evidence of the relationship being admissible in different  
26 offences?

27  
28 PROFESSOR POWELL: Those trained to use open questions and  
29 get more of a narrative tend to be good at getting  
30 confessions. I think for that reason, they want to put it  
31 in context, what they have done.

32  
33 ASSOCIATE PROFESSOR NOLAN: Is that a motive you see  
34 in therapy with offenders of child sexual abuse? Are they  
35 looking for a chance to elaborate?

36  
37 PROFESSOR POWELL: "It wasn't that, it was watching, or  
38 teaching her". They put it within the context of their  
39 explanation for what they have done.

40  
41 ASSOCIATE PROFESSOR NOLAN: As a justification.

42  
43 DR SEIDLER: I'm not sure they are motivated to put it in  
44 context, but I think if we allow questions that offer  
45 elaboration, they'll do so, but I think that they are very  
46 super sensitive to any question that might come across in a  
47 way that they are going to hang themselves by giving

1 details about sexual offending, so you are probably going  
2 to get truer narratives about things that are not specific  
3 to sexual acts, because their defences are not as  
4 heightened.

5  
6 I'm not sure that they are motivated to tell a story  
7 that puts it in context, but certainly they'll give you a  
8 justification or distortion, if you like, of the question  
9 that allows them to do that.

10  
11 MR TOLLIDAY: Something Martine said reminded me, with the  
12 Cedar Cottage program a number of years ago, the offenders  
13 had to apply to come to the program and they understood  
14 that, subject to the assessment which was a privileged  
15 process, they needed to affirm the victim's disclosure, and  
16 they always started with addressing the charges or the  
17 facts around the charges, and they learnt quite quickly to  
18 step back from that and say, "That's what the police have  
19 put together from your child or what your partner's child  
20 said happened; what we'd like you to do is to provide us  
21 with your story", effectively, and not have an open-ended  
22 interview on the spot that encouraged those who are  
23 literate to actually spend some time writing it and viewing  
24 it and coming back and then reading through an open  
25 narrative.

26  
27 Those narratives very quickly and clearly, not only  
28 met the charges and the child's narrative, but went beyond  
29 it. For these kind of reasons of wanting to explain, they  
30 weren't trying to defend a charge; they were trying to  
31 explain their circumstance and they tried to hold on to  
32 what they felt were strong relational connections that  
33 still endured. We got very rich information from that  
34 process.

35  
36 DR SEIDLER: Can I make one really quick point: often the  
37 legal system and the stories that the legal system  
38 privileges for offenders actually hampers the treatment  
39 process. When you get clients into treatment, they are  
40 used to talking a legal story, which is very factual, very  
41 specific about who, what, where and when, but also very  
42 limiting on any other detail, things that are important to  
43 the offenders in their stories and motivations as to why  
44 they offend.

45  
46 You spend a lot of time in treatment breaking down  
47 barriers to get that story, rather than the story that's

1       been privileged through the legal process. If the legal  
2       process was able to open that up a little bit more, I think  
3       you would find that the treatment process would be smoother  
4       for offenders, and you'd get less resistance in the  
5       treatment.

6  
7       ASSOCIATE PROFESSOR NOLAN:     Thank you.

8  
9       DR DEAR:     Just very quickly in addition to that, that sort  
10      of data is absolutely gold for risk assessment as well, in  
11      terms of parole, it's the sort of information that's very  
12      helpful.

13  
14      PROFESSOR GOODMAN-DELAHUNTY:   We are going to move on to  
15      the next item now, which I don't think will take very much  
16      time, but I would like to get the reaction of the panel to  
17      the question posed: in terms of conveying some of the  
18      memory research findings to non-psychologists, is it a good  
19      practice or is it a risky practice to include a lot of the  
20      details of some of the age-based findings?

21  
22      PROFESSOR POWELL:   That's a very good question. I wrote a  
23      chapter, and after a lot of deliberation, I decided not to  
24      separate children. I have an issue defining what is  
25      vulnerable. I mean, sometimes the more cognitive capacity  
26      you have the more vulnerable you are because there's a  
27      higher emotive element. You can understand the impact of  
28      what's happened to you and the effect of reporting, and  
29      what have you.

30  
31             I think one issue I see is that the factors affect  
32      children and adults in similar ways. Maybe it's  
33      contributed to more onus and responsibility on the witness,  
34      the victim, to jump through certain hoops to get into the  
35      court as opposed to the interviewer, the process of  
36      interviewing.

37  
38      DR HENDERSON:   I think that is really interesting. I'd  
39      like to see what Suzanne and Fred think, because they both  
40      do a lot of this evidence in front of juries. Having had  
41      to listen to complaints of defence counsel about the  
42      "Suzanne Blackwell effect", I just wondered what you  
43      thought about that in terms of the specificity and  
44      willingness to assist?

45  
46      DR BLACKWELL:   Are we talking about in the context of the  
47      evidence that we would give to a jury?

1  
2 DR HENDERSON: Yes.  
3

4 DR BLACKWELL: I think when any expert gives evidence to  
5 a jury, they do have to talk about it in such a way that  
6 makes it relevant to the case at hand. I'm thinking really  
7 not about the counter-intuitive evidence that I give, but  
8 about memory research, that sometimes memory experts do  
9 come to court and they quote a lot of the eyewitness  
10 identification research, the post-event research, which  
11 involves students and flashcards, and things, and some of  
12 the false memory research which, again, involves relatively  
13 low stakes events and makes statements about that without  
14 adding any caveats to its relevance to children who have  
15 undergone sexual abuse and repeated events by people well  
16 known to them.  
17

18 The ecological validity of those studies, I think, is  
19 sort of questionable. Sometimes if I'm asked to talk about  
20 that, I will talk to the jury about what those studies that  
21 have been cited are, so that they can make up their mind  
22 whether showing students flashcards for 2.5 seconds, or  
23 whatever, or identifying someone that someone has never  
24 seen before, if that does have relevance to a situation  
25 where the identity of the person is absolutely not in  
26 question, where the act is repeated, so it almost forms the  
27 sort of schema-type memory, those sorts of things.  
28

29 I feel it is important to just talk a little bit about  
30 age-related differences and the differences in research,  
31 and how sometimes the applicability to some of that  
32 research to their situations is not always clear. I don't  
33 know if that answers the question.  
34

35 PROFESSOR GOODMAN-DELAHUNTY: Let me ask you another  
36 question. I think testifying in a particular case where  
37 there's a particular age complainant makes it very  
38 specific, what sort of age range might be in issue in a  
39 case, but if we consider, for example, some of the output  
40 that might come from this report and trying to convey the  
41 gist of some of these findings to a legal audience, where  
42 we are taking individual differences into account, or  
43 taking into account intellectual disabilities or cultural  
44 differences, and so on, all of which might impact some of  
45 the specific age findings that are reported in a study,  
46 things become more complicated.  
47



1           Let's just consider the output from this discussion  
2 that goes into this report. Do you think that we are  
3 better advised to pull back on specifying some of the age  
4 ranges, or where are they really important?

5  
6 DR HENDERSON: Give us the information. I think it is  
7 useful to give a range of information, and I think the  
8 level of information you have got in there is good, is at a  
9 good level.

10  
11 DR BLACKWELL: Context is really important. I think when  
12 we were just looking at this form, it became apparent to me  
13 that context was at the point of the differences and the  
14 queries that people had. So I always think that context is  
15 vital in these situations.

16  
17 PROFESSOR POWELL: I'd like to get the general impression  
18 of some of the age-related hurdles that we have made our  
19 witnesses go through. In some jurisdictions they have to  
20 undergo psychological assessment and in some other  
21 jurisdictions extensive credibility assessments. We have  
22 to come back to ask ourselves, "Is this witness capable of  
23 encoding, storing and retrieving?"

24  
25 I can't see that the answers to those hurdles are  
26 going to affect the answer as yes, but I would look at the  
27 way in which that statement was elicited. We put the focus  
28 at this end of getting through the hoops rather than  
29 looking at the context in which the reporting was done.

30  
31 PROFESSOR B HAYES: Briefly, in a similar vein, I think  
32 when we are faced with the question of what kinds of things  
33 would predict whether or not this complainant is going to  
34 give accurate and reliable evidence, age is one predictor  
35 among many, and often not the best or strongest predictor.

36  
37 I think the age-related research is fine to report,  
38 but it needs to be placed in the larger context of there  
39 are many, many other things that affect the accuracy of  
40 reporting, particularly with the sorts of things that we  
41 have been discussing today. How did the experience occur  
42 that laid down the memory? What was the particular  
43 context? What's happened since then in terms of discussion  
44 and interaction about a particular event or abuse? Those  
45 things often are much, much more important than the  
46 particular age of the complainant, post about three years,  
47 anyway.

1  
2 PROFESSOR S HAYES: I think there is also an argument for  
3 explaining that young children actually can remember fairly  
4 accurately. I think that is an important point, to take on  
5 board the caveats that everybody has expressed, but also  
6 many judicial officers might think that nobody can remember  
7 anything under the age of 10. I think it is important to  
8 try to explain that children do have memory.

9  
10 ASSOCIATE PROFESSOR BUSSEY: I think it is important to  
11 say what they can do, rather than what they can't do.  
12 Otherwise we end up with a deficiency model. I think it's  
13 important to canvass that and then show these deficiencies  
14 are overcome, or dependent on the kind of interviewing that  
15 occurs and all the other factors, so that the deficiency  
16 model doesn't have to prevail. There are various factors  
17 to enable that not to occur.

18  
19 DR BROWN: Can I say, too, the danger with specifying age  
20 is that in most developmental studies, variability is the  
21 norm. So although we may have age group based findings,  
22 and we might get between age group differences, within each  
23 age group we'll see children overlapping the next in both  
24 directions. I think there are very few aspects of  
25 development where we can confidently say, "We can expect  
26 this at this age and this by this age", because there will  
27 be a whole range of things.

28  
29 PROFESSOR THOMSON: The age of criminal  
30 responsibility - the age of this, and so on. We are living  
31 with a system that demands or requires specificity, as  
32 such, or categorical, whereas the research shows that it's  
33 continuous and changing.

34  
35 ASSOCIATE PROFESSOR NOLAN: Theories of human development.

36  
37 DR HENDERSON: Give us more than less, I think. We need  
38 to know the nuances, that there aren't cut-offs. That's  
39 what we need.

40  
41 ASSOCIATE PROFESSOR SALMON: Age is a proxy for all sorts  
42 of dimensions of development, cognitive and emotional  
43 development. That is actually continuous, but the rates  
44 are very variable.

45  
46 DR VAN GIJN-GROSVENOR: Now moving to the next topic on  
47 reactions to witness inconsistencies. We'd like to talk

1 about the research findings on the legal assumptions  
2 regarding credibility of witness reports when they contain  
3 inconsistencies, or not previously reported information.  
4

5 I'd first like to ask Neil, with regards to your  
6 article, the relation between the consistency and accuracy  
7 of eyewitness testimony, what is important for courts,  
8 lawyers, police, judges to know about the contradictions of  
9 the overall accuracy of a witness?

10  
11 PROFESSOR BREWER: I think it's interesting that if you go  
12 through what you might call handbooks for defence  
13 attorneys, they draw attention to contradictions in  
14 testimony, inconsistencies in testimony, as being the  
15 hallmark of unreliable testimony.  
16

17 I probably give three or four talks each year,  
18 professional development talks to judges, and if ever I'm  
19 talking about the evaluation of credibility, I always say  
20 to them, "Tell me what the hallmarks of a problematic  
21 witness are?" Always the first hallmark that comes up is a  
22 contradiction in testimony. It is just universally named  
23 by judges.  
24

25 Obviously, if a person contradicts something in  
26 testimony, if they say on one occasion, "This bank robber  
27 was carrying a black bag about that long into the bank",  
28 and three months later, "They were carrying a black bag and  
29 the barrel of the shotgun was sticking out of it", one of  
30 those items is wrong. There is no doubt that at the item  
31 level a contradiction like that indicates an inaccuracy,  
32 but the question is does a contradiction like that indicate  
33 global inaccuracy? In other words, does it tell you that  
34 the rest of the witness's account is problematic. That's,  
35 of course, the theme that's come up repeatedly here today.  
36

37 I don't think there actually is any children's  
38 research - I've just been writing down research for honour  
39 students today - on the relationship between contradictions  
40 and the accuracy at the global level of testimony, but the  
41 work we've done and other people have done on the  
42 relationship in adults shows what, to most people, seems  
43 like a counter-intuitive finding, certainly one that's at  
44 odds with what judges think, namely, the relationship  
45 between the two is rather weak. It also shows that if you  
46 interview a person a day after the event and three months  
47 later, in fact everyone produces contradictions in their

1 testimony.

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So while the relationship is weak, of course, we are not able to say a pile of things - is there some kind of ceiling, is there a certain number of contradictions in testimony that indicates that this person has suddenly crossed the line and you shouldn't believe them?

I guess with our work on adults, we'd be saying, "Well, you expect contradictions", and they can actually be about really major things. They don't have to be about some little dinky subset of material. That's the first thing. The second thing is they indicate one of those two bits of information is obviously wrong. The third thing is that it doesn't necessarily indicate that the whole testimony is flawed. The fourth thing probably is that you can't identify a magical number of contradictions that now lead you to transition from, "This witness is okay" to, "This witness is a major problem." All of these things are just murky. The next thing is, as I said, I'm not aware of any study with children on this, so that's a question not answered.

Secondly, while the work we've done has looked at gaps between interviews - if you have an almost immediate interview to an interview, say, several weeks later, to an interview several months later, those results hold. Just before morning tea, someone gave the example of the gap in the person's testimony when they were talking about vaginal versus anal penetration, a 25-year gap, or something like that. We have no idea, we have no evidence on that.

One would be unable to comment about whether stretching that gap out changes the relationship in some way. A really important one - and this is the one that I was writing down for studies - is this issue of is there any difference in the relationship between, say, contradictions and accuracy of the overall testimony when the contradictions are a matter of gist versus detail. The stuff we've done has always been measuring detail. Our analysis of the witness's responses have always been at a detail of quite fine-grain level.

What happens when there's a contradiction in gist? Is it the case that that's far more significant or is it the case that it's not? In answer to that I'd again go with absolutely no idea. I don't know, Brett, you might comment

1 maybe of some theoretical notion as to what you might  
2 expect, but I think no.

3  
4 PROFESSOR B HAYES: To answer the question, I've got to  
5 guess.

6  
7 PROFESSOR BREWER: Yes. In other words, the intuitive  
8 notion and the ones that judges - you know, the Chief Judge  
9 of the District Court in South Australia showed me a  
10 direction he provides on contradictions and after I gave  
11 this talk to these judges, he sent it to me and said,  
12 "I think I'll have to tear this up." The intuitive notion  
13 is probably problematic, but some of the really key  
14 questions we actually don't have an answer to.

15  
16 PROFESSOR POWELL: Doesn't that show that one of them is  
17 wrong, necessarily? Both might have occurred but not at  
18 the time and place, so it's temporally not content.

19  
20 PROFESSOR BREWER: Yes, that is another possibility, yes.

21  
22 DR BROWN: Something that partially speaks to what Neil is  
23 raising is in some of the studies of repeated interviewing  
24 we do know that details that are newly reported in  
25 subsequent interviews tend to be less accurate than things  
26 that are consistently reported, but not wholly inaccurate,  
27 relatively speaking, and when they're new in a second  
28 interview, they're, therefore, inconsistent from interview  
29 one to interview two, so at that level.

30  
31 PROFESSOR BREWER: Is that with children?

32  
33 DR BROWN: Yes.

34  
35 PROFESSOR BREWER: Interestingly with adults, the picture  
36 seems not to be the same. Again, you intuitively might  
37 expect that if an adult has been interviewed repeatedly,  
38 say, by the police several times, the prosecution, then the  
39 defence lawyer asks a question in a different way that  
40 provides a different retrieval cue, out might come some  
41 response that has never been reported and one might listen  
42 to this and say, "How can a person six months after the  
43 event suddenly report this item of information? It must be  
44 wrong", but certainly some of the data from again a limited  
45 number of studies but in the eyewitness context, show  
46 people will produce those examples of reminiscence, adults  
47 will, and most people do, and the accuracy, while not as

1 high, is certainly not problematic, but again, what happens  
2 in kids.

3  
4 PROFESSOR THOMSON: Can I take you back to 1962 when a  
5 laboratory researcher by the name of Endel Tulving did  
6 straight recall studies and multiple tests and what he  
7 found was going from one test to the next, you didn't  
8 always get the same items recalled. New ones were  
9 recalled, which were perfectly correct, but some of the old  
10 ones dropped out too. The problem with that, with the new  
11 ones that were recalled, is many of them were actually  
12 correct, but some of them also were make-ups.

13  
14 DR VAN GIJN-GROSVENOR: We will talk a bit later about the  
15 repeated investigative interviews. I just wanted to ask  
16 one more question --

17  
18 DR BLACKWELL: Could I just make a comment, though, about  
19 inconsistency because cross-examination tactics force  
20 inconsistencies in child witnesses and it is that  
21 acquiescence, those sorts of things, and I think that's an  
22 important --

23  
24 PROFESSOR POWELL: And highly specific questions, in the  
25 investigative sense, that allows cross-examination to then  
26 continue.

27  
28 DR BLACKWELL: Yes, and so I think that's a process and  
29 I think there's some research that suggests that children's  
30 reports that come out under cross-examination type  
31 questioning change, but then when they're again interviewed  
32 using proper methodology, their memory hasn't changed, it  
33 was just their report that changed. I think inconsistency  
34 is an issue in the courtroom for that reason.

35  
36 DR HENDERSON: The little girl who came out of a case and  
37 said brightly - having just retracted everything, she came  
38 out of cross-examination and said brightly, "That man told  
39 me what to say." She hadn't forgotten anything.

40  
41 PROFESSOR POWELL: In addressing Neil's point, in my  
42 career I have focused a lot on looking at interviews about  
43 repeated events and I rarely see inconsistencies about the  
44 details that were consistent and they are the gist sort of  
45 what generally happened even at two-year delay.

46  
47 PROFESSOR BREWER: The gist details, yes.

1  
2 PROFESSOR POWELL: The specific minute details that change  
3 from time to time, that is where I see the inconsistencies.  
4 I just cannot think of a study where I saw inconsistencies  
5 about central --

6  
7 DR BLACKWELL: But that is what people are cross-examined  
8 on. They are cross-examined on the details, not the gist.

9  
10 PROFESSOR POWELL: Yes.

11  
12 PROFESSOR THOMSON: What one is trying to distinguish is  
13 between unreliable memory and lying; that's two different  
14 concepts.

15  
16 PROFESSOR POWELL: They're totally different.

17  
18 PROFESSOR THOMSON: Nonetheless, when one is  
19 cross-examining one attempts to elicit whether or not that  
20 person is lying: "You said this now. You said this  
21 before. Why are you saying this now?"

22  
23 ASSOCIATE PROFESSOR NOLAN: I will break in here. We are  
24 at least 15 minutes behind schedule at this point.

25  
26 DR BLACKWELL: The ones we thought would pass quickly.

27  
28 ASSOCIATE PROFESSOR NOLAN: That's right, and that's okay,  
29 but we're conscious of how hard we're working you up until  
30 3.30 here, but let's push on. The next dot point is about  
31 complaint management, maybe complainant management as well,  
32 in the context of what are some useful supports to handle  
33 issues such as retractions, recanting evidence, or not  
34 reporting what you would hope would be reported. Are we  
35 getting false positives, but are we also getting false  
36 negatives in a way? I am going to call on Fred first  
37 because he, in some feedback, talked about false negatives  
38 being a problem, and maybe Dale, you might want to say  
39 something about support generally on the issue of  
40 retraction, recantation. Fred, false negatives.

41  
42 PROFESSOR SEYMOUR: Can I repeat what I said earlier about  
43 support. The first thing is, of course, we know that the  
44 support given after a complaint has been laid is very  
45 uneven and we know that particularly the non-offending  
46 parent, usually the mother, if there is a supportive  
47 relationship with the child then those children will show

1 better mental health following the trial - I am thinking of  
2 Quas' and Goodman's research here - and there's less  
3 retractions.  
4

5 We should be aiming in the assistance we provide to  
6 give clear direction to families about what they can talk  
7 about and what they can't and we should be reacting much  
8 better to the needs of parents during that period of time.  
9 That is not a memory issue, that's a social service  
10 provision issue. Of course, all of these things are  
11 exacerbated by delay to going to cross-examination, so not  
12 an obvious argument for prerecording evidence and so on.  
13

14 In terms of false negatives and retractions, we know  
15 that with retractions they can be because there was a lie,  
16 I made that distinction before, and with time truth is  
17 told, but more often it is the result of social influence  
18 and that relates directly to the provision of support.  
19

20 I think there is a real need in our systems to be  
21 clearer in the advice we give, particularly to  
22 social workers and police as to what information they give  
23 to family members after the complaint, and certainly young  
24 people that one of my students spoke with who had been  
25 through the trial process in Whangarei in Auckland, one of  
26 the ideas that they put forward was access to information  
27 via online resources. I notice there's difficulties with  
28 that in terms of how that might interfere with evidence,  
29 but they will go looking for that information online  
30 anyway, so we need to think about alternative ways of  
31 supporting people. The impacts on the accuracy of  
32 information over time of course has to be uppermost of  
33 concern.  
34

35 ASSOCIATE PROFESSOR NOLAN: Anything quick to add there,  
36 Dale?  
37

38 PROFESSOR POWELL: I think around the issue of support, it  
39 is support not only for the individual but communities.  
40 We've just done some interesting work comparing the  
41 inequality between Indigenous children and non-Indigenous  
42 children across the whole stages of the process and where  
43 we found the inequality lay is at disclosure. Once the  
44 Indigenous children made a disclosure there was no  
45 difference in the likelihood of conviction or  
46 authorisation. What that is pointing towards is the need  
47 for support, a proactive policing model that engages



1 communities and the families to actually report.

2

3 ASSOCIATE PROFESSOR NOLAN: Thank you.

4

5 PROFESSOR SEYMOUR: We have education for court in  
6 New Zealand and you probably have it in Australia. It's  
7 only available to young people close to the trial because  
8 it is a limited resource and that you can't make that  
9 available to everyone is the reasoning. Actually, even in  
10 that system a lot of kids don't get that level of support.  
11 I understand in the UK a system has been introduced or is  
12 about to be introduced where there is a support person --

13

14 DR HENDERSON: They've had one for a while.

15

16 PROFESSOR SEYMOUR: -- who will be available from the time  
17 of the complaint being made and all the way through.

18

19 DR HENDERSON: Yes. As I understand it, yes. I don't  
20 know very much about it, but it is one of the things that  
21 they do.

22

23 ASSOCIATE PROFESSOR NOLAN: Thank you. Final comments?

24

25 MR TOLLIDAY: Could I echo two things? One is delay is a  
26 substantial problem; it's not a challenge, it is a problem.  
27 I was reading yesterday that the average in this  
28 jurisdiction is 16 months between disclosure and trial and  
29 frequently over two years.

30

31 The process and guidelines for debriefing for,  
32 in particular, parents and the messages given about what  
33 can be discussed and not discussed, particularly the  
34 contextual things that are actually shared, there are  
35 things that the parents had been present at but they're not  
36 aware of what has been happening, is highly significant for  
37 the support for their children and there are frequently  
38 mixed messages given about whether that can be discussed or  
39 not discussed.

40

41 Combine delay and uncertainty about how things are  
42 proceeding, raises in my mind a large prospect of  
43 subsequent withdrawal from the proceedings or other things.

44

45 ASSOCIATE PROFESSOR NOLAN: These are issues that drag us  
46 away from the problems about memory a little bit. A final  
47 comment?

1  
2 DR HENDERSON: Or they're not.

3  
4 ASSOCIATE PROFESSOR NOLAN: Or they're not, yes.

5  
6 PROFESSOR S HAYES: I was just going to say that  
7 everything that Fred said actually means that children in  
8 out-of-home care, or any institutions, are placed in a much  
9 more invidious position because they don't necessarily have  
10 a support person who is there all the time, or even the  
11 same support person who is there all the time, so they're  
12 much less likely to get their story across in an optimum  
13 fashion.

14  
15 ASSOCIATE PROFESSOR NOLAN: Thank you.

16  
17 DR HENDERSON: With respect, Mark, the delays before trial  
18 are hugely significant --

19  
20 ASSOCIATE PROFESSOR NOLAN: I understand the point but --

21  
22 DR HENDERSON: -- for memory, I would have said, and for  
23 stress levels and things, but yes.

24  
25 MS SANDERSON: Can I assure people that we are dealing  
26 with all of those issues, so it would be a bit much to ask  
27 you to address all the issues in one day, so don't worry,  
28 they are being covered, but we probably need to move  
29 forward.

30  
31 ASSOCIATE PROFESSOR NOLAN: Yes, probably on the same  
32 floor today in the other hearing room.

33  
34 DR DEAR: I think that that issue of advice to family  
35 members and other people, to anyone who the child lives  
36 with, between making an initial disclosure and then  
37 subsequently being properly interviewed and then  
38 subsequently perhaps having to give evidence, even if  
39 that's prerecorded, that is a memory issue because the  
40 wrong sort of conversations and leading and suggestive  
41 questions and urging the child to sort of try really hard  
42 to remember more about what happened, or whatever, that  
43 just speaks to all of the issues we've been talking about  
44 all day, source monitoring, the sort of false details,  
45 et cetera.

46  
47 ASSOCIATE PROFESSOR NOLAN: Yes.

1  
2 MR TOLLIDAY: And misunderstanding disclosure as a  
3 process, which I think Kay mentioned this morning, after  
4 the initial disclosure, and there's a large amount of  
5 activity around getting statements and so forth at the  
6 front end, and then there's a period that can be quite a  
7 hiatus, but it can also be a period in which a child is  
8 able, if the conditions are correct and safe and there's  
9 security for them, to start speaking to different elements  
10 of what happened.

11  
12 PROFESSOR GOODMAN-DELAHUNTY: That is really the perfect  
13 segue to the next topic and we've covered quite a number of  
14 my sub-questions in mind for the next topic already, so I'm  
15 going to jump to the idea of providing more social support  
16 or rapport building with the interviewee during some of the  
17 official interviews that take place and ask those of you  
18 who have expertise on the interviewing sessions what advice  
19 you might offer in terms of providing support and perhaps  
20 including rapport building, without compromising memory.  
21 What sort of guidance is there that needs to be imparted to  
22 those in the justice system? Stefanie, is that something  
23 that you would like to comment on?

24  
25 DR SHARMAN: I think Deirdre brought up an important point  
26 before when she was talking about in the rapport building  
27 stage there's the opportunity to not only develop the  
28 rapport with the child, and obviously that needs to be done  
29 as best as possible, but to give them the retrieval  
30 practice event which we've now found helps them to remember  
31 the event in question, so when they get the opportunity to  
32 talk about and get used to responding to the particular  
33 questions and also as a child being the person who needs to  
34 speak more, children are often used to adults telling them  
35 what they need to know and that sort of thing, it gives the  
36 child good practice with talking and responding in a  
37 particular way, answering the questions, getting used to  
38 that style. It is that practice that also helps develop  
39 the rapport with the interviewer.

40  
41 I also think that it has a lot to do with the  
42 interviewer themselves. There are a lot of personal issues  
43 with the interviewer and how well they can establish  
44 rapport with a particular child and that's not as easy to  
45 get around because you can't necessarily train someone to  
46 be good. You can train them to a certain point, but you  
47 can't make them a nice, friendly person if they're not,

1 for example.

2

3 DR BROWN: Picking up on the notion of rapport, I think  
4 much of our research has looked at rapport as something  
5 that you do at the beginning and then it is done and  
6 somehow it will stay there for the rest of the session and  
7 I think we know less about how to guide interviewers to  
8 safely repair rapport if it starts to perhaps fall away in  
9 ways that wouldn't perhaps be open to misinterpretation as  
10 becoming suggestive or influencing children's subsequent  
11 responses.

12

13 I think that's an area for us to be responsive to in  
14 the future to get a better understanding of the dynamics  
15 throughout the entirety of the interview and how they might  
16 wax and wane at different points and how to respond to  
17 that.

18

19 We know a little bit about things like adopting a warm  
20 style can increase resistance to suggestive questions,  
21 for example, and there's a little bit of work out there  
22 looking at different ways of establishing rapport and we  
23 see a network that, just as with everything else, the kinds  
24 of questions that you're using to establish rapport are  
25 also really important. Again, so you're in-training that  
26 style of interacting with the child right from the get-go  
27 perhaps rather than using a normal adult-child interaction  
28 style and then switching to our best interviewing practice.  
29 Do you want to jump in?

30

31 PROFESSOR POWELL: I think we also need to make a  
32 distinction between rapport in the interview as well as  
33 rapport that is needed in order to initiate a disclosure.  
34 Most children, once the camera starts, they know that  
35 they're going to make a disclosure or there has been  
36 evidence that suggests that there is going to be and that  
37 type of rapport building is quite distinct from the rapport  
38 building that we talk about within the interview, which can  
39 be detrimental if it is not for a short period of time  
40 because it puts cognitive load on that interviewer in a  
41 single interview, the more time engaging in it, and  
42 traditionally rapport in the interview used to be a lot of  
43 questions around testing the child's understanding. We  
44 know that's not useful.

45

46 There is a strong evidence base around what rapport  
47 should look like in the interview and that comes back to

1 your question, do we need to increase that? I think we  
2 need to be seeing what best practice is to see its effect  
3 in these interviews before we look at whether we need to  
4 increase that.

5  
6 There is more focus now, more innovative research  
7 being done on rapport and supportive behaviours, but the  
8 basic thing where there is a strong evidence base around,  
9 which is practice narrative, keeping that short, minimising  
10 the number of specific questions in that early stage about,  
11 "Who is in your family?", "What class are you in?", we know  
12 they're detrimental, but let's at least see the correct  
13 best practice being implemented to then assess whether we  
14 need to go further than that.

15  
16 I think there's that distinction between rapport  
17 off camera in order to get the child to feel safe enough to  
18 make a disclosure in the first place and what is to  
19 facilitate a disclosure that is going to be made.

20  
21 ASSOCIATE PROFESSOR BUSSEY: Just along those lines, I  
22 think there is now more research occurring on rapport and  
23 that it is moving away from the rules-based approach to  
24 more to do with the social context. For example, children  
25 are used to adults being in authority and adults know the  
26 right answer and so kids look to the adult for the right  
27 answer, whereas in this situation I think it has to be made  
28 clear to the child that the adult doesn't know the answer  
29 and in fact we often think the drain is on the child's  
30 memory; it is often on the interviewer's memory to actually  
31 remember all of the things that the child has said so that  
32 you can ask them some follow-up questions. The  
33 interviewers actually get stuck and then will revert to  
34 leading questions. Again, I think all the way through,  
35 just to show the child that they're guiding this process a  
36 little bit more, that they're going to have some kind of  
37 agency.

38  
39 One of the things that we do in our laboratory  
40 interviews, for example, is just make sure we've got the  
41 furniture changed so that the adult is sitting on a chair  
42 right down with the child, they're changing the social  
43 context as well as the rules in terms of what they should  
44 be reporting; but again, it's very easy to assess the  
45 implications of that kind of rapport on subsequent accuracy  
46 and reporting, along with the different entity methods.

1 DR VAN GIJN-GROSVENOR: Going to the next dot point, we  
2 discussed this a little bit earlier already, actually,  
3 repeated interviews. May I now ask Martine to talk about  
4 it. What should court lawyers or judges know about  
5 repeated interviews and why is it important?  
6

7 PROFESSOR POWELL: I don't know that my expertise is what  
8 they know, but I do have an opinion about repeated  
9 interviews and I think it's dependent on the questions that  
10 were asked in the preceding interviews and there's robust  
11 evidence around that.  
12

13 I think they're kind of known in this area of the  
14 world as doing a single investigative interview and I think  
15 that would be quite rare. There are jurisdictions that  
16 won't talk at all before that, but then even before that a  
17 social worker or an intake worker or a parent, or something  
18 that has led to that, so I think what is defined as an  
19 interview is quite broad.  
20

21 Looking at the whole process, I think if you look from  
22 the procedure perspective, victims don't like repeating the  
23 story and so if we can minimise the amount of questioning,  
24 I think that will be preferable. There is sometimes an  
25 overestimation of what we need for prosecution, or a  
26 mismatch between what the police think how much you need to  
27 establish at that point, and there is always the  
28 possibility for the prosecution to ask further questioning  
29 about what has occurred earlier. I think that the issue is  
30 not is repeated questioning okay, it's the type of  
31 questioning.  
32

33 DR VAN GIJN-GROSVENOR: There is some misunderstanding  
34 with regards to repeated questioning and repeated  
35 interviews, but what I understand is that there is a  
36 reminiscence effect and that perhaps some more details can  
37 be provided in a second interview.  
38

39 PROFESSOR POWELL: But that relates to what I was saying -  
40 are more details needed to move this further in the process  
41 because there's going to be a detrimental effect that  
42 you've got to bring someone back in to really be engaged.  
43 Correct me if I am wrong, but I think it's fairly robust  
44 that victims would rather have less interviews than more.  
45

46 PROFESSOR SEYMOUR: The other issue is the distinction you  
47 made before. Repeat interviews with the same person is a

1 very different method to repeat interviews with a different  
2 person. I think the former, obviously, being less likely  
3 to be harmful or disturbing of the evidence.  
4

5 PROFESSOR POWELL: It very much depends on the quality of  
6 the initial interview. Sometimes there is no point in a  
7 further interview because there has been so much potential  
8 contamination that it will just increase the number of  
9 inconsistencies, which will then be fodder for  
10 cross-examination.  
11

12 MS SANDERSON: Could I clarify, too, the material you're  
13 talking about, Martine, is that only or primarily in  
14 relation to interviewing children, because I know,  
15 for example, adults who make statements where it is not  
16 recorded and it won't be their evidence in chief, that will  
17 often be an ongoing process over a number of sessions with  
18 police, not always, but certainly if there's a lot to  
19 disclose or it may take quite a few sessions.  
20

21 PROFESSOR POWELL: I think the situation is the same but  
22 perhaps to a lesser degree. The details will then be in  
23 the statement or they will then be in the witness's head,  
24 which they then bring to the trial. So I think that --  
25

26 MS SANDERSON: I was just checking in terms of when you  
27 were saying that you think the evidence is that people  
28 prefer fewer interviews, not more. Is that primarily from  
29 the perspective of not wanting to bring the child in to  
30 talk about something that is not pleasant?  
31

32 PROFESSOR POWELL: To my understanding, but it's not my  
33 main area of expertise, I would have thought that the adult  
34 victims that I've interviewed said that they were assured  
35 of a more streamlined process with less interviewing, so  
36 I think there are similar findings, but maybe I'm wrong;  
37 others have greater expertise in this area.  
38

39 DR DEAR: There is a difference between conducting a  
40 second and/or third interview than repeat interviewing,  
41 which implies asking the same sorts of questions or getting  
42 them to go over and over the same thing.  
43

44 PROFESSOR POWELL: If it's interrogative it's going to be  
45 questioning, it's going to be a negative experience, but if  
46 they're heard and not judged and believed then it can be --  
47

1 DR DEAR: Coming back subsequently to follow up on  
2 additional things that weren't covered the first time.

3  
4 DR BLACKWELL: I was just thinking of the Leander study  
5 where they actually had videotaped evidence of what had  
6 happened to the children and so they knew what had happened  
7 and we know from research that children are quite reluctant  
8 to talk about sexual content and that study, the first  
9 interview had sort of denials and tentative reporting, the  
10 second interview had a lot more sexual detail, and the  
11 third had even more, and my reading of it was that the  
12 children did not add material that wasn't seen in the  
13 videotapes.

14  
15 I am not sure exactly why they conducted the further  
16 interviews and my experience of that is where subsequent to  
17 the first interview, the child tells someone something else  
18 and then they're re-interviewed about that rather than  
19 going back to the original subject matter.

20  
21 PROFESSOR POWELL: I think we just need to look very hard  
22 at whether we're re-interviewing for detail that wasn't  
23 elicited in the first interview. Is it likely there is  
24 going to be a greater chance of getting this now or is it  
25 just a minute detail, or are we re-interviewing because we  
26 don't think the child made a complete disclosure and it was  
27 due to inadequate establishing of trust. There is a great  
28 opportunity which will have a big impact on the outcome.

29  
30 DR BLACKWELL: Yes.

31  
32 PROFESSOR GOODMAN-DELAHUNTY: I think some of the issues  
33 that have motivated our questions and focus on this are  
34 that there seem to be some contradictory tensions between  
35 some of the memory research that shows that there is a  
36 reminiscence effect many times and that if you stop talking  
37 about something and different retrieval cues are used  
38 later, you might disclose more and you might need another  
39 opportunity to really produce information that is in your  
40 memory that wasn't triggered by earlier retrieval cues,  
41 versus the idea that many lawyers or police and so on are  
42 worried about which is that if you re-interview people,  
43 they will say different things and there will be  
44 contradictions in the evidence and therefore you don't want  
45 to give them an opportunity to answer questions that are  
46 similar again because the record will become so murky that  
47 you won't be able to sustain perhaps a prosecution.



1  
2 Part of what we would like to get some information on  
3 is really whether there should be a firm policy about  
4 re-interviewing, especially of younger children. Is it  
5 beneficial if it is going to lead to, perhaps in the  
6 situation that you're describing where you sense that there  
7 hasn't been a real disclosure of what is in memory, or  
8 should there should be a one-interview policy which can  
9 also be quite taxing for young children, especially if it  
10 is multiple events.

11  
12 DR LENNINGS: I think part of the difficulty with that is  
13 what actually happens to young children following initial  
14 disclosure. There is usually or quite often further  
15 discussions with that child by a foster parent of the child  
16 put in care or a kin carer, or someone else like that.  
17 Further disclosures then get made. Sometimes these  
18 disclosures may be legitimate, sometimes they might not be,  
19 sometimes a child may be placed into therapy and  
20 disclosures may occur in therapy. It becomes very  
21 difficult, then, to make a rule about what should happen  
22 when you are actually getting further disclosure.

23  
24 That can become problematic both in terms of  
25 assessment of liability of the original disclosure which  
26 was made, but also about the notion that children are, with  
27 some rehearsal, able to recall more information. To have a  
28 policy about it is going to disadvantage someone somewhere  
29 down the line.

30  
31 PROFESSOR S HAYES: I have certainly seen situations where  
32 the child themselves have asked for a repeat interview,  
33 because they have remembered certain things, or once they  
34 have read their first statement, if they can read, or the  
35 transcript, that's triggered off another memories as well.  
36 I think this whole question, the crux of it, is you can't  
37 have a policy on having only one interview if that's a  
38 lousy interview.

39  
40 PROFESSOR THOMSON: The other thing is, let's not kid  
41 ourselves, there have been lots of interviews that occurred  
42 beforehand, whether it's by the teachers, parents and  
43 relatives, so by the time the formal interview comes, those  
44 questions have been asked and again and again and again. I  
45 think we have to be realistic that that is the case.

46  
47 I understood the introduction of the videotaping of

1 the child was for the protection of the child, to save the  
2 child from the trauma of interviews. In some ways I accept  
3 that entirely, but as a memory researcher I see the flaws  
4 in that because none of us remember everything we want to  
5 say at one time. The analogy that my assistant used, who  
6 looked at this, was, "It's a retrieval, at any one time we  
7 can retrieve so much." Memory is a big bag there and we  
8 can pull out so much at one time. When we go back again,  
9 we go in from probably a slightly different entrance and we  
10 will recall details that we didn't really before.

11  
12 To the extent that we want the fullest and best  
13 information in court, it seems to me that to rule out  
14 having a second interview would be inappropriate.

15  
16 PROFESSOR POWELL: Is it enough for a decision; that's  
17 where there is contention.

18  
19 PROFESSOR THOMSON: It's not just details that were  
20 recalled the second time - it is themes, different issues  
21 are recalled, too. I would think that it is a mistake to  
22 claim that it's limited just to details.

23  
24 DR DEAR: There's a difference between conducting an  
25 additional interview and repeating an interview. I think a  
26 lot of the research that shows problems is when you are  
27 asking the same questions.

28  
29 DR BROWN: Depending on the kind of questions.

30  
31 PROFESSOR GOODMAN-DELAHUNTY: Part of the problem is the  
32 literature talks about repeated interviewing, but that's  
33 not necessarily meaning repeating the questions.

34  
35 DR DEAR: It may be about additional interviews instead of  
36 repeated interviews.

37  
38 ASSOCIATE PROFESSOR NOLAN: Thank you. The next dot point  
39 that we have got there is about cross-examination. I  
40 suppose what Neil was talking about before was, if you read  
41 that paper, a concern about cross-examination being a  
42 search for inconsistency.

43  
44 We have a couple of you who have done quite a lot of  
45 work on cross-examination. Emily and Kay might want to, in  
46 particular, talk about cross-examination and its impact on  
47 memory and retrieval here, in particular. Would you like

1 to start talking about some of the work you've done on  
2 cross-examination, Emily?

3  
4 DR HENDERSON: My information will be about what lawyers  
5 are trying to do, and some about the language. Do you want  
6 to start with the memory stuff, and then I'll talk about  
7 what we are trying to do?

8  
9 ASSOCIATE PROFESSOR BUSSEY: Okay. We have just done some  
10 studies in which we have looked at children who are  
11 interviewed after they have witnessed a staged event, as a  
12 lot of this research is based on, but also the person  
13 involved in the skit actually commits a transgression.

14  
15 What we actually find is that if children are  
16 interviewed in a direct way, followed by cross-examination,  
17 initially it was shown that they gave less accurate  
18 information during cross-examination. To be sure that it  
19 wasn't just that this was their second interview, we did  
20 some actual studies showing when children were interviewed  
21 with the same types of questions in interview one, and when  
22 they had interview two they scored very well. They  
23 performed very well, their accuracy was high.

24  
25 However, if that second examination was a  
26 cross-examination in which the attorneys are allowed to ask  
27 leading questions, ambiguous and complex ones - and we took  
28 the kind of questions actually from cases - we found that  
29 the children's accuracy reduced quite dramatically. Their  
30 accuracy went down in that second interview if it was  
31 cross-examination; it didn't alter if it wasn't  
32 cross-examination.

33  
34 We also then looked at various conditions of coaching  
35 and things of that kind, and actually looked not only at  
36 children's accuracy of information that was reported, but  
37 whether they would report the transgression where there was  
38 something that they knew wasn't correct that had occurred.

39  
40 Children who had in the initial interview said, "Yes,  
41 the lady who was teaching the health lesson did come up and  
42 tear all the stickers up", they reported that in their  
43 first interview. When they went to the cross-examination  
44 interview and were challenged, "That didn't really happen,  
45 did it?", the child said, "No, it didn't really happen".  
46 So they retracted their statement. It wasn't just the  
47 minute details that their accuracy reduced on, but they

1 actually falsely denied the major event that occurred.

2

3 I guess for us, after conducting a number of studies  
4 on this, what we are concerned about is those aggressive  
5 kind of challenging, leading questions, everything that we  
6 know gives rise to inaccurate reporting of information,  
7 reduces accuracy, is allowed in cross-examination. Our  
8 concern is that as long as they remain in  
9 cross-examination, children are likely to give inaccurate  
10 reports and even retract allegations of abuse.

11

12 I think some of the challenges are that there are  
13 certain legal requirements in terms of it must be put to  
14 the witness that they actually didn't do the event that is  
15 being alleged, so they can refute that. I think it's  
16 *Browne v Dunn's* challenge.

17

18 Again, I don't think we can do very much to change  
19 that, but the way in which that's actually put to children,  
20 in this incredibly aggressive way in which  
21 cross-examination lawyers actually try to trick kids, is  
22 not doing anything to further justice by increasing  
23 accuracy or true disclosures.

24

25 At the end of the day, with a lot of this research,  
26 and I think there's some coming out of New Zealand as well,  
27 it seems to me that it is the time to think about ways in  
28 which we can make the cross-examination process more child  
29 friendly.

30

31 ASSOCIATE PROFESSOR NOLAN: Maybe to follow-up on one  
32 thing you mentioned there, you talked about coaching in the  
33 context of cross-examination as well. Did you manipulate  
34 that in those studies?

35

36 ASSOCIATE PROFESSOR BUSSEY: Yes, we did.

37

38 ASSOCIATE PROFESSOR NOLAN: Can you talk a little bit more  
39 about what elements of coaching you included in those  
40 studies?

41

42 ASSOCIATE PROFESSOR BUSSEY: We actually got children to  
43 falsely allege an event and falsely deny an event. In  
44 other words, in terms of a false allegation, they hadn't  
45 seen the event and they then were coached to say they did,  
46 or they did see the event and they were coached to say they  
47 didn't.

1  
2 In fact, cross-examination worked slightly differently  
3 in both of those events. Particularly when you are looking  
4 at false disclosures - that is, kids who are recanting  
5 their evidence - they are particularly likely to do that  
6 under cross-examination. However, for those kids who were  
7 falsely alleging the event, they were, under those  
8 conditions, more likely to go back and say, "No, I made  
9 that up". That was the one area in which cross-examination  
10 did have a beneficial effect. What we would argue is that  
11 that effect can still be maintained, and maintain the  
12 Browne v Dunn rule, but doing it in a different way so you  
13 don't reduce the overall accuracy of the children's reports  
14 across the board. So we have to take into account both of  
15 those allegations and the false denials that,  
16 differentially, impact false denials much more than the  
17 false allegations.

18  
19 ASSOCIATE PROFESSOR NOLAN: Thank you for those details.  
20 Emily?

21  
22 DR HENDERSON: I think it is accepted now by everyone, but  
23 my profession, that cross-examination is the perfect storm.  
24 It is the how not to guide to get accurate evidence.

25  
26 We have power imbalance. Even if, as one of my  
27 favourite interviewees always says, "You can catch more  
28 flies with honey, he's never aggressive, he's sweet as  
29 anything", you cannot overcome that power imbalance. You  
30 have the fact that we regard the primary rule of  
31 cross-examination as legal legalese. You then have the  
32 fact that multiple studies show that the language we use is  
33 significantly age inappropriate. The grammar is wrong, the  
34 vocab is wrong. It's the perfect storm.

35  
36 PROFESSOR SEYMOUR: There is no rapport.

37  
38 DR HENDERSON: No rapport building whatsoever.

39  
40 In fact, in one of the experiments I'm going to talk  
41 about in a minute, that we are doing in my home town,  
42 lawyers have been offered essentially an opportunity to  
43 take a rapport building meeting with the witness and they  
44 are refusing it, in some cases, because they find it  
45 difficult to be appropriately aggressive and attacking of  
46 the child when they have in fact had an opportunity to the  
47 say, "Hello, my name is so and so".

1  
2           So, we have the perfect storm. Why? Well, it's a  
3 combination. On the one hand, we lawyers are profoundly  
4 ignorant about what is the appropriate language for  
5 children. If you speak to lawyers about this, we generally  
6 regard this as a problem that really doesn't exist and  
7 you're all exaggerating, frankly, and being a bit  
8 namby-pamby about it. We don't know what we don't know and  
9 that is a massive problem.

10  
11           The other issue, of course, as Kay outlined, is  
12 intention. We have certain things that we are there to do  
13 in a trial, we are there to test the evidence on behalf of  
14 the defendant, that's pretty damn important, and part of  
15 that is also that we have a duty to put the case, which is  
16 the rule in Browne v Dunn 1893 - one of the few cases I can  
17 remember the date of, so I always have to say it. The rule  
18 in Browne v Dunn is actually if you are going to make an  
19 allegation that goes against the credibility or the credit  
20 of that witness, you have an obligation to put it to that  
21 witness. It is often confused with the defendant's right  
22 to test the evidence. It is not. It is actually an  
23 obligation of natural justice to give the witness an  
24 opportunity to respond to an adverse allegation. I'm going  
25 to come back to that, because that's really, really  
26 important.

27  
28           What I'm going to say is that I used to believe there  
29 was only one way forward with that and that was basically  
30 put us up against the wall and shoot us. I no longer  
31 believe that. Where judges and lawyers are sufficiently  
32 educated about this process, and where they have the  
33 information that you people have been talking about all  
34 day, and where that is added to by information about the  
35 linguistics, and just how poorly we do in terms of sheer  
36 vocabulary and language complexity, we are capable of  
37 taking control of the process and change, and I know this  
38 because they have done it in, of all places, England.

39  
40           In England in 2010, the Court of Appeal decided that  
41 they would start to take note of the research findings and  
42 they began to issue a series of decisions. It starts with  
43 one called Barker, which was about a 4-year-old who was  
44 anally raped. In that case, they appealed because the  
45 4-year-old had given a series of answers that were  
46 non sequitur, and the defence said that that showed that  
47 she was incompetent and the evidence should have never have

1 been allowed to proceed. What the court said was, "She  
2 only said those things because you asked a bloody silly  
3 question", and they rejected it. They proceeded to do that  
4 over about 15 cases, and rising, and they have extended it  
5 beyond children, into all sorts of things.  
6

7 So now in England you've got a situation where heavily  
8 leading questions are out, and tagged questions - because  
9 lawyers can recognise tag questions, so we like them, "He  
10 didn't do it, did he?" They are pretty much banned.  
11 You've got judges controlling for repetition. You've got  
12 judges controlling for length. Questioning is regularly  
13 down to under about 40 minutes, or less. Also tags,  
14 legalese, repetition, roll-ups, multiples, double  
15 negatives - at high end, and it's reaching down, it's  
16 really changing.  
17

18 When it comes to the duty to put the case, what the  
19 court's done is really interesting. What they have said is  
20 that is about testing - that is, about giving the witness  
21 the opportunity to respond. It's also about, in more  
22 detail, making sure that the jury has all the information  
23 they need. If there's an allegation, there's an  
24 opportunity to get the contrary information in. What they  
25 have said is if that question cannot be framed in a way  
26 that is going to enable the witness to answer reliably,  
27 then it should not be answered. So asking, "You're lying,  
28 aren't you?" is out, because it does not give the  
29 sufficient guarantee of reliability.  
30

31 Similarly, asking about peripheral details of the type  
32 where really there's no point, because you are not going to  
33 get reliable and sensible answers, is under significant  
34 strain and really has been reduced down. There's a case  
35 called Edwards which is very useful to look at. Edwards,  
36 Willis and Barker are the starting points.  
37

38 All of these things to me, show that while  
39 cross-examination is a problem, it is a problem that can be  
40 taken under advisement by lawyers, if they are given the  
41 right information, at the high level. Don't give it to  
42 lawyers, give it to judges and give it to the top judges  
43 because they are the ones who control the courtroom. If  
44 that is done, it can make a significant difference because  
45 there is nothing in the actual case law of  
46 cross-examination that isn't compatible with a good  
47 forensic examination of the evidence. It's just the way in

1 which lawyers have been used to doing it, and we are used  
2 to doing it because we are interested in theatrics and we  
3 have allowed that to enter into interviews, and that is  
4 changing.

5  
6 I'm very pleased to tell you that it's beginning to  
7 change in New Zealand as well. Our District Court  
8 judiciary has initiated two pilot programs where the  
9 control of cross-examination and a range of other things to  
10 do with things like not allowing children to sit in  
11 courtroom for hours on end before they testify, making sure  
12 that they aren't on the witness stand in the afternoons,  
13 for example, little things that make a difference - not  
14 forcing them to watch their EVIs with the jury, taking the  
15 cognitive load off. All of these things are possible  
16 within very ordinary statutory limitations. I'm noticing  
17 that that is also happening here. There was a recent  
18 decision in South Australia in the Supreme Court called  
19 Edwards which does some very similar things to Barker. I  
20 guess I'm saying we desperately need your educative input  
21 and then we are capable of doing better.

22  
23 ASSOCIATE PROFESSOR NOLAN: Thank you, Emily. That segues  
24 quite nicely into the last two topics we want to cover in  
25 the 15 minutes that remain. I hand over to you, Jane.

26  
27 PROFESSOR GOODMAN-DELAHUNTY: We have alluded very briefly  
28 earlier today to the use of expert evidence to convey to  
29 juries some of the issues surrounding memories of child sex  
30 abuse. Another option is to present that information via  
31 judicial directions, and that's something that New Zealand  
32 had also trialed in the past.

33  
34 There are different kinds of jury directions. Some of  
35 those just simply give you a warning about a factor such as  
36 the reliability of people at a very young age, for example,  
37 which used to be a traditional direction. Some of them go  
38 further and itemise a series of factors known to impact  
39 memory. Some go even further and are actually substitutes  
40 of what an expert might say.

41  
42 What I'd like to do in the next few minutes is just  
43 talk a little bit about whether, especially those of  
44 you - and I know there are quite a few in this room - who  
45 have given expert evidence, or those of you who have done  
46 research on the effectiveness of jury directions, whether  
47 you think, particularly after looking at some of those



1 simplified statements that we provided today, would those  
2 be suitable in a jury direction? Is it better to have an  
3 expert provide that sort of information with all of the  
4 contextual information that you thought was more critical?  
5 How do you see the potential of jury directions versus  
6 expert evidence stacking up to convey the same sort of  
7 content to a judge, or particularly lay jurors?  
8

9 I think there are quite a number of people who have  
10 done relevant research, and have participated as experts,  
11 so quite a few of you might be able to comment. Perhaps  
12 Fred, Neil, Don? I think Richard and Helen have done some  
13 jury research work as well. Suzanne, you've worked quite a  
14 lot providing counter-intuitive expert evidence. Is that  
15 provided in New Zealand jury directions as well?  
16

17 DR BLACKWELL: Well, there is a section where judges can  
18 tell juries that there may be some good reasons for delay.  
19 That's really about it, in terms of that. The difficulty  
20 with that direction has been that it's not written down, so  
21 judges give that direction in a variety of ways, and I have  
22 seen them give it in a way that actually makes it sound the  
23 opposite to what is intended.  
24

25 One of the things that I have been doing for about the  
26 last eight years or so, is giving what is called  
27 counter-intuitive evidence. What happens is that the Crown  
28 will give me the documents, I will read the file and I will  
29 prepare a brief of evidence that does have the narrative of  
30 what the case is about, but that is not for the jury; it's  
31 for the Court of Appeal to provide the basis, if you like,  
32 for what the evidence is about.  
33

34 Then I will give some evidence to the jury about  
35 aspects of reporting patterns and delay, and it's made  
36 quite clear at the beginning that this evidence does not  
37 prove or disprove that offending has occurred; it's purely  
38 evidence that they can look at that might help them  
39 understand the proceedings. So I will talk about, if  
40 relevant to the case, delay; I will talk about incremental  
41 reporting, because often defence lawyers will suggest that  
42 if a child told more later it's necessarily the result of  
43 some coaching sort of situation; I will talk about denial  
44 when asked, and I will talk about retraction, if those  
45 happen to feature in the case; I will then talk about some  
46 of the reasons for delayed or non-reporting, which might  
47 involve the close relationship between the child and the

1 offender. It might be grooming processes, although the  
2 Supreme Court has said that we can't talk about grooming  
3 processes with family members, that we can only talk about  
4 that with non-family members. We must use other  
5 terminology. I also talk about the availability of  
6 supportive protective parents, or caregivers, for the child  
7 to tell, and so on. So there will be a number of reasons  
8 that might have emerged in the case.

9  
10 We might also talk about continued contact and  
11 affection with children and offenders, because that's often  
12 put up by defence counsel as a suggestion as to why this  
13 could not have in fact occurred, if the child has continued  
14 to have a close relationship. Often there might be cards  
15 or videos of affection that defence might want to present.

16  
17 Sometimes it's suggested that the offending could not  
18 have occurred because someone was in the near facility or  
19 the next room and they didn't see it, so it could not have  
20 occurred. So we talk about the research about that. There  
21 is some quite interesting Australian research that's  
22 emerged about that factor.

23  
24 Sometimes when a child has a previous history of  
25 sexual abuse by someone, it might be suggested that they  
26 are a child prone to making allegations, or it might be  
27 suggested that this child has been previously sexually  
28 abused, and that they are confusing that abuse with defence  
29 counsel's client. What they often bring to that is the  
30 eyewitness identification lineup research to suggest that  
31 the child has confused through what they call unconscious  
32 transference. It would be absolutely legitimate if the  
33 perpetrator was a stranger to the child and they'd only  
34 seen them once, but as we have talked about today, most  
35 frequently the offender is someone well known to the child  
36 and the offending has occurred on a frequent basis for a  
37 long time, so identity is not an issue.

38  
39 Then we finish it by saying this doesn't prove  
40 anything and make the point, just in case jurors think that  
41 because reporting has been delayed that means the offender  
42 is guilty. We say, "Look, timing doesn't really tell us  
43 anything at all, because just as an immediate complaint may  
44 be true, untrue or false, a delayed complaint may be true  
45 or untrue also". So that's sort of the evidence we give.

46  
47 We do not talk about the case or any of the players in

1 the case at all. It's purely educative evidence. There  
2 was a lot of case law about it, a lot of resistance to it  
3 at the beginning. The High Court appeals and a Court of  
4 Appeal upheld it, and recently the Supreme Court, which is  
5 our highest court, has upheld that it is substantially  
6 useful evidence for a jury to hear.

7  
8 PROFESSOR GOODMAN-DELAHUNTY: Thank you. I think one of  
9 the interesting things, as you look at the law, is that  
10 although New Zealand has had that law and experts have  
11 testified on those sorts of issues, Australia's had  
12 provisions available to do the same thing, yet they have  
13 remained under-used by comparison. One of the questions  
14 that I'd like your input on is what sort of expert  
15 evidence, particularly on some of the memory issues that we  
16 have talked about today, do you think might be helpful to  
17 juries?

18  
19 DR LENNINGS: Can I go back to an issue which I think goes  
20 to your question as well. In my experience, working in  
21 this kind of area in the courts in New South Wales, across  
22 the prosecution, we retain one expert and the defence will  
23 retain another expert. 50 per cent of the evidence given  
24 by both experts is the same, but 50 per cent of the  
25 evidence given by the experts differs. That's a matter of  
26 nuance, a matter of interpretation, a matter of perhaps  
27 some ideological biases, perhaps even some pressure. But  
28 it becomes important, then, that there be an interpreter  
29 for the jury about how to place weight upon the information  
30 that's being given.

31  
32 You could have some very stark contradictions between  
33 experts which can then leave a jury more confused rather  
34 than less confused, unless there is some clarity or some  
35 ability to cut through some of that for them in the form of  
36 direction. You hear this sort of comment, "Trial by  
37 expert", and it becomes a problem when you've got  
38 contradictions occurring between experts for juries.

39  
40 ASSOCIATE PROFESSOR NOLAN: Is that an argument for a  
41 court-appointed expert to do that translation?

42  
43 DR LENNINGS: I think a court-appointed expert is by far  
44 the best way out of that situation. A single expert would  
45 be by far the best way to go.

46  
47 PROFESSOR KEMP: It depends who the expert is. That's

1 fine, as long as you've got the right expert.

2

3 PROFESSOR THOMSON: For example, there's a case in Western  
4 Australia --

5

6 DR LENNINGS: A lot of the more subtle and nuanced  
7 pressures placed upon the expert can then be released.

8

9 DR HENDERSON: The other possibility, which you guys do  
10 far more than we do, is hot tub - putting experts up  
11 together so that issues can be dealt with and people don't  
12 get confused about what the issues are and they can be  
13 answered directly. Or at least have experts appear one  
14 after the other, rather than one at one end of the trial  
15 and one at the other end.

16

17 DR BLACKWELL: I think there is still that problem that  
18 jurors get really confused if one expert is saying one  
19 thing and another is saying something. Some of the issues  
20 about how experts are perceived can be the factors that  
21 sway them, rather than whether the evidence is accurate or  
22 not.

23

24 DR LENNINGS: That's a matter of concern.

25

26 DR BLACKWELL: We expect expert witnesses, who have a  
27 code, to behave better.

28

29 PROFESSOR SEYMOUR: There is another provision in our law  
30 in the High Court rules of conduct for experts that allows  
31 a judge to direct the experts to consult one another.

32

33 DR BLACKWELL: And you produce a statement.

34

35 PROFESSOR SEYMOUR: Actually, I would say it's a lot more  
36 than 50 per cent agreement, but there's a lot of difference  
37 in nuance and the way that information is actually  
38 presented. I don't think there is a great deal of  
39 difference in what people are saying.

40

41 DR BLACKWELL: We stick to pretty mainstream things and  
42 I guess I'm there because primarily I am a practitioner or  
43 I have been a practitioner who has treated and assessed  
44 people who have been victims of sexual abuse and also  
45 sexual offenders, and combining that with a knowledge of  
46 the literature, but it is very mainstream and if I cite a  
47 small study, I talk about the caveats to why we would take

1 that into consideration. It is pretty even-handed and  
2 I hear back that defence experts don't worry too much  
3 because they always think they can get something good out  
4 of me that would help their case. I think that's because  
5 we're there to assist the court and not there to take  
6 sides.

7  
8 DR HENDERSON: And that is what is so incredibly  
9 important, that expert witnesses do not become co-opted to  
10 one side or the other and that level of ethical adherence  
11 to your responsibility to the court rather than to the side  
12 who might be calling you is just so important. I do agree,  
13 a court-appointed expert would take that pressure away to  
14 an extent.

15  
16 MS SANDERSON: On that note, I am sorry everyone, I am  
17 actually going to have to bring it to an end for the day  
18 because we are out of time.

19  
20 DR DEAR: Picking up Don's point just very quickly, Don  
21 reacted to the single expert - single expert with the  
22 capacity to have the expert's report critiqued.

23  
24 MS HENDERSON: As in the Family Court?

25  
26 DR DEAR: Yes.

27  
28 MS SANDERSON: All that remains for me to do really is to  
29 say two things: first and most importantly, thank you  
30 everyone and thank you to Jane, Mark and Evianne, but thank  
31 you all, to all of you. I think it has been a really  
32 useful day, it certainly got people animated and we will be  
33 very interested to pick through the transcript.

34  
35 The other slightly less important thing, but still  
36 important, we will email you a link to the transcript as  
37 soon as it goes up next week - it might be Monday, it may  
38 be Tuesday, we'll just see how we go - and if there's any  
39 follow-up issue, or anything like that, we'll flag that in  
40 the email, but also if there's anything you had a burning  
41 desire to say today and you didn't get to say it, please  
42 shoot us an email, but do it quickly because we are on a  
43 tight time frame.

44  
45 The other thing we will follow up with, of course, is  
46 that this is leading to a research report and you will get  
47 the report. I am not sure yet if we will publishing it in

1 hard copy, if we are we will send you a hard copy, but  
2 we will definitely be publishing it online, so we'll also  
3 give you a link, but yes, on behalf of the Commissioners,  
4 who as I said at the start were very sorry not to be able  
5 to be here, thank you all very much for such a thoughtful  
6 and enthusiastic contribution right throughout the day. It  
7 is really very much appreciated and it will be a big help  
8 for our work at the Commission and hopefully also for Jane,  
9 Mark and Evianne.

10  
11 ASSOCIATE PROFESSOR NOLAN: Thank you all.

12  
13 PROFESSOR GOODMAN-DELAHUNTY: Thank you.

14  
15 DR VAN GIJN-GROSVENOR: Thank you.

16  
17 **AT 3.35PM THE ROUNDTABLE ADJOURNED ACCORDINGLY**  
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