

The Evidence of Children

Many voices are heard to say when discussing Family Court issues regarding residency and contact of young children, that allegations of abuse should be dismissed, unless such allegations can be 'proved to be true in a court of law'.

This simple statement is far from simple in its application, and thus a better understanding of the difficulties that young children face in an adult geared court room situation must be examined.

Increasing numbers of children, including the very young are now giving evidence in criminal court proceedings.

Recently, some reforms have been made, such as the removal or reduction of formal barriers to children's testimony in the form of corroboration and competence requirements and some physical procedures, such as video testimony and screens to shield them from the gaze of the alleged perpetrator.

However, the implementation of these measures relies largely on judicial discretion, as does the tactics used by the defence to discredit the witness.

The traditional view of children was that they were unreliable witnesses, prone to fantasy, easily manipulated with incomplete and inaccurate memories of what they have experienced. A survey of judicial officers found that most thought that children under the age of 5 were too young to give evidence and that a child was competent to give evidence at around age 12.

Research now indicates that "children are able to encode and retrieve large amounts of information, especially when it is personally experienced and highly meaningful". However it must also be remembered that there can be "serious social and cognitive hazards to young children if adults who have access to them attempt to usurp their memories..."

The first problem to be faced by the child is the determination of whether they understand the concept of "telling the truth". Sometimes the questioning technique is simple eg; " You understand you have to tell the truth don't you?". Other times complex questions can be asked, such as "Do you know you could be charged with perjury?", the child not

answering as they do not know what perjury is, or get asked complex questions such as “In respect to the answers that you give to those questions, are you conscious of the fact that you have an obligation.....do you know what an obligation is?”

Thus the child is confused and disorientated from the outset which adds to any trauma that the child faces from testifying in such a formal environment as a court, such a situation holding the same acknowledged terrors for adults.

Juries are also often warned about accepting the uncorroborated evidence of children. The younger the child, the more a judicial warning is seen to be necessary.

However, it is interesting to note that although competency testing is on the child’s understanding of truth and lies, judiciary held little concern about children’s dishonesty, and believed that children were at least as honest as adults, if not more so.

The problem for many children and their parent or protective carer, is the lengthy delays in getting matters to court finality, having to face the defendant, an intimidating court room environment and having to face the defendant, with this aspect being reported as the worst of all. The use of closed circuit television is not automatic and has to be applied for and application for such may be denied.

It has been shown that in many cases the presence of the accused can *reduce* the willingness of a witness to report what “an offender” has done and increase stress levels which may be taken as an indication of ‘lying’. This would be even more onerous if the “offender” was a parent of the child.

Cross examination holds other fears. The main problems were being accused of lying, the harshness of the questioning techniques, and the length of cross examination with embarrassing questions being directed with the expectation of intimate and detailed answers.

In many instances, parents and children who have been through ‘the system’ only to be discredited, the offender being found ‘not guilty’ or receive a lenient sentence, would not go through the trauma again, and would advise others not to do so.

As one child summed up:

“ I had to answer lots of questions for about five hours. The solicitor kept on saying I lied and that I did things that I didn't. He kept on and on about things. My grandfather never had to answer any questions.”

The information in this document has been obtained from
“The Evidence of Children” Judy Cashmore and Kay Bussey
Judicial Commission of NSW 1995
National Library of Australia ISBN 0 7310 5052 5