INTERVIEWING OF ABORIGINAL PEOPLE

By Martine Powell*

The barriers faced by many Aboriginal people when participating in investigative or evidentiary interviews have received considerable attention over the past two decades. Research and other evidence has shown that indigenous styles of interpersonal interaction differ markedly from those styles found among non-indigenous Australians and that such differences often lead Aboriginal interviewees to give information that is misleading, unreliable and self-incriminating. Increasing concerns about this problem have led to numerous positive changes in the way the evidence of Aboriginal people is gathered by lawyers and police.

However, there is still considerable room for improvement if our goal is to create a fair and reliable system for the investigation of complaints made by and against Aboriginal people. One area in need of major improvement is the *investigative interview process*; the manner and context in which accounts of events are elicited. The elicitation of a reliable and accurate account of an event from an Aboriginal person is indeed a highly complex process that depends in part on five important elements. These elements, which form the acronym P.R.I.D.E., are discussed in turn below.

P = Prior knowledge about the interviewee and the wider context.

Awareness of the differences between the interviewee's and interviewer's language and culture is the first step in being able to communicate cross-culturally. By considering an Aboriginal interviewee's language, culture, customs and knowledge, the interviewer is in a better position to establish rapport with the interviewee, to probe issues appropriately, to know when an interpreter is required, and to understand the context and meaning of the interviewee's behaviour and the information that is reported. Prior information about an interviewee will be most useful if it is acquired from credible persons who have a good understanding of the particular interviewee's background and position within the community. The three areas of inquiry that are likely to have the largest impact on the interview process are;

- the interviewee's verbal (and nonverbal) dialect
- the interviewee's usual style of relating, in particular how familiar the person is with the discursive style of questioning, and
- knowledge of the kin-based network, customs and rules governing verbal exchange between persons (e.g., whether there are restrictions on the contact or dissemination of information between certain categories of relatives).

The more the interviewer relies on language and a style of interaction which is alien to Aboriginal people, the greater the cognitive demands and stress he/she places on the interviewee, thereby reducing the interviewee's ability to engage in the interview process and provide relevant information about the offence.

R = Rapport with the interviewee

The more at ease the interviewee is within the interview setting, the greater the likelihood that he/she will talk openly, without fear of criticism or judgement. Aboriginal people depend heavily on the existence of personal relationships and respect among others in their own society, therefore it is important that interviewers are courteous, fair and honest, and demonstrate acceptance of their cultural differences (without display of stereotypic beliefs). Interviewers who demonstrate these characteristics empower their interviewees and reduce their subjective experience of threat, thereby increasing their willingness to cooperate in the interview process. A good rapport is established in the interview setting by;

- being sensitive to the interviewee's needs and being flexible where appropriate,
- showing goodwill (without being patronising),
- listening carefully to the interviewee and showing the interviewee that he/she has been understood,
- taking the time to get to know the interviewee and learning about aspects of his/her culture and community life,
- making sure that the interviewee understands the purpose, process and rules of the interview process and his/her rights.

Rapport is also facilitated by the interview context, as well as qualities associated with the individual interviewer. Any diminution in formality in manner and language is likely to decrease a sense of intimidation and anxiety, particularly when the interview is conducted at a relaxed pace where silence is tolerated and the interviewee is free to respond without pressure. An ideal physical environment is one that minimises a sense of threat, isolation, distractibility, disorientation and physical discomfort.

I = Interpretative assistance (if required)

In light of the mismatch of Aboriginal language and culture with the language and culture which prevail among members of the legal system, there is little doubt that accurate and detailed statements from Aboriginal people (particularly speakers of traditional Aboriginal languages and Torres Strait Creole) is largely dependent on the assistance of interpreters. With only a limited range of English vocabulary, an Aboriginal speaker is constrained in his/

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her ability to link pieces of information together, and to provide detailed information, particularly evaluative and descriptive comments about an event. There is an underuse of interpreters of Aboriginal languages by police and lawyers in the Northern Territory. This is due in part to the difficulty in accessing competent, trained interpreters who are readily available at short notice, and to inadequate training among professionals in how to determine whether Aboriginal witnesses or defendants have the language skills to be interviewed in English. The need for an interpreter cannot be determined merely by conversing informally with the person. Informal conversations rarely require reporting of the types of details that are relevant to the courts such as estimations of dates, time, distance, size, number and issues related to intent.

D = Diverse array of hypotheses

Investigative interviewing should be regarded as an exercise in testing alternative hypotheses, not a confirmation of what the interviewer already knows. A good interviewer is flexible enough to change his/her hypothesis about what occurred, as new, and even disconfirming information arises. When the interviewer is biased, or thinks he/she knows the truth about the nature of the event or the identity of the offender, relevant and vital information is overlooked, screened out, or ignored, and questioning is likely to be incomplete or inaccurate. Keeping an open-mind is such an important consideration when interviewing Aboriginal people because the potential for inaccurate hypotheses is greater when the interviewee is not of the same cultural group as the interviewer.

E = Effective techniques for eliciting a free narrative

The most important and crucial part of any investigative interview is the free-narrative stage conducted prior to any specific questioning about the alleged offence. The phase generally proceeds with the interviewer providing a general or open-ended question, for example " Tell me what happened..." and using nonverbal encouragers (e.g., head nods, pauses) or open-ended questions (e.g., "What happened then?") to encourage the interviewee to provide further information about the event. While the process may sound easy, one of the main criticisms of lawyers and police in this country is their overuse of short-answer and direct questions compared to open-ended interviewing techniques. The rapid question-and-answer style of interviewing is not appropriate when conducting interviews with Aboriginal people for several reasons;

- it elicits less accurate evidence and shorter responses compared to open questions
- it masks poor comprehension because Aboriginal people often adopt strategies to cover up their limitations e.g., repeating back phrases or words used by the interviewer, providing a stereotypical response, or providing affirmative answers to yes/no

questions even if they do not understand them,

- most Aboriginal people are not socialised into the question-and-answer discursive style,
- swift questioning does not allow the interviewee or interviewer time to collect his/her thoughts, and as a consequence, does not lend itself to elaborate retrieval.

The elicitation of a comprehensive narrative is a skill that many Anglo-Australians do not acquire easily because from an early age Anglo-Australians are socialised into the question-and-answer style of conversation. An abundance of research indicates that their ability to elicit a free-narrative from an interviewee usually requires specialised training with practice and critical feedback. Unfortunately relatively little training is offered to police and lawyers in this skill, particularly in the early stages of career development when habitual interviewing styles are being formed. Without adequate training by professionals who have the appropriate knowledge and techniques needed to facilitate the development of this skill, it is unlikely that marked improvements will be made to the quality of evidence that is generally obtained from Aboriginal people.

End Note:

This is a synopsis of a paper entitled *"Guidelines for conducting investigative interviews with Aboriginal people"* which was sponsored by the Law Society Public Purposes Trust. The paper includes practical suggestions for interviewing Aboriginal witnesses, victims or offenders. To offer feedback about this article or to request a copy of the full paper, write to Dr M. Powell, School of Psychology, Deakin University, 221 Burwood Hwy, Burwood, VIC. 3186, Australia. Ph: (03) 9244 6106, FAX: (03) 9244 6858, email: mbpowell@deakin.edu.au or contact the Society.

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Professional standards

The mission statement of the Law Society nominates self-regulation and raising standards of the legal profession as an integral part of its role in the Northern Territory community.

At a strategic planning conference in January this year the Council resolved to provide statistical information to the profession and the public concerning complaints.

This resolution brings the Law Society into line with other regulatory bodies around the nation, who provide annual reports on complaints procedures and results. The level of detail of information distributed in relation to specific complaints varies from jurisdiction to jurisdiction.

The Council has resolved to make public statistics without detail or identification until the confidentiality provisions contained in Section 47 (c) of the Legal Practitioners Act are amended.

In 1999, 98 complaints were investigated by the Law Society. This compares with 42 complaints in 1998, 173 in 1997 and 147 in 1996.

The most common complaints centred around delay and costs.

Of the 98 complaints, 31 were dismissed after no prima facie case was found by the Chairman of the Ethics Committee, a further 27 were successfully resolved through mediation or conciliation and 17 were withdrawn. Four complaints were referred to other regulatory bodies and six remain outstanding.

Of a more serious nature, the Chairman of the Ethics Committee found there was a prima facie case to answer in nine complaints.

In each of these cases an Ethics Committee was convened to hear the complaint and recommendations were made to the Council of the Law Society.

Of those nine complaints three legal practitioners were fined, three were admonished, one was dismissed and two decisions have been reserved.

Following a complaint in relation to trust accounts in 1999, one practising certificate was suspended.

In 1999 three charges of professional misconduct were laid against legal practitioners before the Legal Practitioners Complaints Committee and the Law Society successfully applied to have one legal practitioners struck off.