

Practical Guidelines for Conducting Investigative Interviews with Aboriginal People

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This paper integrates knowledge on the vulnerability of Aboriginal interviewees with research findings on investigative interviewing and eyewitness memory to offer practical guidelines for interviewing Aboriginal people. The aim of these guidelines is to maximise the reliability and relevance of the evidence obtained when interviewing Aboriginal people. A simple, flexible interview protocol is offered which consists of several key stages: (i) rapport and initial assessment, (ii) an explanation of the purpose, routines and ground rules of the interview, (iii) the elicitation of a free narrative about the alleged offence, (iv) the use of questions to elicit specific details about the offence, and (v) closure of the interview. A rationale for each of the recommendations is outlined with reference to the relevant legal, linguistic, anthropological and eyewitness memory literature where appropriate.

The barriers faced by many Aboriginal people when participating in investigative interviews have received considerable attention in the professional literature over the past two decades. While there is no homogenous Aboriginal culture, 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 (Eades 1992). Increasing concerns about this problem have led to numerous changes in the way the evidence of Aboriginal people is gathered by lawyers (Criminal Justice Commission 1996) and police (Mildren 1997). In particular, reforms achieved by the Anunga Rules (*R vs Amunga* 1976) and the introduction of audio and videotaped evidence have led to widespread improvement in the ethical behaviour of police interviewers, due in part to increased public scrutiny of the interview process. However, improvements still need to be made if a fair and reliable system for the investigation of complaints made by and against Aboriginal people is to be obtained (see Goldflam 1995; Australian Law Reform Commission 1986; Lawrie 1999). This paper focuses on one area in need of improvement that has received relatively little attention to date, i.e. the investigative interview process and specific questions that **should** be asked by police, lawyers and social workers when eliciting information from Aboriginal people about an alleged offence¹.

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The main criticisms of interviews conducted by police and lawyers in recent years have been the frequent use of jargon and leading questions, and the reliance on the question-and-answer interviewing style which is ill-suited to the language and cultural background of most Aboriginal people (Eades 1994). While this style of interviewing is not confined to police in Australia (Milne & Bull 1999), Australian Aboriginal people are particularly vulnerable to such interviewing practice because they often lack the verbal skills and confidence to withstand the questioning process and have difficulty understanding the full meaning or context of questions that are put to them (Cooke 1998). The current paper addresses these concerns by offering some practical guidelines for interviewing Aboriginal people which may help to maximise the reliability and relevance of the evidence obtained. A simple, flexible interview protocol is offered which complements the Anunga guidelines (adopted in the Northern Territory) and guidelines implemented in other States (see Australian Law Reform Commission 1986). This protocol consists of several key stages, including rapport and initial assessment; an explanation of the purpose, routines and ground rules of the interview; elicitation of a free narrative about the alleged offence; the use of questions to elicit specific details about the offence; and closure of the interview.

It should be noted that this structure is not a new or radical proposal; the stages are present in most respected investigative interview protocols (Milne & Bull 1999). As yet, however, the implementation of this interview structure has not been discussed with particular reference to Aboriginal interviewees.

The overall framework that is proposed is particularly suited to the elicitation of evidence from Aboriginal people for four reasons. First, the framework is interviewee centered. In other words, it allows the interviewee to determine the vocabulary and specific content as much as possible, by maximising free narrative and minimising interviewer questioning (particularly in the early stages of the interview). Second, it prioritises the establishment of a nonintimidating environment and a good understanding of the interview process in the interviewee prior to the elicitation of evidence. Third, the framework addresses judicial concerns about the reliability of evidence admitted by opening with free narrative or general questions before moving on to specific questions. Fourth, the framework is broad enough to apply to any interview situation. It may be used with any interviewee (juveniles, witnesses, victims, suspects) regardless of whether an interpreter is used. Further, while the focus of this paper is on interviews conducted by police, the recommendations apply to interviews conducted during all stages of the legal process (e.g. interviews conducted by legal counsel, defence lawyers, field officers and social workers)².

Rapport and Initial Assessment

Most experts in investigative interviewing agree that a good rapport with an interviewee is one of the most important assets to an interviewer, especially if the topic being discussed is traumatic or embarrassing (Milne & Bull 1999). The more at ease the interviewee is within the interview setting, the greater the likelihood that he/she will engage in the interview process and talk openly, without fear of criticism or judgement. The importance of building rapport is especially relevant when interviewing Aboriginal people who depend heavily on

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- 1 The paper is confined to examining ways in which existing interviewing procedures can be improved. Wider issues such as the adoption of a more culturally appropriate justice system for Aboriginal people are not discussed.
 - 2 Modifications would obviously need to be applied depending on the purpose of the interview. For example, an interview for the purpose of obtaining a confession to be used as evidence at trial must include a caution before the interview commences (Australian Law Reform Commission, 1986).

the existence of personal relationships and respect among others in their own society (Alpher 1995; Eades 1995b). From the point of first contact with an Aboriginal interviewee, a relationship needs to be established where his/her anxiety, and feelings of insecurity and intimidation are reduced as much as possible. While the way in which rapport is developed will differ depending on the individual interviewee and the circumstances surrounding the event, there are three broad recommendations that can be offered.

First, upon initial contact with the interviewee, the interviewer should introduce him/herself by name (and any other unknown persons present) and greet the interviewee by name. The interviewer should then clearly state his/her role, where he/she is from, and why the interview is taking place. Depending on the context of the interview, there are several details that may need to be explained at this point:

- The aim of the interview needs to be explained in simple terms e.g. 'We're here to talk about that trouble at top camp last night where someone got stabbed. We think you might have been there and know something about that trouble. We need to talk with you to find out about that trouble.' With a child who is being interviewed about possible abuse, an explanation of the purpose, however, would need to be less explicit (see Wilson & Powell 1999 for guidelines about how to question a child about abuse).
- The interviewee needs to be made aware that he/she is not in any trouble, and is not going to be arrested (if this is the case).
- If the interviewer is a police officer who is not wearing a uniform, the reason for this may need to be explained to the interviewee so that he/she is not confused about the officer's role.
- If the interviewee has travelled a long way to the interview (and is not familiar with the area) it may also be important to explain precisely where the interview is taking place.

The above details may need to be explained to other persons attending the interview (e.g. 'prisoner's friend'), and to the interviewee's relatives or senior members of the community who are likely to be concerned about the interviewee's whereabouts and the reason for the professional's involvement.

Second, prior to the elicitation of information about the alleged offence, the interviewer should take some time to get to know the interviewee and to put him/her at ease. While the establishment of trust and a personal relationship with the interviewee will depend largely on the general attitude toward police within the community (Eades 1995b), it can be facilitated in the interview context by asking questions which promote expanded conversation about neutral, positive issues that are not related to the alleged offence (e.g. the interviewee's home of origin, sporting events, or recent community activities). The interviewer should listen patiently and contribute to the conversation as an interested party, not merely as if he/she is asking a standard list of questions (Milne & Bull 1999). Indeed, this stage provides a good opportunity for the interviewer to learn about aspects of the person's culture and community life that have not previously been understood.

It is highly important that rapport-building questions are asked at a relaxed pace, and encourage the interviewee to talk as much as possible. This familiarises the interviewee with the structure of the interview (which should involve the interviewee doing most of the talking), and it allows the interviewer to become accustomed to the person's speech volume, accent and level of English comprehension and production. This is crucial for determining the need for an interpreter³, for determining how to modify one's own speech (i.e. word choice and rate of speaking), and for determining how best to set up the recording equipment. The interviewee at this stage will also be learning from the interviewer's behaviour what is expected and will try to adjust his/her behaviour accordingly (Milne &

Bull 1999). Thus, if the interviewer speaks slowly in a relaxed, calm manner, the interviewee will be encouraged to do so as well. If the interviewer shows concern for the interviewee's level of comfort, listens empathically without interrupting, and responds openly and honestly without judgement, then the interviewee will be confident that he/she will be understood and treated fairly.

Third, consideration needs to be made of the interview environment to ensure that it minimises a sense of threat, isolation, distractibility, disorientation and discomfort. Where possible, the interviewer should seek advice in advance about relevant cultural and linguistic factors that may impact upon the interview. However, irrespective of what prior information the interviewer may have, the interviewee's behaviour would still need to be observed carefully for signs of awkwardness, intimidation, embarrassment and discomfort within the interview setting. This is because there is a diverse range of potential stressors and individual reactions to stress which cannot be predicted merely from an individual's sociocultural background. Other factors which could determine the stress of an Aboriginal interviewee include his/her personality, the amount of experience with mainstream Australian culture and with police, the type of offence and the person's relationship with the victim or offender, the perceived consequences of disclosure and any customs/taboo that might prevent such disclosure, and the characteristics of the interviewer and the interview environment. Where possible, therefore, the person should be encouraged to outline what would make the interview easier for him/her. Some of the possible factors to explore include the following.

Physical/Environmental Factors

Is the interview room too distracting (e.g. are there too many persons in the proximity)?

Is the room temperature too hot or cold for the interviewee? The interviewee may not be suitably dressed for heating or air-conditioning.

Is the room too claustrophobic, unfamiliar, or stuffy? Many Aboriginal people would feel more at ease being interviewed in an open, familiar environment rather than a police station.

Is the person hungry or tired?

Does the person suffer a hearing loss? If so, the interpreter needs to be made aware of this.

Does the person require a drink or need to use the lavatory?

Is the person ill or under the influence of alcohol or drugs? The interview should be postponed in these cases.

Language/Cultural Factors

Is there too much direct eye contact or not enough personal space? Many Aboriginal people find direct eye contact very intimidating.

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- 3 There is an abundance of evidence to suggest that interpreters need to be used more frequently in interviews by police and lawyers (Goldflam 1995; Lawrie 1999). This is unlikely to occur unless professional interpreters become more readily available and interviewers are instructed how to assess their need and use them effectively (Cooke 1995). Lawyers at the Northern Australian Aboriginal Legal Aid Service currently use a quick, objectively verifiable questionnaire to determine whether Aboriginal witnesses or defendants have the language skills necessary to cope with the court proceeding and to give instructions to legal counsel. This questionnaire could be modified for use by police.

Is the interpreter, support person or interviewer not permitted to hear the to-be-recalled event? For example, it is usually the case that sexual matters should not be discussed in front of a person of the opposite sex. Such problems can be avoided if the alleged offence and the interviewee's demographic details are identified when the request for an interpreter is made, and if the suspect is informed of the precise nature of the police investigation prior to selecting a prisoner's friend.

Can the interpreter communicate fully with the interviewee?

Is the interviewer talking too quickly or asking too many specific questions?

Psychological Environment

Is the person worried or fearful about the consequences of the interview, about what will happen to him/her in police custody, or about how and when he/she will return to the community? Any concerns of the interviewee may need to be discussed at this stage.

Has the person had prior experiences with the police that were negative?

Does the person feel embarrassed about his/her lack of competence in the English language? If so, an interpreter should be used.

Does the person feel too embarrassed to talk about the event in front of several people? While many victims prefer to be interviewed in a group, some victims may prefer to be interviewed alone.

Is the interviewer speaking too loudly? This is a common complaint of Aboriginal people who do not have hearing problems (Local Government Association of the Northern Territory 1994).

If the initial interaction with the interviewee suggests that the interview is unlikely to progress in an easy manner, it may be fruitful to postpone the interview to a later date and to do some further research and thinking before conducting the main interview about the alleged offence. There is no value in continuing an interview if it is causing anxiety, if the person will not talk, or the interviewer cannot understand what the person is saying. If the interviewee feels overly pressured to talk, then he/she will be less likely to come forth and disclose details about offences in the future.

Explanation of the Routines and Ground Rules of the Interview

The Australian legal system is very alien to many Aboriginal people, who do not understand the various aims of the investigative interview and the function of various rules of speech and social requirements. This is an important consideration because when interviewees do not understand the purpose of the investigative interview, they are less likely to provide information that is forensically relevant (Siegal 1991), and may be unnecessarily fearful and confused about the interview process (Forham 1994).

There are numerous potential sources of misunderstanding when an Aboriginal person participates in an investigative interview. For example, if other professionals have already spoken to people in the community, the person may omit important information because he/she believes that the interviewer knows about the event already. Some interviewees may erroneously believe that they know what information is of investigative value (i.e. information told to them by others, or information about the spiritual world). Important procedures such as the requirement to state the caution back in the interviewee's own words is likely to create confusion. Furthermore, a desire to appear co-operative and competent might lead the

interviewee to intentionally downplay problems in English comprehension and production. At appropriate points throughout the interview, therefore, the interviewer may need to provide a brief, clear explanation of the purpose, process and ground rules of the interview and the rights of the interviewee in terms that the interviewee can understand. The various socio-linguistic and legal aspects that may need to be explained to the interviewee include:

- the person's right not to be interviewed if he/she does not want to, as well as the reason for having to repeat back phrases of the caution (if required), e.g. 'I need you to repeat back what I say in your own words. If you can say it in your own words, I will know that you understand me';
- the function and purpose of any technical equipment used in the interview (e.g. video or tape recorder);
- the roles of various people who are attending the interview;
- the need for the interviewee to suggest what factors may assist the interview process (i.e. an interpreter, a slower pace);
- the reason for asking questions in which there are obvious answers (e.g. a police officer asking the witness to state his/her name for the tape when it is already known to the officer, or asking the witness to state how many people are in the room);
- the purpose of long breaks or silences (e.g. 'I need some time to think about what you have told me');
- the need for the interviewee to correct any misunderstandings that the interviewer may have (e.g. 'I do not know what happened so it is very important that you tell me if I misunderstand you.');
- the structure of the interview (e.g. 'First I am going to ask you to tell me everything you can remember about that fight, then I will ask you questions about it');
- the need to elicit specific details related to time and place, and the nature of the offence. This is particularly puzzling for victims of crime who may feel that their story is being challenged;
- the need for the interviewee to say 'I don't know' or 'I don't understand' if he/she does not understand something that is said;
- the need for the interviewee to make clear the source of any factual beliefs (e.g. whether the interviewee saw the event with his/her own eyes or merely heard about it);
- the need for the interviewee to report everything that he/she can remember even little things that may not seem important, or things that the interviewer may know already;
- the reason for any note taking;
- the reason why a question or part of a question is repeated e.g. 'I might ask you some questions that you've been asked before to check that I understand your answer. If I ask a question again it doesn't mean I want you to change your answer. Just do your best to tell me what you remember.');
- the form of the police statement (whether written or on audiotape). Interviewees who have given evidence prior to the introduction of audiotaped statements might become confused when they are handed an audio cassette instead of a typed document;
- that it is permissible for the interviewee to use Aboriginal words if he/she does not know an equivalent word in English (even in the absence of an interpreter). Aboriginal words can be interpreted later if they are recorded on audiotape or videotape.

The interviewer should not assume that the interviewee understands any of the above procedures merely because he/she has participated in investigative interviews previously, speaks English well, or is familiar with mainstream culture. The onus is always on the interviewer to prevent or correct any misunderstandings about the process and purpose of the interview. Because such details may be difficult to explain in simple language, it is advisable for interviewers to think about them in advance and to memorise clear and simple explanations⁴.

Eliciting a Free Narrative

Prior to any specific questioning about the event, the interviewer needs to elicit an uninterrupted free report of the interviewee's version of the event using only general probes or nonverbal prompts. The free narrative stage of an interview is one of the most frequently omitted or rushed sections of investigative interviews (Mildren 1997; Eades 1994) but it is the most evidentially important. Judges and juries place greatest reliance on accounts given in the Aboriginal person's own words rather than on the fragmentary testimony achieved by specific questioning techniques (Mildren 1997). This is because general probes or open questions elicit more accurate evidence and longer responses compared to specific or closed questions (Lamb et al 1996). Further, responses to closed questions mask poor comprehension as 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 (Cooke 1998).

The free narrative section usually begins with a clear instruction as to the event that needs to be reported, and the important ground rules for providing a free narrative (e.g. being comprehensive, reporting only first-hand knowledge, and reporting details in chronological order). For example, if an interviewee has admitted witnessing a stabbing, the interviewer might say:

Before you told me that you saw Joe get stabbed at top camp last night. I need you to tell me everything you can remember about that trouble, even things that you don't think are important. But I only want you to tell me what you saw with your own eyes and heard with your own ears. Start from the beginning; what is the first thing you can remember.

It would be inappropriate to refer to the event in any vague terms e.g. 'What do you want to say about what you were doing last night'. Therefore it may be necessary to ask a direct or closed question first to establish that the person does in fact acknowledge that the to-be-recalled event occurred. If the free narrative is not clearly anchored to a particular event, then the information obtained is less likely to be relevant or useful. The following are some examples of ways to anchor an event before eliciting a free narrative:

- Did you see the fight? Tell me everything you can remember about the fight.
- This morning you spoke to your teacher. You said you were frightened by some things... is that right? I want you to tell me about these things.
- I have spoken to Jim and it sounds as though there was some trouble here last night. Can you tell me a little bit about that trouble?

Interviewers may become despondent when initially trying to elicit a free narrative from Aboriginal interviewees because they often do not provide much information after a single prompt, and any information they initially provide may not appear (on the surface) to be directly relevant to the topic at hand. Many Aboriginal people are naturally shy and unassertive speakers, and within their culture they unfold the details of a story slowly over time (Australian Law Reform Commission 1986). While this can be irritating for an interviewer who is under a great deal of pressure to get information to substantiate charges, it is important to be patient and let the person proceed at his/her own pace. If the interviewee feels hurried or his/her train of thought is interrupted, he/she will not be able to effectively

4 Another possibility is to record these explanations in the interviewee's own language. Information audiotapes are currently being trialed by police in the Northern Territory where an explanation of the police caution and other information relevant to the needs of non-English speaking Aboriginal suspects is played to the suspect in his/her own language prior to the investigative interview.

search memory and provide elaborate responses. In order to steer the interviewee to the next point in the story, or to gently encourage the interviewee to provide further narrative information, a range of non-leading prompts can be used which are displayed in Table 1. Of all the prompts listed in this table, the nonverbal prompts are likely to be the most effective with Aboriginal people because they are frequently used within traditional Aboriginal society to indicate audience participation during the narration of a story (Eades 1995b). The purpose of all these prompts is merely to indicate to the interviewee that he/she is being heard.

Table 1: Nonleading questions and prompts used to indicate that further narrative information is desired.

Nonverbal prompts	General probes	Echo-probes
'Yeah', 'Oh'	'Tell me more about that.'	The interviewer reiterates part of what the interviewee has said in his/her own words, i.e. the last two or three words
'Mmmm'	'What happened then?'	
Head nod	'What else can you remember about that...?'	
'Uh-Huh'		
Silence (i.e. waiting for the person to go on)		

An example of the use of the above questions and prompts is provided in the narrative that follows:

Interviewee: You know that Johnny Brown?

Police officer: Yeah.

Interviewee: Lives that away (interviewee points toward the North)

Police officer: Interviewer nods

Interviewee: Well he got real angry at Nick

Police officer: Nick? (Interviewer looks puzzled)

Interviewee: That man who sell the smokes

Police officer: Oh yeah.

Interviewee: He wanted to get rid of him... tried to kill him

Police officer: Oh.

Interviewee: At Bottom camp ... he went down there with a big rifle ... (silence) ... Went down there ... I seen his face ... real mad.

Police officer: Ah ha.

Interviewee: I was scared ... he was talk - telling us he was going to kill him.

Police officer: And what happened then?

Interviewee: We was talking to him... (story continues)

Once the interviewee has reached the end of his/her story, the interviewer could encourage him/her to keep talking by guiding him/her back to parts of the narrative and providing the opportunity for further recall (e.g. 'You said Johnny Brown wanted to get rid of Nick. Tell me more about that', or 'You said Johnny went down to Bottom camp with a rifle. What happened just before that?'). The importance of these prompts is that they are general; while they focus the interviewee on a particular part of the account, they do not dictate what specific information is required. Any specific questions that may be relevant for the investigation should be noted at this point and postponed until after the free narrative has been exhausted. This is because any interruption at this stage is likely to preclude further information being produced if the interviewee loses his/her train of thought.

If the interviewee will not disclose *any* information about the event, then the interviewer should try to determine the underlying reason for this silence to ascertain whether he/she should try to proceed with the interview at this time. Prior knowledge about the interviewee, and experience interacting with Aboriginal people may help the interviewer to generate alternative hypotheses for the silence which could gently be explored with the interviewee. There are several possible reasons for silence.

Perhaps the interviewee is too fearful or embarrassed to talk, feels ashamed to talk, or is just not ready to talk at this time. If this is the case, the interviewee may need more time to get to know the interviewer and to familiarise him/herself with the setting. Waiting a few minutes, and then gently asking for the information again might help. If it is appropriate to do so, the interviewer could tell the interviewee that he will return in a few days to talk about it. This may be effective given the centrality in Aboriginal information-seeking of silence and waiting until the person is ready to give information (Eades 1992:34). For some victims, questions of confidentiality and the consequences of disclosure may need to be discussed before they are willing to talk about the abuse.

Perhaps the person believes that if he/she is silent, the interviewer will revert to yes/no questions which are much easier to answer. Because responses to such questions are likely to be less accurate, any temptation to do so at this stage of the interview should be avoided.

Perhaps there is nothing for the interviewee to tell (e.g. the incident did not occur, the person is not clear about which event needs to be recalled, or the information requested is not available in memory). Or possibly the interviewee does not have the language skills to talk without an interpreter or to understand what he/she is required to do. Or possibly the person is merely thinking about the request and will respond to it in time. Or possibly the interviewee is intentionally exercising his/her right to remain silent.

Perhaps the person does not have the authority or right to speak about the matter, or the support person, interpreter or interviewer does not have the right within Aboriginal society to hear the information. Or perhaps the victim has been subjected to significant pressure from the community not to proceed with the complaint (Criminal Justice Commission 1996).

If the reason for the person's silence is not obvious, then the interviewer could ask 'Why are you not talking. Is it because you don't want to answer the question or is it something else? How can I make it easier for you to talk?' Further questioning about the event should not proceed unless the interviewer is certain there is something for the interviewee to tell, and has explored various avenues to help the interviewee provide the information on his/her own. While the elicitation of a free-flowing narrative is one of the most challenging tasks the interviewer faces, the importance of this phase for the investigation cannot be overestimated.

Questioning About the Event

Although the free reports of co-operative interviewees typically provide highly accurate information, they do not provide all the information that is critical to the investigation. Questions are usually needed in order to provide a complete account for investigative purposes or to particularise the interviewee's account. The problem with the question-and-answer phase, however, is that error rates increase compared to when the interviewee is required to spontaneously generate information (Craik 1979). When the interviewer imposes his/her language and framework of the event, there is greater potential for miscommunication or misunderstanding (Brennan & Brennan 1988), and the information that is requested may not be available or accessible (Loftus 1975). When information cannot be accessed, there is the danger that the interviewee may agree to something that did not happen, confuse the event with other events, or invent something merely to please the interviewer or to bring the interview to a close (Cooke 1998). It is important to note, however, that the degree of error in response to questions can be controlled by choosing questions carefully: generally the less restricted the answer to a question, or the less the interviewer imposes his/her view of what happened, the lower the potential for errors or misunderstanding (Fisher & Geiselman 1992; Lane 1988).

What types of questions do police typically use in interviews? Studies in the U.S.A. and Britain which have attempted to define a typical police interview with actual witnesses have shown that police in these countries tend to use a very stylised speech (which includes jargon and technical terms), and they use predominantly short-answer questions with few pauses and an excessive number of leading questions⁵ (Fisher et al 1987; George 1991, cited in Milne & Bull 1999). While no research has documented the typical questioning style of Australian police (cf. Powell et al unpublished manuscript), the impression among those professionals who have regular access to police records of interview is that such question style is frequently used by Australian police as well. Indeed, the heavy use of jargon and closed questions has been the major criticism to date of police and lawyer questioning of Australian Aboriginal people (Cooke 1998; Mildren 1997). Table 2 displays the three types of nonleading questions that may be used in interviews with Aboriginal people. The questions are listed in order of preference; that is, questioning should consist mainly of open-ended questioning, with nonleading specific and closed questions being used only to obtain detail that would not otherwise be volunteered. Closed questions are the least preferred questions because they decrease concentration in the interviewee (i.e. cause the interviewee to be passive) and increase the possibility of contamination or ambiguous answers (Cooke 1998; Australian Law Reform Commission 1986). Yes/no and forced-

5 Leading questions are those that suggest that a certain answer is desired or assume the existence of disputed facts that have not been mentioned by the interviewee. While these questions put less weight on the person's verbal ability (i.e. they often merely require a yes/no response) they are associated with the highest error rates.

choice questions are particularly problematic because Aboriginal interviewees frequently choose an answer merely to please the interviewer (this is referred to as 'gratuitous concurrence') (Eades 1994). Thus, if a yes/no or forced choice question is used, it should be followed with an open question (where appropriate) that seeks further clarification e.g. 'Tell me why you think it was X?', 'Can you think of things that made you realise it was X?', 'Tell me more about that.' This may help the interviewer to determine whether the interviewee has actually understood the question.

Table 2: Types of nonleading questions that may be used in the questioning phase of investigative interviews with Aboriginal people

Question type	Examples	Description
Non-leading open-ended questions or prompts.	'You told me it was late. Tell me more about that.' 'You just told me that you saw the stabbing with your own eyes, but before you said you were at Bottom camp. What do you say about that?'	These questions focus on a particular area of interest but still encourage the interviewee talk freely. Where possible, the interviewer merely asks the person to elaborate on information that was indicated earlier (i.e. with the interviewer using the same language as that spoken by the person).
Nonleading specific or direct questions	'Tell me what Joe was wearing' (assuming that Joe was mentioned previously by the interviewee). 'What time of day did that happen?' 'Tell me where you were standing when you saw this happen'	These questions focus the interviewee on a more narrow or specific aspect of the event and usually require only a few words in the response. They are helpful because they tell the interviewee exactly what facts are relevant to the case.
Nonleading closed questions	'What colour shirt was Joe wearing?' 'Was it day time or night time?' 'Was it night time?'	These questions elicit the most narrow range of responses; answers usually consist of one or two words only. Closed questions which require the interviewee to generate an answer are better than questions which require the interviewee to say yes or no, or to select among several alternative responses ^a . If the question concerns a fact to be disputed in court, it will be considered leading.

- a. While research has shown that either-or questions or forced-choice questions provide more accurate responses with vulnerable witnesses than yes-no questions (Sigelman et al 1981), linguists have criticised the use of these questions with Aboriginal people because it is not normal within Aboriginal culture to listen to questions that merely ask a person to choose an answer (Eades 1992).

When considering the number and type of questions, the interviewer needs to balance the demand on the one hand for a full account while on the other hand, minimising the potential for error. Minimising the demand for highly specific details may reduce the number of errors in the person's evidence, however, the larger number of details obtained per se gives investigating interviewers greater opportunity to follow leads and obtain additional evidence that may be used to corroborate the initial allegation. If corroborative evidence is strong, less specific information may be needed. However, the potential for error is not entirely related to the specificity or type of questions that are asked; errors can occur when the interviewer does not use appropriate language or takes no responsibility for clarifying any misunderstandings or inconsistencies in the interviewee's story. While interviewees should be encouraged to say 'I don't know' or 'I don't understand', it should never be assumed that the person will solicit help if it is required. The following are some recommended strategies for minimising error, misunderstanding or ambiguity during the questioning phase of the interview.

Make the Topic or Information that is Requested Clear at all Times

Misunderstanding frequently occurs because the interviewer or interviewee has switched from one topic to another without warning, or has not made an object, person or place that is being referred to, clear. To minimise error, the interviewer should offer frequent reminders about which incident, topic or detail is being reported while avoiding the use of pronouns such as *she*, *he*, *it* and *that* which are easily confused by Aboriginal speakers. For example, the interviewer should say 'What else can you tell me about that *white Toyota*' rather than 'What else can you tell me about *it*', or 'Tell me more about what *Joe* looks like', instead of 'Tell me more about *his* appearance.' If the incident occurred on multiple occasions, interviewees may switch from one occurrence of the offence to another without warning. This problem may be minimised by allowing the interviewee to fully report about one part of the incident or one full incident before moving onto the next (see Powell & McMeeken 1998). If new information is provided by the interviewee, it would be useful to check whether the person is still referring to the alleged occurrence of the offence. For example, the interviewer may ask 'You told me that he cut your leg up real bad. Are you still talking about the trouble that happened at Joe's party?' When describing the event, or referring to previously reported details, the interviewer should always use terms or phrases that were used by the interviewee previously.

Simplify the Language

The interviewer should speak slowly and clearly, use short simple sentences that contain no more than one question at a time, and avoid complex English syntax and formal vocabulary. Table 3 lists some common types of questions that should be avoided when interviewing Aboriginal people who are not fluent in the English language. Suggestions for simplifying these questions are offered in the third column of the table.

Table 3: Common types of questions which should be avoided in interviews with Aboriginal people.

Question type	Example	Suggested alternative	Explanation
Passive questions	'Was the car seen?'	'Did anybody see the car?' ^a	It is better to maintain a subject-verb-object format that places the main idea early in the question.
Negative questions	'The old man didn't go in the boat, did he?'	'Did the old man go in the boat?' ^b	A yes response to a negative question is arbitrary as it may merely be confirming the veracity of a negatively framed proposition.
Agentless questions or questions that do not clearly state the appropriate object, person action or location.	'What happened to you?' 'Where did it happen?' 'When did this happen?'	'Somebody did something to you. Tell me about that.' 'What place did X happen?' 'I need to know what time X happened.'	Substituting phrases for standard English interrogatives such as <i>Where, When, Who</i> , might facilitate understanding. Further, it may be better to state what information is required rather than asking a direct question which is not typically used in Aboriginal societies.
Tag questions	'You've just moved, have you?'	'Where do you live now?'	Tag questions typically require a yes/no response and bias the listener towards the 'yes' response.
Questions beginning with 'Why' or 'When'.	'Why did John steal the paint?'	'You said that John stole the paint. Tell me more about that.'	Observation of court transcripts suggests that questions starting with 'Why' or 'When' are the most difficult questions for Aboriginal people to understand (Koch 1991).

- a. The suggested alternative question in these cases are not ideal because yes/no questions should be avoided as much as possible in interviews with Aboriginal people
- b. Ibid.

Use Meaningful Labels for Concepts Related to Distance, Time and Number

Expressions of quantifiable specification are not commonly used in Aboriginal society. This may cause misunderstandings when estimations of dates, time, distance, size or number are required, as Aboriginal interviewees may attempt to use quantifiable dimensions without full understanding of their meaning (Eades 1995a). It is important, therefore, for interviewers to encourage interviewees to use references that are meaningful to them. Time references can be facilitated by encouraging interviewees to anchor the event around specific events in his/her life (e.g. night/day, sunrise/sunset, TV shows, the mail plane arrival, shop or school hours, pension or court day, social and sporting events, football seasons, school holidays etc). Distances can be related to areas within the person's region that he/she is familiar with e.g. the distance from the person's house to the council office, or the distance from one end of the oval to the other.

Allow the Use of Drawing or Props

The interviewer could consider allowing a witness to use drawing materials or props to assist him/her in describing complex matters such as the layout of rooms and the relative positions of people. The role of materials or props, however, should be to support rather than replace the interviewee's verbal account and interviewers should be cautious about the added trauma that reenactment of an event could have on victims of crime. Research indicates that the use of drawings, props and visual cues are likely to be of greater benefit to adults and adolescents than children (see Powell & Thomson 1994 for review).

Watch Carefully for Signs of Tiredness and Poor Concentration

The greater the communication barriers, the longer it takes for the interview to complete and the more stressful and tiring the process is for the interviewee and the interviewer. It may be beneficial, therefore, to schedule frequent breaks or to conduct several shorter interviews rather than one long session. This is especially important if the interviewee has associated health problems that would impede his/her ability to sit and concentrate for lengthy periods of time.

Closure of the Interview

Talking about highly personal matters (especially sexual matters) is an immensely shameful, embarrassing and traumatic experience for many Aboriginal people. Therefore it would be unethical to close the interview abruptly without giving the person time to gain composure. After the questioning is complete, the interviewer should spend some time trying to gain an understanding of how the interviewee feels about the situation and listen to his/her concerns, fears and future expectations. The interviewer should take this time seriously, and spend as much time as the interviewee needs answering questions as openly and honestly as possible. If the interviewee enquires about the consequences of any disclosure, he/she should be informed that there are a variety of circumstances that may develop from the investigation and there are no guarantees as to the outcome. Any false promises in this regard would make the interviewee feel betrayed and/or further confused by the investigation process.

At this stage in the interview, the interviewer could also gather any relevant demographic information that was not needed at the start of the interview (Milne & Bull 1999). Asking demographic questions at the conclusion rather than the beginning of the interview may obviate the negative effects that short-answer questions have on subsequent stages of the interview process⁶ (Sternberg et al 1997). While collecting these details, the interviewer could return to neutral topics that had been introduced in the rapport building stage that might put the interviewee in a positive mood. Finally, the interviewer should thank the interviewee for his/her participation and should provide the opportunity for further contact if the interviewee wishes to disclose any further information that he/she might remember in the future. The importance of taking the time to conduct an adequate closure cannot be underestimated for it is likely to have direct repercussions on professional-community relations as well as the person's willingness to engage in interviews in the future.

6 The type of questions that are asked early in the interview teaches the interviewee what type of interaction is desired throughout the remainder of the interview. For this reason, interviewees who are encouraged to provide elaborative responses in the rapport building stage of the interview provide more elaborative free narrative about an event compared to those interviewees who are asked direct and focused questions in the rapport building stage of the interview (Sternberg et al 1997).

Summary and Overall Conclusion

While many changes have taken place in Aboriginal society, there are still numerous language and cultural differences that make Aboriginal people highly susceptible to the contaminating effects of leading and closed questions when being interviewed for the courts. The current section has provided a simple, flexible interview protocol for eliciting accounts of an event from Aboriginal people. The protocol consisted of several stages:

(i) the development of rapport and an initial assessment of the interviewee, (ii) an explanation of the purpose and ground rules of the interview, (iii) elicitation of a free narrative about the alleged offence, (iv) the elicitation of specific details about the offence and (v) closure of the interview. While there are many interviewers who have extensive knowledge of and rapport with Aboriginal people and implement these recommendations in their general practice, it is generally accepted that these skills need to be more widely understood and implemented (Mildren 1997).

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