

RESEARCH FINDINGS No. 20

VIDEOTAPING CHILDREN'S EVIDENCE: AN EVALUATION

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Under the terms of the 1991 Criminal Justice Act video recorded interviews with child witnesses may be substituted for the child giving evidence in court. Such interviews should comply with guidance issued by the Home Office and Department of Health in a Memorandum of Good Practice. The Home Office commissioned the University of Leicester to carry out research into what court and child protection professionals thought about the new provisions; how closely Memorandum recommendations were adhered to; how court procedures, trial outcomes and the children themselves were affected by the new procedures and to consider best practice issues concerning the compilation of written records of videotaped interviews.

KEY POINTS

- ▶ Between 1 October 1992 and 30 June 1994, 1199 trials took place in England and Wales involving child witnesses – 640 were accompanied by applications to show a videotaped interview. 470 applications were granted, but only 202 of these are known to have resulted in a video being shown in court.
- ▶ Judges, barristers, police officers and social workers all believed that the main benefit of allowing videotaped evidence in court was the reduced stress on child witnesses.
- ▶ Videotaped interviews were generally conducted along the lines advised in the Memorandum of Good Practice. However, interviewers did not always allow child witnesses enough opportunities to describe the incident in their own words.
- ▶ Evidential quality was generally satisfactory although some interviews contained material which was leading or otherwise in breach of the Memorandum.
- ▶ Just under half the tapes examined were linked to cases where the offender was cautioned or submitted a late guilty plea. However, a third were judged of no evidential value.
- ▶ Children who were interviewed on tape were rated less anxious and the interviewers more supportive and more accommodating to the child's linguistic style than were those examined in person at court.
- ▶ There was no significant difference between the proportion of guilty verdicts delivered for videotaped evidence as opposed to live examination-in-chief, indicating that videotapes have much the same impact on a jury as a live examination.

The 1991 Criminal Justice Act introduced new provisions to allow the admission of videotaped interviews with a child witness instead of making the child give their evidence-in-chief at trial. These provisions are confined to young persons under the age of 17 years appearing as witnesses in cases of sexual assault and under 14 years in cases of physical violence. The conduct of such interviews, which must be carried out by a police officer or social worker, is governed by the Memorandum of Good Practice issued by the Home Office and Department of Health in 1992. Admission as evidence is at the discretion of the judge and the power to question the child about what he or she says on tape is retained.

In order to examine the impact of these new powers the Home Office commissioned the University of Leicester to:

- sample the views of court and child protection professionals before and after the provisions were introduced;
- establish how closely Memorandum recommendations on the conduct of interviews were being adhered to;
- examine the impact of the new procedure on the courts, the child witnesses themselves and the outcome of cases; and
- consider best practice issues surrounding the compilation of written records or transcripts of videotaped interviews.

VIEWS ON VIDEOTAPING CHILDREN'S EVIDENCE

A questionnaire was sent to court and child protection professionals in February 1993 – i.e., before most workers had practical experience of the Act – to establish their concerns and expectations about the Act. A second questionnaire, completed in August 1994, was sent to those who had actually been involved in proceedings brought under the Act and aimed to establish their reactions to working with the new legislation. The two surveys were conducted on separate groups of respondents. The court professionals consisted of judges and barristers, while the child protection professionals were police officers and social workers.

All the police officers and practically all the social workers (98%) who were canvassed before the new provisions took force were in favour of them. Enthusiasm for the principle and the Memorandum was maintained after they experienced the new procedures. The main perceived advantage was the reduction of stress for the child. Initial worries over inadequate training had greatly diminished but the need for the child to have to attend court for live cross-examination was a continuing concern, particularly among social workers.

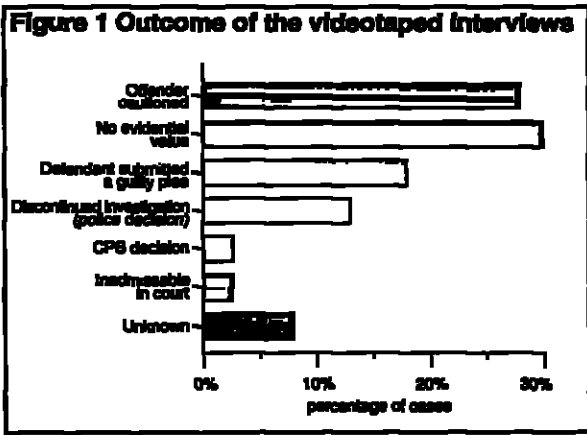
The initial survey suggested a much greater enthusiasm for the Act among judges (93% in favour) than barristers (41%). Over half the judges felt the Act would be likely to work in favour of the interests of justice and the child, a view endorsed by less than half the barristers. As with the child protection professionals, court professionals thought the main advantage of the new system would be the reduced stress for the children involved. Judges anticipated that the main disadvantage was likely to be that the tapes would reveal poor interviewing skills while barristers were most concerned that false allegations would be less detectable. After experience of the Act, three quarters of the judges polled believed that it was working in favour of the interests of children. Both groups continued to see the reduction of stress as the main advantage. As regards disadvantages, judges highlighted the lack of preparedness of witnesses for live cross-examination. Among barristers, those for the defence remained concerned that false allegations were going undetected whilst many prosecution barristers believed the videotape had less impact on a jury compared to live examination.

HOW INTERVIEWS WERE CONDUCTED

In order to establish the degree to which interviewers followed the Memorandum of Good Practice, a sample of 40 tapes were examined with the permission of the interviewers and interviewees involved. The majority were conducted by female police officers and none of the taped interviews lasted more than one hour.

Generally the recommended staged or stepwise approach was followed, with the interviewer building up rapport, questioning the child and signalling a clear end to the interview. However, the free narrative phase, in which the child is allowed to tell the story in his or her own words, was frequently omitted and some children were rushed into the questioning phase. Spontaneous information from the child was further curtailed by an excessive number of closed as opposed to open-ended questions. The technical quality was generally satisfactory, an exception being that some children were inaudible. Evidential quality was also satisfactory in that 75% of the tapes examined gave a clear account of the incident and in 60% the interview was well structured. However, some interviews still contained material which was clearly leading or otherwise in breach of the Memorandum. Most children were judged to be task-focused and calm although anxiety rose during the questioning phase.

Just under half the tapes were linked to cases where the offender was cautioned or submitted a late guilty plea (See Figure 1). However, a third were judged of no evidential value, suggesting that the point in the investigative process at which interviews are made may need further consideration. For example, some witnesses were interviewed before they felt ready to describe the incident.



THE IMPACT OF THE NEW PROVISIONS ON COURT CASES AND ON CHILD WITNESSES

Between 1 October 1992 and 30 June 1994, 1199 trials took place in England and Wales involving child witnesses of which 640 were accompanied by applications to show a videotaped interview (See Figure 2). Of the applications, 470 were granted, the remainder were either refused on evidential grounds or overtaken by a guilty plea from the accused. Not all applications led to a tape being shown in court; in only 202 was it possible to establish conclusively that the tape was played and in some of the remaining cases, the tape was withdrawn at trial at the instigation of the prosecuting counsel. The cases involved were overwhelmingly sexual offences of which indecent assault was the most common charge. The typical defendant was male and was related to one or more of the witnesses. Nearly three-quarters of witnesses were female. The average age of all child witnesses was 12, though children as young as 3 were known to have given evidence in the period under study.

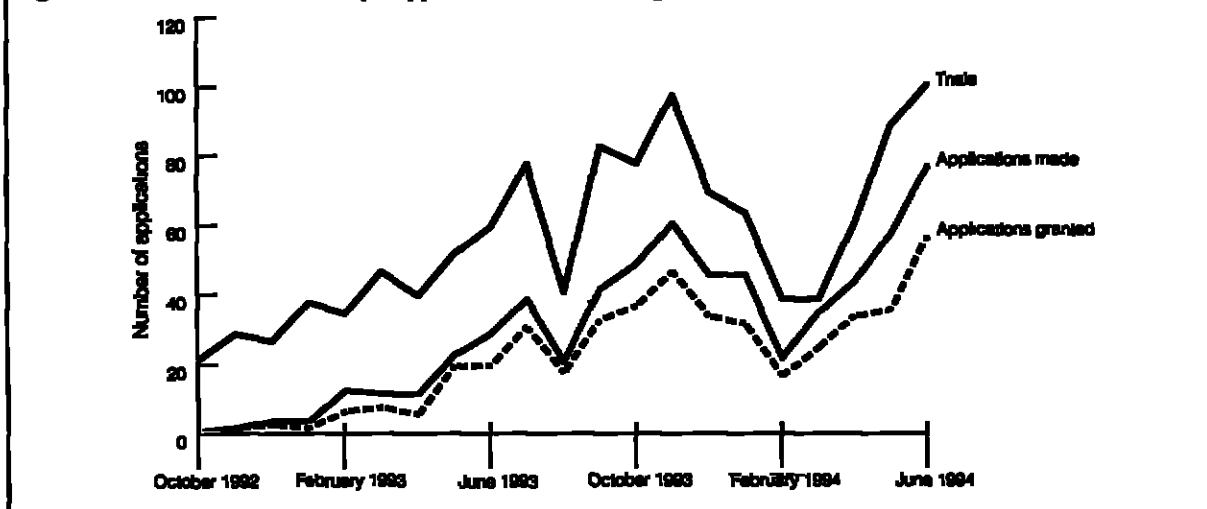
Trained observers attended 93 trials i.e., just under 10% of all trials nationally which involved child witnesses. They assessed the child's

competence and demeanour while giving evidence and the content and style of the questioning to which they were subjected. Of the 150 children observed, 73% had their videotape played as evidence-in-chief while the remainder were examined via a closed-circuit TV link. Children who were interviewed on tape were less anxious and the interviewers more supportive and more accommodating to the child's linguistic style than were those who were examined live at court. Ratings on competency and demeanour during cross-examination showed no consistent differences between those who had previously been examined by the prosecuting barristers and those who had not. However, both groups exhibited high levels of anxiety. Defence barristers were rated as less supportive and less accommodating to the child's linguistic style than prosecuting barristers and a minority (17%) used language which was inappropriate to the age of the child.

Figures on the outcome of trials indicated that 48% of all trials involving child witnesses resulted in late guilty pleas by defendants. Where cases were heard by a jury, a further 22% resulted in guilty verdicts while 27% led to an acquittal (3% had some other outcome). Comparing cases with and without an application to show video evidence revealed a tendency for higher rates of guilty pleas in the former but this did not reach statistical significance. There was also no significant difference between the proportion of guilty verdicts delivered for videotaped evidence as opposed to live examination-in-chief, which suggests that videotapes have much the same impact on a jury as a live examination.

Children waited an average of 20 weeks for their case to come to court. The majority were given a tour of the courtroom prior to testifying and a minority were introduced to the live link. However 30% of the children received no

Figure 2 The number of videotape applications made and granted between 1 October 1992 and 1 June 1994



preparation. Once at court, children waited an average of 2 hours and 30 minutes to testify. Of the sample of children questioned, most welcomed the opportunity of making the tape though a few would have preferred to have given their evidence live at trial.

WRITTEN RECORDS OF VIDEOTAPED INTERVIEWS

On the issue of transcripts or written records the views of relevant officers in three police forces were canvassed together with members of the Crown Prosecution Service. The results suggest that currently there is little consistency either within or between forces on the extent of written records and this has led to differences of opinion with the Crown Prosecution Service. While verbatim transcripts may be an ideal, the costs in human resources and materials should not be underestimated. It is to be hoped that current discussions between these parties will lead to a convergence on good practice.

CONCLUSIONS

The research suggests that a number of improvements should be made if the intentions of the 1991 Act are to be fully realised. In particular, the conditions under which Memorandum interviews are conducted by police and social service departments should be clarified and interviewer training should be improved.

Overall the results of the research indicate:

- a need to clarify when recorded interviews should be carried out;
- better training and clear standards for interviewers; and
- periodic reviews of the Memorandum of Good Practice.

These periodic reviews could cover, for example, recent findings on children's competence and vulnerabilities as witnesses and expand significantly the coverage of such issues as the interviewing of children with special needs.

The research also points to a need to improve and make more use of 'fast track' arrangements for cases involving children to reduce delays (Plotnikoff and Woolfson, 1994). Judges might be encouraged to intervene more readily to deal with inappropriate or intimidatory tactics by counsel, as recommended by the Memorandum of Guidance for the Judiciary on Child Witnesses (Joel-Essam, 1994). This document focuses on good court practice issues for judges such as the need for children to have prior practice on the live link, monitoring video shots to ensure the defendant cannot be viewed by the child and monitoring the questioning techniques used. Attention to such issues may be as effective in reducing stress among child witnesses as the widespread employment of video technology.

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More detailed results appear in *Videotaping Children's Evidence: an evaluation* by G. Davies, C. Wilson, R. Mitchell and J. Milsom. London: Home Office. Copies are available from the Information Department (address below).



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