



The Scottish
Government

Children's Hearings

THE 1995 KILBRANDON CHILD CARE LECTURE

Frederick H Stone
Emeritus Professor
University of Glasgow

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The Second
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by Fred Stone
University of Glasgow

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courtesy of
Professor Graeme Davies
Principal Glasgow University

Frederick H Stone

OBE, FRCP (Glasgow and London), FRC Psych

Emeritus Professor of Child and Adolescent Psychiatry
University of Glasgow

1954-1986 Senior Consultant, Department of Child
and Family Psychiatry Royal Hospital
for Sick Children, Glasgow

1962-1966 Secretary General International
Association for Child Psychiatry and
Allied Professions

1963-1965 Member, Kilbrandon Committee

1968-1971 Member, Houghton Committee on
Adoption, UK

1981-1984 Chairman, Scottish Division,
Royal College of Psychiatrists

1988-1993 Chairman,
Children's Panel Advisory Committee,
Strathclyde Region

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It is both an honour and a challenge to be invited to give the second Kilbrandon lecture, and a particular pleasure to have Lady Kilbrandon with us on this occasion.

Almost exactly a quarter of a century ago the Scottish Children's Hearing System came into being. And it is just 30 years since the Children and Young Persons' report appeared the Kilbrandon Report.

The first Kilbrandon Lecture was delivered by Professor Sanford Fox of Boston College Law School, USA, just four years ago, and as a start it is interesting to consider what has been happening in Scotland in the field of Child Protection in the intervening years. We have had:

A White Paper "Child Care Policy and Law"

An international conference in Glasgow on children's rights.

A conference focused on children's views of the hearings.

The Fife Inquiry. (The Kearney Report.)

The Orkney Inquiry. (The Clyde Report.)

The Ayrshire Hearing.

The reorganisation of the Reporters' service.

Researches into:

*Interviewing children, and their evidence
(Flin and Spencer, 1993)*

The live television link for child witnesses (Murray, 1995)

Worldwide review of child abuse publications
(Gough, 1993)

Ongoing projects inaugurated by the Social Work Services
Group at the Scottish Office into:

a) decision-making in the Hearing System¹.

b) a follow-up cohort study of attenders at the Hearings².

The setting-up in this University of the Centre for the Study
of the Child and Society.

The Children (Scotland) Act 1995.

It has not been a quiet four years!

1 University of Stirling

2 University of Edinburgh

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I would like to share with you a few thoughts on my memories of the committee which gave rise to the Kilbrandon Report, and I start by posing the question “How did Lord Kilbrandon and his colleagues understand the needs of children” and what did he intend by the use of the phrase “children with problems”? One might reasonably further ask what knowledge and experience did the members of the working party bring to our discussions. Some, like myself, had served on the Advisory Council for Child Care. I remember particularly the problems we faced in the procedures and legislation relating to adoption and the problems which involved many of the families whose children were being presented for adoption. The Advisory council carried out quite a lot of specialised enquiries, for example, in setting up the Remand Homes Committee and I still recall vividly the conditions of what can only be called incarceration of children and young people in a Dickensian environment. These remand homes were disbanded as a result of one recommendation of the Kilbrandon Committee. Some of its members had served on juvenile courts, though these were never very popular in Scotland.

We had the advice and experience of a Sheriff Principal, of a Headmaster, of Justices of the Peace, of voluntary workers, of administrators and, of course, a persuasive and charismatic chairman. I would like to dispose of one major misunderstanding. It has been alleged from time to time that the committee was concerned only with delinquent youth, and that considerations of child neglect and abuse were but an afterthought. I quote from the minutes of our ninth meeting in which we were discussing the sort of cases that we anticipated might come before the Hearings (which at that time were called Panels).

These were:

1. *Care and Protection cases*

(There is an interesting parenthesis here suggesting that allegations of this kind would probably have to be confirmed by a Sheriff before coming to the Panel).

2. *Minor delinquent acts*

3. *Grave persistent delinquency*

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So although care and protection proceedings were not studied in the same depth as the problems of offenders they were nevertheless the first category that was mentioned as likely to come before the Children's Hearings.

Possibly the most significant statement in the entire Kilbrandon Report is the assertion, made in unequivocal terms, about care and protection and offender behaviour. It goes as follows " ...the true distinguishing factor common to all children concerned is their need for special measures of education and training, the normal upbringing process having, for whatever reason, fallen short". What seem to be separate categories amount to little more than the stage of the child's development at which problems come to light. It is worth considering how this view stands up to subsequent researches into child development and childhood disorders.

Basic emotional needs of all youngsters have been confirmed repeatedly. The need for security, for affection

and for reasonably consistent limits what used to be called love and discipline. It is necessary, however, to consider the complexity of the condition that we refer to as “disadvantage” in the lives of children and families. It is not just a matter of run-down neighbourhoods, poor accommodation, and poverty. The same families are vulnerable to a whole range of health problems, physical and emotional, both in the adults and the children. In many such communities there is a very real risk that the schools providing for these children suffer similar problems of low morale as the families themselves. A common feature for many such families often one-parent families – is social isolation, that is to say the lack of informal ongoing support from friends, from relatives and so on. To this grim picture it is not difficult to realise the dangers of alcohol and drug abuse, major stresses in relationships, break-up of partnerships and marriages, and child abuse. And yet when we say that 10% to 20% of children living under such unfavourable circumstances are in need of specialist help, we also have to recognise that this means that a majority of children do survive, do become reasonably mature adults. One of the preoccupations of research in recent years in the psychology and psychiatry field has been to

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look for 'protective factors'. What is it that affords protection to these survivors? What is it that allows many children to develop resilience, even competence, under such unfavourable circumstances? There are not many truly reliable answers as yet. Some are obvious. For example, the presence of at least one caring permanent parent. The importance of brothers and sisters, who have a reasonable relationship with each other, of remaining together also acts as a buffer to family insecurity. The supportive environment of a caring school is not to be underestimated. So how does the Kilbrandon formulation on "children with problems" (Lord Kilbrandon's own term) stand up? "A failure of upbringing" is not the whole aetiological story of child and adolescent disturbance.

What else have we learned in recent years? Firstly, although there are many different theories, there is general agreement about the importance of environmental influences from the earliest stages of development. Of late, however, it has become clear that we must take into account not only child-caring practices and other circumstances within the family but also the quality of experience, for the growing child from the peer-group,

school, and neighbourhood. Moreover, these influences can make a significant impact for good or ill at all stages of development. Some youngsters are clearly much more resilient than others, even within the same family, but as yet little is known about “protective factors”. There may be an inherited or a constitutional factor. No one seriously questions the benefit to a child of being cared for by at least one caring and reasonably consistent adult without major or frequent interruptions. Usually this is the biological mother but it may not be, for there is nothing exclusively positive about the blood-tie. And some fathers make very competent “mothers”. There is now overwhelming evidence that where behavioural problems are severe and persistent children do not simply “grow out of them”. Of those with disorders at ten years of age, over half still have difficulties five years later (Graham and Rutter, 1973). Even in very young children, whose problems tend not to be taken seriously, among those with behaviour problems at three years of age, 60% still present difficulties at eight years old (Richman, 1982). Moreover, children with anti-social “conduct” disorders are at increased risk of emotional and personality problems, including depression, in adult life (Robins, 1966). But these outcomes are not inevitable.

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Part of their persistence, as (Rutter, 1989) points out, is because disturbed children act in ways that create environmental stress which in turn puts them at further risk.

All of this emphasises the importance of early recognition of developmental danger signals, and if possible intervention aimed at the promotion of the child's well-being. While this is in keeping with the central aim of the Children's Hearing system, Kilbrandon did not underestimate the range and quality of skills that would be required. Complex and severe childhood problems, resistant to straightforward methods of advice, counselling, educational help, and material assistance, often prove to be the outcome of multiple causal factors, social, medical, emotional, and frequently test the resources of even the skilled, multi-professional teams in departments of child psychology and psychiatry. The more effective methods of treatment tend to be goal-directed, focused on the family as a whole, and relatively short-term. Much is still to be learned about effective therapy. For the less severe and much commoner problems there would appear to be much benefit from local supportive measures for parents and children themselves, particularly so at times of crisis

such as accidents, illness, bereavement, marital break-up. “Crisis intervention” as it has been termed tends to be provided more often than not by voluntary effort such as mother and toddler groups, pre-school play groups, single-parent support groups, and more specialised activities for families with children with special needs. Much experiment of late has gone into the setting-up of various forms of “Family Centre”, some with Local Authority support. While there is clearly great variability in the quality of such local resources, many families acknowledge their helpfulness. What is now required is evaluative research.

The Report focuses on three issues:

1. The majority of young offenders, the Report asserts, are amenable to sensitive intervention, and really need above all a holding situation, and for a few a residential provision. Most of them grow up to be ordinary reasonable adults.
2. A minority of persistent young offenders dating from the early years require skilled and specialised expertise and quite frequently highly specialised residential provision.

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3. All available and relevant resources, especially those within the local community, must be available to the Director of Children's Services.

Of course, the Kilbrandon proposal of a Department of "Social Education" was transformed into Social Work Departments in the transition from Report to White Paper, "Social Work and the Community 1966", an alternative proposal which Lord Kilbrandon himself accepted graciously. One might speculate whether there were hidden or personal agendas in the discussions and arguments that lead to the Social Work (Scotland) Act of 1968. I can only share with you my own – the notion of a comprehensive mental health service for children and young people for which the Hearing System, and more especially its so-called "Matching Field Organisation" held the promise of the nucleus of such a service. This may have been one factor in the idea of an educational base for the proposed supportive services a captive population of children within which consultation services to children, to families and to teaching staff could be applied, and from which research data for longitudinal studies could readily be obtained. Well, perhaps the creation of a reorganised Social Work Service

with its own autonomy and status was a more imaginative step. Still, one must observe that the co-ordination of the Hearing System and educational services still has a considerable way to go. Perhaps the present importance given at last to pre-school education along with the re-organisation of local authorities provides a rare opportunity for fresh joint activities.

In my introduction to the re-issued Report, I have referred to some of the major changes affecting families and children in Scotland in these recent decades. Of course we are all only too well aware of the problems that have arisen with the increasing rates of separation and divorce, of the complexities and especially for children of reconstituted and multiple relationships, of the striking changes in sexual mores, early sexual experience being commonplace in both sexes, of the explicitness of much of the sexuality and violence to which children may be exposed in the media and in readily available videos of less reputable status, of alcohol and drug abuse, of the impact of the AIDS epidemic. In the Report issued last week "On the Health of our Children" which is a study based in England and Wales, it is noted that our children are, compared with

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previous times, bigger and in many respects healthier, and yet there is the dreadful statistic of a major increase in suicides in young males; and parasuicides, that is non-fatal self-damage in females. The Scottish scene is no more reassuring. I am indebted to the Public Health Research Unit at Glasgow University for recent data which reveal a major rise in self-poisoning among teenage girls; and as in the south, a significant increase in suicide rates in young males. By way of explanation it is surely impossible to ignore the role of drug abuse in both sexes, throughout the UK. And yet, many young people are far better informed about a range of subjects than my own generation was, and to a large extent have benefited from imaginative programmes on television and other media whose gratuitous sex and violence gives us so much cause for concern. Many children are active in sport, in music, in voluntary services, quite apart from their computer sophistication. Still, in social and family terms the picture has changed dramatically in these 20 years.

What has been the impact of all of this on the work of the Children's Hearings? The most obvious has been the considerable increase in the numbers of care and

protection cases coming before the Hearings. By its very nature, problems of physical abuse and sexual abuse and neglect, with all the ramifications we face in the family situations, are certainly most stressful for those who are engaged in the helping process. But there is another issue here, namely that this has resulted in much larger numbers of very young children coming before the Hearings. How well do the Hearings cope? It certainly is not enough just to provide a play area, and it does concern me that in some regions it is commonplace to exclude young children from the Hearings. I presume because they are too young to participate verbally in an exchange of ideas and may well constitute a nuisance factor around our ankles. I believe it would be a great pity if this became widespread practice. The younger the child the more one is dependent on behaviour rather than spoken language for assessment, and to be able to observe the interaction between adults and children in the Hearing itself is a rich source of highly relevant information about parental competence and responsiveness, although it does call for patience and perhaps some modification to the setting itself. Furthermore, child abuse apart, if we are in sympathy with the Kilbrandon emphasis on prevention, we should

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welcome the attendance of pre-school children at the Hearings, for there is much evidence that developmental danger signals are commonly recognisable at an early age. The upper end of the age range also gives cause for concern. Indeed there has been an expressed worry that so much focus on child abuse is resulting in relative neglect of other problems. Certainly the 16 to 18 year olds who have been the focus of much discussion at recent conferences may need special consideration given to the setting in which they are interviewed and the kinds of provision which are most likely to be helpful. We must certainly not avoid facing up to the issue of the numbers of young people who have spent extended periods in residential care drifting into homelessness and sleeping rough.

It seems to me that for panel members at Hearings there is an inherent tension between two contrasting issues – that of procedural accuracy and imaginative intervention. Of course procedures matter, but this is not an immensely difficult job, a responsibility for the Chairman of Hearings. I have been a little disappointed, in the years since the Report was written, in the lack of much interest in what

one might call the dynamic of the Hearing process. By that I mean the potential impact of the Hearing itself on children and parents alike. One has to go back to a notable publication in the early years, “Face to Face with Families”, (Bruce and Spencer, 1976) to find an extended discussion on the Hearing dynamics, or somewhat later in “Children Out of Court” (1991) where Martin and Murray discuss, with illustrations, the interaction between Hearing members and the families. Those of you who are directly involved may be surprised to learn that there is a highly relevant paragraph in the Kilbrandon Report on this very topic. “In making a supervision order, the Juvenile Panel (that’s what the Report calls a Children’s Hearing) should in our view have the widest discretion to include in it any of the conditions which may at present be included in a supervision order or a probation order. Because of the greater informality of proceedings before the Panel it would we think no doubt be possible for the Panel to apply formally or otherwise a variety of unorthodox conditions if it appeared to it that these would be beneficial in particular cases.” Of course, critical in all of this is the role of the Hearing Chairperson, one of whose main tasks is to maximise the participation of the child, the family and all three Hearing members.

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Under the new Act it will be possible for part of the Hearing at least to interview the child without the parents being present, something that would often have been in the past regarded as unorthodox. Then again it strikes me as curious that a Hearing can make recommendations about compulsory care and how it is to be carried out (now to be called "compulsory supervision") or has the option to discharge the case, but seemingly has no option to redirect the family when, the situation seems propitious, to participate voluntarily with the helping agencies. If a Hearing considers that compulsory measures are not now required, but some measures are needed, it is neither logical nor constructive simply to discharge. Indeed, in his interesting publication on "The Emergence of the Scottish Children's Hearing System" (1988), Cowperthwaite draws attention to the preponderance of compulsory measures in the provisions of the Social Work (Scotland) Act, 1968, which does not reflect the emphasis in the Report on voluntary or informal measures.

Are the Hearings perhaps burdened with too much paper? From my own experience in clinical practice I have a suspicion that the heavier the file the less is really known

about the subject. What most Hearings need in the way of background and specialist reports is not extensive process records but a distillation in straightforward language. As Sheriff Kearney emphasised in the Fife Report, the Social Workers should spell out for the Hearing the realistic options at their disposal. But is it adequate for a Hearing simply to decide on “supervision”? After all, supervision could mean befriending, support, counselling, work with the whole family or parents, therapy. In a personal communication Pickles has shared with me his ideas about the use of contracts with young clients. It would be unrealistic, he believes, for the assigned Social Worker to possess all the necessary skills of these related but differing approaches to helping children and families, and he considers whether the task of the Social Worker is not necessarily to provide the supervision personally but to act as the co-ordinator of the appropriate resources. Contracts, formal commitments, depend upon the client’s co-operation; if it is not forthcoming, what then? Contracts may well have a place in work with offenders, but unlikely to be useful when dealing with problems of child neglect and abuse. All of this has implications for social work training. From several quarters the request has come for

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an extension of the duration of training, which to date has not received official acceptance. I very much support this need for more extensive training of Social Workers, but would only add that it is not simply more training that is needed but specialist training. I have noted over the years in many different professions and specialties a curious reluctance to acknowledge that work with children requires special knowledge and aptitude. From my own personal experience by and large therapeutic psychological work with adults is a much easier assignment than with children.

There is another aspect of the Hearing process which I believe might benefit from improvement. It is the question of follow-up. It must surely be imperative as part of the learning process that those who make decisions about helping young people and their families should be faced at regular intervals with the outcome of their decisions. You may say that it is one of the strengths of the system that there is a built-in requirement for review. Now that is true, but there is no absolute guarantee of continuity of Hearing membership, although efforts are made to ensure that at least one of the three members, usually the Chairperson, is present at the review. There are, of course, logistical

problems here. Nevertheless, I am convinced that regular feed-back is an absolute necessity for effective in-service training of members of Panels. This would require to be built in to the regular local meetings of Panels, and would have to be a responsibility of Panel chairperson (I refer to the local chairperson of the group of Panel members, not the Hearing chairperson) assisted by the Reporter and by a representative of the Social Work Department. Winnicott, the distinguished children's psychiatrist, once remarked that in every interview with parents there is a major question which is often never actually voiced, namely, "What kind of adult will this child become?" In short, the basic requirement of those who work for the welfare of children is to be skilled in the art of prognosis, of assessing future outcome. I believe we could help members of Panels enormously by regular review of the outcome of their decisions, in which they could enjoy successful outcomes and ponder the less successful. I also believe that such a procedure (along with the other topics which are part of regular local meetings) would serve as an important support mechanism, especially for the less experienced Panel members. Over the years there have been worries from time to time at the number of "fall-outs", of people who

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resign from the Hearing System after quite short periods of service. I am not sure that this is really something that can be avoided. There are those who are perhaps too sensitive for this kind of work; others who have had quite misguided notions about what the work entails and so on and who decide that this is not for them. We can help them to pursue alternative voluntary activities. But the question of support remains an important one. Anyone who has worked in the field of disturbed child and family relationships, of child abuse, and perhaps especially in the field of sexual abuse must be only too aware of the personal stress that is involved, even for well experienced professionals. Spontaneous mutual support groups of Panel members have sprung up in various parts of the country, so called "buddy-groups". That is fine but more I think needs to be done within the system itself.

We have now had an opportunity to browse through the new Children (Scotland) Act and it is not my intention to analyse in any detail the changes that have been introduced. Indeed I feel that my first duty is to reassure the audience that the rules and regulations which will accompany the implementation of the Act are unlikely to

be issued for 18 months or 2 years, and will be preceded by wide consultation. It is a further reassurance to know that a commentary on the Act is being prepared by a distinguished legal academic and that we should have it in a few weeks time. There are a lot of new names in this Act. “Parents” have become “responsible persons”. “Compulsory measures of care” have become “compulsory measures of supervision”. Semantics are quite important and we should look at these changes carefully. “Supervision” is a narrower concept than “care”! There are at least three major areas in which responsibility seems to pass more to the Sheriffs the assumption of parental rights, the exclusion of an alleged offender from the home, and the general powers of Sheriffs to make decisions on disposal. This last proposal is apparently intended to comply with the European Convention on Children’s Rights, but this is something that is difficult to understand and surely needs explanation under what circumstances, with what background information? If we take together these three modifications they all point in one direction to the absolute necessity of offering to sheriffs additional training and knowledge in the field of child development, family relationships, and child protection. The advocacy issue,

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that is legal representation or legal advice to children and young people is well argued, for and against by Duquette and Lockyer in “Justice for Children” (1994).

Who represents the interests of the public? I am not referring to the protection of society against the activities of delinquents. But simply who keeps a watchful eye on what is going on in the conduct of the Hearing System? The Council of Tribunals – which has an absolute right to attend Hearings? I think not. Its members are the appointees of the Lord Advocate and have many different tribunals as their responsibility – presumably to ensure that legal requirements are in order.

To whom does one turn with a complaint, a worry, an outrage about the Hearing system whether as parent, guardian, teacher, health worker, – or for that matter child or young person? – one possibility might be the appointment of a children's ombudsman. I think this would be a sensible provision. Something along the lines of the Mental Welfare Commission could, I think, bring a measure of reassurance.

As if all this proposed legislation was not enough we are also in the throes of facing reorganisation of local authorities. It is of course a truism to note that whenever there is change there is stress, but there is also opportunity. I really do believe that within these new local authorities there is an opportunity for initiative, for new areas of joint thinking and co-operation for what Kilbrandon called “unorthodoxy”. The Scottish Hearing System over the years has adjusted remarkably to many changes and new demands and is still going strong. I have every confidence it will continue to do so.

So far I have made no mention of *Resources* – an issue which tends to alarm the politicians. It is of course important that we have well designed Hearing Rooms, that paid officials have decent salaries, that Training Organisers have modern teaching aids, that Members of Panels have appropriate travelling expenses, that panel Chairpersons have secretarial help but the main resource of the Hearing System is people.

I have come to know many of them, mostly committed, caring, argumentative, supportive colleagues and friends. It has been a privilege.

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