

AFFIDAVIT OF MICHAEL ERNEST LAMB

I. Michael Ernest Lamb of Bethesda, Maryland, United States of America, declare and affirm as follows:

Introduction

Qualifications

1. My qualifications were summarized in paragraphs 1.1 to 1.9 and in exhibit A (Curriculum Vitae) of the Affidavit sworn by me on April 21, 1999. In the interests of brevity, my qualifications are not repeated here.

Purpose of this Affidavit

2. On Wednesday June 9, 1999 I received, by fax, a copy of an affidavit prepared by Constance J. Dalenberg, Ph.D. This affidavit criticized the expert affidavits offered in this case by Barry S. Parsonson, Ph.D. and me. My purpose in this brief affidavit is to respond to these criticisms, most of which are misleading and serve only to deflect attention away from the serious issues at stake in this appeal. In my response, I deal first with criticisms of my affidavit, then with criticisms of the affidavit prepared by Dr. Parsonson, and finally with implications for the appeal submitted by Mr. Ellis.

3. Dr. Dalenberg summarizes her qualifications in paragraphs 1 through 7 of her affidavit, but a conventional curriculum vitae was not appended. References to the large number of research projects in which she has participated were thus unaccompanied by details concerning her contributions to the peer-reviewed professional literature. A computer-assisted search of both the medical and social science literatures on June 12, 1999 identified 14 publications since 1984. None of these publications were about interviewing young child abuse victims. Her curriculum vitae, obtained independently, likewise identified no publications concerned with forensic interviews of young alleged victims.

Criticisms of the Affidavit submitted by Michael E. Lamb.

4. Dr. Dalenberg specifically states that she will offer more criticisms of Dr. Parkinson's affidavit than my own (her paragraph 9) but she makes reference to deficiencies of "both briefs", "both affidavits", or "these affidavits" in her paragraphs 9, 10.1, 10.3, 10.4, and 24, even though the paragraphs in question make no other specific reference to the content of my Affidavit. Obviously, I cannot respond to innuendo of this sort.

5. 5.1. Although Dr. Dalenberg (her paragraph 10.2) challenges the absence in my affidavit of "relevant contextual information...that leads children to appear more competent." she specifically cites only my discussion of suggestibility in that regard. In reviewing this literature, however, I summarized at length the factors, including all relevant contextual information, associated with variations in the susceptibility to influence (my paragraphs 32 to 40).

5.2. Dr. Dalenberg's accusation (paragraph 10.2) that "in the studies that show children are quite suggestible, the children are often told that a trusted adult knows for certain that "the perpetrator" committed the specific act" is flatly untrue, which may explain why she fails to cite specific studies in which this is the case. Ironically, however, her assertion only underscores the need to be concerned about susceptibility to influence in the Ellis case, where the parents acknowledged asking children about events they had learned about from others.

6. Contrary to the accusation made by Dr. Dalenberg (her paragraph 10.4), important age distinctions are always referenced in my Affidavit. Note that Dr. Dalenberg cites no specific example of my deficiencies in this regard.

7. Nowhere in my Affidavit do I present "fantasy statements and fantastic allegations...as signs of a false allegation" (Dalenberg paragraph 10.5). There is no published evidence that fantasy is to be expected when children have been abused, contrary to the assertion by Dr. Dalenberg (her paragraph 10.5). In Dr. Dalenberg's (1996) own study, fantastic elements were reportedly present in only 10 of 322 cases in which abuse was considered

likely to have occurred and 2 of 322 cases in which the allegations were considered more implausible. Clearly, fantasy is absent from the vast majority of plausible allegations.

8. In my affidavit, I explained in some detail why it is preferable to elicit information using open-ended questions. Contrary to the impression conveyed by Dr. Dalenberg (paragraphs 10.7, 10.8, 10.9, 11, and 12), this conclusion was not based simply on "research in laboratory eyewitness interviewing" (Dalenberg paragraph 10.8). As noted in my affidavit (paragraph 48), recommendations that forensic interviewers in the field should rely as much as possible on open-ended questioning have been endorsed by every relevant professional group. Furthermore, almost all of my research on interviewing has been conducted in the field in collaboration with police officers and forensic investigators rather than in the laboratory, with children interviewed "about a neutral laboratory event" (Dalenberg paragraph 10.8). The relevant data summarized in Tables M and N appended to my affidavit were derived from forensic interviews of abused children comparable in age to those interviewed in the Ellis case. The data reported in my affidavit, and the studies from which they are drawn, clearly demonstrate that forensic interviewers can and, when appropriately trained, do elicit information from victims- including young children (cf. Dalenberg paragraph 12, *inter alia*)--using open-ended questions. Dr. Dalenberg's criticisms of my affidavit on this score is thus misleading and ill-informed. Compared with laboratory researchers, forensic interviewers do indeed have different responsibilities and face different challenges; my research, writing, and Affidavit were and are all focused on issues of relevance to forensic interviews.

9. It is faintly ironic that, after criticizing my supposed reliance on laboratory studies, Dr. Dalenberg (her paragraphs 13, 14, 15, 16, and 17) relies on laboratory studies by Salmon et al. (1995, 1997), Saywitz et al. (1991), and Leichtman and Ceci (1995) when defending the value of focused questions and the limitations of free recall. To reiterate, the published research on forensic interviews (not laboratory studies) clearly demonstrates that richly detailed accounts can be elicited from young alleged victims using open-ended prompts.

10. 10.1. In her paragraph 17, Dr. Dalenberg quotes my assertion that "once contamination has occurred it is typically impossible to reverse its effects (my paragraph 99)." By citing from my summary rather than from the relevant substantive section of my Affidavit (paragraphs 41 to 46), Dr. Dalenberg avoids reference to the 5 published reports cited in support of my conclusion (paragraph 46). Instead, she criticizes a study on the effects of negative stereotypes (Leichtman & Ceci, 1995) that was not cited in this context. In addition, Dr. Dalenberg ignores obvious differences in the intensity of pressure brought to bear in laboratory studies as opposed to forensic contexts like those exemplified in the Ellis case.

10.2. Instead, Dr. Dalenberg studiously avoids reference to the startling similarities between the Ellis case and recent similar cases in the United States. In each of these, a single, often ambiguous, comment by a preschooler prompted anxious, suggestive, repetitive, and contaminating questioning by parents and professionals of other young children who had attended the same day care centers. In each case, as in the Ellis case, the atmosphere of accusation and clear confirmatory biases magnified the risks of contamination. In each case, multiple allegations by multiple victims ultimately emerged, and in each case substantial doubt existed by then regarding the reliability of the children's accounts in light of their extraordinary exposure to the sorts of contaminating influences explained in my Affidavit (see also Ceci & Bruck, 1995).

11. In her paragraph 18, Dr. Dalenberg questions my reference to a study by Ricci et al. (1996). Her criticisms are misleading on a number of counts.

11.1. The Ricci et al. paper reports two studies, one of children averaging 67 months of age (range 57 to 79 months) and one of children averaging 66 months (range 60 to 73 months). The authors refer to these as "5-year-olds" in their abstract and report no analyses based on age. It is thus unclear why Dalenberg criticizes my reference to 5-year-olds.

11.2. The children in both studies viewed a brief slide show, not a movie.

11.3. In the first study, children were asked a) about the perpetrator, b) about the picnic depicted in the slides, c) one suggestive question, and d) to recognize the perpetrator in one of two lineups. According to the authors, "children interviewed by their parents had less accurate recall ($M = 2.36$) than those interviewed by the experimenter ($M = 3.24$)" (Ricci et al., p. 489).

11.4. In the second study, the researchers scripted the questions posed by the mothers, and when the experimenters and mothers asked the questions identically, "there was no effect of interviewer" (p. 494), suggesting (as the authors note in their discussion), that the effects noted in the first study may have been attributable to differences between the mothers' and experimenters' questioning styles. It is not clear to me that addition of the phrase "except when the parents were required to follow a script instead of questioning the children as they normally would" would have been helpful to readers of my Affidavit.

11.5 The Ricci et al. study was not cited in my conclusions regarding susceptibility to suggestion in the Ellis case (my paragraphs 39 to 46). Indeed, deletion of reference to the Ricci study would not in any way affect my conclusion or the concerns I highlighted. To reiterate, suggestive contamination is a major concern in the Ellis case because of the lengthy delays, the high level of concerns on the part of the parents, the age of the children, and the amount of contact between the complaining parents.

12. Dr. Dalenberg's response to evidence concerning the evidentiary interviews is similarly misleading (her paragraphs 19 to 21). Exhibits M and N of my Affidavit provided data comparing interviews of the Ellis complainants with interviews of comparably-aged children alleging comparable forms of abuse. The comparison interviews were conducted either at the same historical time as the Ellis interviews, or by more highly trained interviewers who actually followed universally recognized interview guidelines. I showed that the Ellis interviewers conducted interviews that were quite similar to those conducted by many of their contemporaries, but that they used many fewer open-ended

questions than recommended. I also showed that forensic interviewers could elicit much more information from recall memory when trained to do so.

13. None of the interviews I obtained from San Diego's Center for Child Protection were included in the analyses reported in the exhibits. As Dr. Dalenberg notes, they would have made for inappropriate comparisons and, having conducted and published research on forensic interviews for years, I am well aware of the need to ensure that comparisons are apt and generalization appropriate.

14. Dr. Dalenberg (paragraph 21) claims that "the reader may need a clarification in understanding the Lamb chart fully." In my affidavit (paragraph 51), however, I wrote "Note that we label these categories in a distinctive way, such that the utterances we call leading in our research reports may not be the same on those called leading by other researchers or legal practitioners....[Most of what we call] suggestive utterances....would be called leading in other forensic contexts." The same admonition by Dr. Dalenberg appear gratuitous.

15. Paragraphs 35 to 40 of Dr. Dalenberg's Affidavit focus on the relationship between fantasy and abuse. Her own research on this topic has been described only in a professional newsletter (Dalenberg, 1996) and was cited in my Affidavit. Dr. Dalenberg claims (her paragraph 5) that this research was the focus of a chapter she wrote for the Handbook of interviewing (Memon & Bull, 1999), but her chapter in that volume is concerned with interviews of adult Holocaust survivors and her research on children's fantasy is only referenced briefly. Whether or not her research on fantasy was presented at the 1996 NATO conference, the published proceedings contain only one "Brief Paper" by Dr. Dalenberg. this focused on "The prediction of accurate recollections of trauma" by adult women who discussed childhood abuse in the course of treatment by Dr. Dalenberg. We are thus forced to rely on a single report in a newsletter rather than in a peer-reviewed journal when evaluating Dr. Dalenberg's research.

16. Dr. Dalenberg (paragraph 36) challenges my assertion that fantasy rarely occurs in the accounts of abuse victims. According to Dr. Dalenberg's (1996) report. "The base rate [for single instances of implausibly, exaggerated, or impossible features] across all age, sex, \and race, groups was about 2% for the 644 interviews thus far coded for this feature (p. 7)." For 3- to 9-year-olds, the rate was higher (12/284 or 4%). The 15% rate cited as "most relevant to the children that concern the reader here" (Dalenberg paragraph 36) was derived from a sample of 3- to 9-year-olds whose allegation of severe abuse were supported by medical evidence and perpetrator confessions. It is unclear why this sample is "most relevant": Mr. Ellis did not confess and no medical evidence consistent with the allegations was obtained. Dr. Dalenberg rated as "questionable" allegations in which confessions and corroborative medical evidence were lacking. Arguably, then, the "most relevant" subgroup was that involving "questionable" allegations of "severe" abuse by 3- to 9-year-olds; in that group, the rate was 4%. In any event, my statement that fantasy rarely appears in the accounts provided by alleged victims appears correct.

17. In the subgroup of 3- to 9-year-old children believed to have been abused severely, fantasy was much more prevalent (15%) than in the "questionable" reports of severe abuse (4%), but was absent in at least 85% of the allegations. Dr. Dalenberg's study did not include samples of children known to have offered false allegations nor samples of children who had not been abused, and it is thus impossible to state whether fantasy is more or less common in true than in false allegations.

18. The "base rates" cited by Dr. Dalenberg are probably higher than a random sampling of interviews would yield because all the interviews she coded were conducted at a facility where dolls and other props associated with the occurrence of fantasy are available to interviewees during the interview.

19. As stated in my Affidavit, the confusion between fantasy and reality is an old canard-- a) most children over four years of age can distinguish between truth and reality and b) fantasy rarely occurs in investigative interviews. Dr. Dalenberg's study supports my

assertion that children as a class should not be deemed incompetent witnesses for fear that they may confuse fantasy and reality.

20. The next reference to my Affidavit is made by Dr. Dalenberg in her paragraph 17, though my Affidavit is misrepresented. I stated (paragraph 33): "In a series of studies, Goodman and her colleagues [References] showed that three to four-year-olds falsely assented to "abuse-related" questions [Examples] between 20% and 35% of the time, even when the questions implied actions quite different from those that were witnessed or experienced."

Dr. Dalenberg asserts that this statement "give[s] false impressions about the data regarding children's responses to misleading abuse-related questions" (her paragraph 47), but the statement I wrote was checked for accuracy by Dr. Goodman, whose research it summarized. Dr. Goodman, unlike Dr. Dalenberg, felt that her research was summarized fairly.

Criticisms of the Affidavit submitted by Barry S. Parsonson.

21. Dr. Dalenberg reserves her harshest criticisms for Dr. Parkinson's Affidavit. Not being as familiar with that as with my own, I limit my reactions to a few general observations.

22. 22.1. Contrary to Dr. Dalenberg's claims, high levels of fantasy in children's allegations of abuse are problematic because it is difficult to determine which details are fantastic and which are realistic. Dr. Dalenberg's research, as noted above, does not resolve this conundrum; it simply demonstrates that fantasy can be present in highly plausible accounts. It may even be more common in accounts by children who experienced very severe abuse, as Dr. Dalenberg suggests, although it is by no means common in such circumstances and the definition of severity employed by Dr. Dalenberg is multifaceted, confusing the relationship between child and alleged perpetrator, use or threat of force, frequency of abuse, and occurrence of some form of penetration. There is absolutely no support in Dr. Dalenberg's report for her claim that "violent fantasy production within an

abuse allegation is a sign of the truth of the allegation not the falsity. It should be clearly stated that it is not a definite sign of the presence of abuse. However, the presence of this type of description should legitimately alert the investigator to the likelihood of some severe abuse history" (paragraph 38. italics in original). In fact, as noted above, even when severe abuse was strongly suspected, 85% of the statements by 3- to 9-year-old interviewees were devoid of fantasy, flatly contradicting Dr. Dalenberg's assertion, which is repeated in paragraph 10.5 ("fantastic allegations are to be expected when children are traumatized").

22.2. Exclusion from consideration of obviously fantastic details, furthermore, should not lead evaluators to assume that the remaining details are credible. Not all false details - whatever their origin—are obviously fantastic or bizarre in nature. Inaccurate but plausible descriptions may result from confusion, contamination, confabulation, etc. It is thus essential to evaluate the entire account, not simply the bizarre details, in light of the possibilities for contamination, distortion, confusion, misunderstanding, etc.

23. Dr. Dalenberg (paragraph 25 to 34) also excoriates Dr. Parsonson for his criticisms of the use of anatomical dolls during the interviews. The vehemence of her criticism is surprising in light of the fact that she has not viewed videotapes of the interviews in question (Dalenberg paragraph 8) and so cannot address the relevance of Dr. Parkinson's criticism of these interviews. Anatomically detailed dolls can be used in a variety of ways, both appropriately and inappropriately, and thus the recent literature (as acknowledged by Dr. Dalenberg at the end of paragraph 28,) has focused on the specific ways in which the dolls were used, rather than simply on whether or not they were used. The draft Parsonson affidavit that I reviewed focused on the actual use of dolls in this case, with the literature reviewed only as means for placing in context Dr. Parkinson's critique of the interviewers' practices

24. Neither Dr. Parsonson nor Dr. Dalenberg articulate a consensus on the usage of anatomically detailed dolls. Although The dolls are still widely used, questions about their misuse, suggestiveness, and inability to facilitate communication have combined to generate considerable disquiet, particularly among researchers. Nevertheless, the conclusion reached by Poole and Lamb (1998. p. 193) in our recent book appears valid today.

"What then is the consensus about AD dolls? There is none. Recommendations range from enthusiastic endorsement though cautious tolerance to adamant censorship "

Ceci and Bruck (1995) are among the most articulate critics of AD doll use in forensic contexts Their book, Jeopardy in the courtroom is a widely cited monograph published by the American Psychological Association, so the convergence between their views and those articulated by Dr Parsonson at minimum places him in good company) and casts doubt on Dr. Dalenberg's depiction of Dr. Parsonson as an extremist. Among researchers and those who emphasize empirical evidence, Parkinson's views are in the mainstream.

25. Dr. Dalenberg (paragraph 45-46) also attack's Dr. Parsonson's analysis of recantation. I run puzzled by the criticisms, as the Appeals Court already (in 1994) vacated Mr. Ellis's conviction for abusing the child who recanted her allegations. In my opinion, this child's recantation tells us nothing about the veracity of the remaining accusations.

26. Children recant for a variety) of reasons, but false recantations, like false accusations, often appear to be prompted by the prospect of secondary gain. Because the complainant in question appeared to gain nothing from the recantation, it appears quite credible.

27 Dr. Dalenberg confuses recantations of alleged within-family abuse with recantations of allegations against non-family members, although the dynamics and probabilities of recantation are quite different.

28. Dr. Dalenberg (paragraph 41 to 44) correctly notes that children exhibit varied facial and vocal expressions while describing incidents of abuse. No researchers have successfully described expressions reliably indicative of the truth or falseness of children's allegations. Dr Parsonson would be incorrect if he claimed that the children's expressions indicated that they were not telling the truth and Dr. Dalenberg is correct when she concludes (paragraph 52) that "The demeanor of the children, if accurately described, is not inconsistent with true allegations of child abuse." By the same token, of course, they could be evident in untrue allegations.

Conclusion

30. In closing, it is important to place Dr. Dalenberg's criticisms and conclusions in context. She offers several criticisms of my Affidavit, and I have tried to show above why these criticisms are unwarranted. Whether or not the reader accepts the validity of my rejoinder, however, a fundamental point must be made: Dr. Dalenberg's criticisms do not address any of the central concerns raised in my affidavit. My affidavit concluded:

103. The research indicates that there are many ways in which children's reports can be contaminated. Specifically, suggested information is most likely to be incorporated into children's 'memories' when inter alia 1) details are suggested repeatedly, 2) alternative hypotheses are not pursued, 3) the questioner appears to be knowledgeable about the events, 4) an air of accusation is established, 5) the questioner responds positively to certain contents and ignores others, 6) some details are rehearsed (e.g., incorporated into a book about the allegations that is then reviewed and revised), 7) the child is led to believe that others have already reported the details in question, 8) multiple conversations with multiple sources of contaminating information - including parents, peers, counselors-, and investigators - proceed unchecked, and 9) any real memories are weak. Any of these conditions in isolation foster contamination, and the risks we magnified when, as in the case of Peter Ellis, all the relevant conditions are met. Cases involving multiple young

complainants within the same child care setting involve higher risks of contamination and thus require precautionary and preventive steps by investigators to minimize these risks. Such steps were not taken in the case of Peter Ellis, on the contrary, the record reveals many circumstances that maximized the potential for contamination. As a result the probability that the children's reports were tainted is extremely high

This evaluation stands unchallenged by Dr Dalenberg. I thus remain convinced that the evidence provided by these children must be evaluated with great suspicion

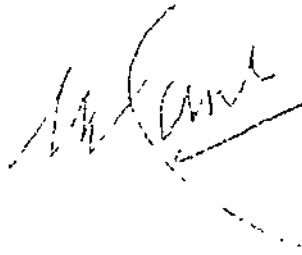
AFFIRMED by the said

MICHAEL ERNEST LAMB

at Bethesda

the 22nd day of June.

1999 before me:



sworn and subscribed to before me this 22nd day of
June 1999
Lisa Bosse
Lisa Bosse
Notary Public
My commission expires 3/24/03