

contained in the fourth of the five recorded interviews gave.

77. An unmistakable characteristic of this complainant's interviews is the exponential growth in the bizarreness of his allegations as interview followed interview. This growth exemplified as a suggestible child.

78. It is submitted that the other blatant characteristic of the interviews is that they were conducted following repeated informal interviewing of a most contaminating nature by at least his parents (and possibly older brothers). Whilst this aspect is dealt with in detail in the submissions on contamination it is relevant to mention it at this point given that the failure of the professional interviewers to follow up and check the obvious risks of contamination outside the recorded interview setting as far as this child was concerned are compounded by the failure in interview to do the same.

79. It is submitted that the manner of questioning of in relation to the allegations contained in the interviews not only breached the standards that should have been known about at the time but provide adequate demonstration of the dangers of such technique that have resulted in more stringent guidelines being widely adopted since.

80. It is submitted that is the classic example of why it is necessary:

1. To interview without delay where there is suspicion or risk of abuse;
2. To avoid repeated interviews;
3. To not question a child about the suspicions before the professionals can undertake that task;
4. To use free recall and open questions to identify issues for that child;
5. To pursue alternative hypotheses;
6. To prohibit unchecked conversations occurring.

81. It is to be noted that Dr ZELAS at trial, even given the less clear knowledge of 1992/93, identified free recall and open ended questions as the appropriate way of interviewing. Dr ZELAS stated however that if there is a paucity of information then direct

questioning is permitted (see page 347 of the Notes of Evidence at trial).

82. It is submitted however that when Dr ZELAS told the Jury that direct questioning of a child could elicit more information, she failed to accurately advise the Jury of the possible consequences of such a course (see page 336 of the notes of evidence at trial).
83. It is submitted that Dr ZELAS gave information that we now know to be incorrect (refer to pages 18,33,35,38 of the First Affidavit of Dr Lamb and pages 17,18, 19 of the First Affidavit of Dr Parsonson).
84. It is submitted that Dr ZELAS recognised the potential for unreliability of evidence by her comments in the letter of 28 August 1992 and the need for checks to be made to validate or otherwise the child's allegations. There is of course no evidence that her suggestions were acted upon.
85. The interviews of do not demonstrate any acknowledgement by the interviewers of the inherent risks or the question types, props, parental contamination or the risks associated with multi-victim allegations.
86. The Jury was not assisted by the interviewers in their evidence as to identification and assessment of risk. Any risk that was identified under cross examination was minimised.

**THE ALLEGATION THAT PETER ELLIS INDUCED AN INDECENT ACT
AT AN UNKNOWN ADDRESS WITH . WHEN
BATHING BY TOUCHING MR ELLIS'S PENIS.**

87. The Court is reminded that first interview did not result in any count being presented at trial.
88. A general criticism is made of the interviews by Dr PARSONSON as follows (at page D53):

"Interviewer:

- a) A large number (5) interviews spread over 5 months.
- b) Considerable use of prompting, suggestive, and multiple-choice questions, particularly in obtaining detail.
- c) Rarely challenges some of the more unusual aspects of described events special equipment and locations.
- d) Occasionally used social influence.
- e) Dolls, toys, free-hand drawing, body parts diagrams used.
- f) Seems not to note inconsistencies within and between interviews on many alleged facts.
- g) requested the interviewer to ask him questions (92/263) rather than give free narrative

1.2 Potential sources of external contamination:

- a) Family discussion and questioning by brother(s) and parents, including suggestive questioning by brother and mother.
- b) Regular pre- and post-interview questioning by mother.
- iii) Mother and father drive child around city to assist location of sites.
- c) Counselling sessions, counsellor informed of child's 'fears' by mother.
- d) Pirate film ('Hook'), pirate toys, TV programmes
- e) Possible maternal contact with other concerned parents.

...

1.4 Unusual aspects:

- a) Allegations are characterised by inclusion of a large number of unusual items, such as secret passages and stairs, pirate chest, ladders, trapdoors, etc.
- b) Numbers of unusual locations, 'library', 'hospital/ restaurant', etc.
- c) Numbers of unusual characters in various unusual clothing.
- d) Unusual acts, such as putting children in an oven." (D53)

89. Against this background, it is submitted that the interview itself progressed in a generally unsatisfactory way because of the techniques used.

THE ALLEGATION OF BEING IN THE BATH

PERMISSION TO SPECULATE, INTERVIEWER ASSUMPTIONS AND INTERVIEWER MISTAKES

90. made an extremely sketchy allegation that Peter ELLIS made him have a bath with him in an upstairs bathroom at Ellis' house. Although interviewers and Dr ZELAS were later to give credibility to children's allegations and to minimise the risks of inaccurate information being obtained at interview by referring to the detail provided, in fact provided little by way of detail. In addition as early as page 7 of the interview he is given permission to speculate "asked who was present said Ellis' friends were present and after initial difficulty remembering any names, said, "hmm. I don't know, I can't remember. Something like " The interviewer then proceeded to adopt " " as being the person. When asked "what was his friend doing" (p8), responded "um ah I think he was just up and around...he was being smart with some other children...I can't remember [which children]" (p8).

91. made the allegation that once in the bath "he made me eat his poos, ah no no, he made me um, yeah he made me eat my poos and then he said next time you come here I'll eat mine and he didn't" (at page 9). Without eliciting any open detail about the actual stages in the event, that is, how he was made to eat it (poos), the interviewer suggestively asked "and what happened after he made the poos go in your mouth, what happened after that" (at page 10).

92. alleged that Peter ELLIS had made him eat his own poos, stated "he made me eat my poos" the interviewer

responded incorrectly restating the allegation as "what did you feel like when he made you eat his poos" (at page 9) to which does not correct Ms SIDEY but says "Sad" and presumably realising her mistake Ms SIDEY says "Your poos. You felt sad." Of significance however is that the next time stated what happened he changed whose excrement he alleged he had been made to eat, saying "um he just made me eat his poos with the door shut" (at page 10) demonstrating that rather than correcting the interviewer when she restated what he had said accepted the interviewer's version.

THE ALLEGATION OF TOUCHING MR ELLIS'S PENIS

93. It is submitted here that the interviewer completely lost sight of objectivity and neutrality and the vulnerability of this child to interview pressure.

INTERVIEWER PRESSURE

94. The interviewer was not content with the responses provided up until page 12 by and pushed for further allegations, saying, "So what else did he do, what were the other things that he did" (at page 12) to which responded, "um I made this white stuff come out of his penis".
95. The interviewer then responded to this allegation by mis-stating what the child said, "What was the white, how did he make the white stuff come out" (at page 12) to which incorporates the suggestion that he did "He made me touch his penis a long time" (at page 12).
96. volunteered that he had to touch the penis with his hand (at page 12) but the remaining detail was elicited through the use of props (in this case, a pen) or through direct multiple choice questioning, for example, "did your hand move or stay still" to which replied "I made it stay still" and then introducing the interviewer's own detail by saying "And you had to do that till the white stuff came out" when had not provided that detail (see page 12). But he did acquiesce to it when the interviewer restated "And you had to touch his penis with your hand till the white stuff came" stated "Mym" (at page 15).
97. It is submitted that Dr PARSONSON is correct when he says "children of this age do not tend to have a sound knowledge of erection and ejaculation. may have learned this from the experience he described or from his adolescent brother's or parents" (at page D57) and at page 23 of the transcript goes on to describe that in fact his parents had been the providers of similar knowledge.

98. The interviewer then was successful in eliciting further information about this allegation, including that "he [Peter Ellis] was holding his dick". [redacted] had now given two versions of who was holding Peter's penis and the interviewer failed to follow up on this conflict. It is submitted that a gentle challenge is not inappropriate and indeed the early interview presented the only realistic opportunity to obtain reliable and accurate information.

99. It is submitted that when [redacted] alleged that others had helped Mr Ellis remove his trousers "They just pulled his pants down" the interviewer did not ask who "they" were (at page 13).

100. The interviewer relies on inappropriate suggested multiple choice questions to elicit the remaining detail. For example, as to the state of Mr Ellis's penis:

- Q. "Yeah was it hanging down or sticking out"
A. "Um it was hanging down like that"
Q. "Im hym. Do you, you know when penises stick out"
A. "Yeah it was"
Q. "Go straight"
A. "Actually this is his body and that's the thing hanging down there like that"
Q. "Okay and then the white stuff came out"
A. "Yeah" (at page 15)

101. It is submitted that Dr PARSONSON correctly identifies the risks of this sort of questioning and points out at page D57 that [redacted] may not know about erection or about the relationship between erection and ejaculation. It seems clear from his description and demonstration prior to subsequent suggestive questioning that he was claiming that the penis was flaccid. It also appeared the interviewer was attempting to get him to alter his report, which it seems he did to some degree, but his final demonstration was not supportive of his changed report suggesting his knowledge of erection is not sound."

LACK OF INTERVIEWER FOLLOW-UP

102. Later in the interview when the topic of the masturbation allegation is revisited [redacted] indicated that he had other knowledge about sexual activities. The source of this knowledge and therefore what had been told to this child was not followed up:

- Q. "And when he did, when you had to hold his penis"
A. "Mym"
Q. "White stuff came out"
A. "White sticky stuff"
Q. "White sticky stuff"
A. "Ah um things when you have sex"
Q. "Mym how do you know about that"
A. "Um I just do cos mum and dad have it"
Q. "Okay" (at page 23)

**THE ALLEGATION THAT MR ELLIS PLACED HIS PENIS ON
BOTTOM**

102. The questioning for detail over this allegation "frequently involved suggestive questioning which prevents the expression of the child's own understanding and experience of what he alleged. shows himself to be somewhat ignorant of erection and the description of body relativity does not match what would seem to be required for an adult to sodomise a four year old." (Dr Parsonson, p D58).

INAPPROPRIATE USE OF PROPS

103. The interviewer encouraged _____ to use props, asking "So could you choose, I need you to ____ choose a doll to be Peter and one to be _____ (at page 17) and "show me how his bathroom was" (at page 18). The danger here is that the child may well be able to arrange the commonly known items into a semblance of a bathroom and the truer of fact may assume the arrangement adds to reliability of the evidence as the child seems to be re-creating an actual environment.
104. The dolls were also used by _____ to allege the relative body positions. At page 18:

- Q. "Im hym so show me how he did that to your bum with his penis"
A. "Um he he won't stand up"
Q. "No okay well I'll hold him and you show me where you were"
A. "He went.."
Q. "No."
A. "I was um like that bending over and he was um putting this in there like that"
Q. "Right so you were standing bending over"
A. "Yeah"

INAPPROPRIATE QUESTION USE

105. The interviewer used suggestive forced choice questions to obtain additional reported information for example (at page 18):

- Q. "Was he standing up or kneeling or sitting"
A. "Um he was ss kneeling, standing up"
Q. "Right and he was behind you and his penis was going um now when his penis did that to your bum was it, it felt tickly, was his body staying still or was it moving"
A. "It was staying still"

and (at page 18)

- Q. "...so did it go on your bum or in your bum"
A. "In in my bum"

PERMISSION TO SPECULATE

106. When discussing how _____ was supposed to have got to the house, he indicated his willingness to speculate as to information that he did not know about personally, for instance, at page 21 he alleged "They were hurting other children" when asked "How did they do that" he stated "I don't know cos I wasn't with the other children". As to whether there were any other children present, he speculated "Um I, there probably was but I can't remember".

INAPPROPRIATE QUESTIONING

107. _____ then alleged that he was similarly abused by _____
" _____ The interviewer tries to elicit further information in relation to the sodomy allegations by use of forced choice questioning and the use of dolls, at page 29:

Q. "What about Peter's, did his go in the poo hole or in the crack"
A. "The crack"

108. _____ went on to allege that Peter ELLIS photographed with a camera "all the nasty things that happened like um when he said all the swear words and how his um white stuff got on the floor that was at creche..he took photos when he smacked my bum, he's done that heaps of times and he said you're a fucken arsehole and so is your family and then he said I'll turn and I'll get your brothers and I'll fucken bury them and then they'll be the end of _____ because you're a fucken arseholes"

109. _____ then alleged that he was taken to the house alone and that all of ELLIS' friends were standing around laughing at him, "[t]hey were they were laughing while Peter was doing and he said don't worry Peter he'll never tell" (at page 33). That these other people were laughing when Peter was "putting his penis in my bum" (at page 33). _____ speculated that the friends "probably hanged them up in their um house and every morning they probably laugh at them" (at page 33).

EVIDENCE OF CONTAMINATION

110. The interviewer asked _____ who else he had discussed the allegations with, he replied that he had spoken to his family:

Q. "[w]ho was the first person you told these things to"
A. "Um my mum an dad and my brothers. I told them what he said about my brother's kid there were two men he was throwing them in the garden and bury them and _____ said won't be able to cos he'd just beat them up and that's what I feel too."

..
Q. "Have you, have you told anybody else"
A. "Yeah told my brothers" (at page 34).

THE ALLEGATION THAT PETER ELLIS PUT HIS PENIS INTO _____ MOUTH

SUGGESTIVE QUESTIONING

111. The interviewer asked _____ to speculate in an extremely suggestive manner, at page 35:

Q. "Hey um you know how his penis went in your bum like that."

A. "Mym"

Q. "Where else could a penis go"

A. "He he put it in my mouth as well" (at page 35)

THE DETAIL

112. _____ made further statements about this allegation, including that it happened twice in the bedroom of the house, that it tasted like wees, that Peter ELLIS took his shoes, pants, and knickers off and that he made _____ pull his pants down and that ELLIS was holding his penis in _____ mouth (p35-36).

PRE INTERVIEW CONTAMINATION

113. _____ told the interviewer that he had talked about the allegations earlier, at page 40:

"Yeah I told _____ first and then mum and dad and...and my other brothers"

and

Q. "When they touched your bum with their penis, who knows about that. Does mum and dad know about those other men or not"

A. "Yep I told them all about it last night and that's why they wanted me to have another interview" (at page 40).

IN SUMMARY

114. The allegations that _____ had a bath with Peter ELLIS, that he touched Peter ELLIS' penis, that Peter ELLIS had inserted his penis into _____ anus and mouth were all contained in the second interview.

115. It is important to note that _____ referred to many other incidents for which no charges relate, for example, Peter ELLIS making him eat excrement, the sexual touching and the anus interference by others including _____ and others.

116. In a number of parts of this interview _____ demonstrated that he is susceptible to suggestion and was willing to speculate in response to questions, which is one of the problems inherent in the use of such questions with young children.

117. In addition there was clear evidence from this second interview that _____ indicated that _____ used questioning as a stalling tactic.

On a number of occasions within the second interview he repeated the question back to the interviewer, for example, at page 18 "did he do anything to my bum before that", page 19 "what happened when he had finished doing what", at page 27 "whereabouts did it happen", page 29 "how did his penis hurt my bum", page 30 "How many times did it happen, I want to go to the loo" and at page 26 "whereabouts were his hands when his penis went in my mouth" amongst others.

118. This interview therefore contained all of the allegations for which convictions against [redacted] relate. Whilst some of the allegations were volunteered in the interview, much of the detail was elicited from the asking of suggestive, direct or forced choice questions. The allegations contained significant discrepancies and contradictions which were often not followed up. [redacted] demonstrated that he was willing and able to speculate as to answers and that he was responsive to suggestive questioning. If Dr LAMB is correct that once inaccurate information has been absorbed into the developing memory of a child as young as six, then the prospect of cross-examination being able to elicit the accurate information is remote.
119. The aforementioned criticisms have been confined to the second interview, however the suggestibility of this child and the perhaps understandable failure of the interviewing techniques to identify accurate information from [redacted] were further seen in the following three interviews. As early as the 5th and 6th of August 1992 [redacted] was to allege and went on to develop:
- that he had been taken to a three-storied library building with a trap door along with [redacted]. He provided drawings of what was supposed to be the library that turned out to be a "normal" building.
 - the involvement of two adult male conspirators identified as being "Spike" and "Boulderhead" who were wearing all black including black shoes, a white tie and black hats (Dr PARSONSON notes the coincidental conformity to cartoon gangster stereotypes, p D65).
 - that one of these men had written "fucking shit" on the side of a Toyota Corona car with a putty knife - a fact that he ascertained by reading it at the age of 4 years;
 - the presence of two black women dressed in white with a black tie. He asserted that these people "were hurting kids except that I don't know what they did because I wasn't around" (p16 of the interview transcript).
 - a sharp stick was stuck up his "bum" five times and made it bleed on the floor;
 - that burning paper was also stuck up his "bum" five times;
 - that his "bum" bled ten times;