The Impact on Juries of Pre-Recording Children's Evidence

Josephine Hubble

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THE IMPACT ON JURIES OF PRE-RECORDING CHILDREN'S EVIDENCE

By

Josephine Hubble

A Thesis Submitted in Partial Fulfilment of the Requirements for the Award of Bachelor of Arts (Psychology) Honours at the Faculty of Health and Human Sciences Edith Cowan University.

Date of Submission: 31 October, 1996.
USE OF THESIS

The Use of Thesis statement is not included in this version of the thesis.
Abstract

The impact on juries of pre-recording children's evidence was investigated. University undergraduate students (N = 123; 91 females, 32 males) volunteered to participate in the study as mock jurors. Participants either watched a videotape or read a transcript of a simulated trial involving a child sexual abuse case. Participants who watched the videotape saw the child give evidence either by closed circuit television or by a pre-recording. Participants who read the transcript were advised the child's evidence had been given via closed circuit television or had been pre-recorded. After viewing the videotape or reading the transcript, participants completed a questionnaire that asked them to rate the credibility of each witness on a 5-point Likert scale and recall trial-related information for each witness. They were also asked to state a verdict - guilty or not guilty. There were no differences for ratings of credibility or recall of trial-related information between conditions. There also were no differences in verdict as a function of the way the child gave evidence, either by closed circuit television or pre-recorded evidence, or the way the trial was presented, either watching the videotape or reading the transcript of the trial. There was a difference for gender for verdicts where males returned not guilty verdicts more often than females; but there was no interaction between gender and the way the child presented evidence, and gender and the way the trial was presented. A number of explanations for the findings of the study are discussed.
DECLARATION

I certify that this thesis does not incorporate, without acknowledgement, any material previously submitted for a degree or diploma in any institution of higher education and that, to the best of my knowledge and belief, it does not contain any material previously published or written by another person except where due reference is made in the text.

Signature:

Date:
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Timeline of Recording Evidence for Closed Circuit Television and Pre-Recorded Videotaped Evidence for Child and Other Witnesses
The Impact on Juries of Pre-Recording Children's Evidence

Recently, changes have occurred in Western Australian courts to facilitate child witnesses giving evidence. These are: the use of screens, where the child is in the courtroom and a screen is placed between the child and the accused so that the child does not see the accused; the use of closed circuit television, where the child is removed from the courtroom but gives evidence, on the day of the trial, from another room and the audio and visual image of the child is transmitted into the courtroom via video monitors (also known as video link or live link); the admission of videotaped statements of an initial interview of the child made to a police officer or social worker; the admission of videotaped evidence-in-chief where the child's examination-in-chief is video recorded to be used as part of or for the whole of the child's evidence-in-chief in court; and the use of pre-recorded videotaped evidence where all the child's evidence, both examination-in-chief and cross examination are pre-recorded before the trial at a pre-trial hearing and the videotape of the child's evidence is played in the place of the child's live testimony on the day of the trial - the child is not present at the trial (Dixon, 1993).

Legislative Changes for Child Witnesses' Evidence - Overseas and Australia

The changes in Western Australian courts for children's evidence follow or parallel changes to legislation in other parts of the world for the manner in which children can give evidence. These countries include the United States of America, Canada, Scotland, the United Kingdom, and New Zealand, as well as other Australian states (Davies & Noon, 1991).
Some states in America have specific legislation allowing a child's videotaped testimony to be admitted in a trial (Goldstein, 1989). In Canadian trials, videotaped interviews of children alleging sexual abuse are permitted while calls to further assist and protect children giving evidence have been made for the introduction of screens and closed circuit television (Dezwilek-Sas, Wolfe & Gowdey, 1996).


In the United Kingdom, the Report of the Advisory Group on Video Evidence chaired by Judge Pigot in 1989 [also known as the Pigot report] recommended that a child's testimony be pre-recorded thereby keeping children "away from criminal trials as much as possible" (Temkin, 1991, p. 315) and that this would help reduce the consequences of the effects of long delays before trials (Smith & Wilson, 1991).

While the Pigot report recommended that no child witness should have to testify in an open court (McEwan, 1990), the Criminal Justice Act of 1991 in the United Kingdom did not follow Pigot's recommendations, stipulating that whilst video recordings were admissible, cross examination of witnesses would be conducted in court with the child present (Sood & Stevenson, 1991). Videotaped interviews of children's testimony were admitted as evidence-in-chief under the Act although child witnesses were still required to attend court for cross examination and the concern relating to long delays between an accused being charged and the trial date was still inherent (Davies, Wilson, Mitchell & Milsom, 1995).
Closed circuit television was first used in trials in New Zealand in 1989 (Whitney & Cook, 1990). The Evidence Amendment Act and the Summary Proceedings Amendment Act, both of 1989, were legislated and came into effect on 1 January, 1990 (Pipe & Henaghan, 1996). Changes to the legislation allowed child witnesses to give evidence in alternative ways such as: using screens or wall partitions; closed circuit television; and, pre-recorded videotaped evidence. Pre-recording of evidence followed the recommendations made by the Pigot report where both the child's examination-in-chief and cross examination were pre-recorded on videotape before the trial and the videotape was then played at the trial in place of the child's live testimony - the child not being present in court on the day of the trial (Pipe, Henaghan, Bidrose & Egerton, 1996).

In Australia, most states such as the Australian Capital Territory, Queensland, New South Wales, Victoria and Western Australia, have enacted legislation to provide child witnesses with the use of closed circuit television when giving evidence in court. Western Australia trialed the use of closed circuit television in a pilot study conducted in the Perth Children's Court from 23 June 1989 to 1 December 1989 (Department for Community Services, 1990). In the pilot study, the child gave evidence in open court while the accused watched proceedings via closed circuit television in another room. This manner of presenting the child's evidence was unique, as it appeared to negate one of the advantages of closed circuit television - that the child was able to give evidence outside the intimidating environment of the courtroom (Davies & Noon, 1991; Davies & Westcott, 1992).

Amendments to the Evidence Act 1906 (WA) and to the Western Australian
Criminal Code were made in November 1992 which allowed children to give evidence via closed circuit television, videotape their evidence, or use a screen (Dixon, 1995). Due to the amendments, the standard manner for children testifying in court in Western Australia was by closed circuit television although the child who wished to testify in open court was permitted to do so if the judge was satisfied the child was able to present evidence in this way. The amendments also allowed provision for the child's videotaped statements made in an interview to, for example, the police or a social worker to be admitted as part of the child's evidence. Pre-recording the child's evidence-in-chief as well as the whole of a child's evidence were also permissible under the amendments (Dixon, 1993).

**Recording of Evidence - Closed Circuit Television**

It has been claimed the changes to the manner in which children can give evidence have been of great benefit to child witnesses in reducing the trauma and stress associated with testifying in court (Spencer, 1987). While the use of a screen spares the child seeing the accused in court, closed circuit television spares the child from having to appear in open court (Westcott & Davies, 1993). Furthermore, the child is not in direct, physical contact of the accused and is shielded from having to testify in front of strangers such as the jury and the public, if present at the trial. Child witnesses can give evidence away from what may be an intimidating environment of the courtroom and they do not have to contend with the unfamiliar faces of the jury and the public who may be attending the trial, but the child is still present at court on the day of the trial (Cashmore & Cahill, 1990) which is seen by some as "enhancing..."
the credibility of the child in the eyes of the jury” (Szwarc, 1991, p. 136).

Closed circuit television thus helps to alleviate the two main concerns children have of giving evidence in a trial - first, the fear of the courtroom itself, and second seeing the accused (Cashmore, 1990). Research evaluating the use of closed circuit television in presenting children's testimony concluded anxiety and stress levels in child witnesses were reduced while the quality of their evidence was enhanced because they did not have to confront the accused nor did they have to testify in the courtroom which was formal and intimidating (Davies & Noon, 1991; Cashmore, 1992).

Although the child appears on a video monitor when giving evidence via closed circuit television, there has been cause for concern that removal of the child from the courtroom leads to a presumption of the accused's guilt or that the jury are less likely to convict because they cannot see or hear the child witness's testimony in court (Re, 1983; Stevenson & Sood, 1990). On the other hand, it is postulated that a witness may be accorded greater credibility because the witness appears on a video monitor - often referred to as status conferral (Boster, Miller & Fontes, 1978). According to Cashmore and Cahill (1991) “the medium bestows prestige and authority to those who appear on it” (p. 59).

Conversely, appearing on a video monitor may reduce the impact of a child's testimony (Davies, 1991; Davies & Westcott, 1992). The medium of a video monitor may induce a sense of unreality where jurors potentially treat those appearing on the monitor differently to witnesses who appear live (Doret, 1974; Farmer, Cundick, Williams, Howell, Lee & Rooker, 1976; Rayner, 1989; Spencer & Flin, 1990;
Closed Circuit Television - Past Research

Ross, Hopkins, Hanson, Lindsay, Hazen and Eslinger, (1994) studied the impact on conviction rates in a simulated child sexual abuse trial where the child gave evidence live in court, using a protective shield or via closed circuit television. In their study, 300 students were randomly assigned to one of the three conditions. In each condition, participants viewed a videotape of a simulated trial where, in the first condition, the child testified in open court [open court condition]; in the second condition, the child gave evidence in court with a screen placed between her and the accused [shield condition] and thirdly, the child gave evidence via closed circuit television [video condition]. For each condition, the videotaped simulated trial was a two-hour long child sexual assault case. The transcript was the same for all conditions and the only thing that differed between conditions was the way the child presented evidence.

Following the “trial”, participants were asked to give a verdict and rate the credibility of the child and the defendant on a number of characteristics on a 7-point Likert scale. Ross et al. report in the results “the modality of the child’s testimony had no impact on the subsequent outcome of the trial” (1994, p. 558), although there was a significant effect for gender across verdict in that more females convicted the defendant than did the males. There were no differences across conditions for the rating of credibility for the defendant or the child.

An Australian study also investigated the effects of modality of child
witness's evidence on trial outcome, credibility ratings and recall of trial-related information (Jonas, 1994). In this particular study, 41 participants watched a mock live trial with two conditions - either the child witness gave evidence in court or the child's evidence was presented via closed circuit television. The trial transcript, which was fictitious, was based on a schoolgirl's allegation of sexual assault by a male teacher. The transcript was the same in both conditions and only differed in the way the child witness presented evidence either in court or via closed circuit television.

After viewing the trial, participants were asked to complete a response sheet that included: stating a verdict, recalling evidence from each of the witnesses and rating the credibility of the child and other witnesses on a 5-point Likert scale. Neither individual verdicts taken pre-deliberation or group verdicts taken post-deliberation showed any differences across mode of presentation nor were there any differences in verdict for gender.

Results revealed no differences for recall of trial-related information for the witnesses, neither were credibility ratings for the child and other witnesses different. The researcher concluded the mode of presentation of the child's evidence did not impact on jurors' assessment of the child's evidence nor on their verdict.

Children's evidence viewed on a television monitor may be treated differently "because of its novelty and singularity" (Cashmore & Cahill, 1991, p. 59) in that the evidence is presented on a television monitor whereas all other witnesses' evidence is presented in person. The effect of using videotechnology in court can be powerful (Naylor, 1989a) and although studies suggest jurors ability to recall trial-related information would not be influenced by videotaped testimony (McCrystal, 1992),
the use of closed circuit television for presenting evidence for child witnesses where
other witnesses appear live in court may cause imbalance to jurors weighting of
evidence presented by the prosecution and the defence (Visher, 1987).

Support for the concern that the novelty aspect of evidence presented on the
television monitor is found in the findings of von Restorff (cited Koffka, 1935) and

In studies conducted by von Restorff, when a vivid, contrasting item was
placed in a list of words, recall was higher for the vivid item than other items on the
list. Similar research was conducted by Tulving (1969) who presented participants
with lists of common words. When the words or items on the list were similar,
words at the beginning and end were recalled better than words in the middle of the
lists. Participants were then told that some lists would contain the name of a famous
person. When lists were presented to participants that contained a name of a famous
person participants were told they must remember this name. No matter where on the
list the name of the famous person occurred, participants successfully recalled these
items to the detriment of words before and after the "high priority" word.
Pre-Recording Evidence

Recording of Evidence - Pre-Recorded Videotaped Evidence

One concern that the giving of evidence via closed circuit television does not address is the long delays between reporting the offence and the trial. When a child gives evidence via closed circuit television, the child is still required to attend court on the day of the trial. In Western Australia, the average delay for reporting of offence to trial is 13.5 months for child witnesses attending Supreme Court - the minimum delay being eight months and the lengthiest delay 21 months. In the District Court, child witnesses experience average delays of 15 months while the shortest delay is nine months and 27 months for the longest delay between reporting of offence and trial (Ministry of Justice, 1995).

Pre-recording the child's evidence obviates the need for a child to appear in court. While the child's pre-recorded evidence also appears on a video monitor during a trial, the two major differences between closed circuit television and pre-recorded videotaped evidence are the timing of when evidence is taken and the absence of any interaction between the child and the lawyers on the day of the trial when evidence has been pre-recorded. In closed circuit television, a contemporaneous account of evidence is given while in pre-recorded videotaped evidence, the evidence has been pre-recorded at an earlier date (Cashmore, 1990).

The obvious advantage of pre-recording children's evidence is that this evidence can be recorded as close in time to the alleged incident as possible. Because it has been taken closer in time to the event in question and not many months or even years later this evidence is more likely to be reliable (Cashmore, 1990). The pre-recorded videotape captures "the earliest and most spontaneous account from the
child of the events in question" (Davies, 1988, p. 21); because the evidence is taken closer in time to the event, the recollection is still fresh in the mind of the witness (Byrne, 1988; Warner, 1991) and may “represent some of the witness’s best and most reliable evidence” (Naylor, 1989b, p. 92). The value of the evidence is likely to be increased when taken as soon as possible after the event (Tilmouth, 1994) and the recall of events is likely to be more vivid, include more detail and be more accurate when taken in this manner (Hill & Hill, 1987; Thomson, 1989; Spencer & Flin, 1990; Warren & Lane, 1995).

When evidence is pre-recorded, the number of interviews a child may have to undergo to recount the events of the ordeal to different parties is reduced. The various investigators involved in the investigation of the alleged offence can acquaint themselves with the facts by viewing the videotaped recording rather than re-interviewing the child. This elimination of multiple interviews is an important consideration because studies have shown multiple interviews may contaminate evidence as “repeated testing could alter a person’s memory for an event” (Martin & Thomson, 1994, p. 120). Several researchers (Loftus, Miller & Burns, 1978; McCloskey & Zaragoza, 1985) have shown that subsequent interviews which contain misleading information distorts witnesses’ recall of the original event.

Thus, pre-recording a child witness’s testimony as soon as possible minimises the possibility that subsequent information contaminates the child’s recall. This aspect is important as children’s memory are more susceptible to delay and contamination than adults (Zaragoza, 1987).

A further non-legal advantage of pre-recording a child’s testimony soon after
the event is that therapeutic intervention can occur sooner without the concern that the child's evidence may be contaminated by the therapy.

Potential Consequences of Pre-Recorded Videotaped Evidence

Pre-recorded videotaped evidence raises two issues pertaining to the courtroom and the knowledge of evidence that have not been raised in other forms of presentation of testimony of children. The first issue pertaining to the courtroom is the psychological dynamics of the setting, that is, the social situation of pre-recorded videotaped evidence compared to other forms of giving evidence. When a child is in court giving a contemporaneous account of evidence, there is interaction with the lawyers and the trial judge and the jury are an active part of the process of examination. With the use of pre-recorded videotaped evidence, "the trial process itself will be altered as will the relationships between and among lawyers, parties, witnesses, and judge" (Brakel, 1975, p. 957). When all the child's examination has been pre-recorded, there is no interaction with the lawyers or the trial judge and the jury remains a passive observer throughout the hearing of the child's pre-recorded evidence. Pre-recorded videotaped evidence changes the complex workings of a trial that exist when the child's evidence is given live (Doret, 1974). The essence of such interaction may lead to the child's evidence being regarded as less salient.

The second issue pertains to the knowledge that the evidence has been taken at an earlier date. Jurors may perceive evidence obtained earlier as more credible than evidence obtained much later. They may then accord greater weight to the pre-recorded evidence in comparison to the weight accorded testimony from other
witnesses given in court much later in time. Thus, simply knowledge that the child's evidence has been pre-recorded at an earlier date may impact on jurors and the decisions they make.

To summarise the differences between pre-recorded evidence and closed circuit television: the evidence has been pre-recorded on the one hand whereas a contemporaneous account of the evidence is given in closed circuit television; although both forms of giving evidence are presented via video monitors and all other witnesses testify live in court, the child is not present on the day of the trial when evidence has been pre-recorded. For evidence that is given via closed circuit television, the child is at court on the day of the trial; there is knowledge that the pre-recorded evidence has been taken at an earlier date where the child giving evidence via closed circuit television may have had to wait several months before coming to court; and there is no social interaction between the lawyers and the child witness when evidence is presented as a pre-recorded videotape. Interaction between lawyers and child witness occurs when evidence is presented via closed circuit television.

Pre-Recorded Videotaped Evidence - Past Research

In 1973 in the United States, two groups of jurors were asked their responses after viewing civil trials that contained evidence that had been pre-recorded (Bermant, Chappell, Crockett, Jacobovitch & McGuire, 1975). The pre-recorded evidence was known as pre-recorded videotape trial presentation where substantial parts, if not all, of witnesses' testimony had been pre-recorded before the trial. In the first group, the jury viewed a videotape of a civil litigation case, Liggons v. Hanisko, the first pre-
recorded videotaped trial to be held in California (September, 1973). The case involved a motor vehicle accident where a two-car collision had occurred at an intersection controlled by traffic lights. The main point of contention in the case centred around which driver had gone through the intersection against an amber or red light.

The instructions given to the jurors were that all witnesses had testified but their evidence had been pre-recorded therefore at the trial, there were no live witnesses testifying (Bermant et al., 1975). Jurors were asked a range of questions and several felt troubled by the “impersonal quality of the televised presentation” (Bermant et al., 1975, p. 986); some of the jurors felt that they needed “the human factor” and that watching the videotape of the evidence precluded this aspect.

The second group of jurors viewed cases of land appropriation (condemnation) that had been presented as pre-recorded videotaped trials in Erie County Ohio during November and December of 1973. Reactions to the technology of video recording was favourably received. When asked if they would choose to have a pre-recorded videotaped trial for a civil case, 76% of the Ohio jurors answered affirmatively. In a criminal trial, 43% of the Ohio jurors would choose videotaping, the remaining jurors choosing live trials suggesting live testimony would have greater influence on members of the jury. Of the California jurors asked about using pre-recorded videotaped trial for criminal trials, opposition was nearly unanimous. They believed that when the freedom and livelihood of a defendant was at stake, the trial should be conducted with live witnesses giving testimony in the courtroom in front of judge and jury.
Bermant and Jacoubovitch (1975) concluded from the two surveys that most jurors thought videotaped trials were acceptable though cautious about using pre-recorded videotaped trials for criminal cases. Further studies were conducted to determine the effects of videotaped trial materials on the decision making and information processing of jurors (Miller, Bender, Boster, Florence, Fontes, Hocking & Nicholson, 1975). In one study the question was posed whether the way in which testimony was presented, either live or by videotape, significantly influenced the responses of jurors. To determine any difference, Miller et al. re-enacted a trial involving a motor vehicle injury case. Fifty two jurors viewed the live trial and a month later, 45 jurors viewed the videotaped trial. All jurors completed a questionnaire which asked for verdict, credibility ratings of the plaintiff's and defence's attorney, retention of trial-related information and interest and motivation in jury duty.

Results revealed no difference in the way testimony was presented in the attribution of negligence. There was no difference in the credibility ratings for the attorneys nor was there any difference for retention of trial-related information and jurors in both the live and videotape conditions were attentive to the task at hand.

Previous studies had focussed on all the witnesses' evidence being presented as a pre-recorded videotaped trial. Miller and Fontes (1979) extended these studies to include trials where only certain witnesses' evidence was presented pre-recorded. This was because research had consistently shown that appearing on television was perceived as being credible and reliable, and people relied on television for news and information. Status-conferral was thus assumed to be given to people appearing on
television. The rationale for the study was to investigate whether witnesses giving pre-recorded evidence were given greater credibility than those appearing live, as jurors were viewing witnesses who gave pre-recorded evidence on a video monitor and there was a possibility these witnesses would be accorded status-conferral.

The four conditions in the study that were manipulated were: i) both expert witnesses testified live, ii) both expert witnesses' evidence were presented on videotape in black and white, iii) the expert witness for the plaintiff testified live while the expert for the defence gave videotaped evidence in black and white, and iv) the expert witness for the plaintiff gave videotaped evidence in black and white while the expert witness for the defence testified live. Participants were 106 jurors who watched a civil trial involving a motor vehicle accident where the defendant was at fault. The contentious issue was the back injury allegedly sustained in the accident by the plaintiff.

After the trial, jurors completed a questionnaire which included measures of retention of trial-related information and credibility ratings of each of the trial participants. Results showed that more information was retained by jurors when the plaintiff's witness gave evidence live than when giving pre-recorded evidence. Other results suggested jurors retained more information of the defendant's witness when both witnesses presented evidence live or they both presented pre-recorded evidence. For credibility ratings of trial participants, the expert witness for the plaintiff was rated higher in credibility when evidence was given live than when evidence was pre-recorded. There were no significant differences between the two attorneys across modes of presentation nor were there any differences for verdicts. Costs awarded to
the plaintiff were not significantly affected by the use of pre-recorded evidence.

Swim, Borgida and McCoy (1993) conducted research involving live versus videotaped evidence from a child witness in a criminal trial. In this particular study, conducted in a laboratory setting, 143 students acted as mock jurors. All participants watched a videotape of a mock trial involving a child sexual assault case. The mock trial, three hours in duration and the videotape had two conditions - either jurors watched a videotape of the trial depicting the child giving testimony live in court or they watched a videotape of the trial depicting the child giving pre-recorded evidence. Thus, in either case, the transcript was the same for the two conditions, therefore the testimony of the child was identical.

After viewing the videotape of the trial, mock jurors completed a questionnaire pre-deliberation and post-deliberation which asked for verdict, perceptions of the trial participants and memory for the testimony of the child, the defendant and the judge's instructions. No difference was found for verdict between mode of presenting the child's evidence although there was a gender difference for verdict where females were more likely to convict than males. There were no differences for perceptions between mode of presentation nor were there any differences for the memory of the child’s and defendant’s testimony, and the judge’s instructions.

In summary, pre-recording of evidence in trials did not appear to impact on: verdicts (Swim et al., 1993; Ross et al., 1994); credibility ratings (Swim et al., 1993; Ross et al., 1994); or on retention of trial-related information (Swim et al., 1993).
Pre-Recorded Evidence - The Present Study

The present study investigated the impact on juries of pre-recording a child’s evidence in comparison to a child’s evidence given by closed circuit television. In both conditions, the manner in which the child presented evidence contrasted to other witnesses’ evidence because in both conditions the evidence was presented on a television monitor. The differences between the two conditions was the knowledge of the participants that in the pre-recorded evidence, the evidence had been taken earlier in time, and the lack of social interaction between the child and lawyers. For closed circuit television, the child gave a contemporaneous account of evidence and there was active examination by the lawyers in the trial.

In the present study, the trial was presented in two ways: either as a videotape of the trial or a trial transcript. Utilising a trial transcript was likely to mean that any differences found were because of participants knowledge that the evidence had been obtained earlier and the effect this would have on the weight given that evidence.

Therefore, the questions posed in the research were:

- Was there a difference in jurors’ ratings of the credibility of the child and other witnesses between the child’s pre-recorded evidence and evidence given via closed circuit television? Was there any interaction for credibility ratings between the medium of the trial (watching a videotape of the trial and reading the trial transcript) and the presentation of the child’s evidence (closed circuit television and pre-recorded evidence)?
- Was there a difference in jurors’ recall of trial-related information for the child and
other witnesses between the child’s pre-recorded evidence and evidence given via closed circuit television? Was there any interaction for recall of trial-related information between the medium of the trial (watching a videotape of the trial and reading the trial transcript) and the presentation of the child’s evidence (closed circuit television and pre-recorded evidence)?

- Was there a difference in the verdict given between the child’s pre-recorded evidence and evidence given via closed circuit television? Was there any interaction for verdict between the medium of the trial (watching a videotape of the trial and reading the trial transcript) and the presentation of the child’s evidence (closed circuit television and pre-recorded evidence)?

- Did the mode of presentation of the child’s evidence or medium of the trial impact differentially on males and females for verdict?

Method

Design

The basic design of the study combined two ways of presenting a child’s evidence - closed circuit television and pre-recorded evidence, with two ways of media of the trial - watching a videotape of the trial and reading the trial transcript.

The dependant variables were: jurors’ ratings of credibility for each witness on a 5-point Likert scale, recall scores on evidence given and verdict. For verdict, additional analyses were conducted to ascertain any gender differences.
Participants

Undergraduate students volunteered to participate in the study as mock jurors (N = 123; 91 females and 32 males). Ages ranged from 17 to 55 with a mean of 27.7 years and students came from a cross-section of university faculties. All volunteers were treated in accordance with the "Ethical Principles of Psychologists and Code of Conduct" (American Psychological Association, 1992).

Materials

A simulated trial transcript (Appendix A) was obtained for the present study (Jonas, 1994). With permission of the author, the transcript was modified for the present research. The transcript was used in both the "watching videotape of trial" and the "reading transcript of trial" conditions as well as being used for both closed circuit television and pre-recorded videotaped evidence conditions and was an hour in duration. The only difference in the transcript was the judge's instructions and summing up where these each reflected the manner in which the child witness gave evidence (Appendix B).

A courtroom in the District Court of Western Australia was used for filming the videotape trial condition. Permission to use the courtroom was secured through Court Services of the Ministry of Justice. VHS 180 minute colour tapes were used in the taping of the trial. Actors, all over the age of 18, played the roles of judge, judge’s associate, prosecution and defence lawyers, child witness, expert witness (female doctor), child’s mother and the accused.

An explanatory statement of research (Appendix C) was read to all
participants preceding the experiment after which they signed a consent form (Appendix D). After viewing the videotape of the trial or reading the trial transcript, participants were given 30 minutes to complete a questionnaire (Appendix E). Questions from Jonas' study (1994) were used with permission. Respondents were asked their verdicts, credibility rating of each witness using a 5-point Likert scale, free recall of trial-related information for each witness, age and sex. Once participants had finished the questionnaire, they were debriefed (Appendix F).

**Procedure**

There were four conditions included in this study. Participants either: watched a videotape of a trial where the child gave evidence via closed circuit television; watched a videotape of a trial where the child's evidence was pre-recorded; read a trial transcript which indicated that the child gave evidence via closed circuit television; read a trial transcript which indicated that the child's evidence was pre-recorded.

Testing sessions were conducted several times daily over a four-week period to maximise subject participation. Participants were randomly assigned to testing sessions by placing all conditions in a container and randomly selecting a condition for a given session.

Participants were assembled in rooms to either watch the videotape of the trial or read the transcript of the trial. They were read an explanatory statement of research which advised them of what the research entailed. They were told the trial involved a child sexual abuse offence and advised they were free to withdraw at any
stage if they were feeling uncomfortable with the content material. A questionnaire followed both conditions of viewing the videotaped trial and reading the trial transcript. Participants were advised there would be a debriefing on completion of the experiment. After listening to the statement of research, they were asked to sign a consent form which ensured the researcher had used real participants for the study and that ethically, the participants had the research explained to them.

Participants were asked if there were any questions before the experiment began. Any questions were addressed. Participants were told that questions that were not able to be answered at that time would be answered after the experiment in the debriefing. An example of a question not able to be answered before the experiment began was, “is this a real trial”? This question was asked a number of times.

The format of the trial in the experiment followed standard Western Australian criminal trial proceedings of a similar case in an attempt to maintain accuracy of a real trial. The format was: the charge was read out by the judge’s associate and the defendant asked to plead. An opening statement was read by the prosecution and the child witness was called to give evidence. The judge instructed jurors the procedure used to hear the child’s evidence was a routine standard procedure and they were not to make any inference as to the guilt or otherwise of the defendant. The presentation of the evidence then commenced.

Where jurors watched the videotape of the trial in the closed circuit television condition, they saw and heard the child’s examination-in-chief, cross examination and re-examination via closed circuit television with prosecution and defence lawyers present in the courtroom and asking the child questions. Both the child and the
lawyers were in view in the videotape.

In the videotape of the trial where evidence was pre-recorded, jurors watched a pre-recorded tape that was played in place of the child's live testimony. No questions were asked by the lawyers in court as all questions had been asked in the pre-trial hearing and jurors only heard counsels' voices on the pre-recorded tape. Therefore, the participants did not see the lawyers who were questioning the child for the pre-recorded evidence. Although the prosecution and defence lawyers were present in the courtroom, the child was not in court. All other witnesses appeared in court to give their testimony.

When the prosecution case had finished, defence counsel called for the accused to give evidence. Examination-in-chief was lead, followed by cross-examination by the prosecution, then re-examination by the defence. After all evidence was heard for the defence, defence and prosecution made their closing statements. The judge then summed up the case. The timeline of when the child's evidence was pre-recorded and when it was heard in court for both pre-recorded evidence and closed circuit television is depicted in Figure 1.

For participants reading the trial transcript where the child gave evidence via closed circuit television, they were told in the transcript that the child's evidence was presented in this manner. For those reading the trial transcript where the child's evidence was pre-recorded, they were advised in the transcript the evidence of the child had been pre-recorded and was played in place of a contemporaneous account.
Figure 1. Timeline of Recording Evidence for Closed Circuit Television and Pre-Recorded Videotaped Evidence for Child and Other Witnesses.

Thus, the transcripts were identical but for the instructions on how the child presented evidence.

After viewing the videotape of the trial or reading the trial transcript, jurors completed a questionnaire. They were asked for demographic information of age and sex, then to circle a verdict - guilty or not guilty. They were then asked to rate the credibility of each witness by circling a number between one and five on a 5-point
Likert scale where 5 was "very credible" and 1 was "not very credible". After this, they were asked to recall trial-related information for each of the witnesses.

Once the questionnaires were completed, participants were debriefed. They were thanked for their participation and advised their involvement in the research was appreciated. For participants who viewed the videotape of the trial, they were told the trial was simulated and actors, all over the age of 18, had played the roles in the video condition, although a real courtroom of the District Court of Western Australia had been used for filming the trial. For participants who read the trial transcripts, they were told the trial was a simulated trial. All participants were advised if they were uncomfortable or distressed about the nature of the trial, they were able to contact the university student counsellor. They were told results of the study would be available after completion of the experiment and they were asked if they had any questions. Questions posed were addressed and answered.

Results

All data were analysed using the Statistical Package for the Social Sciences (SPSS) for windows. Missing data were keyed in as nine and 99 in the case of the variable for age. The "explore" function in SPSS was conducted on all data to check for any anomalies, that is: any data lying outside the range between 1 and 5 for the Likert scale; any data lying outside the range of 1 and 2 for verdict and gender; and, any discrepancies for age. No anomalies were found. The alpha level used in the study for all statistical tests was .05.


Credibility

In the questionnaire, participants were asked to rate the credibility of the child witness, expert witness (female doctor), mother and the accused on a 5-point Likert scale by circling a value between one and five. Only two anchors were used at 5 for “very credible” and 1 for “not at all credible”. The means and standard deviations for credibility ratings for each witness by presentation of child’s evidence and medium of trial are listed in Table 1.

A first 2 x 2 medium of trial by presentation of child’s evidence analysis of variance (ANOVA) was conducted on credibility ratings of each of the witnesses. Assumptions for an ANOVA - the dependent variable has an interval measurement, scores are independent of other scores, scores are drawn from a normally distributed population, and there is homogeneity of variance were met (Shavelson, 1988; Hills, 1994b). For the credibility rating of the child witness, there were no significant differences for main effects of medium of trial or presentation of child’s evidence nor any interaction: medium of trial, (means: watching video 3.75, reading transcript 3.78), F(1, 119) = .05, p > .05; presentation of child’s evidence, (means: CCTV 3.68, PRVTE 3.84), F(1, 119) = .81, p > .05; and medium of trial by presentation of child’s evidence, (means: watching video CCTV 3.73, reading transcript CCTV 3.63, watching video PRVTE 3.76, reading transcript PRVTE 3.93), F(1, 119) = .64, p > .05.

There were no significant main effects or interaction for the expert witness’s credibility rating: medium of trial, (means: watching video 4.16, reading transcript 3.98), F(1, 119) = .74, p > .05; presentation of child’s evidence, (means: CCTV 4.15,
Table 1

Means and Standard Deviations of Credibility Ratings for Witness by Presentation of Child’s Evidence and Medium of Trial

<table>
<thead>
<tr>
<th>Presentation of Child’s Evidence</th>
<th>Medium of Trial</th>
<th>Child</th>
<th>Doctor</th>
<th>Mother</th>
<th>Accused</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCTV</td>
<td>Watching Video</td>
<td>3.73</td>
<td>4.37</td>
<td>3.67</td>
<td>2.83</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.98)</td>
<td>(1.03)</td>
<td>(.99)</td>
<td>(.89)</td>
</tr>
<tr>
<td></td>
<td>Reading Transcript</td>
<td>3.63</td>
<td>3.93</td>
<td>3.43</td>
<td>3.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.93)</td>
<td>(1.26)</td>
<td>(1.17)</td>
<td>(95)</td>
</tr>
<tr>
<td>PRVTE</td>
<td>Watching Video</td>
<td>3.76</td>
<td>3.97</td>
<td>3.64</td>
<td>2.85</td>
</tr>
<tr>
<td></td>
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<td>(.97)</td>
<td>(1.19)</td>
<td>(.86)</td>
<td>(.94)</td>
</tr>
<tr>
<td></td>
<td>Reading Transcript</td>
<td>3.93</td>
<td>4.03</td>
<td>3.53</td>
<td>2.90</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.94)</td>
<td>(1.27)</td>
<td>(94)</td>
<td>(1.14)</td>
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<tr>
<td>CCTV (Total)</td>
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<td>3.68</td>
<td>4.15</td>
<td>3.55</td>
<td>2.91</td>
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<tr>
<td></td>
<td></td>
<td>(.95)</td>
<td>(1.16)</td>
<td>(1.08)</td>
<td>(92)</td>
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<tr>
<td>PRVTE (Total)</td>
<td></td>
<td>3.84</td>
<td>4.00</td>
<td>3.59</td>
<td>2.87</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.95)</td>
<td>(1.22)</td>
<td>(89)</td>
<td>(1.03)</td>
</tr>
<tr>
<td>Watching Video (Total)</td>
<td></td>
<td>3.75</td>
<td>4.16</td>
<td>3.65</td>
<td>2.84</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.97)</td>
<td>(1.12)</td>
<td>(.92)</td>
<td>(.91)</td>
</tr>
<tr>
<td>Reading Transcript (Total)</td>
<td></td>
<td>3.78</td>
<td>3.98</td>
<td>3.48</td>
<td>2.95</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.94)</td>
<td>(1.26)</td>
<td>(1.05)</td>
<td>(1.04)</td>
</tr>
</tbody>
</table>
The credibility rating for the mother showed no significant differences for main effects: medium of trial, (means: watching video 3.65, reading transcript 3.48), $F(1, 119) = .88, p > .05$; presentation of child's evidence, (means: CCTV 3.55, PRVTE 3.59) $F(1, 119) = .04, p > .05$; and no significant difference for interaction, medium of trial by presentation of child's evidence, (means: watching video CCTV 3.67, reading transcript CCTV 3.43, watching video PRVTE 3.64, reading transcript PRVTE 3.53), $F(1, 119) = .13, p > .05$.

The credibility rating for the accused when subjected to an ANOVA also showed no significant main effects or interaction: medium of trial, (means: watching video 2.84, reading transcript 2.95), $F(1, 117) = .38, p > .05$; presentation of child's evidence, (means: CCTV 2.91, PRVTE 2.87), $F(1, 117) = .05, p > .05$; and medium of trial by presentation of child's evidence, (means: watching video CCTV 2.83, reading transcript CCTV 3.00, watching video PRVTE 2.85, reading transcript PRVTE 2.90), $F(1, 117) = .12, p > .05$.

The results for credibility showed no difference between participants who watched the videotape of the trial and those who read the trial transcript and the way the child's evidence was presented, closed circuit television or pre-recorded video taped evidence.
Recall Performance

After completing the credibility ratings for each witness, participants were asked to recall all the information they could remember for the child's, doctor's, mother's and accused's evidence. Relevant details from the trial transcript were used as critical points and given one mark if the participant noted or made reference to it.

In the case of the child witness, the four relevant points were: i) who did it, ii) what was done, iii) how was it done, iv) when was it done. For the doctor's evidence, the two critical points were: i) the hymen was ruptured (broken/torn), ii) the doctor was not able to confirm or disconfirm sexual assault. In the case of the mother's evidence, the two important details were i) when did the child tell her of the incident, ii) what did the child say. Six points were used as relevant details in the case of the accused's evidence: i) left an all-girls school after 12 months, ii) knew of reputation as a “sleaze”, iii) tutored students after school, iv) often worked back late, v) saw the child the night of the alleged incident, vi) the child asked to use the phone. Shown in Table 2 are means and standard deviations for witnesses' recall by presentation of child's evidence and medium of trial.

A series of ANOVAs were conducted on recall of trial information for each witness. Recall of child's evidence showed no significant main effects or interactions: medium of trial, (means: watching video 3.61, reading transcript 3.47), $F(1, 114) = .84, p > .05$; presentation of child's evidence, (means: CCTV 3.48, PRVTE 3.60), $F(1, 114) = .61, p > .05$; medium of trial by presentation of child's evidence, (means: watching video CCTV 3.57, reading transcript CCTV, 3.40, watching video PRVTE 3.65, reading transcript PRVTE 3.55), $F(1, 114) = .07, p > .05$. 
Table 2

**Means and Standard Deviations of Witness Recall by Presentation of Child’s Evidence and Medium of Trial**

<table>
<thead>
<tr>
<th>Presentation of Child’s Evidence</th>
<th>Medium of Trial</th>
<th>Child</th>
<th>Doctor</th>
<th>Mother</th>
<th>Accused</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCTV</td>
<td>Watching Video</td>
<td>3.57</td>
<td>1.97</td>
<td>1.32</td>
<td>2.52</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.79)</td>
<td>(.19)</td>
<td>(.48)</td>
<td>(1.12)</td>
</tr>
<tr>
<td></td>
<td>Reading Transcript</td>
<td>3.40</td>
<td>1.96</td>
<td>1.17</td>
<td>3.52</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.72)</td>
<td>(.19)</td>
<td>(.39)</td>
<td>(1.19)</td>
</tr>
<tr>
<td>PRVTE</td>
<td>Watching Video</td>
<td>3.65</td>
<td>1.91</td>
<td>1.18</td>
<td>2.85</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.80)</td>
<td>(.29)</td>
<td>(.39)</td>
<td>(1.23)</td>
</tr>
<tr>
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<td>Reading Transcript</td>
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<td>2.00</td>
<td>1.14</td>
<td>3.43</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.83)</td>
<td>(0.00)</td>
<td>(.35)</td>
<td>(1.45)</td>
</tr>
<tr>
<td>CCTV (Total)</td>
<td></td>
<td>3.48</td>
<td>1.96</td>
<td>1.24</td>
<td>3.02</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.75)</td>
<td>(.19)</td>
<td>(.43)</td>
<td>(1.25)</td>
</tr>
<tr>
<td>PRVTE (Total)</td>
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<td>3.60</td>
<td>1.95</td>
<td>1.16</td>
<td>3.15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.81)</td>
<td>(.22)</td>
<td>(.37)</td>
<td>(1.37)</td>
</tr>
<tr>
<td>Watching Video (Total)</td>
<td></td>
<td>3.61</td>
<td>1.94</td>
<td>1.25</td>
<td>2.70</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.79)</td>
<td>(.25)</td>
<td>(.44)</td>
<td>(1.18)</td>
</tr>
<tr>
<td>Reading Transcript (Total)</td>
<td></td>
<td>3.47</td>
<td>1.98</td>
<td>1.16</td>
<td>3.47</td>
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<tr>
<td></td>
<td></td>
<td>(.77)</td>
<td>(.13)</td>
<td>(.37)</td>
<td>(1.32)</td>
</tr>
</tbody>
</table>
Main effects were not significant nor was the interaction for recall of the doctor’s evidence: medium of trial (means: watching video 1.94, reading transcript 1.98), $F(1, 113) = 1.38, p > .05$; presentation of child’s evidence, (means: CCTV 1.96, PRVTE 1.95), $F(1, 113) = .07, p > .05$; medium of trial by presentation of child’s evidence, (means: watching video CCTV 1.97, reading transcript CCTV 1.96, watching video PRVTE 1.91, reading transcript PRVTE 2.00), $F(1, 113) = 1.54, p > .05$. The trial-related recall of the mother did not reveal any significant main effects or interaction: medium of trial, (means: watching video 1.25, reading transcript 1.16), $F(1, 85) = 1.22, p > .05$; presentation of child’s evidence, (means: CCTV 1.24, PRVTE 1.16), $F(1, 85) = 1.02, p > .05$; medium of trial by presentation of child’s evidence, (means: watching video CCTV 1.32, reading transcript CCTV 1.17, watching video PRVTE 1.18, reading transcript PRVTE 1.14), $F(1, 85) = .33, p > .05$.

There was a significant main effect for recall of the accused’s trial-related information for medium of trial (means: watching video 2.70, reading transcript 3.47), $F(1, 101) = 10.23, p < .05$, but no significant main effect for presentation of child’s evidence, (means: CCTV 3.02, PRVTE 3.15), $F(1, 101) = .24, p > .05$. There was no significant interaction for medium of trial by presentation of child’s evidence for the accused’s recall of trial-related information (means: watching video CCTV 2.52, reading transcript CCTV 3.52, watching video 2.85, reading transcript PRVTE 3.43), $F(1, 101) = .74, p > .05$. 
Verdicts

In the present study, no group verdicts were obtained. Three participants failed to record a verdict resulting in three missing cases. Table 3 presents the number of guilty and not guilty verdicts by presentation of child’s evidence, gender and medium of trial.

The first analysis conducted examined the effect of presentation of the child’s evidence on verdict. For closed circuit television, there were 32 guilty and 27 not guilty decisions. For pre-recorded videotaped evidence, there were 31 guilty and 30 not guilty decisions. Chi square analysis revealed no significant difference in decisions

Table 3

Guilty and Not Guilty Verdicts by Presentation of Child’s Evidence, Gender and Medium of Trial

<table>
<thead>
<tr>
<th>Presentation of Child’s Evidence</th>
<th>Gender</th>
<th>Medium of Trial</th>
<th>Guilty</th>
<th>Not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCTV</td>
<td>Male</td>
<td>Watching Video</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reading Transcript</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>Watching Video</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reading Transcript</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>PRVTE</td>
<td>Male</td>
<td>Watching Video</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reading Transcript</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>Watching Video</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reading Transcript</td>
<td>13</td>
<td>10</td>
</tr>
</tbody>
</table>
for the two ways of presenting the child's evidence, $\chi^2 (1, N = 120) = .14, p > .05$.

The second analysis conducted examined the effect of medium of trial on verdict. For those watching the video there were 37 guilty and 24 not guilty decisions. For those reading the transcript there were 26 guilty and 33 not guilty decisions. There was no difference in verdict for the two media of trial, $\chi^2 (1, N = 120) = 3.31, p > .05$.

Further to these two analyses, chi squares were conducted to ascertain whether there were any interactions between presentation of child's evidence and medium of trial. For CCTV in the watching video condition, there were 19 guilty and 10 not guilty decisions. For CCTV in the reading transcript condition, there were 13 guilty and 17 not guilty decisions. There was no effect for the medium of the trial, $\chi^2 (1, N = 59) = 2.92, p > .05$. For PRVTE in the watching video condition, there were 18 guilty and 14 not guilty decisions. For PRVTE in the reading transcript condition, there were 13 guilty and 16 not guilty decisions. There was no effect for medium of the trial, $\chi^2 (1, N = 61) = .79, p > .05$. Therefore, it can be concluded that there was no interaction.

A third analysis conducted examined the effect of gender on verdict. For females there were 52 guilty and 37 not guilty decisions. For males there were 11 guilty and 20 not guilty decisions. A two-way chi square revealed a significant difference, $\chi^2 (1, N = 120) = 4.85, p < .05$, female jurors more likely than male jurors to give a guilty verdict.

Further analyses were conducted to ascertain whether there were any interactions between gender and the way of presenting the child's evidence, and gender and medium of trial. For males in the CCTV condition there were 8 guilty and
12 not guilty decisions. For males in the PRVTE condition there were 3 guilty and 8 not guilty decisions. There was no main effect for presentation of the child’s evidence, $X^2 (1, N = 31) = .50, p > .05$. For females in the CCTV condition there were 24 guilty and 15 not guilty decisions. For females in the PRVTE condition there were 28 guilty and 22 not guilty decisions. There was no main effect for presentation of the child’s evidence, $X^2 (1, N = 89) = .28, p > .05$. Therefore, it can be concluded there was no interaction.

For males watching the video there were 8 guilty and 8 not guilty decisions. For males reading the transcript there were 3 guilty and 12 not guilty decisions. There was no main effect for medium of trial, $X^2 (1, N = 31) = 3.04, p > .05$. For females watching the video there were 29 guilty and 16 not guilty decisions. For females reading the transcript there were 23 guilty and 21 not guilty decisions. There was no main effect for medium of trial, $X^2 (1, N = 89) = 1.36, p > .05$. Therefore, it can be concluded there was no interaction.

**Discussion**

The aim of the present study was to investigate the impact on juries of pre-recording children’s evidence compared to closed circuit television. In the experiment, the child witness gave evidence either by closed circuit television or pre-recorded videotaped evidence. All other trial procedures, including other witnesses’ evidence, were the same for both conditions. Furthermore, participants were assigned to either watching a videotape of the trial or reading the trial transcript where again the trial content was the same in both conditions except for the manner in which the
child presented evidence. The child’s testimony in all conditions was the same and only differed in the way the testimony was presented. A questionnaire was then completed asking for verdict, credibility ratings for the child and other witnesses, and recall of trial-related information for all witnesses.

There were no differences in credibility ratings for the child and other witnesses, recall of trial-related information or verdicts for the presentation of the child’s evidence, that is, between closed circuit television and pre-recorded videotaped evidence nor were there any interactions. There were no differences in credibility ratings for witnesses or verdicts for the medium of the trial, that is, between viewing the videotape of the trial and reading the transcript of the trial nor were there any interactions. While there were no differences for recall of the child, doctor and mother for the medium of the trial, there was a difference for the accused between viewing the videotape of the trial and reading the transcript of the trial. For verdicts, there was a difference between female and male jurors with females giving more guilty decisions and less not guilty decisions than males but there was no interaction with gender and the way of presenting the child’s evidence and the medium of trial.

Interpretations of Findings of the Study

Given the non-significance of results, the findings of the study are open to a number of interpretations. The first interpretation is that the study lacked statistical power. This interpretation can possibly be discounted as there were at least 30 participants in each group and this number of participants was considered robust for the design of the study (Hills, 1994b).
The second interpretation is that the manipulation used in the study lacked power. The contrast between a child giving evidence by closed circuit television or pre-recorded evidence cannot be captured by viewing a videotape of a trial or reading a trial transcript therefore the manipulation of the two modes of presenting the child’s evidence did not have the strength to make the differences distinct. It is postulated the manipulation of the study did not adequately depict the child’s pre-recorded evidence compared to the child’s contemporaneous account nor did the manipulation contrast the lack of social interaction between the lawyers and the child when the child’s evidence was pre-recorded, and the interaction occurring between the lawyers and the child during evidence presented via closed circuit television.

Other studies have used a videotape of a videotape for presenting the child’s evidence with similar lack of differences in the findings between the modalities used. In the study by Swim et al. (1993), the videotape of the trial depicted the child giving evidence either that had been pre-recorded or gave evidence via closed circuit television. In Ross et al.’s study (1994), the conditions of the videotape were the child giving evidence in open court, in court using a screen and via closed circuit television. Similar to the present study, these studies found that the medium of the trial did not impact on credibility ratings, recall of trial-related information or verdicts.

A third interpretation for the findings of the research is the advantages and disadvantages of pre-recorded evidence compared to closed circuit television balanced out. On the one hand, it is theorised that evidence taken closer in time to the alleged incident is likely to be more reliable, more vivid and rich in detail (Hill & Hill, 1987; Cashmore, 1990; Spencer & Flin, 1990; Warren & Lane, 1995) therefore, if the
evidence is pre-recorded to be used at a later date, the value of evidence taken soon after the event is likely to increase. On the other hand, because the child does not appear in court when evidence has been pre-recorded, the credibility of the child in the eyes of the jury may be decreased (Szwarc, 1991). Furthermore, the lack of social interaction between the child and the lawyers when evidence is pre-recorded removes the jury from being active participants in the trial process to passive observers. The possible increase in weighting because of the knowledge that the child’s evidence has been pre-recorded is negated by a decrease in weighting because a lack of social interaction between the child and lawyers in court reduces the saliency of the child’s evidence.

A fourth interpretation is the way of presenting a child’s evidence and the media of the trial has no effect because jurors base their judgement from the content of material heard in court on the day of the trial. Jurors focus on the content of the evidence and not on other details such as how the evidence is presented or when it was taken. This interpretation can be supported by the lack of findings from other studies that used similar modalities as the present study such as Swim et al. (1993) and Ross et al. (1994), and studies that used different modalities yet still reported no differences such as Jonas (1994).

The one significant finding of the study - that there was a difference for medium of the trial for the recall of the accused - may be explained by the fact that in the reading of the trial transcript, participants may have re-read the accused’s evidence thus recalling more in this condition. Having to read the transcript may have focussed more attention on the evidence than watching the videotape of the trial
where other distracters such as the accused's demeanour, appearance and non-verbal body language may have caught participants' attention. Although participants in the reading the trial transcript condition were not given any instructions asking them not to re-read any parts of the trial transcript, they were given a time limit in which to read the transcript yet for some, the time allowed may have been ample for them to absorb more detail of the evidence given.

Although this explanation may be feasible, it does not explain the lack of differences for medium of the trial for the recall of the child, doctor and mother. If participants in the reading the trial transcript condition were able to recall more trial-related information for the accused, then this would account for a higher recall for the other witnesses in the trial but this was not found. A further explanation is that after reading for one hour, participants were likely to remember more of what they had just finished reading, that is the evidence of the accused, than what had transpired earlier, being the evidence of the child, doctor and mother.

**Future Directions for Research**

Future studies could conduct live trials to assess the impact of pre-recorded videotaped evidence in a more life-like scenario thus overcoming the problems of participants watching a videotape of a videotape. A live trial would better capture the difference of the social situation between closed circuit television and pre-recorded videotaped evidence and would enhance the fact that one account of the child’s evidence was contemporaneous, while the other was pre-recorded.

In the present study, the content of evidence for the child was kept constant in
the two conditions. In fact, it would be expected that if the child’s evidence had been pre-recorded there would be richer detail which may affect the credibility rating of the witness in the eyes of the jurors and that they would recall more of the information. Since the content of the trial was kept constant in the current research, further studies could manipulate the content of the child’s evidence. Therefore, in one condition, the child’s testimony could include a greater quality and quantity of detail, such as fuller descriptions of the environment of where the incident took place, specific characteristics of the accused, odd or unique details about the event, any dialogue that occurred during the incident, the child’s thoughts and feelings at the time the event was occurring and extraneous detail.

In comparison, a second condition could compare evidence devoid of such detail, or involve testimony that was not as detailed, descriptive, full or complete. If jurors focus on the story presented to them in the court, the knowledge that the child’s evidence has been pre-recorded may not have much impact on them, but the child’s testimony that is more rich in detail and description may impact on jurors’ perception of the child’s credibility.

Another area of research could conduct a longitudinal study of conviction rates pre- and post- legislation of the introduction of amendments for child witnesses in Western Australia to investigate any patterns of conviction rates that may have developed before and after legislation was implemented. It is theorised that a five year pre- and post- longitudinal study may very well uncover changes in conviction rates which would illustrate any effects or consequences of the legislation. This could be an important piece of research since it has not yet been performed and researchers
are yet to know what impact such introductions have had on the justice system and the outcome for defendants.

Further studies utilising trial transcripts could change the order of witnesses giving evidence to investigate any primacy and recency effects. Although this would not necessarily reflect the manner in which witnesses appear in real trials, any findings of such effects could be of interest to the legal profession in the way in which witnesses are called to give evidence especially in cases of long trials with many hours of evidence being heard.

Conclusion

Although the findings of the present research indicated that pre-recorded videotaped evidence did not impact on jurors’ verdicts, their credibility ratings of witnesses and their recall of trial-related information for each witness, the conclusion there is no impact of pre-recorded videotaped evidence when presenting a child’s evidence in this manner must be viewed with caution. The present study is one of only few studies that has researched the impact of presenting a child witness’s pre-recorded evidence. Future research and more studies investigating the impact of pre-recorded videotaped evidence will aid in determining any consequences or effects associated with pre-recorded videotaped evidence.

As “interviews, depositions and the giving of court testimony are all ultimately tests of memory” (Martin & Thomson, 1994, p. 119) and that evaluation of testimony is dependant on how accurate jurors perceive the witness’ memory to be (Treadway-Johnson, 1993), it appears that pre-recorded videotaped evidence has potential
benefits that may improve the quality of evidence presented to the court.

Research needs to examine more closely the impact and benefits or pre-recording evidence for children to ensure that the best evidence possible is obtained for use in trials and that the pre-recording of evidence allows witnesses to begin the healing process relatively soon after their experience. Research may also uncover any detrimental effects that may occur in using pre-recording evidence such as the loss of the social interaction between witness, lawyer and juror and how this impacts on juries.

Any new technological innovation introduced into the courtroom setting that changes the manner in which a witness’s evidence is presented is bound to be viewed with scepticism and over-caution (Williams, 1987) and while there may be reluctance to accept such innovation due to fear of misusing technology (Rayner, 1991), the benefits provided to witnesses by the use of pre-recorded videotaped evidence and the ability to capture evidence that is more complete and rich in detail warrant attention.

The process of an adversarial system is based on the examination of evidence of witnesses and if that evidence can be improved, it not only enhances testimony that convict a guilty person or acquits an innocent one, it ensures that the jury can make decisions that are based on the best possible evidence. To the extent that pre-recorded videotaped evidence is a mode of presenting evidence that does capture fuller and more complete evidence, further research investigating its impacts on juries may aid in understanding any impact pre-recording evidence has on the dynamics of a courtroom setting and the relationships between the players in a trial.
References


*Evidence Act 1906.* Western Australia.


DISTRICT COURT OF WESTERN AUSTRALIA

Judge’s Associate: Douglas Doh, you are charged that on the 16th July 1994, at Jolimont, you sexually penetrated a child over the age of 13 and under the age of 16 by inserting your finger in her vagina. How do you plead to this charge?

Accused (Douglas Doh): Not Guilty.

Defence Counsel (D): (stands) I’m Damien Smith for the accused.

Prosecution Counsel (P): (stands) Julia Fairchild for the crown.

Judge (J): Thank you Ms Fairchild.

P: Thank-you, your Honour. Ladies and gentlemen of the jury, Mr. Doh is charged with the sexual assault of Sarah Forbs. At the time of the alleged offence, Sarah was only 14 years old. During the course of this trial, it will be established that on the 16th of July, 1994, Sarah Forbs was sexually assaulted by Mr. Douglas Doh, her English teacher. It will be established that the sexual assault occurred at Jolimont High School, the school that Sarah was attending at the time of the assault, and the school at which Mr. Doh was employed as a teacher. Evidence will be lead that Mr. Doh, who was working back late at the school, committed the act of sexual assault. Further, it will be established that this attack occurred after Sarah requested to use the phone to ring her mother to pick her up after a hockey match. The evidence the prosecution will be leading in support of this allegation, is first that of the victim, Sarah Forbs. Secondly we will be hearing from Dr. Teal, Sarah’s physician, and lastly from Mrs. Samantha Forbs, Sarah’s mother. That concludes the outline for the prosecution, your Honour.

J: Thank-you. The prosecution will now proceed with the witnesses.

Judge’s Instructions

J: Ladies and gentlemen of the jury, you will be viewing the evidence of the first witness on the TV monitor set up in front of you. Can you all see it clearly? This evidence will be given on a closed
circuit television system. The child giving the evidence is present in a nearby room. This practice is designed to protect the child from any unnecessary stress. You are to treat this evidence in the same way as any other evidence you will hear today. This is a routine practice of the court and you are not to draw any inferences about the guilt or innocence of the accused based on the use of this equipment. Could the accused please move out of the range of the camera? Thank you.

P: The first witness I'd like to call is Sarah Forbs.

Sarah is sworn and examined.

P: Could you please state your full name.

Sarah (S): Sarah Forbs.

P: When were you born Sarah?


P: And how old are you now?

S: 16.

P: Are you still at school?

S: Yes.

P: And what school do you go to?

S: Jolimont High School.

P: And what address is that?

S: 19 Selbourne Street.

P: Jolimont?

S: Yes.

P: Can you recall how old you were when you first went to Jolimont School?

S: High School or Junior?

P: Well, how old were you when you moved from junior school to high school?


P: So that would have been about 1993.

S: Umm, yes.
P: Sarah, do you know a man called Mr. Doh?
S: Yes.

P: How do you know him?
S: He taught at my school...he took me for English.

P: What was the first year that you had Mr. Doh as your teacher?
S: He was my form master in Year 7.

P: So, that was your first year of high school.
S: Yes.

P: What did Mr. Doh have to do as your form master?
S: Well, he sort of got us all together and took us to assembly in the mornings. And he took us for English and Social Studies, and when we had spare periods. He also used to dismiss us at the end of school.

P: Did you ever go on school excursions and camps in Year 7?
S: We went on excursions, but not camps - we didn’t get to go away on camps until year 8.

P: But, in year 8 you went away on school camps?
S: Yes.

P: Were these camps ever overnight?
S: Yes, usually the camps were for a few days.

P: Did Mr. Doh go away with you on school camps?
S: Yes, he came with us when we had camps.

P: Did he ever go on overnight camps with you?
S: Mr. Doh?

P: Yes - did he go on the overnight school camps?
S: Yes.

P: What was Mr. Doh like on these camps? Sorry, I’ll rephrase that. Did Mr. Doh get along well with the students?
S: Not really. Well, he got on alright with the boys, but he was always really sleazy with the girls.
None of us liked him.

P: Tell me what you mean by sleazy.

S: Well, he'd chase you 'round the class room and try and grab you and hug you. He always tried to hug you. And he'd wear these really tight pants, and he was just sleazy.

P: Did Mr. Doh ever try to chase you and hug you while you were away on school camps?

D: Objection.

J: Sustained. Limit your questions to the facts please counsellor.

P: Did Mr. Doh ever try to touch you while you were away on a school camp?

D: Objection. Leading the witness.

J: Sustained.

P: Sorry, I'll rephrase that. Did Mr. Doh ever try to do anything to you while you were away on a camp?

S: Did he try to touch me? Yes. One time he....

P: When was this?

S: It would have been in 1994, when I was in year 8.

P: Was this early in the year?

S: Yeah, it was at the Easter break.

P: So, in early April?

S: Yes, ... and anyway, ... well it was in the afternoon, and we were on a horse camp in the country, and all the other kids were out riding. And I had to change my shoes because the laces broke and I couldn't ride properly. Well, on the way back to the hut - because we were staying in these huts where there were 6 girls in each one, and the boys had their own - I saw Mr. Doh, and he saw me going into the hut. And anyway, I was in there changing, and Mr. Doh came in and asked me what I was doing. I told him about my shoes and he came to help me put another lace in. He was tying my shoe and he grabbed my ankle and started running his other hand up my leg. I just jumped up and ran back to the paddock.
P: So, you were how old?
S: I s'pose about 13 or 14... no, I was 14.
P: Did you report this to anyone?
S: Not any adults, but I told the others.
P: Sorry, which others?
S: ...My friends... the other girls. We didn't think it was any big deal, it was just Mr. Doll being sleazy. And it was on a camp and everything, and we just had a laugh.
P: Did you think it was funny?
S: Oh, sort of... well, not really. I was a bit scared I s'pose, at the time, you know. But after it just seemed stupid... he was just being sleazy.
P: When you say he grabbed your leg, did he grab it tightly... did he hurt you?
S: No, not really.
P: You said he ran his hand up your leg, whereabouts on your leg?
S: Here (gesturing to the inner thigh).
P: I'm sorry, we can't see that, you'll have to tell us.
S: All up the inside of my leg.
P: How far up did he reach?
S: Just above my knees... you know... below my... you know.
P: Was it below your vagina?
S: Yes.
P: Did you have pants or a skirt on?
S: Pants, because we'd been riding.
P: So, did he touch your skin?
S: No.
P: He just ran his hand up the inside of your leg, to just above your knee, over the top of your pants.
S: Yes.
P: Okay, and you didn't tell any teachers, or your parents about this?
S: No.

P: Why?

S: I just thought it was silly - you know, just Mr. Doh being sleazy.

P: So, this is behaviour you expected of him?

S: I suppose so, you know ... he is just sleazy.

P: Alright then, was Mr. Doh still your form master in year 8?

S: No. Miss Shaw was. She still is.

P: And you're in year 10 now, is that right?

S: Yes.

P: Alright then, now if I could take you back to the time that Mr. Doh took you into his office, in July of 1994. Can you recall what happened at that time?

S: Yes.

P: Firstly, before you recall those events I'd like to ask a couple of questions. At any time between the first incident, in April, that you just told us about at the horse riding camp, and the incident I just referred you to, that occurred in July in 1994, did Mr. Doh try to touch you, or make any advances towards you?

S: Apart from those two?

P: Yes, apart from the time in April, and the time in July, has Mr. Doh tried to touch you in any way?

S: Not really...I mean, no.

P: Not really?

S: No, no he hasn't.

P: Were you ever in trouble with Mr. Doh?

S: You mean, because he was my teacher?

P: Yes, did you ever get into trouble with him?

S: No, not really.

P: Has he ever had to reprimand you in class, or kick you out?
S: No.
P: You said earlier that he used to try and chase you and hug you. Did he still try to do this after the camp?
S: I can't remember. I don't think so.
P: Okay, now I'd like you to try to remember what happened in July of 1994. Can you remember the date?
S: No, it was just some time in July. I mean... I did remember, I just can't remember now.
P: That's right, you told us in your statement that it was on the 16th of July.
S: Yes.
P: And how old were you then?
S: I would have been 14.
P: Alright, tell us what happened.
S: Well, I remember that I had been playing hockey, and our team won. That's how I remember it was the 16th, cause we had a "bye" the week before. The game didn't finish 'til late... about 5.30 pm. Mum usually picked me up from school after a game, she was usually waiting. After I got changed I walked out with some friends, and they were walking to the bus stop, so they left. Mum wasn't there, so I waited at the gate, and it started getting really dark, and I remember thinking that maybe Mum forgot that I had a game. I was thinking about going to the office to ring her, but I waited for a little bit more, until it started raining. Then I decided to go and ring. You see, at night, they take the phone in from the tuck-shop area, so you have to go into the office to make calls. So anyway, I went into the office...
P: What time was this, about?
S: I suppose it would have been around 6.00pm.
P: Alright, go on.
S: So, I went into the office and I couldn't see anyone there. Usually the secretary was there, but she must have gone.
P: When you say usually, does that mean that you often go into the office after school - to know that
the secretary is usually there?

S: I don't go in often, but sometimes when you have to use the phone after 4.00 you go in.

P: Alright, go on.

S: I saw Mr. Doh's light on, so I went in to ask him if I could ring Mum. When I knocked, he said to come in, so I pushed the door open.

P: The door was already open - it wasn't closed?

S: It wasn't completely closed, it was just open a crack.

P: And was Mr. Doh sitting or standing when you opened the door?

S: He was sitting at first, but then he got up and came around the other side of the desk.

P: Did you notice if there was anyone else around? Any teachers or students?

S: I couldn't see anyone else.

P: So, there was no-one else there?

S: Not that I know of.

P: Alright, go on with what you were saying - you had pushed the door open...

S: Well, I told him that Mum hadn't turned up, and I asked him if I could use the phone.

P: Was that the first thing that was said when you entered the room?

S: No - he asked what I wanted. He was surprised to see me.

P: What makes you think that he was surprised?

S: Well, he sort of looked up when I opened the door, and raised his eyebrows. That was when he got up and came around the other side of the desk. He said “What do you want Sarah?” That's when I told him about Mum.

P: And what occurred then?

S: When I told him what had happened and asked him if I could use the phone, he pointed to the phone, and then he closed the door behind me. I went to pick up the phone, but he held the receiver down. He started asking me questions about how school was going, and how things were at home. Then he sort of looked at me, like up and down, and asked me about the hockey game. You see I had my sports tunic on (pause...). That's when he started to touch me. I moved back and then went for
the door, but he grabbed my arm, and then he locked the door (head down).

P: When you say he started to touch you, what do you mean?

S: He started rubbing me on my top (a little angry). I started yelling at him to let me out, but he pushed my head against the wall and covered my mouth. He was saying not to worry, that he wasn't going to hurt me, but I was so scared, I was just crying (pause). He still had my arm, and he twisted it around my back, so that I couldn't move, and his body was pressed right up against mine. He told me that if I screamed he would really have to hurt me, and I was so scared, I couldn't move, and he was hurting me. He took his hand away from my mouth and started touching me, and I just closed my eyes. P: You closed your eyes?

S: Yes. I just didn't want it to be happening.

P: When you say "touching" you this time, do you mean your chest again?

S: No. This time he was rubbing down here (indicating groin).

P: Down here? Can you be more specific?

S: He was rubbing my vagina

P: And what happened then?

S: He put his hand up under my dress and started to pull down my pants, (suddenly louder, and a little angry) and that's when I tried to get out again, but he pushed me onto the floor.

P: Was Mr. Doh saying anything while this was going on?

S: He was just saying that I'd better shut up or he'd really hurt me.

P: Okay, can you try to tell us what happened next?

S: I'm not sure whether he pulled them down.

P: Pulled what down?

S: My pants. And then he put them under my pants.

P: Put what under your pants?

S: His hand... his fingers.

P: Could you tell the court specifically what he did?

S: (A little embarrassed) He pushed his fingers into my vagina and was moving them around and he
just rubbed his hand on me and then - I can't say how long he did it for, I can't clearly remember what happened, and he just rubbed my vagina with his hand.

P: When you say fingers, how many fingers did he put into your vagina?

S: I don't know, it just hurt, I could feel that it was more than one, but I don't know how many.

P: Can you tell us how you could feel that it was more than one?

S: I don't know... it's just that he pushed up really hard, and it really hurt, and there was more than one moving around inside me (head down).

P: Okay, ... Did you have your pants on or off?

S: On, I think, I'm not sure.

P: So, did Mr. Doh have his hand inside your pants?

S: He had his hand, and he was rubbing, and he had his fingers inside, and...

P: And what did you do during this, if anything?

S: (Pause) I can't say really what happened, I just cried and lay there, and wanted it all to stop.

P: Okay, what else happened then?

S: What, when he was rubbing me?

P: After that.

S: Then he pushed my dress up, and he sort of laid on top of me and was just rubbing himself up and down on me.

P: He was rubbing himself up and down?

S: Yes.

P: Can you tell us what you mean by this?

S: He was holding my dress up and was pushing his thing up on me, and moving it up and down on me.

P: What do you mean by his "thing"?

S: His penis.

P: Where was he pushing his penis?

S: Up against me ... against my vagina.
P: Were your pants on then?
S: Yes. I remember that they were on then.
P: Did he have his clothes on or off?
S: No. He had his pants on... his clothes on.
P: What did his penis feel like?
S: It was hard. (Embarrassed) I could feel it.
P: Go on then.
S: Well, then he just suddenly got up, like he remembered something, I don’t know, and he unlocked the door and told me to get out. He said I’d better not say anything, because no-one would believe me anyway. And after that I just ran. I remember I was still crying, and it was really raining outside, but I just ran.
P: Sarah, do you know what ejaculate means?
S: Yes.
P: Did Mr. Doh ejaculate while he was rubbing himself up and down on you?
S: I don’t know. He had all his clothes on, I couldn’t tell.
P: Where did you go when you ran outside?
S: I ran to the bus stop, and I rang Mum.
P: Did she come to pick you up?
S: Well. she was really angry at me, because she didn’t know where I was. But she came and got me.
P: Did you tell her what had happened?
S: Well. I was going to, but she was so angry, and I didn’t know what to say, and I didn’t know what she would think... I was just so scared.
P: So you didn’t tell her right then because you didn’t know what she would think, and you were very frightened?
S: Yes.
P: Okay. Thank you Sarah. Can you just stay there please?
(to judge) Do think we should take a break here your Honour, and give the witness a rest?
J: (to Sarah) Are you alright to go on Sarah?
S: Yes. I'm okay.
J: Alright, we'll continue.

_Defence commences cross-examination._

D: Sarah, you know that I have to ask you questions about these matters?
S: Yes.
D: That I am appearing on behalf of Mr. Doh?
S: Yes.
D: Sarah, the alleged event occurred how many years ago?
S: Two years ago, in July.
D: Sarah, in your evidence earlier about the event that you said occurred in July, you said that you were pretty sure that he - Mr. Doh, put his fingers in your vagina. You are only pretty sure?
S: No, I am certain.
D: You also said that you weren't sure whether you had your underwear on or not?
S: No, I can't remember.
D: So you don't know that he actually put - you cannot remember whether he put his fingers in your vagina?
S: Yes, he did!
D: But he may have just rubbed them on the outside of your underwear?
S: No. I know that it wasn't just on the outside.
D: But you said just a minute ago that you can't even remember if you had your pants on or not, so how can you be so certain that he put his fingers in your vagina? He could have just rubbed them on the outside, couldn't he?
S: No, I'm certain that he didn't. I know, because I could feel them inside me.
D: Sarah, I put it to you that what you felt was Mr. Doh's hand on the outside of your pants.
S: No, I felt his hand inside me.
D: Sarah, I put it to you that that did not happen at all.
S: Why? What didn’t happen?
D: That Mr. Doh did not put his fingers in your vagina.
S: Yes he did!
D: Did you tell anybody of this after it happened?
S: No.
D: Sarah, earlier you stated that Mr. Doh lay on top of you, and rubbed himself up and down on you, is that correct?
S: Yes.
D: What exactly happened at this point?
S: He rubbed his penis against my vagina.
D: Did Mr. Doh have his clothes on?
S: Yes.
D: All of them, including his pants?
S: Yes.
D: Were his pants done up?
S: Yes.
D: Did you have your clothes on?
S: Yes, but he pushed my tunic right up.
D: But did you have all your clothes on?
S: Yes.
D: And, did you have your underwear on?
S: I think so, I’m not sure.
D: You’re not sure, but you think so?
S: Yes.
D: Mr. Doh did not try to put his penis in your vagina did he?
S: If he pulled my underpants down - ...well, no.
D: That is all you can say is it not - that you both had your clothes on, and Mr. Doh did not try to put
his penis in your vagina?

S: I think that he thought about it.

D: But you don't know?

(no answer from Sarah)

D: Did you tell anybody about that?

S: No.

D: How long after that was it when you told somebody about that event?

S: Could've been months.

D: So it was quite a considerable time afterwards?

S: It could have been weeks too.

D: So at the minimum it was weeks, and at the maximum it was months?

D: Sarah, who was the person that you told about this event?

S: Mum.

D: So you told your mother. Can you remember when that occurred?

S: Not the date, but it was around October.

D: Why did you tell your mother then?

S: Because I hadn't told anyone and I just needed to tell someone.

D: You chose not to tell your mother about it when it happened?

S: Yes, because I didn't think anyone would believe me, and I was really confused.

D: Not even your mother?

S: No.

D: Is there any reason why you think your mother wouldn't believe you?

S: Not really.

D: Have you ever lied to your mother?

S: No.

D: You mean to say you've never told your mother a lie. Not even a little fib?

S: Oh, small things, but nothing big.
D: What sort of small things?
S: Just like smoking, or drinking alcohol.
D: Did you tell your mother when you failed your English essay?
S: No (head bowed).
D: Why not?
S: Because I knew she'd be really angry.
D: She'd be angry because she expects a lot of you doesn't she?
S: Yes.
D: So it's pretty important to you that your Mum doesn't find out when you're not doing well - especially if you're going to fail?
S: Yes.
D: Did you tell your mother that Mr. Doh told you that you were likely to fail the English exam, if you weren't careful?
S: No.
D: Coincidentally this exam was to be held on the 15th of October, wasn't it?
S: Yes.
P: So, did you tell your mother about the likelihood that you would fail this exam?
S: No.
D: Sarah, I put it to you that in October of 1994 you were afraid of having to tell your mother that you were likely to fail your exam, and you were very angry that Mr. Doh was being so hard on you, so you fabricated the allegation that he sexually assaulted you.
S: That's not true.
D: I put it to you that the incident to which you have been referring did not happen at all.
S: Yes it did
D: Sarah, what did your mother do when you told her?
S: She took me to the doctor.

D: And the doctor examined you?

S: Yes.

D: How did you feel about your mother taking you to the doctor?

S: I was pretty angry.

D: You were angry? Why is that?

S: Well, because it happened so long ago, and there was nothing to ... well, I was just angry...embarrassed I suppose.

D: Sarah, I put it to you that you were angry at your mother for taking you to the doctor because this was something you had made up?

S: No, I - it wasn't something I'd made up. I wouldn't go through all this if I had made it up.

D: Sarah, when you made your statement in October, 1994, you said, "I really don't remember much about it ... I was really scared". Would that be a correct statement of matters, that you did not remember much about it?

S: It took a while for all the details to come back. But that's only because I didn't want to remember them.

D: Sarah, I put it to you that in fact Mr. Doh never put his hand - his fingers in your vagina?

S: Yes, he did.

D: That Mr. Doh never rubbed his hand on your vagina?

S: Yes, he did.

D: I put it to you that Mr. Doh did not lie on top of you?

S: Yes, he did.

D: And that he did not attempt to put his penis in your vagina?

S: Yes, he did.

D: Your Honour, I have no further questions.

Prosecution commences re-examination.

P: Now Sarah, there are a couple of things that my learned friend has raised with you in cross-
examination that I now wish to clarify. You indicated that when Mr. Doh sexually assaulted you in his office, that you did not tell anyone of that. Why not?

S: I never told anyone.

P: About what had occurred?

S: Yes.

P: Why didn't you?

S: Because I thought no one would believe me, and because he's a teacher, and they would believe him. And because I was scared.

P: Scared - what do you mean by that?

S: Because in case he hurt me.

P: Upon what basis do you have that fear?

S: I don't know, I was just scared that he would hurt me.

P: What I'm getting at though, is what was the basis of that fear that he might hurt you? Why did you think that might occur?

S: Because he said he would - he said he would really have to hurt me if I said anything.

P: When did he say that?

S: When I was in his room, when he was hurting me.

P: So you took that to mean if you ever said anything?

S: I suppose - it's just that he could if he wanted to whenever.

P: So the reason that you didn't say anything to your mother straight away is because you didn't think she would believe you and you were scared that Mr. Doh would really hurt you if you did.

S: Yes.

P: Why, then was it alright to tell your mother in October, three months later?

S: I wasn't going to, but it just happened.

P: What happened in October that made it alright to talk to your mother about this incident?

S: (embarrassed) Well...I got my first period and I told Mum, and we were talking about...you know...boys and stuff, and she was saying about getting pregnant, and I got really scared because I
remembered what he did to me, and I thought I could be...well, I knew, sort of, that I couldn't, but I was scared about it, and I started crying, and that's when I told her. I know I couldn't be now, but I was scared then. And that's when she took me to the doctor, and I suppose that's why I was angry - because I was embarrassed.

P: How old were you then?
S: I was 14, nearly 15.

P: Okay, thanks Sarah. Thank you your Honour, I have no further questions. Might this witness be excused?

J: Alright.

*Witness withdraws - excused.*

P: Sir, I would seek permission at this stage to call a witness, Doctor Mary Teal.

J: Yes.

*Dr. Teal sworn and examined.*

P: Could you tell the court your full name, address and occupation?

Dr: My name is Mary Christina Teal. I reside at 16 Bellevue Drive, Jolimont. I am a registered medical practitioner in the State of Western Australia.

P: Thank you, Dr Teal. Now, on the 10th of October 1994, did you examine Sarah Forbes in relation to an allegation of sexual assault?

Dr: Yes. I did.

P: Could you tell the court what your examinations revealed? What did you find?

Dr: May I refer to my medical notes? Well the examination revealed a ruptured hymen, but on that basis I wasn't able to either confirm or disconfirm that Sarah had been sexually assaulted.

P: When you say that you weren't able to confirm or disconfirm sexual assault, why is this so, if you found the hymen ruptured?

Dr: Well, the hymen of the vagina is a very thin tissue that is very susceptible to breakage, through vaginal penetration, or maybe through other vigorous activity, such as horse riding, or gymnastics and the like. So, you see, even if a hymen is broken, it is not possible to determine the cause of the
P: But, penetration of the vagina with an object, say fingers, would cause the hymen to tear, is that so?

Dr: Yes, probably.

P: Thank you Doctor.

Defence commences cross-examination.

D: Dr. Teal, as I understand it, the evidence you have given is that your examination revealed that Sarah’s hymen was ruptured, but that this may be consistent with activities other than vaginal penetration?

Dr: Yes, this may be the case.

D: So you are not able to assist the court in any way in terms of the matter aside from indicating to the court that those physical signs identified by yourself may have been caused by, say, riding a horse?

Dr: Well, it is possible.

D: I have no further questions.

Prosecution commences re-examination.

P: Just one matter, Dr Teal. In relation to physical signs of sexual assault - can a ruptured hymen be consistent with digital penetration?

Dr: Yes, certainly.

P: Thank you, I have no further questions.

J: Thank you Dr Teal, you may stand down.

Witness withdraws - excused.

Samantha Anne Forbs sworn and examined.

P: Could you tell the court your full name, address and occupation?

Sam: My name is Samantha Anne Forbs. I live at 56 Frank Street Jolimont. I am a Dental Technician.

P: Are you the mother of Sarah Forbs?
Sam: Yes.

P: When was Sarah born?


P: And who is Sarah’s father?

Sam: John Lee Forbs.

P: What is your relationship with John Forbs?

Sam: We were married, we are now divorced.

P: When did you get married?

Sam: In 1977.

P: And when did you separate from him?

Sam: In 1983.

P: And what is his relationship with Sarah like?

Sam: They get on alright.

P: So, you’d say their relationship was okay?

Sam: Sure.

P: And, what is Sarah’s relationship with you like?

Sam: It’s good. We’re close.

P: Okay, now I’d like to refer you to the evening of the 16th of July, 1994. Can you remember the details of that evening?

Sam: I think so.

P: Now would you recount the details of that evening, as best you remember them?

Sam: Well, it was a Friday evening, I remember because I went and did the shopping after work. I remember that it was raining, and I didn’t get home until about 6.15 or 6.30. I was really surprised when I got home because Sarah wasn’t there, and she was supposed to have fed the neighbour’s cat - they were away, and we were looking after Megs for them. Anyway, I remember being really annoyed with Sarah, and then she rang and wanted me to pick her up.
P: Where did she want you to pick her up from?

Sam: The bus stop near school - that's where the phone box is.

P: Was that usually where you picked her up from?

Sam: No. I usually got her from school, but often, if she had to ring me, that's where I got her from.

P: So she rang and asked you to pick her up from the bus stop? Did she sound any different?

D: Objection. Leading the witness.

J: Sustained.

P: How did Sarah sound over the phone?

Sam: Well, I don't really recall. I was pretty worked up because she wasn't home. I didn't notice I suppose.

P: Alright, what happened then?

Sam: Well, I went and got her, and I remember she looked really wet and miserable, but I thought she had just been standing in the rain and that she was feeling sorry for not being home - she knew I was angry with her, because I gave her a talk about responsibilities.

P: Did she say anything to you about why she wasn't home?

Sam: No, I don't suppose I gave her a chance.

P: Okay, now I'd like to draw your attention to the afternoon of the 10th of October, 1994. Do you recall the events that occurred on that day?

Sam: Yes, I think so.

P: Okay, now I'd like you to try to remember what happened on that day, and tell the court.

Sam: Well, I think it was a Saturday, because I was in the garden doing the compost. I remember Sarah came outside and sat down watching me for a while and then she said: "Mum I just got my period". Well we'd talked about this sort of thing before so we sat and chatted, and I was saying about boyfriends, and getting involved with people...and then I said that now she had to be careful about getting pregnant, you know...if she's sexually involved, and she just broke down.

P: What did Sarah say when she broke down?

Sam: Well, she started saying that what if she was pregnant what if he got her pregnant, and I didn't
know what she was talking about, and I was telling her to calm down and slow down and tell me what she was talking about, and she just kept crying and saying he hurt her, he hurt her.

P: Okay, Mrs. Forbs. Could you try to tell the court what happened then?

Sam: Well. I got her to calm down a little and I said to start from the beginning, and that's when she told me that her teacher had locked her in his room and had...touched her.

D: Objection. Speculation - it requires the witness to explain something she does not have first-hand knowledge of.

P: Your honour this is evidence of first complaint. I think it is very relevant to the case, to determine what the victim said to her mother in terms of explaining what happened to her.

J: Objection over-ruled.

P: Sorry Mrs. Forbs. So, can you explain to the court what Sarah described him as doing to her, touching her? Sorry, first of all, can we clarify - by "him", who are you referring to?

Sam: Mr. Doh.

P: Okay, and what do you mean by "touching" her?

Sam: Well, Sarah said that he closed the door and fondled her breasts.

P: Under or over her clothes?

Sam: I think at this stage she said it was over her clothes.

P: Go on.

Sam: Then she said he...reached under her dress, and pulled down her pants......and put his fingers into her vagina.

P: He put his fingers into her vagina while she was standing?

Sam: Yes, and then he pushed... no, wait...I'm confused...I think he did that after he had pushed her onto the floor.

P: So it was after he had pushed her onto the floor that Sarah alleges he put his fingers into her vagina.

Sam: Yes.
P: And not while she was standing?

Sam: I don't think so.

P: You don't think it was while Sarah was standing?

Sam: No.

P: Okay - what did Sarah say happened next?

Sam: She said he got on top of her and was rubbing his penis all up and down her, and on her vagina.

P: What position did Sarah say she was in at this stage?

Sam: He had pushed her onto the floor.

P: Did Sarah say whether she had her clothes on or off?

Sam: I think he had pulled down her pants.

P: You think or you remember Sarah saying?

Sam: Oht, I remember Sarah saying.

P: And did Sarah mention whether Mr. Doh had his clothes on or off?

Sam: He had his clothes on...according to Sarah.

P: And what happened then?

Sam: Sarah said that he just got up and told her to go, and that's when she went to the phone box and rang me.

P: Did Sarah happen to mention whether Mr. Doh had said anything to her while this was going on?

Sam: She said that he threatened her - that he would hurt her if she yelled.

P: Alright then Mrs. Forbs, what did you do after Sarah had told you what Mr. Doh had done?

Sam: Well, I took her to the doctor's.

P: Why did you do that?

Sam: Because Sarah was worried about being pregnant, and although she said that he did not put his penis inside her vagina, I wanted to be certain. I also wanted to be able to reassure Sarah. She was so confused and upset, so I thought it would be a good idea to go to the doctor's.

P: Which doctor did you take Sarah to?
Sam: It was Dr. Teal. She's just around the corner, and she knows Sarah.

P: How was Sarah about going to the doctor?

D: Objection. Requires speculation.

J: Sustained.

P: The court heard from Sarah earlier that she was angry at having to go to the doctor's.

Sam: I guess she was a little embarrassed.

P: What about?

Sam: Well, she's never had to talk about these things, or have a physical examination before.

P: Thank you Mrs. Forbes.

Defence commences cross-examination.

D: Before you got divorced from your husband, what did you do?

Sam: I was studying part-time, and looking after Sarah.

D: And, after you got divorced, did you continue studying?

Sam: No, I needed to work, so I stopped.

D: Was that disappointing for you - having to give up study?

Sam: I suppose so, but I knew that's what I'd have to do.

D: So studying is something that's pretty important to you?

Sam: Yes.

D: So, you'd be pretty keen for Sarah to do well.....get into uni.....get a good job?

Sam: Sure, I'd like for her to do well, any mother would.

D: Would you say you put a lot of pressure on Sarah to do well at school?

Sam: A bit, not too much

D: Not too much? Do you think Sarah would agree with that?

Sam: I don't know

D: Well, do you think that Sarah tries really hard to please you, with her study?

Sam: Yes, I think she probably does.

D: So, you agree that it's very important to Sarah what you think of her - I mean it's really important
for Sarah for you to be pleased with her?

Sam: I guess so.

D: So important that she would lie to you if she wasn't doing well?

Sam: No, Sarah doesn't lie.

D: You say Sarah doesn't lie?

Sam: No

D: To your knowledge, has she ever lied to you?

Sam: Only about not smoking - that's all.

D: So, did you know that Sarah was probably going to fail her English exam?

Sam: No.

D: And, did you know that Sarah had already failed her English essay?

Sam: No.

D: So, I guess that you can't really say that Sarah never lied to you - can you?

Sam: (shaking head)

D: Can you speak up please?

Sam: No.

D: Mrs. Forbs - is it usual for Sarah to come home after dark, after 6.00 pm without letting you know?

Sam: No.

D: So, why is it that on the night of the 16th of July, when you alleged to have arrived home after 6.00pm, and found Sarah not to be home, you were angry rather than worried?

Sam: Well, I was worried more than angry.

D: But you said just a moment ago that you were angry when you got home and realised that Sarah had not fed the neighbour's cat. Is that not so?

Sam: Yes... I...

D: And further - you claim that even when you picked Sarah up from the bus stop, at what must have been at least 6.30 pm, you were still not worried, you were angry. In fact, you gave her a talking to
about responsibility". Did you not?

Sam: I...

D: Did you not?

Sam: Yes, but...

D: And how old was Sarah, at this time?

Sam: She was 14.

D: She was only 14, and yet your first reaction was one of anger rather than concern?

(no response)

D: Had this sort of thing happened before?

Sam: Her not being home?

D: Yes. had Sarah not come home until after 6.00 pm before?

Sam: Yes, sometimes she went to a friend’s house after school.

D: So, in fact, Sarah often did not have to account for where she had been after school?

Sam: If you mean, did I have to know everywhere she had been all the time - no, I trust her.

D: So, her ringing you up from the bus stop after 6.00 pm at night was really nothing new to you?

Sam: It didn’t happen all the time

D: But it happened sometimes?

Sam: Yes.

D: So on the night that Sarah alleges that Mr. Doh locked her in his room and sexually assaulted her, she could have in fact been anywhere else, and you would not know - it would not be unusual?

Sam: It would! Sarah doesn’t lie - she wouldn’t make something like this up, she just wouldn’t.

D: But we’ve already established that Sarah does lie to you - so she could have been lying on this occasion too, couldn’t she?

Sam: No, she wouldn’t, she just wouldn’t...

D: You don’t really know what Sarah is capable of lying about do you Mrs. Forbes?

Sam: She just wouldn’t...
D: No further questions your honour

Prosecution commences re-examination.

P: Mrs. Forbs, just a couple more questions. You've said that you have high expectations of Sarah, in terms of study, do you think these expectations are unreasonably high?

Sam: No, not at all.

P: Do you think that Sarah would think they're too high?

Sam: No, she knows I like her to do well, but that's not the only thing that matters to me, she knows that.

P: So, do you think that the fear of your finding out that she failed would be enough to motivate her to make something like this up?

D: Objection!

J: Sustained.

P: I have no further questions.

J: Thank you Mrs Forbs, you may stand down.

Witness withdrawn - excused.

D: Your Honour, I propose opening the case and calling Mr. Douglas Doh.

J: Is he going to be giving evidence on oath?

D: Yes, he will be giving evidence on oath.

Douglas William Doh sworn and examined.

D: Please state your full name, address and occupation to the court.

Doh: My name is Douglas William Doh, and I live at 34 Attril Crescent, Blackwood. I am a teacher.

D: Are you currently employed with the Ministry of Education?

Doh: Yes, but I am not currently teaching in a classroom.

D: Where were you last employed as a classroom teacher?

Doh: At Johnston High School.

D: Address?

Doh: 19 Sebourne Street Johnston.
D: How long had you been employed at that school?
D: Have you ever had any complaints made against you?
Doh: Not until now.
D: Do you know a person by the name of Sarah Forbs?
Doh: Yes.
D: And what is your relationship to Sarah Forbs?
Doh: She was one of my students.
D: What was the first year that you had her as one of your students?
Doh: I think it was 1993, I was her form master.
D: Did you have a lot to do with her as a student, more than any other student?
Doh: No, not really.
D: Was Sarah a good student - did she get good grades?
Doh: Yes, she is bright.
D: Have her grades been consistent over the three years that you've been teaching her?
Doh: She's finding things a lot harder now.
D: "Now"?
Doh: In the higher grades.
D: Have you ever met Sarah's mother?
Doh: Yes.
D: On how many occasions?
Doh: About five or six.
D: Under what circumstances?
Doh: Well, every year we have parent-teacher interviews, I've spoken with her then - and a couple of times she's come in to speak to me about Sarah's progress.
D: How would you describe Mrs. Forbs' attitude to Sarah's performance - academically?
Doh: She's very anxious for Sarah to do well.
D: More so than other parents?
Doh: Yes, I'd say so.

D: How would you say Sarah reacted to this?
Doh: Well, she tries very hard. She worries about bad grades.

D: What makes you think this?
Doh: She's cried a couple of times when she hasn't done well, and she worries about what her mother will think.

D: Is she justified in being worried?

Doh: Well, I don't know, but the couple of times Mrs. Forbs has been in to see me, other than parent-teacher interviews, have related to Sarah getting bad marks on essays. So I guess Sarah is justified in being worried.

D: Is this kind of motherly concern common?

Doh: It's not common, but it's not unheard of.

D: Do you tutor students privately if they need help?

Doh: Sure.

D: Have you ever tutored Sarah Forbs?

Doh: Yes. At one stage her mother wanted her to receive some help, but that was only for a few weeks.

D: When was this?


D: "Mid"? When?

Doh: Around June.

D: When you tutor students, is this during or after school hours?

Doh: Usually during, but if there's a few, I do it after school.

D: And, where do you tutor the students?

Doh: Usually in the library, or in my office.
D: At what time did you tutor Sarah in 1993?

Doh: It's hard to remember, but I think that was after school - at exam time there are usually a lot of students who want help.

D: And in June of 1994?

Doh: Again after school.

D: And where would you have tutored Sarah?

Doh: After school it's usually in my office.

D: So you tutored Sarah in your office after school hours at the end of 1993 and in June of 1994?

Doh: Yes, I think that's accurate.

D: Were there ever any allegations or complaints about that?

P: Objection

J: Sustained.

D: Mr. Doh, part of your duty as Form Master is to accompany students and other teachers on school camps, is that correct?

Doh: Yes.

D: Did you ever accompany Sarah Forbs on a school camp?

Doh: Yes.

D: Was this an overnight camp?

Doh: Yes.

D: Where was it to?

Doh: I think that was in 1994, so it would have been to Eppally, on the horse riding camp.

D: How many teachers accompany students on these camps?

Doh: It depends on how many students go, but it's usually just the Form Masters and maybe a couple of P.E. teachers.

D: How are the activities arranged, in terms of supervising the riding, say?

Doh: On the riding camp there's the lady who owns the ranch, and she always takes the kids riding, with the P.E. teachers, and any others that particularly want to ride.
D: Do you ride horses Mr. Doh?

Doh: No, I’ve never enjoyed horse riding.

D: So, when you go on these camps you don’t go riding?

Doh: No.

D: What do you do while everyone else is riding?

Doh: Well, if there’s another teacher who isn’t riding, I talk with them, or if I’m the only one, I just read a book or something, that’s if there’s nothing that needs to be organised for the evening.

D: Would there ever be occasion for you to be in the students’ rooms during the day, while they are riding?

Doh: No.

D: What about if a student comes back from riding?

Doh: It would depend on why - if they’ve hurt themselves then they would be accompanied by another teacher back to the bunk house, or to the first aid room, or if it’s a disciplinary thing, likewise, they’d be accompanied by another teacher back from the paddock, but if it’s something minor, like they’re just getting something, then they would get it and go back.

D: Do you recall any instance in which you were in the bunk-house with a student on the 1994 camp?


D: You’re certain?

Doh: Yes, I think so.

D: Okay then, on the evening of the 16th of July, 1994, can you recall what you were doing between 5.30 and 6.30 pm?

Doh: Yes - I was in my office marking essays.

D: You were in your office the whole time?

Doh: Except maybe to go to the kitchen and make a coffee.

D: Do you recall seeing anyone during that time?
Doh: Only Sarah.

D: You saw Sarah?

Doh: Yes. She walked down the corridor and out the front door of the office building.

D: At approximately what time was this?

Doh: Around 5.30 - 6'ish.

D: Was this unusual - for students to be walking around at that hour, and in the office building?

Doh: Around the building - no, that's where the phone is kept after 4.00. But, near 6.00, I suppose so, but I knew there was a hockey game on, so again I wasn't too surprised.

D: How did you know there was a hockey game on?

Doh: I just knew, it's a small school, you know what's happening. And I heard the mini-bus come back anyway.

D: Did you see anyone else apart from Sarah?

Doh: No.

D: Did Sarah say anything to you as she walked past?

Doh: Actually I said something to her - I commented that I didn't have her essay.

D: What did Sarah do when you said that?

Doh: She paused in the doorway, and said something like "sorry Mr. D, I'll hand it to you tomorrow".

D: What happened then?

Doh: I heard the front door close, and I got back to work.

D: Did you see anyone else that night?

Doh: Apart from Sarah? No.

D: Did you see Sarah again that night?

Doh: Yes, she came back in about 15 minutes later, and asked if she could use my phone. The students usually use the phone in the main office, but I noticed that the lights had been turned off, so I thought it would be okay for her to use mine. She tried to ring home, but no-one answered.

D: What happened then?

Doh: I mentioned her essay again, and how her standard had slipped, but she just apologised and
walked out.

D: Was that the last you saw of Sarah on the night of the 16th of July, 1994.

Doh: Yes.

D: Did you say anything more to Sarah on that night?

Doh: No.

D: Have you heard the charge against you?

Doh: Yes.

D: The charge is that on the 16th of July in 1994, you sexually assaulted Sarah Forbs, by inserting your fingers into her vagina. Did you do that?

Doh: No, I did not.

D: Did you ever do that to Sarah?

Doh: Never.

D: It has been alleged that you said to Sarah about this matter that if she said anything no-one would believe her, and you would have to really hurt her. Did you say that?

Doh: No, I did not.

D: Did you threaten Sarah at all, that if she said anything, that you would hurt her?

Doh: No.

D: Your Honour, I have no further questions.

*Prosecution commences cross-examination.*

P: Mr. Doh at what school were you employed prior to 1991?

Doh: Gembrow Girls' School.

P: Why did you leave?

Doh: Because I needed a change of jobs.

P: How long were you employed at Gembrow Girls' School?

Doh: For 12 months.

P: And already you needed a change?

Doh: Yes.
P: Is it not true Mr. Doh, that you left Genibrow Girls' School, because there were suggestions that you had acted indecently with a student?
D: Objection your Honour.
J: Sustained.
P: Are you aware of your reputation at Jolimont High?
Doh: What are you referring to?
P: I'm referring to your reputation as a... and I quote "sleaze". Are you aware of this reputation?
Doh: I've heard it before, but you know what young kids are like, they always give their teachers nick-names, there's no substance to that.
P: Why do you think the students call you that?
D: Objection... requires the witness to speculate.
J: Sustained.
P: You testified earlier that you go away with students on school camps?
Doh: Yes.
P: You also mentioned that you went on an over-night horse riding camp with Sarah Forbs in 1994?
Doh: Yes.
P: Further, you testified that on that camp you did not go into the bunk-house with any student alone?
Doh: That's right.
P: Not even into the boys' bunk-house?
Doh: Not that I can recall.
P: Do you remember seeing Sarah Forbs go into her bunk-house on one afternoon, whilst on that camp?
Doh: No.
P: Do you have any recollection of her needing to replace a shoelace, and you assisting?
Doh: No.
P: I put it to you that you saw Sarah go into the bunk-house, and you followed her in.
Doh: No, that didn’t happen.

P: I further put it to you that whilst helping her lace up her shoe, you rubbed your hand up the inside of her thigh?

Doh: That’s just not true at all!

D: Objection your Honour, do you think that the prosecution could stick to the charges being dealt with without making unsubstantiated allegations?

J: Sustained … counsel, you know the rules.

P: Mr. Doh, did you often work back late at school in 1994?

Doh: Yes.

P: Yes, in fact you often saw Sarah late after class, isn’t that so?

Doh: Sometimes, for tutoring.

P: Actually, it wasn’t unusual for Sarah to be back late in your office, was it?

Doh: It didn’t happen that often, only sometimes.

P: About how often would you say?

Doh: I don’t know…about once a week.

P: On average, how many nights a week would you work as late as 6.30, in 1994?

Doh: When I’m seeing a student, or when I’m doing my work?

P: Both.

Doh: Maybe 3 or 4.

P: And would this 3 or 4 usually include a Friday night?

Doh: It varies.

P: But just say…on average, how many Fridays per month would you spend working late at school?

Doh: Maybe three.

P: It’d be a pretty quiet night - on a Friday, I imagine.

Doh: I suppose so.

P: More so than any other night of the week?
Doh: I guess so.

P: In fact, was there anyone else who would stay back on a regular basis on a Friday night?
Doh: Probably.

P: Can you think of anyone?
Doh: Not offhand.

P: But if there was someone who stayed back late on a Friday on a regular basis, you'd probably know about it?
Doh: Not necessarily.

P: You gave evidence earlier that it is a small school and not much goes on without people knowing. Is that so?
Doh: Yes.

P: And how many teachers are there on staff at Jolimont High?
Doh: Maybe 18 or 20.

P: And do you all share the same staff room area?
Doh: Yes, but everyone has their own office.

P: But it is pretty likely that you would know if someone else was working back late?
Doh: Yes.

P: Especially on a regular basis?
Doh: I suppose so.

P: So on the night of the 16th of July, 1994, you knew that there was no-one else around, didn't you?
Doh: I don't really remember. I don't remember anyone being there.

P: So you remember that there was no-one else there. Do you also remember whether it was common for students to use the office phone late on a Friday night?
Doh: Students used the phone whenever.

P: Do you remember ever having seen Sarah use the phone before?
Doh: I don't remember specifically, but I'm sure she did.

P: Have you ever let a student use the phone in your office before?
Doh: I don't recall. It's not something that happens often.

P: I'm not asking if it happens often, I'm asking if it happens at all?

Doh: I don't remember...probably.

P: So you can't recall ever having let a student use your phone in your office before?

Doh: Not specifically, but I'm sure it happened.

P: But you can't remember any time?

Doh: No.

P: I put it to you Mr. Doh, that you were working back late on the evening of the 16th of July 1994, and you were aware that there was no-one else around. I further suggest to you that when Sarah Forbs came and asked to use your phone, you closed the door behind her.

Doh: No, that's not true.

P: I put it to you that after you closed the door behind her, you asked her a few questions, and then you began to fondle her breasts?

Doh: No, I did not.

P: I put it to you that you then brutally restrained Sarah, while you rubbed her vagina with your hand, and that you then threw her onto the floor where you then digitally penetrated her vagina?

Doh: That's not true...I did not do any of that.

P: I further put it to you that you then lay on top of Sarah, and rubbed your erect penis up and down on her body, specifically in her vaginal region?

Doh: No (shaking head).

P: No further questions your Honour.

_Defence commences re-examination._

D: I'd like to just very briefly clarify - you testified that you often saw Sarah for tutoring after school, is that right?

Doh: Yes.

D: In fact, my learned friend used the words "not unusual for Sarah to be in your office after school", which you more or less agreed to?
Doh: Yes.

D: You also testified that you saw many students for tutoring after school, not just Sarah, is that so?
Doh: Yes.

D: Would you say that it would be "not unusual" for many of these students to be in your office after school?
Doh: Yes, certainly that would be so.

D: So, it wasn’t exclusively Sarah Forbs who you saw for tutoring after school on a regular basis?
Doh: No.

D: And you testified earlier that none of these other students have ever lodged any complaints against you?
Doh: No.

D: And it wouldn’t be unreasonable for a teacher to let a student use an office phone, if the general office was locked or in darkness?
Doh: No.

D: In fact, it would probably be considered unreasonable if the teacher didn’t let the student use the phone?
Doh: Probably.

D: And you still maintain that the allegations made against you by Sarah Forbs are untrue?
Doh: Yes, absolutely.

D: I have no further questions, the witness can be excused.

J: Mr Doh, stand down thank you.

Witness withdrawn and excused.

Defence Counsel closing address:

Members of the jury, you’ve heard the evidence. It is not clear from the evidence of Dr. Teal whether any vaginal penetration has occurred, and there are no physical signs of assault. You have heard that there was clear motivation for Sarah to fabricate the story, in that she was very fearful of her mother finding out that she was likely to fail English, and there was no evidence other than Sarah’s own
statement. You have heard Mr. Doh deny that he had any sexual contact with Sarah, and his evidence was not shaken at all by cross-examination. So, in fact, what the case boils down to is a case of Sarah's word versus that of Mr. Doh. In all the circumstances, I submit that there is insufficient reason for you to find Mr. Doh guilty of this offence.

**Prosecution closing address:**

Members of the jury, the accused stands charged of the crime of the sexual assault of a young person, in this case, Sarah Forbs. You need only be satisfied that this assault occurred, that sexual contact was involved in the assault, that the accused is responsible, and that Sarah was under the age of sixteen. So, there are three elements: that the accused assaulted Sarah, that the assault was of a sexual nature, and at the time of the assault Sarah was under the age of sixteen. You have heard the uncontradicted evidence of Dr. Teal, that the hymen was broken, suggesting vaginal penetration. There is also no question that Sarah was under sixteen years of age at the time of the incident. The only question therefore is whether the accused sexually assaulted Sarah. The defence have been able to point to no convincing motive for Sarah fabricating such a story. Nor has any motive for her mother fabricating such a story been suggested. Therefore it is clearly open to you to find the accused guilty of the charge against him.

**Judge's Summing Up**

J: Very shortly, ladies and gentlemen, you will be retiring to consider your verdict in the trial at which Douglas Doh is presented on a count of sexual penetration. Specifically, it is alleged that at Jolimont in the State of Western Australia on 16th July 1994, the accused man sexually penetrated a person named Sarah Forbs, by inserting his finger in her vagina. It is your function to find that the facts prove beyond reasonable doubt that the accused is guilty of this offence. The task which you will be required to perform is, as you will undoubtedly appreciate, one of the most important which you are likely to be required to undertake as members of this community. My function as the trial Judge is, first and foremost, to ensure that this is a fair trial and that it is conducted in accordance with the rules of evidence and procedure. Your function is to consider the evidence and to decide what facts you can properly find. As members of the jury you are judges of the facts. Some of the
evidence before you today has been presented on closed circuit television. You are reminded that this is a routine practice of the court and you are not to draw any inferences about the guilt or innocence of the accused based on the use of this equipment. Ladies and gentlemen, thank you. Please retire to consider your verdict.
Appendix B

Judge's Instructions and Summing Up for
Pre-Recorded Videotaped Evidence

Judge's Instructions

J: Ladies and gentlemen of the jury, you will be viewing the evidence of the first witness on the TV monitor set up in front of you. Can you all see it clearly? Although this evidence will appear to be a live recording, the child is not present in the courtroom today. This evidence has been pre-recorded at an earlier date in this courtroom in order to protect the child from any unnecessary stress. You are to treat this evidence in the same way as any other evidence you will hear today. This is a routine practice of the court and you are not to draw any inferences about the guilt or innocence of the accused based on the use of this equipment.

Judge's Summing Up

J: Very shortly, ladies and gentlemen, you will be retiring to consider your verdict in the trial at which Douglas Doh is presented on a count of sexual penetration. Specifically, it is alleged that at Jolimont in the State of Western Australia on 16th July 1994, the accused man sexually penetrated a person named Sarah Forbs, by inserting his finger in her vagina. It is your function to find that the facts prove beyond reasonable doubt that the accused is guilty of this offence. The task which you will be required to perform is, as you will undoubtedly appreciate, one of the most important which you are likely to be required to undertake as members of this community. My function as the trial Judge is, first and foremost, to ensure that this is a fair trial and that it is conducted in accordance with the rules of evidence and procedure. Your function is to consider the evidence and to decide what facts you can properly find. As members of the jury you are judges of the facts. Some of the evidence before you today has been pre-recorded at an earlier date. You are reminded that this is a routine practice of the court and you are not to draw any inferences about the guilt or innocence of the accused based on the use of this equipment. Ladies and gentlemen, thank you. Please retire to consider your verdict.
Appendix C

Explanatory Statement of Research

This study is being conducted as part of an Honours degree at Edith Cowan University. The purpose of the study is to investigate child witnesses' evidence, videotechnology and how this impacts on jurors. I am grateful for your assistance.

As a participant in this study, you are required to either view a videotape of a trial or read a transcript of a trial involving sexual assault against a child under the age of 18. It is expected that the trial will take about one hour to view or read. After viewing the videotape or reading the trial transcript, you will be asked to complete a questionnaire which will take about 30 minutes. Once the questionnaire has been completed, there will be a debriefing.

Your participation is entirely voluntary. If you agree to participate, you are free to withdraw that participation at any stage of the research. You will not be asked for your name in the questionnaire nor will you be identified in anything written in or said about the study. Any information you give will remain strictly confidential. Anyone that has either been involved in sexual assault or feels uncomfortable with the content material is free to withdraw their participation.

It is anticipated the information obtained from this research will contribute to the body of knowledge regarding children's evidence and how this impacts on juries. The videotape and transcript of the trial have been edited where jury selection, any legal argument and the swearing in of witnesses have been deleted for sake of brevity.

Should you wish to find out about the results of the study, please feel free to write or contact me requesting a summary through the Psychology Department, 400 5551.

Should you have any queries regarding this project, please feel free to contact me, or my university supervisor, Professor Don Thomson, in the Psychology Department. You are required to sign a consent form ensuring you have been made aware of the research. Are there any questions?

Josie Hubble
Honours Candidate
Department of Psychology
Edith Cowan University
400 5551

Professor Don Thomson
Supervisor
Department of Psychology
Edith Cowan University
400 5626
Appendix D

Consent Form

Study: Child Witness Evidence and Videotechnology

Researcher: Josie Hubble, Honours Candidate, Psychology Department, Edith Cowan University

- I have been informed that the research, which is being conducted by Josie Hubble, is investigating child witnesses' evidence, videotechnology and how this impacts on jurors.
- I am required to either view a videotape of a trial or read a transcript of a trial and then complete a questionnaire which will take about an hour and a half in total.
- I have been informed that the confidentiality of the information I provide will be ensured and that I will not be identified in anything written in or said about the study.
- I have been informed that I am free to withdraw from the project at any time.
- A summary of the results of the study will be made available to me upon request.
- Any questions or queries I have of the research may be directed to the researcher or the researcher's supervisor.
- Any concerns regarding this research may be directed to the researcher or the researcher's supervisor.
- The project is for the purpose of research and information obtained from this research will contribute to the body of knowledge regarding children's evidence and how this impacts on jurors.
- I consent to participate in the study, the particulars of which have been explained to me.

__________________________________________    _______________________________
Participant                                        Date

__________________________________________    _______________________________
Researcher                                         Date
Appendix E

Questionnaire - Child Witness Evidence and Videotechnology

Please state:

- Your age

- Sex
  Male / Female

Please circle your answer:

- Please indicate whether you find the defendant
  Guilty / Not Guilty

- What is the basis of your decision? What evidence was critical?
  (Continue on the back of the page if necessary)
Please circle your answers:

- How credible did you find the child witness's (Sarah Forbs) evidence?

  5  4  3  2  1

  very credible not at all credible

- How credible did you find the expert witness's (Doctor Mary Teal) evidence?

  5  4  3  2  1

  very credible not at all credible

- How credible did you find the mother's (Samantha Forbs) evidence?

  5  4  3  2  1

  very credible not at all credible

- How credible did you find the defendant's (Douglas Doh) evidence?

  5  4  3  2  1

  very credible not at all credible
• Recall all the information you can remember of the child's (Sarah Forbs) evidence
(Continue on the back of the page if necessary)
• Recall all the information you can remember of the expert witness’s (Doctor Mary Teal) evidence
  (Continue on the back of the page if necessary)
• Recall all the information you can remember of the mother’s (Samantha Forbs) evidence.
(Continue on the back of the page if necessary)
• Recall all the information you can remember of the defendant's (Douglas Doli) evidence (Continue on the back of the page if necessary)
Appendix F

Debriefing

- The researcher sincerely thanks subjects for taking part in the study and reiterates subjects' participation and involvement is much appreciated.
- Subjects in the videotape condition are advised all actors have played the roles in the videotaped trial and that all actors are over the age of 18 including the actor who played the part of the child witness.
- The videotaped trial and the trial transcript are simulated sexual assault trials (filming of the videotaped trial was conducted in the District Court of WA with permission).
- Results on request will be available from the researcher upon completion of the research.
- Anyone feeling uncomfortable or distress with the content material is able to contact the university student counsellor.
- Subjects are asked to refrain from discussing the research as testing is in progress for the next few weeks.
- The researcher wishes participants good luck with their studies.
- The researcher asks participants if there are any questions.