

A: "Yeah but sometimes when we were on the toilet he'd sometimes do secret touching then too." (at page 16)

79. [redacted] had said (earlier in the interview) that Peter Ellis had touched her with his hands and fingers. She then made the allegation that "secret touching" had occurred when "we were on the toilet". The interviewer then asked a suggestive direct question: "Whereabouts did his fingers go then" (at page 16) to which [redacted] indicated the vagina and bottom.

80. To a series of suggestive multiple choice questions [redacted] said that it felt sore when she went to the toilet and that Ellis threatened her "He just said don't tell your parents or else you'll turn into a gherkin and get eaten up" (at page 17). [redacted] stating (at page 18) that this had inhibited her from telling her parents until recently when her parents asked her to tell:

A: Um it felt like that he was um saying the truth so I didn't tell them until I was big like this.

Q: Okay so when did you realise that he wasn't telling the truth, how old were you when you realised.

A: "About five, because even before I telled them I realised that he was never telling the truth."

Q: "Did you"

A: "Because I told them a little bit but um they still didn't tell, they still didn't turn into a gherkin and get eaten up"

Q: "Right okay so what made you tell in the end"

A: "It just because mummy and daddy asked me to tell."

Q: "Asked you to tell"

A: "Yep and last night mummy asked me if I wanted to talk to them about Peter so I did."

Q: "So when mummy and daddy asked you, what did they say."

A: "Mummy said do you want to talk about Peter and I said yes." (at page 18)

81. It is submitted that the failure of the interviewer to follow up on details of the conversation that [redacted] had had with her parents about Peter Ellis, denied the trier of fact the opportunity to hear how the complaint was elicited. Given the extensive unrecorded interviewing by the parents it was essential that such a query be done at interview.

82. The interviewer then requested that [redacted] show her on the doll how the touching had occurred and in response to a suggestive multi-choice question "Did his hands move or stay still" [redacted] responded that "his hands moved" although in demonstrating the activity on the doll the action did not show this movement described.

83. In an attempt to elicit information from [redacted] the interviewer later introduced the topic of being touched on the bottom (p 20) and asked [redacted] where poohs come out, she replies

"your anus" (p20) and then is asked a leading question "Okay. And so what, whereabouts did his hand go?" to which [redacted] replied "[o]n our bottom". A further leading question was asked "Did it go near the anus or not?" to which [redacted] answered "no" and then the response was changed to "it went over the anus" (p21).

84. The interviewer told [redacted] that she had to go next door "and check with my friends to see if I haven't forgotten anything and then I'll come back". Upon return the interviewer probed with direct questions:

Q: "now um remember when you told me about how his hand went on your clitoris when you were on the toilet"
A: "Yep"
Q: "And have you got another name for that part of your body, have you got any other names, for that part, those parts of your body"
A: "Um I can't remember"
Q: "Is there one or not"
A: "Um"
Q: "What are clitoris' for, oh are they for doing weeze are they."
A: "Yep"
Q: "Are there any other parts down there for doing weeze"
A: "The vagina"

and then using suggestive multiple choice questions:

Q: "The vagina, so did his, whereabouts did his hand go by your vagina or not"
A: "It didn't go near my vagina."
Q: "Okay, what are vagina's for"
A: "Where you keep your weeze until they are ready to come out"
Q: "Okay so it went in, what comes first, the clitoris or the vagina"
A: "The vagina"

and then using the dolls

Q: "And where's the clitoris"
A: "It's just there in front of the vagina"
Q: "In front of it. So did the hand went on the clitoris"
A: "Yes"
Q: "But it didn't go on your vagina is that right"
A: "No" (at page 25)

85. When asked a number of multiple choice questions about where Ellis' hand had gone with respect to her vagina [redacted] indicated twice that his hand did not go near her vagina or inside that part of her body (p25). In response to a leading question "[s]o did, the hand went on the clitoris?" [redacted] stated "yes".

**ALLEGATIONS THAT DID NOT FORM THE SUBJECT OF CHARGES
AGAINST PETER ELLIS**

86. There are two allegations of touching that described in the first interview that were not the subject of charges, namely, (1) that she alleged that Peter Ellis had hit her on the back and (2) that Peter Ellis had kicked her on the bottom.

87. There are numerous allegations that makes in her later interviews that were not the subject of charges, including:

- that Peter Ellis touched her vulva;
- that Peter Ellis took to a place unknown where men unknown put their penis' into her mouth and vulva;
- that Peter Ellis took to a place unknown where men unknown hit and kicked her;

THE IMPORTANCE OF THE INTERVIEWS THAT WERE NOT PLAYED

88. Neither of 's later video-taped interviews (6 October 1992; 9 December 1992) were played to the Jury. It is submitted that the playing of these interviews would have demonstrated to the Jury that:

(a) did not have a concrete view of what "secret touching" means, for example, in the second interview:

(i) the allegation from the first interview was that Peter Ellis did "secret touching" which was described as amounting to touching bottoms inside the crèche and tickling and other activities outside the gate, in the second interview it becomes clear that to secret touching is tickling;

(b) provided detail that is inconsistent with earlier allegations some 6 months after the Second interview (some 21 months after leaving the crèche). For example, in the Second interview:

(i) widens her allegations to include that Gaye knew that Peter Ellis was doing this "because when he was doing that she peeped round the door" (p9) whereas earlier had said that it was Marie that she had told and who had actually seen Peter putting his penis into children's mouths.

and in the second and third interviews

(ii) alleged in the second and third interviews that Peter took her to the "City Council" and an unknown

place where three men were involved in the abuse of children. This is contrary to what [redacted] told the interviewer in the first interview that "one day Gaye took us for a ride in her car, over to the kindergarten and Peter went there too" and that she hadn't seen Peter anywhere else (page 23,24).

(c) [redacted] provided reports of new allegations in the context of parental contamination. This would have been useful to the Jury in that if they determined that the later allegations were a construct of contamination then the evidence adduced at trial as to the early contamination could have lead the Jury to conclude that given that this was a child who was susceptible to contamination then she had been even for the March allegations. For example, in the Third interview:

(i) There is a clear reference from [redacted] that she talked with her parents and her counsellor about the crèche (page 13);

(d) [redacted] demonstrated that she was susceptible to suggestion and social pressure and would readily accept propositions that were suggested to her; For example, in the Second interview:

(i) There is more evidence that [redacted] and her mother had been talking about the crèche and crèche workers, for example, at page 12 when [redacted] says that she can't remember what [redacted] looks like, but that he was a teacher: "Because mummy telled me and then I remembered a wee bit of him."; and the allegation involving the City Council, [redacted] stated "My mummy thinks that it could have been the City Council or something" (p15). The importance of including this feature of the interview is that it can be demonstrated how [redacted] then incorporates a suggestion from what her mother thinks to a definite allegation "there were lots of people just working at their desks...where they worked at the City Council" (p17) and later, when the interviewer asked "so when he did secret touching on your vagina and your bum, whereabouts were you?" [redacted] replied "Um, in the city council".

and from the Third interview:

(ii) [redacted] alleged that secret touching happened in room with "lots of escalators" and it had "carpet on the floor and it had some desks in it" and [redacted] were present [redacted] had earlier stated that [redacted] were currently attending the same

school as her) denied that there were big people there (whereas in her second interview she had said there were lots of people working at their desks);

- (iii) in response to a suggestive question, then said that Peter had not ever taken her anywhere else before and done secret touching;
 - (iv) responded positively to social influence, going along with the suggestion "I heard that that there might have been other people there one time, is that right" (at page 9);
 - (v) Through social pressure the interviewer introduced the possibility of other places and people being involved in "secret touching" (at page 15), a suggestion that accepts and then named and
- (e) demonstrated that she readily changed her accounts of events when she was directly challenged about her allegations; For example, in the second interview:
- (i) then said that no other crèche workers knew about it (but when challenged she says that others did know about it because Debbie told them);
- and in the third interview:
- (ii) In a number of instances amended her allegations to meet a challenge from the interviewer, for example, when asked about where her clothes were when the men touched her, replied "on my body", after being challenged "so how did their penis touch your vulva" amended her allegation to "my clothes were, trousers were down" (at page 21); and when alleged that both she and the men were standing up when they touched her vulva with their penis' the interviewer challenged her "right. Cos do you know what I think, because if a big man stands up then the penis wouldn't be able to touch your vulva because you'd be much littler. So how did the penis touch?" to which amended her allegation to be that they squatted down (at page 23);
- (f) widened the number of people involved in the abuse, making the allegation move from a semi-credible account to one that was clearly outrageous. For example, in the second interview:

- (i) _____ widened her allegation of which other children were present in the toilets when Peter Ellis was inserting his penis into children's mouths to "most of the children";

and in the third interview:

- (ii) _____ alleged that three men were involved in this secret touching (at page 15) and that "we" walked with Peter there; that the men had put their penis into the children's mouths;
- (iii) _____ alleged that they were in a room with the men who said "I know what we're going to do, lets do some secret touching", that it happened twice to _____ with the same man, but then said that "just two" men did it to her;
- (iv) _____ alleged that Peter was doing "secret touching" to _____ and that she had told her parents this;
- (v) After the production of a body parts diagram _____ alleged that the men had touched her vulva and then went on to allege that Peter had touched her vulva.
- (g) In widening the number of people who _____ said had been abused she named a number of additional children, this would have enabled the Jury to consider that these children were not called to give evidence to support the contention that what _____ alleged had actually happened. For example, in the first interview:

- (i) _____ named additional children as being allegedly involved in the "secret touching", including _____ and _____ (_____ had been mentioned earlier) _____ did not mention _____ who had been described by _____ as being present in the first interview;

and from the Third Interview:

- (ii) _____ said that she saw other children complain to the crèche workers, and named _____ and _____ as people who had told (p 11).

A SUMMARY OF THE NEW POINTS RELATING TO THE INTERVIEWING OF _____

89. It is submitted that from what is now known in relation to interviewing techniques the following criticisms can be made of the interviews of _____ The presence of these flaws in the interviewing procedure demonstrate that a miscarriage of Justice has occurred:

1. The effect of leading and suggestive question form;
2. The effect of interviewer bias;
3. The lack of interview follow-up;
4. The effect of social pressure on a child
5. The importance of testing an alternative hypothesis
6. The importance of testing inconsistent accounts
7. The importance of caution over the use of body parts diagrams

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OFFICIAL INFORMATION ACT

THE EVIDENCE OF INTERVIEWING AND CONTAMINATION

A. INTRODUCTION:

1. _____ was born on the _____
2. _____ attended the Christchurch Civic Crèche from _____ from almost 2 years of age until aged 5 years.
3. Parents: _____ (Social Worker) and _____
4. At Trial two counts related to _____ Mr Ellis was found Guilty on Count 6:
Count 6. Indecent Assault alleging ELLIS urinated on his face at the Crèche.
and Not Guilty on Count 7:
Count 7. Indecent Act by ELLIS touching his anal area with a stick at the Cramner Centre.
5. Count 6 was alleged to have occurred between 1 March 1989 and 30 October 1991.
6. _____ is referred to as Child D in the Court of Appeal Judgment (sometimes as Child 13 in the Depositions).
7. Interviews dated:

DATE	INTERVIEWER	MONITOR	JURY SHOWN?
3 April 1992	Susan Sidey	Colin Eade	Yes
27 April 1992	Susan Sidey	Lynda Morgan	No
28 October 1992	Susan Sidey	Cathy Crawford	Yes

- 8 _____ was aged 5 years 6 months at the time of the first and second interviews, 6 years at the time of the third interview and 6 years 6 months at the time of Trial. There was a delay of 6 months between when _____ left the creche and when he was first formally interviewed.

B. PARENTAL CONTAMINATION

9. [redacted] was advised by a parent about the initial allegations against Mr Ellis when he was suspended in November 1991.¹⁰⁷ She stated in her original statement to the Police that she had, on the basis of what other parents had told her, determined that there had been inappropriate behaviour at the creche, and reiterated her belief that children do not lie about abuse¹⁰⁸
10. [redacted] and her partner attended the initial Creche parents' meeting at the end of 1991 and was concerned that parents who did not think there was abuse at the creche were in "denial". [redacted] makes it clear that her view is that children do not get it wrong where abuse is concerned¹⁰⁹.
11. Following the meeting [redacted] questioned [redacted] asking him who he remembered from the Creche, which workers, and what games they played. [redacted] responded that "Peter was really nice and that was that."¹¹⁰
12. [redacted] reported that she did not question [redacted] again until early March when she returned from an overseas trip. However, [redacted] accepted that [redacted] had heard her talk on the phone to other parents but was not too sure whether she had had a phone conversation at that time.¹¹¹
13. [redacted] returned from overseas to find that "the children were talking"¹¹²:

"I got back on Wednesday and found out Wednesday night the inquiry was happening and the children were talking and on Thursday and Friday, this is in March, I asked did you ever go to the Park with Peter and what sort of games did you play and on Saturday afternoon when having a story sitting up on the bed I said to him some of the children have said Peter pulled down their pants and touched their bottom do you think that is true or do you think you know about that."

¹⁰⁷Source: [redacted] Original Statement dated 17 May 1992

¹⁰⁸Source: [redacted] Original Statement dated 17 May 1992: "I felt that children don't make these things up and I hoped from listening to parents that there had only been a lot of inappropriate behaviour - that is tickling etc and some verbal things but I hoped that there had been no sexual abuse. Certainly I believed that something had happened.

Some parents I spoke to talked about concerns they had had. What that said to me was that he was inappropriate to be working in child care at that time.

¹⁰⁹Source: [redacted] Original Statement dated 17 May 1992: "The main feeling I got from that meeting was that there was a terrible sense of denial from some parents and a blind support of Peter over and above what a child had been saying and that concerned me."

See also Notes of Evidence at Trial at page 93:

¹¹⁰ Source: Notes of Evidence at Depositions, p576

¹¹¹ Source: Notes of Evidence at Trial, p89

¹¹² Source: Notes of Evidence at Trial, p94

14. At the Depositions hearing [redacted] also revealed that she was aware that one particular child [redacted] had disclosed and as [redacted] acted quite a lot like [redacted] she felt that she "now had to be at least open to the fact that my son may not be telling everything but I still of course hoped that nothing had happened."¹¹³

15. At the Depositions Hearing [redacted] accepted that during these conversations she had asked her son specifically about Mr Ellis, including asking him "whether Peter had ever taken him to his house".¹¹⁴ When asked whether she thought she was acting contrary to the advice given by Ms Sidey in asking specifically about Mr Ellis, she replied¹¹⁵:

"Yes, I did think I was and I asked as a mother, I asked."

16. [redacted] also stated at the Depositions Hearing that she "was quite serious when I said it and so he didn't joke. Up to then he had laughed a lot of those conversations off."¹¹⁶

17. [redacted] recollection of these early conversations were recorded in her Original Police Statement in which [redacted] makes it clear that she repeatedly questioned [redacted] that she did not accept [redacted]'s assurances that nothing untoward had happened at the creche. [redacted] put to [redacted] that other children had been saying that Peter Ellis had pulled down their pants and touched their bottoms. [redacted] then alleged that other Peter had done "wees and poos" into other children's faces, then when questioned how he had done poos, said that it wasn't poo's, just wee's but that it hadn't happened to him. Later that evening [redacted] asked [redacted] again if it had happened to him, and he agreed that it had, but just the once.¹¹⁷

¹¹³ Source: Notes of Evidence at Depositions, p577

¹¹⁴ Source: Notes of Evidence at Depositions, p582

¹¹⁵ Source: Notes of Evidence at Depositions, p582

¹¹⁶ Source: Notes of Evidence at Depositions, p577

¹¹⁷ Source: [redacted] Original Statement 17 May 1992: "I went away to [redacted] for 2 1/2 weeks in February and when I returned [redacted] told me that the whole crèche thing had blown up and that children had started to disclose. I decided to question him again. I got back on Wednesday 11 March. I asked [redacted] what sorts of things happened and what sort of games he played at the park when he went there with Peter. He said, "He bought us an ice-cream and we walked back and nothing else happened [redacted]. I also asked him if Peter ever took them to his house on a walk. He said, "No". I believed him. On Saturday about 4.00 on 14th, I read [redacted] two stories and then I said I wanted to have a serious talk to him about the crèche and Peter. He picked up two books and held them really tightly and wouldn't have eye contact with me. I said to him that some of the children had been saying to their mummies and daddies about what Peter had done to them, like pulling down their pants and touching their bottoms. [redacted] went white. Every bit of colour just went from his face. He then started laughing like he often does when he's nervous. He flung himself over