*on you?"*. Of course .. had not said that it did happen to him. accepts the suggestion from the interviewer and stated *"in my mouth"*.

57. The allegation that Peter Ellis urinated onto face was elicited using a number of techniques that are known to lead to inaccurate reports in children, namely, use of leading and suggestive questioning, the interviewer focus on the target (Peter Ellis) as a "bad" person, the extensive use of social pressure to extract a repetition of what had allegedly told his parents earlier. It is to be noted that in asking to promise to tell the truth, and then asking him, not what happened, but what he told his parents that happened, could be lead to believe that he was to tell what he said to his parents (and be truthful about reporting what he said to them) even if he knew that what he told his parents was not true.

58. It is submitted that the contaminating effect of having the child know that Colin Eade was outside the interview room observing the course of the allegations is demonstrated by the inclusion of Colin Eade in accounting of events *"she told on Peter and told the Policeman, she told Colin"* (at page 37).

## THE ALLEGATION THAT PETER ELLIS INSERTED HIS PENIS INTO MOUTH

### LEADING QUESTIONS

59. It is submitted that the detail that Peter Ellis' penis went into mouth was a result of a leading question. The interviewer was questioning about an allegation concerning urinating and asked:

> *Q. "What did his, did, where did his penis go"*
> *A. "Um there (indicated mouth)*
> *Q. "Yeah did it touch your mouth or not"*
> *A. "Um no, it went in my mouth"*
> *Q. "Pardon"*
> *A. "It went in my mouth" (p35)*

60. Instead of the interviewer clarifying by a non-leading question "what went in your mouth" she then stated "The penis went in your mouth?" to which replied "Yeah" (at p35).

61. The allegation that Peter Ellis inserted his penis into mouth was as a result of a leading question. Instead of adopting neutral open-ended questions the interviewer directly suggested to that the penis had been put into his mouth, a suggestion that accepted. readily

demonstrated in this first interview that he was susceptible to suggestion.

## THE ELICITING OF THE DETAIL SURROUNDING THE ALLEGATIONS

62. The detail of allegation that Peter Ellis had urinated on came from the use of suggestive multi-choice questions, for example about pants "Were they up or down" (at page 34) to whic said "Um they up" Sidey then stated "Yeah how did they get down". had not said that they were down and responded "Just um don't know" Sidey then stated "Yeah and hey were down, you were sitting on the toilet"; and about Peter Ellis' relative position "Was he standing up or kneeling down" (p34) and about Peter Ellis' penis "Yeah, was it hanging down or standing up?" (p34) and direct suggestive questioning "What did his, did, where did his penis go?"

## THE IMPORTANCE OF SHOWING THE SECOND VIDEO TAPE:

63. In the second interview the allegation that Peter Ellis urinated into mouth was re-explored after was questioned about his alleged witnessing of Peter ELLIS urinating into mouth: "Mmm. Well last week you told me that Peter did a mean thing to you." responded "yes". The interviewer continued, "And that um one of the things that he's done to you is that he um..." interjected, "Didn't do it to me". The interviewer challenged this, "Right, because I think you told me, well you did tell me last week it did happen to you." retorted, "Oh yeah." but still seemed uncertain ... "What?". At this point the interviewer directly prompted "The penis in your face". After further questioning agrees that it happened to him. is then asked "Mmm, so sometimes you say that that doesn't, that didn't happen to you." (page 14). affirms this, "Yeah". The interviewer probes, "Yeah, so what makes you say that?" to whic replies "Oh, I don't know. I just sometimes forget." The interviewer asks whether forgetting makes it harder or easier, responds "harder". The interviewer says "that mum thought that you said to her that it happened lots of times" to which responded, "No um yeah but not lots of times to me" The interviewer explains for him "Oh, I see. So it happened to you once but it happened lots of times to kids." (at pages 13, 14)

64. This extract from the interview evidenced the need for specific and direct prompting in order to obtain the allegation of abuse. In the context of a jury being provided with appropriate expert evidence regarding the dangers of such techniques, the information was most significant.

# THE EVIDENCE OF INTERVIEWING AND CONTAMINATION

## A. INTRODUCTION:

1. was born on the

2. attended the Christchurch Civic Crèche from from age 2 until age 5 years

3. Parents: (Social Worker / Counsellor / Tutor in Social Work) and has an older brother

4. At Trial four Counts related to Mr Ellis was found guilty on two counts, namely:

   Count 9. Doing an Indecent Act by urinating on her face.
   Count 10. Inducing an Indecent Act, namely bath with ELLIS

5. These offences were alleged to have occurred between 3 June 1988 and 1 December 1990.

6. ELLIS was found not guilty upon two counts relating to this child, namely:

   Count 11: Attempting to have sexual intercourse with her.
   Count 12: Indecent Assault by touching her bottom with a needle.

7. is referred to as Child F in the Court of Appeal Judgment (sometimes referred to as Child 3 in the Depositions).

8. The Interviews:

| DATE | INTERVIEWER | MONITOR | SHOWN? |
|---|---|---|---|
| 1 May 1992 | Susan Sidey | Lynda Morgan | Yes |
| 28 May 1992 | Susan Sidey | Cathy Crawford | No |
| 3 August 1992 | Susan Sidey | Cathy Crawford | Yes |

9. was aged 6 1/2 at the time of the first interview and it had been 1 1/2 years since she had attended at the Crèche, she was aged 7 1/2 at the time of trial. There was a delay of 18 months

between when left the creche and when she was first formally interviewed.

## B. PARENTAL CONTAMINATION

10. stated in her Police statement that she first heard about the Crèche inquiry in November 1991 when she spoke with a who telephoned about the allegations of abuse at the Crèche[137].

11. stated in her Police statement that she must have spoken to about Peter *"but I can't recall what was said. Whatever was said was reassuring that it wasn't applying to her"*.[138] did not attend the December 1991 parents' meeting.

12. However, in early February 1992 received "as part of her work" as a social worker a telephone call from the mother of[139] recorded in her original Police statement that informed her that activities had taken place in the toilet and that the children had been to Mr Ellis's house. was told that both and had been abused and she concluded that either or had also been abused, and that there was a high probability that had been abused as well[140].

13. As a result of this telephone call, spoke to about tickling and asked about the people who tickled her and had anyone tickled her on her private parts.[141] In her original Police statement also noted her comment that Mr Ellis "*was one of the people who tickled.*"[142] accepted at trial that she had asked if she remembered Mr Ellis taking her to the toilet and said "*some children had said Peter had done things in the toilet, I was specific, then I asked her had Peter done anything like that to you.*"[143] also accepted that when she referred to being specific, she might have said "*touched your private parts.*"[144]

---

137 Source: Statement dated 27 June 1992 at page 4

138 Source: Statement dated 27 June 1992 at page 5

139 Source Notes of Evidence at Trial at page 110

140 Source: Statement dated 27 June 1992 at page 5: "*She told me that both of her children were involved. I asked if were involved. She said that she couldn't tell me because one of the mothe was stressed and didn't want people to phone her. From that I concluded that either were involved and that there was a high probability tha was too.*"

141 Source: Notes of Evidence at Trial at page 110

142 Source: Statement dated 27 June 1992 at page 5

143 Source: Notes of Evidence at Trial at page 115

144 Source Notes of Evidence at Trial at page 116

response, as recorded in original Police statement, was a denial, *"I must not have been there mummy."*[145]

14. attended the Knox Hall meeting on 31 March 1992. stated in her original Police statement that she had the impression there was concern about abuse at the creche and that the holding of a meeting reinforced that impression.[146]

15. At the Depositions hearing, noted that the impact of the meeting was that "the allegation was being taken seriously."[147]

16. Within one or two days of the Knox Hall meeting, concerns were raised when she heard additional information from the mother of learnt that Mr Ellis's house was involved in the allegations and that had been named by another child.[149]

17. On 2 April 1992 contacted the Police requiring a Specialist Services Unit interview for The Police Creche Investigation Report Form recorded that had not made a "verbal disclosure", but rather:

> *"Interview required/ has disclosed incidents where (sic) has been present".*

18. spoke to her daughter again and said that she thought that things had happened at the Crèche and that she was "*going to help remember by talking to her*".[150] also disclosed in her original Police statement her view that, "*up until then I hadn't been getting anywhere with* ... accepted at trial that she may have made comments to at that time which she cannot remember.[152]

19. recorded in her original Police statement an example of when she and were having "*one of those general conversations*" said not to be about Mr Ellis where said that Peter Ellis "showed" her poos and wees in the toilet and said that if

---

[145]Source: IS Statement dated 27 June 1992 at page 5

[146]Source: riginal Statement dated 27 June 1992 at page 6: *"I got an impression that there was a concern and I think that holding the meeting had an impact more than what was actually said"*

[147]Source Notes of Evidence at Depositions at page 304

[148]Source: Notes of Evidence at Trial at page 110

[149]Source: Notes of Evidence at Trial at page 119 to 120

[150]Source: Notes of Evidence at Trial at page 116

[151]Source: Original Statement dated 27 June 1992 at page 6

[152]Source: Notes of Evidence at Trial at page 110

she did something she would have to drink it, but *"he didn't mean it"*.[153]

20. On 9 April 1992 Constable Smith recorded from . that had said that everybody at the creche was wonderful, that no one had taken her to the toilets and that Peter had shown her *"pooze and weeze in the toilet"* and *"he made us drink it"*[154]

21. described at trial a further incident of questioning when she was having a bath with her daughter. stated that she asked : *"what was it like at Peter's house or something like that."*[155] stated that at that time:[156]

> *"I knew they had been to Peter's house."*

22. The description of this incident which gave in examination in chief at trial was as follows[157]:

> *"She made some comments about Ellis and I asked her what happened next and she climbed up astride, sort of across my lower stomach and I said where was Peter's penis and then she sort of changed the subject and went funny again and laughing."*

23. However, in cross-examination accepted that had climbed astride her stomach when had askeo to *"show me"* when was talking about riding Mr Ellis's horse.[158]

24. also claimed to have observed moving her mouth up and down just above ' genital area, although mentioned this detail for the first time at trial.[159]

25. Following this incident and prior to any Specialist Services Unit interview, *"sat down with my daughter and prepared a couple of booklets"*.[160] These books were called, "The Way to Peter's House" and "What did Peter do". Images contained in the first book included going to the toilet, the road to Peter's house, Peter's carriage house and Peter's horse. Images contained in the second book included Peter's house, Orana Park, and and

---

[153] Source: Original Statement dated 27 June 1992 at page 6

[154] Source: Constable SMITH Job Sheet dated 9 April 1992: *"She has talked to about the creche and she has expressed that everybody is wonderful. She asked her about anybody taking her to the toilet and as said that nobody had. has also said that Peter showed her pooze and weeze in the toilet and he made us drink it."*

[155] Source: Notes of Evidence at Trial at page 110

[156] Source: Notes of Evidence at Trial at page 116

[157] Source: Notes of Evidence at Trial at page 111

[158] Source: Notes of Evidence at Trial at page 117

[159] Source: Notes of Evidence at Trial at page 111

[160] Source: Notes of Evidence at Trial at page 112

Peter in a bath. Both . s and e accepted at trial that they talked about the pictures that they were making in the books and that they both wrote and drew in the books, although generally would tell what to draw.[161] . stated that the detail of the books and how the story was told was at initiative.[162]

26. At the Depositions Hearing gave evidence about discussions between her and prior to or during the course of making the books[163]:

> *"Was there any discussion about houses she has visited, yes, she says she visited 2 houses, one she described as a house and the other she thought was peter's bach. but she saw it as a holiday house. she gave me that information: when we were drawing the pictures, she would talk about the house and the other houses. who first mentioned about the first house, the house in the city, I did. who mentioned the house in the country, she did. i had been told that the children had been to his house and i said lets draw a picture of peters house"*

27. Further discussion which took place during the production of the books is recorded in own hand-written notes.[164]

28. Whilst these series of notes are not dated, it is submitted that they demonstrate that there was a number of conversations between and during which there was direct and repetitive questioning. For example, recorded the following:

> *said she wanted to talk about Peter. Said "well - ask me some questions" I reminded her what she said before about washing bottoms. She said Peter put his finger in her vagina in her bottom (right up her bottom) and then...(I couldn't hear and asked) she finally said nose. A little later I understood and said did he put his finger in your mouth? She said yes he put his finger in her vagina and bottom and his vagina with all the yucky stuff in it."*

---

[161] Source: and Notes of Evidence at Trial at pages 104 and 112

[162] Source: Notes of Evidence at Trial at page 112

[163] Source: Notes of Evidence at Deposition page 297

[164] The notes record:

*"I drew Peter's house + she drew house*
*Talked about what did in rooms - played snap*
*with - went upstairs to Peter's*
*bedroom found Peter's knickers + took them out + all*
*laughed. Peter*
*they had a snooze (not Peter) but played*
*pillow fights. Peter's mother was there*
*Peter's silly games - (Got up saying she was going to vomit.)*
*Saying Peter favourite teacher. Talking about rude -*
*(she introduced word). Doesn't know what rude + what's*
*funny.*
*She said that when it was funny she laughed + when it was*
*rude she vomited"*

29. told the Court she had spoken to her dad about Peter.[165] However, there is no record of these conversations either in the form of a statement from or from at trial.

## C. SHARING OF INFORMATION

30. regularly attended the fortnightly support group meetings which started on 1 July 1992.[166] Although claimed that there was a rule that the children's allegations would not be discussed, certainly the children's behaviours were discussed at the meetings.[167]

31. Furthermore, accepted that she received information about allegations of other children when talked in front of her.[168] tis stated that nd her daughter had one contact prior to 's first two interviews, although had occasional contact with another unidentified non-complainant child. Between s second and the third interview stated that and played together on a further two occasions and also went out together with the social worker on another.[169]

32. mother, on the other hand stated at the Depositions Hearing that she passed information to of allegations made by that concerned

> *Q: "You also passed information to about what your daughter had been saying didn't you?"*
> *A: "I passed information to 's mother about things that had said that concerned*
> *Q: "You will have done that throughout March, April and May?"*
> *A: "I didn't make contact with mother until after the meeting on the 31st March and then we had contact about two or three weeks after that."*
> *Q: "So from then on you had contact where you passed information?"*
> *A: "We have contact when we ring up each other to make times for our children to play and we do talk about behaviours of our children and things that are worrying us. That is not specifically information that our children are always saying. If it comes up in the context in a behavioural problem then we do talk about it."*
> *Q: "And if your daughter has mentioned has been somewhere or something happening you have told mother about it haven't you?"*

---

[165] Source: Notes of Evidence at Trial page 104
[166] Source Notes of Evidence at page 114
[167] Source: Notes of Evidence at page 114
[168] Source: Notes of Evidence at page 114
[169] Source: Notes of Evidence at page 114
[170] Source: Notes of Evidence at Depositons pages 547-548

*A: "Yes, when was first talking she mentioned that was with her. Because they were best friends at the Creche that was quite logical."*
*Q: "Do you have the notes of what was written between your daughter and there in front of you?"*
*A: "Yes."*
*Q: "Can you just tell me what is the first thing that says?"*
*A: ""If we both say it it must be the truth"."*

33. At trial accepted that she received from pages of recorded conversations between and describing allegations.[171]

34. It is submitted that a Specialist Services Unit file note dated 3 August 1992 indicated that information concerning allegations had been passed to who in turn questioned .[172]

35. At trial described the contact between her and as follows:[173]

*Q: "You saw yesterday?"*
*A: "Yes."*
*Q: "Do you see ry often?"*
*A: "Yes."*
*Q: "Do you talk much about things that happened at the Creche?"*
*A: "No."*
*Q: "You don't?"*
*A: "No."*
*Q: "You never talked about things from the Creche at all?"*
*A: "I do sometimes."*
*Q: "Is it right that nd you talked about needles being put up your bums?"*
*A: "Yes."*

[171] Source: Notes of Evidence at page 114
[172] Source: Handwritten notes attached to Specialist Report dated 2 November 1992:
*started talking about Peter*
*drew a line about how much left to tell*
*pooh up her vagina*
*said that P. had put his penis in*
*her bottom, has that happened to you?*
*yes.*
*Later:*
*it was in her vagina - in the bath*
*has also indicated it was at creche*
*Peter put a pin up he bottom*
*made bottom bleed*
*knows coming to talk about scary things*
*doesn't want to talk about penis*
*really afraid"*
[173] Source: Notes of Evidence at Trial page 102