

# THE EVIDENCE OF INTERVIEWING AND CONTAMINATION

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## A. INTRODUCTION:

1.           .....' was born on the
2.           ..... attended the Christchurch Civic Crèche from  
                    from age 2 years 3 months until age 4 years 9 months.  
                    ..... moved from the "Wombles" to the "Big End" part way  
                    through 1988, she attended the Crèche at both the Arts Centre and  
                    Hereford Street locations.
3.           Parents:
4.           At Trial one count related to  
  
                    Count 4.   Indecent Assault alleging ELLIS' hand on her vagina.
5.           This offence was alleged to have occurred between 1 February 1988  
                    and 30 July 1989.
6.           Mr Ellis was found guilty on this count.
7.           ..... is referred to as Child B in the Court of Appeal Judgment  
                    (sometimes referred to at Depositions as Child 2).
8.           The Interview:

DATE	INTERVIEWER	MONITOR	SHOWN?
12 May 1992	Lynda Morgan	Colin Eade	Yes

9.           ..... was aged 7 1/2 at the time of the interview and it had been 2  
                    years 10 months since she had attended at the crèche, she was aged 8  
                    years 8 months at the time of trial.

## B. PARENTAL CONTAMINATION

10.          At trial ..... stated that she initially became aware of the  
                    Crèche inquiry in November 1991 after reading an article in the

newspaper and that she did not attend the Crèche meeting in December 1991<sup>180</sup>. She also stated<sup>181</sup>:

*"As to what discussions I have had with other parents whose children attended the crèche about the allegations, there was one particular boy who was very fond of and kept association with [redacted] and his mother telephoned me at the time there was a meeting held in November 1991. I didn't know what the nature of the allegations were. Other than [redacted] and his sister [redacted] my daughter has not had contact with any of the other children at the crèche since she left."*

11. In her original statement to the Police [redacted] added that she had spoken to a friend and her mother-in-law about the possibility of abuse by Peter Ellis at the creche<sup>182</sup>

12. At trial [redacted] stated<sup>183</sup>:

*"As regards the various things that have been in the papers or on TV, I formed no view as to anything to do with anything I didn't know about."*

13. However, in her original Police statement it would appear that [redacted] had, as a result of her contact with other Creche parents, begun to form the view that Peter Ellis may have abused children and that [redacted] may have been one of those abused.<sup>184</sup>

14. The extent of this contact and information sharing was not explored at trial.

15. [redacted] attended the Knox Hall meeting on 31 March 1992 "because we thought it was important to see whether or not [redacted] should be given an opportunity to say anything about what had happened to her."<sup>185</sup>

16. [redacted] also added in her original Police statement that they had been told by one of the psychologists at the meeting that even if

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<sup>180</sup>Source: Notes of Evidence at Trial, page 45

<sup>181</sup>Source: Notes of Evidence at Trial, p45

<sup>182</sup>Source: [redacted] Statement dated 20 May 1992: "A friend of ours, [redacted] phoned me and we talked for about two hours about whether Peter would abuse children and we decided that he wouldn't. We believed it was rough play, not abuse. When there was the second wave of media attention, [redacted] mother phoned from Whangarei about it. At that time Peter was dismissed."

<sup>183</sup>Source: Notes of Evidence at Trial, p45

<sup>184</sup>Source: [redacted] Statement dated 20 May 1992: "[A]s time went on and more evidence began to be talked about informally among my friends and parents of former kids at day care, I began to accept that I should not assume that Peter was the victim, but rather have another look at whether he may have abused children and that [redacted] may have been a victim of abuse herself."

<sup>185</sup>Source: Notes of Evidence at Trial, p45

appeared to be "okay" she could have been abused and the abuse would "show up" later in her life.<sup>186</sup>

17. Evidence at trial as to the meeting was as follows<sup>187</sup>:

"The meeting gave us the means whereby to ask the questions."

18. Following the meeting parents decided that they wanted to talk to her. At trial told the Court that<sup>188</sup>:

"..we were very careful not to say anything to her about us going to the meeting prior to it and then just raised it with her on Sat. morning the fact there had been a meeting and did she wish to speak to the police about anything, about any bad touching that had happened to her."

19. I claimed that when questioning she followed the guidelines she had received at the Knox Hall meeting.<sup>189</sup> However, had not understood that these guidelines prevented her from directly questioning about Mr Ellis<sup>190</sup>:

Q. "The information provided at the Knox Hall meeting was that you weren't to directly question your child as to who it was and what was done, is that right?"

A. "No that wasn't my understanding"

Q. "What was your understanding"

A. "My understanding was that the child needed to be reassured that the child was safe and that they couldn't be harmed in any way and that they could have an opportunity to talk to the Police if they had had bad touching happen to them."

20. At trial confirmed that she told that the Police believed Mr Ellis had been doing bad touching.<sup>191</sup> also recounted part of the conversation<sup>192</sup>:

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<sup>186</sup> Source: Statement dated 20 May 1992 records: wanted to explore whether or not having the opportunity to disclose possible abuse would have a detrimental effect on or not. He talked to one of the psychologists at the meeting after it had finished and it was explained that if she was apparently okay, but had been abused, that it would show up later in her life around puberty."

Note that the initial hand-written statement, taken by Former Detective Colin EADE includes the following text which has been ruled out and not included in the typed signed statement: wondered if had been abused and hadn't shown signs of and need it to come out. He spoke to one of the psychologists after the meeting. Because of what she said I thought there was sufficient grounds for her to go in for a video."

<sup>187</sup>Source: Notes of Evidence at Trial, p33

<sup>188</sup>Source: Notes of Evidence at Trial, p45

<sup>189</sup> Source: Notes of Evidence at Trial, p46

<sup>190</sup>Source: Notes of Evidence at Trial, p48

<sup>191</sup>Source: Notes of Evidence at Trial, p48

<sup>192</sup>Source: Notes of Evidence at Trial, p33

"Q. Were you present when your wife explained to [redacted] that the police believed Peter had done bad things in terms of bad touching to children?

A. Yes I was present when my wife told [redacted] Peter had been arrested by the police because it was thought[t] he may have done bad touching of the children yes

Q. Did she know what bad touching was?

A. Yes she did."

21. At the depositions hearing [redacted] ; recollection of the conversation was as follows<sup>193</sup>:

"I had a discussion with my daughter about the defendant Ellis, we explained to [redacted] that the police believed that Peter had done bad things in terms of bad touching [with] children and we said that the children were safe. We followed the guidelines that had been given out at the meeting about how to raise this sensitive matter with children without putting ideas into their head so to speak. We told her the fact that the police believed he had done bad touching to children and she said is he has he got any money, I said yes, she said has he got somewhere to live I said yes she said well is he going to go to jail I said I don't know she said well if he has been doing bad touching then he should go to jail. We said would you like to talk to the police about this and she said yes. So she was actually very angry and said she had turned us into stone and that our respective private parts had been transferred, funny things like that went around singing and actually punched me in the vagina a couple of times."

22. It would appear from [redacted] original Police statement that [redacted] was further questioned by her parents over lunch.<sup>194</sup>

23. The Crèche Investigation Form, completed by Detective Eade on 15 April 1992 from information given by [redacted] recorded that [redacted] was also told that Mr Ellis had been "bad touching in private places"<sup>195</sup>

"Spoke to [redacted] after the meeting. Told her Peter was in trouble with the Police. Children didn't have to be afraid of him any more. Told her there was hurting and bad touching in private places" (emphasis added)

<sup>193</sup>Source: Notes of Evidence at Depositions, p381

<sup>194</sup>Source: [redacted] statement dated 20 May 1992 records: Over lunch we asked her if she wanted us to ring the Police and tell the Police that she wanted to talk to them. She said, "Yes". When we first talked to her we talked about Peter doing bad things to the children. When we talked with [redacted] over lunch about ringing the Police, we said that it also meant talking about bad touching. Other kids had had bad touching from Peter. She put her hands on her hips and said, "Me too"."

Note that the initial hand-written statement, taken by Former Detective Colin EADE includes the following text which has been ruled out and replaced before the typed Statement is made: "Then we asked her over lunch to ringing the Police, then we said that it also meant talking about bad touching. Other kids had said bad touching from Peter."

<sup>195</sup>Source: Creche Investigation Form dated 15 April 1992

24. [redacted] indicated at trial that during the course of the Crèche investigation, they attempted to shield [redacted] from their emotions<sup>196</sup>:

*"We have just shared our feelings of despair between each other, [redacted] and I, but we have tried to do that, it might seem terribly artificial for a whole year but we have scrupulously tried to do that."*

25. However, it would appear that [redacted] was aware of the her parents' emotions and at trial stated that she was aware that her mother was sad about the Crèche closing down and "had a little cry about it because she felt upset."<sup>197</sup>

26. [redacted] indicated in his original Statement that there were discussions with [redacted] following her Specialist Services Unit interview in May 1992 which resulted in [redacted] making further allegations against Mr Ellis including that he had hit and grabbed her in the crutch, had tried to kiss her on the neck, had pushed her in the sand pit and had pulled her off the climbing frame.<sup>198</sup>

27. [redacted] also indicated at trial that her father had taken her back to the Crèche before its closure and left her there for a period of time.<sup>199</sup>

### **C. SHARING OF INFORMATION**

28. [redacted] was identified by [redacted] attending one or two of the support group meetings which commenced in July 1992.<sup>200</sup> However, the extent to which [redacted] was in contact with other parents was not explored at trial.

29. Likewise, whilst [redacted] accepted at trial that she had contact with the mother of one of the Crèche children, her comments made in her original statement to the Police indicating that she was in contact with a great deal more parents was not explored at trial.<sup>201</sup>

<sup>196</sup>Source: Notes of Evidence at Trial, p45

<sup>197</sup>Source: Notes of Evidence at Trial, p39

<sup>198</sup>Source: Original Statement dated 22 July 1992 records: "Now, after this inquiry began and [redacted] made her evidential video, she has disclosed to us that he would hit and grab her in the crutch. She has also since disclosed to us that Peter tried to kiss her on the side of the neck (which she did not want or like); that he pushed her over face down in the sandpit; and that he pulled her down off the top of the climbing frame to fall to the floor. She had not been hurt, but it had been a "mean thing to do", and it had upset her a lot and had cried.

<sup>199</sup>Source: Notes of Evidence at Trial, p36

<sup>200</sup>Source: Notes of Evidence at Depositions, p 366

<sup>201</sup>Source: Statement dated 20 May 1992: "[A]s time went on and more evidence began to be talked about informally among my friends and parents of former kids

30. However, [redacted] confirmed at trial that [redacted] remained in contact with [redacted] both children from the Crèche.

#### D. OTHER SOURCES OF CONTAMINATION

31. It would appear when [redacted] had attended the Crèche she had expressed dislike of Mr Ellis because he teased her, calling her [redacted] tickling her and tying her shoe-laces together.<sup>202</sup>

32. [redacted] added that he and his wife raised the teasing with the supervisor, Gaye Davidson, and that [redacted] later said the teasing had stopped.<sup>203</sup>

33. A further incident occurred in early November 1991 when [redacted] and her husband had taken [redacted] to a Guy Fawkes display<sup>204</sup>:

*"As a result of expressing negative feelings about the creche, I just told her off and said it was very unfair of her to be so negative and I told her off very strongly so we didn't go to the fireworks display and we went home and she cried all the way home in the car."*

34. Despite [redacted] willingness to complain about teasing, prior to being questioned by her parents in April 1992 [redacted] had not referred to Mr Ellis in terms of "bad touching", notwithstanding that her parents had discussed with her bad touching<sup>205</sup>:

A. *"What my husband and I explained to our daughter is her body is her own body and so if she wishes to give a hug to somebody and they respond that is fine, that is good touching. If she has anyone touch her that she doesn't like then that is bad touching, she has a right to say no to being touched by another person if she wishes. That is the extent to which we have talked about things of that nature."*

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*at day care, I began to accept that I should not assume that Peter was the victim, but rather have another look at whether he may have abused children and that [redacted] may have been a victim of abuse herself."*

<sup>202</sup>Source: [redacted] Original Statement dated 22 July 1992: *"..the type of teasing by Peter that [redacted] had complained about included name calling (she had been called [redacted] excessive tickling, and tying her shoe-laces together so that she fell over."*

<sup>203</sup>Source: [redacted]; Original Statement dated 22 July 1992: *"[redacted] complained about it several times to my wife and I, and we then complained to Gaye Davidson, the supervisor, who said she would have a word to Peter about it. [redacted] later said that the teasing had stopped."*

<sup>204</sup>Source: Notes of Evidence at Trial, page 44

<sup>205</sup>Source: Notes of Evidence at Trial, p48-49

Q. "Can you tell us whether or not your daughter would understand bad touching would include a touching in the genital area that was unwanted?"

A. "That was unwanted yes."

35. \_\_\_\_\_ at trial was able to recall being instructed by her parents in the topic of keeping safe<sup>206</sup>:

Q. "Your Mum would have talked to you though about keeping yourself safe and that sort of thing?"

A. "Yes a little bit"

36. \_\_\_\_\_ stated at trial that \_\_\_\_\_ did not see any media reports or television relating to the inquiry.<sup>207</sup> However, whilst \_\_\_\_\_ accepted that she was not allowed to watch the news, she stated that she could read newspapers<sup>208</sup>:

"A. No I am not allowed to watch the news but I can read newspapers.

Q. Did you read the newspapers?

A. But once but I haven't read it after the last two fortnights."

37. \_\_\_\_\_ was in counselling before the trial began and her counsellor was her support person at trial.<sup>209</sup>

38. \_\_\_\_\_ alleged, in her video interview, that during the alleged abuse (the poking in the crutch) the other teachers were at the other end of the crèche looking at the deaf children.<sup>210</sup> However, there were no deaf children at the Christchurch Civic Crèche, but there were deaf children as part of an integrated class at the school \_\_\_\_\_ later attended.<sup>211</sup> At trial \_\_\_\_\_ was questioned as follows<sup>212</sup>:

Q. "You are quite sure the poking of your crutch happened when the deaf children were down the other end, is that right?"

A. "I think so"

Q. "Peter will say that he never did this to you and we are wondering whether it is possible that what you are remembering about being poked in the crutch could have happened where the deaf children were?"

A. "I don't know if it was at the big end or the small end I just can't remember that actual picture, I just remember he did poke me in the crutch."

Q. "You see there were no deaf children at crèche, okay, so when you remember deaf children being there it might be?"

A. "I didn't think there was any deaf children, I didn't quite remember."

<sup>206</sup>Source: Notes of Evidence at Trial, p39

<sup>207</sup>Source: Notes of Evidence at Trial, p45

<sup>208</sup>Source: Notes of Evidence at Trial, p39

<sup>209</sup>Source: Notes of Evidence at Trial, p38

<sup>210</sup>Source: Video Interview Transcript p32

<sup>211</sup>Source: Notes of Evidence at Trial, p38

<sup>212</sup>Source: Notes of Evidence at Trial, p40

## E. THE SSU VIDEO RECORDED INTERVIEWS

39. Mr Ellis was convicted on one count relating to \_\_\_\_\_.
- (a) Indecent assault by touching her vagina with his hand at the Crèche between 1 February 1988 and 30 July 1989, this allegation being recorded on at \_\_\_\_\_ 12 May 1992 interview.
40. This interview of \_\_\_\_\_ was characterised by leading questions, invitations to speculate, lack of interviewer follow up, and the use of social pressure.

### LACK OF INTERVIEWER FOLLOW-UP

41. The interviewer and \_\_\_\_\_ were discussing whether \_\_\_\_\_ liked Peter Ellis, in response to a suggestive multi-choice question said that she did not like Peter from the beginning (at page 12):

Q: *"And do it's nice and clear aye and when you first went to crèche did you like Peter when you first went to crèche because you said you didn't like him was that right from the start or just."*

A: *"Right from the start"*

and then at page 14:

A: *"Ah no no no. He I did like him but one day we were just found out, I found out that he was a mean bugger."*

42. The interviewer fails to follow up \_\_\_\_\_ response, an obligation that was necessary if the child's account was to be validated. The later response of \_\_\_\_\_ ought to have been followed up with \_\_\_\_\_ particularly given that \_\_\_\_\_ had indicated that there was once a time when she liked Peter (this is revisited at page 49 of the interview where she says, "Because I really did think he was a nice person once"). Instead of asking how she "just found out one day" the interviewer then returns to the nicknames issue, asking "So he used to call you

### CONTAMINATION

43. It is apparent that \_\_\_\_\_ came to the interview primed to talk about Peter Ellis:

Q: *"Have to make room for me mate because two of us have got to sit here"*

A: *"Did you know my dad made this"*

Q: *"Did he"*

A: *"Yep"*



Q: "He's a good sole. Alright are you comfy"  
A: "Ah ha"  
Q: "Right okay now to start off with I have to ask you a whole lot of ordinary questions about"  
A: "Peter" (at page 1)

and (at page 8):

Q: "..And you came up here with you mum and dad, that's  
A:  
Q: and what have you come up here to talk to me about, what's the reason that you've come to talk to me"  
A: "About Peter and what things he did to me"  
Q: "Ah ha."  
A: "And my friends"  
Q: "Right okay so tell me whose Peter"  
A: "Peter is a man who worked at day care and who was mean to children at the day care"

and at page 9:

Q: Right so this stuff that that about Peter have you told anyone else or this stuff or it is this um.  
A: "I told um, what's the name, um.  
Q: Sue"  
A: "Yeah Sue"  
Q: Yeah"  
A: "Told Sue about Pet, a little bit about Peter."  
Q: "And who else have you told. Have you told mum and dad at all."  
A: "Yeah"  
Q: "And so have you told mum and dad everything or is there, there are other things that you haven't told them."  
A: "Mum I've told mum and dad everything"  
Q: "In hym. So how come you got talking about Peter with mum and dad, what happened to make you talk about it with them."  
A: "Because they asked me oh well went to the fireworks one day"

44. It is submitted that contrary to recommended procedure the interviewer does not explore with what information she had been given about coming to the interview and what topics were to be discussed there.

45. Similarly, the interviewer does not explore what basis has for saying that Peter Ellis "was mean to children at the day care". This is of particular relevance given that it is clear that has talked with her parents and Sue Sidey about Peter Ellis. The interviewer makes the assumption that had direct knowledge about the mean things Peter "did" to children.

#### PERMISSION TO SPECULATE

46. Early in the interview the interviewer encourages to speculate:

Q: "Right and did what did think about that" (at page 11)

although responds with what she says did as a result of being sat on, the indication was that was allowed to guess what others were thinking, to speculate.

### INTERVIEWER BIAS - LACK OF NEUTRALITY

47. Rather than maintain a neutral stance the interviewer responds with "right" to comments made by For example, when the interviewer says "What's the reason that you've come to talk to me?" replies "About Peter and what things he did to me" then says "And my friends" to which the interviewer says "Right". The interviewer also says "Right" after says "...Peter was mean to me there". The interviewer frequently says "Right" after makes an incriminating utterance (see for example, at pages 13, 15, 16, 17, 18, 19 of the interview).

48. The interviewer indicated to that she was only interested in hearing about the "bad" things about Peter Ellis, for example, at page 10:

Q: *"..maybe it would be a good idea to tell me some of the mean things that you felt that Peter did and perhaps we could, we could have two different lists, we have one list of mean things that Peter did to you and the other one that he did to the other kids that you said you."*

A:

*"Okay"*

and at page 12:

Q: *"Yeah okay so that was something that you saw Peter do that you thought was mean so will we put will we put um mean things here"*

A: *"Yeah."*

Q: *"Okay so tell me if so we've got two lists, we've got other children and we've got So what was some mean things that you think that he did to you."*

and at page 13:

Q: *"So tell me some other mean things that he said to you Megan"*

The interviewer does not suggest a corresponding list of good things done by Peter.

49. The interviewer then directly questions in a suggestive way about other "mean" things about Peter Ellis (at page 14):

Q: *"And what other things can you remember that he said."*

A: *"Nothing else I don't think"*

Q: *"Okay."*

A: *"Nothing else"*