CRITIQUE OF THE EICHELBAUM REPORT AND MATTERS ARISING FROM THE ELLIS CONVICTIONS

Written and researched by **Jonathon Harper** M.A. (Psychology) B.A. (Philosophy and Psychology) Dip.Tchg. (previous member of the Social Worker Association of New Zealand – ex -DSW social worker and ex - schoolteacher)

Edited and assisted by Richard Christie

Revision number 23.0 January 2006

This document can be regarded as a work in progress. Until it is formally published, new information may be added as it comes to hand, and corrections may be made. All suggestions are welcome and can be made to Jonathon.harper@xtra.co.nz

The Eichelbaum Report is the report of the ministerial inquiry into the reliability of the convictions against Peter Ellis for child abuse, prepared for the Honourable Phil Goff, completed in February 2001, released in March 2001.

Disclaimer

The author does not claim that anyone mentioned in this document has acted out of malice or in bad faith, although he has concluded that serious and avoidable mistakes were made in the course of the Christchurch Civic Child Care Centre case. Therefore, let no one claim that he says otherwise. All opinions, unless quoted directly are the author's, any errors of fact are inadvertent.

In particular, the motives of all the parents of the children involved in the course of the case will not be maligned in this document. Their genuine concern for their children's well-being is acknowledged by the author.

Preface

Sir Thomas Eichelbaum found that the way the child interviews in this case were conducted was "of a good overall quality" even by present day standards. He reported that one of his two overseas experts Dr Louise Sas concluded that the contamination of evidence by the parent's prior questioning of the children was not significant. The other expert, Professor Graham Davies, did not report a conclusion on this point. Eichelbaum concluded that all remaining convictions are safe. This report evaluates the Eichelbaum report from a scientific viewpoint, looking at relevant findings published in reputable journals. It was prepared in consultation with a number of leading experts within New Zealand. Much of the relevant science cited is within the discipline of psychology, specifically in the areas of human memory (especially children's) and suggestibility. This science addresses the effects of interview techniques on the accuracy of children's recall, both of real and imagined events.

Good science is also based on sound philosophy and the use of logic. Section (1) of this report, on bias, includes a short analysis of logic and what constitutes good scientific protocol.

The primary issue examined in this report is the safety or otherwise of all the convictions against Peter Ellis. I examined whatever information I consider has bearing on this, as no one had imposed any terms of reference upon me. Furthermore, and regardless of the conclusions made in regard to the safety of the convictions, there were secondary issues that arose as a result of this analysis. These issues are of public importance. I include a discussion section, after the formal conclusions of the report, which looks at issues raised in terms of our legal system. I discuss possible law changes that may be needed for the better resolution of similar cases in the future.

Acknowledgements

I am indebted to the following people who have provided encouragement, suggestions and some of the material: Auckland University professor of psychology, Michael Corballis ONZM (especially for his comments on the nature of memory) Richard Christie (who brought the document back to life), and Dr Barry Kirkwood, who opened my mind to the reality of "major systemic failure" and the immature state of psychology as a science.

I thank Nancy Sutherland for her input into the editing of this document.

I am also grateful to Raymond Ahipene-Mercer (Wellington City Councillor) for his general support and encouragement.

I gratefully acknowledge the meticulous record contained in Hood's landmark book, *A City Possessed* (2001). Excepting direct quotes from Hood, any interpretations given of her findings are my own.

Jonathon Harper, October 2003.

Note on pseudonyms

Publication of the identities of the complainants in the Ellis case is prohibited by court order. This document uses dual aliases in reference to complainants and families. Official court documentation and Eichelbaum's report utilise single letters O,P,Z etc as ciphers for the complainant children. These codes are matched in this document to the pseudonyms used within Lynley Hood's book, *A City Possessed*, 2001, Longacre Press.

Contents

Introduction

Summary of the case history

On 20 November 1991, only 17 days after the Sunday News newspaper featured an article that claimed that satanic ritual abuse was rampant in New Zealand, a mother of an infant attending the Christchurch Civic Child Care Centre, made to supervisor Gaye Davidson the first complaint of “inappropriate sexual behaviour” against Peter Ellis. Ellis, 33, was an experienced, qualified pre-school teacher employed by the childcare centre. Ellis was suspended from work the following day. The mother, referred to by author Lynley Hood as Ms Magnolia, formally complained to police on 25 November. A mass meeting of Civic childcare centre parents was held in December, and rumours fuelled by gossip and media reports flew about amongst the parents and Christchurch citizenry. The first formal allegation made by a child arose in January 1992, but this child had never been enrolled in the Civic childcare centre, and was not a subsequent witness at the trial. On 23 March 1992, the Holmes television show presented an item on the childcare centre. During that item, Karen Zelas (the prosecution’s expert witness) talked about the possibility of abuse at the childcare centre, and listed behaviours that could indicate abuse. On 31 March, there was another significant meeting of parents in Knox Hall, at which a flyer listing “indicators of sexual abuse” was handed out to parents.

Eight months later, at a depositions hearing in November 1992, Peter Ellis and four female colleagues faced 60 charges of sexual offending against 20 children in their care at the Christchurch Civic Child Care Centre. In November 1992, at a depositions hearing, Peter Ellis, and four female colleagues faced 60 charges of sexual offending against 20 children in their care at the Christchurch Civic Child Care Centre. Included was a charge that Ellis and one of the women co-workers, Debbie Gillespie, had sexual intercourse, in full view of the children, in the hall outside the toilets on Civic childcare centre premises. In another charge, they were said to have all danced naked in a circle with the children, singing cowboy songs with a guitar. The only charge against the co-workers that was dismissed at depositions was the one claiming Gillespie had sex with Ellis.

Between the depositions and the trial, the crown solicitor, Brent Stanaway, had the options of bringing new charges (based on the same evidence), re-laying charges dropped at the depositions, or of dropping some or all charges. Stanaway dropped six complainant children as witnesses, and reduced the number of charges involving the remaining children. Two parents withdrew their children as witnesses (Hood Chapter 11). Consequently one female worker was discharged.

On 6 April 1993, still during pre-trial hearings, the three remaining female co-workers were discharged. Justice Williamson reluctantly discharged the three women on grounds that included that the evidence was insufficient, that there was a potential for prejudice against the accused women, and that an “unavoidable delay” would result in hardship to the child witnesses. Later in April Ellis was indicted on 28 charges. Many charges related to children of parents who were counsellors, social workers or therapists. Of the complainants whose accusations resulted in conviction, three of the seven were children of such parents (Haden 1997). According to Hood (p200) five of the parents of these seven children worked in the sexual abuse field.

By June, the judge had further dismissed three charges against Ellis (one child denied the allegations in court and another had stated that the interviewer had "taught" her what to say). Ellis was indicted on charges of various acts of ritual and sexual abuse of the children, and then convicted on sixteen counts. Not guilty verdicts were returned for the remaining nine. On 22 June he was sentenced to 10 years imprisonment.

Ellis appealed against his convictions in 1994 and as a result the three convictions relating to child complainant "N/Zelda Cypress" were quashed as the girl had retracted. She was one of only four of the eleven complainants who had no not-guilty verdicts returned on charges relating to their allegations. Of these four, only one other had resulted in more than two guilty counts. Child N/Cypress was the eldest and on that account had been stressed as being particularly reliable by the prosecution. Following this appeal only 13 of the original 28 counts that had made it to trial remained. The number of children related to the charges had been reduced from 20 to 6. The Court of Appeal rejected criticism of the interview techniques.

In December 1997, Ellis's Counsel, Judith Ablett Kerr petitioned the Governor General for a pardon or alternatively, to return the case to the Court of Appeal (Hood p596-). During 1998 Ablett Kerr applied to extend the scope of reference for the appeal, and also applied for bail for Ellis. The case returned to the appeal court in 1999.

In January 1999, a report was then commissioned for the Secretary for Justice by former judge Sir Thomas Thorp. It raised concerns that the interview techniques may have been flawed due to inappropriate questioning and suggestion. Finally, in October, the Court of Appeal hearing dismissed the appeal, saying that the judge had placed 'no undue restriction on the defence'. However, it also expressed reservations in regard to some of Zelas's testimony (Hood p602). Furthermore it suggested, on no less than four separate occasions, that a commission of inquiry could better evaluate aspects of the case.

On 2 February 2000 Ellis completed his sentence. He had refused to apply for parole, or to take any therapy, stating that both were inappropriate, as he was innocent. In March the Eichelbaum Ministerial Inquiry was established and its report was released in March 2001.

A long awaited book by Lynley Hood, A City Possessed, appeared in 2001. The book had been expected to be published earlier, but the finished work was lengthier than stipulated within the contract between Hood and her publisher, Canterbury University Press. The publisher wished to abridge the work and a subsequent dispute resulted in the book being published by Longacre Press. The Minister of Justice, Phil Goff, publicly refused to read Hood's book. It subsequently won first prize in the non-fiction and reader's choice sections of the Montana Book Awards 2002. In 2003 Hood was awarded a doctorate in literature from the University of Otago for this book and three other works. Two of the examiners said she would have received the doctorate for *A City Possessed* alone.

In 2002 (May) Val Sim, chief legal counsel to the Minister of Justice, prepared a report on Hood's book for Phil Goff. The report looked at some of Hood's major claims and took a contrary position to that of the recent tide of reviews favourable to Hood (e.g. that of criminologist Professor Newbold 2001). Sim's report is a legal analysis, and as such it dismissed all of Hood's major claims in terms of there having been a miscarriage of justice. Most specifically it surveyed Hood's work for the appearance of any new evidence.

In August 2003, publisher Barry Colman published in the Sunday Star Times (a national Sunday newspaper) transcripts of the evidential interviews that were conducted with three of the children whose testimony resulted in convictions.

On 16 August 2003, two of the six children, Child X/Bart Dogwood and Z/Kari Lacebark, now teenagers, publicly replied in the Dominion Post newspaper to the criticism, and stood by their testimony, that had been published the week earlier.

In response to raging public controversy the Minister of Justice referred two petitions calling for a Royal Commission of Inquiry into all aspects of the case to Parliament's Justice and Electoral select committee. This happened on the 3 September 2003. More than one hundred prominent New Zealanders had signed the first of the petitions.

After an unprecedented 23 months of consideration the committee delivered its non binding recommendations on 8 August 2005, a day or two before Parliament arose and one month prior to a general election. Although it did not recommend a commission of inquiry the committee did recommend that the path of appeal to the Privy Council be cleared for Ellis and that a formal body to examine possible miscarriages of justice be established, such as had already been set up in the UK.

In April 2006 Ellis's counsel Judith Ablett Kerr announced an appeal would be lodged with the Privy Council despite, eight months out from the Justice and Electoral select committee's recommendations, there still being no indication from the Attorney General that such an application would be allowed.

Howard Broad, who as a police inspector in 1992 played a significant role in the original investigation, was appointed as Commissioner of Police and became the New Zealand's highest paid public servant.

Public Criticism of the case and verdicts

There has been a steady stream of public criticism of the verdicts from many different sources. A summary of some of the significant reports in the public arena will outline the sorts of concerns that Eichelbaum would need to address in order to satisfy the public that the matter has now been closed. To my knowledge the only other verdict to receive this sort of negative review is that of Arthur Allan Thomas.

The Christchurch Press after initially publishing an article reporting SRA allegations, and the allegations against Ellis, a series of articles by court reporter Martin Van Beynen severely criticised the verdicts.

1993 First do no Harm (a book of 167 pages) was published by Dr Felicity Goodyear-Smith. Because the case was sub judice at the time, she published the chapter directly criticising the Civic childcare centre case in the American Journal of the Institute for Psychological Therapies (Goodyear Smith1993b). In it, she severely criticised the way the evidence was gathered and analysed on scientific grounds and made direct comparisons with overseas cases.

1995 Assignment TV documentary programme *Ellis Through the Looking Glass,* interviewed Professor Stephen Ceci about the case, and reversed the spin of previous programmes from belief to disbelief. Videos of some of Ceci's relevant experiments were shown.

1995 Michael Hill a sociologist at Victoria University and expert in the social phenomenon of *witch-hunts* called for an Inquiry into the case. Hill was to follow this up in 1998 with his treatise *Satan's excellent adventures in the Antipodes.*

1996 North and South published "Second Thoughts on the Christchurch Civic Crèche case" by David McLoughlin. An earlier article had not expressed much doubt. This one certainly did.

1996 NZ Skeptics The 1995 TVNZ Assignment documentary critical of the Civic childcare centre child abuse case was singled out for accolades at the Skeptics annual conference. David Mcloughlin also received awards for his work in the documentary and for his follow up North and South article (see previous entry).

1997 Sunday Star Times Frank Haden's article on June 22 did not beat about the bush. "How on earth can this abuse case have happened" was the headline. Since that article Haden has periodically written and questioned the convictions.

1998 *Satan's excellent adventures in the Antipodes* by Michael Hill published in *Issues in Child Abuse Accusations* 1998 10. In this article Hill traced the development of ritual abuse dogmas in the two decades following 1980. Hill rationalises that the forces driving Civic prosecution had roots in the panic resulting from such imported belief systems.

1999 Thorp report (for the Secretary of Justice) came out, and was quoted in the media. It was written by retired high court Judge, Sir Thomas Thorp in response to the petition for a pardon. This considered reports from Hamilton psychologist Barry Parsonson, and some comments from Cornell University psychologist and child researcher Professor Stephen Ceci. Thorp urged the Justice Minister or Crown Law office to seek a formal opinion from Dr Ceci.

Journalist Warwick Roger, (Metro writer and ex- editor) published a criticism of the way the case was conducted. Unfortunately, I did not keep a copy. It was around this time.

2000 Crime in New Zealand was republished in a substantially revised edition. This is a criminology textbook, by Sociology Professor Dr Greg Newbold from Canterbury University. I quote from this in several places in this report.

2001 A City Possessed by Lynley Hood. Hood's book won first prize in the non-fiction section of the Montana Book Awards 2002. At 672 pages it is the most detailed single volume overview of the case yet published. I quote extensively from it.

2001 New Zealand Law Journal published a review of Hood's book by an Australian Lawyer. It concluded (p361) that "It should focus our attention on necessary reforms".

2002 New Zealand Law Journal (in February) published an editorial significantly more favourable to Hood's conclusions, "*no one … can be happy that the convictions are safe*." It was also scathing of some shortcomings of our legal system discussed by Hood. "*If…you argue you*

are innocent and have only been convicted because of misjudgement…the court of appeal will refuse to exercise the power parliament intended it to have."

2003 Canterbury Criminal Bar Association. At a special meeting called in March 2003 to discuss the case the Canterbury Criminal Bar Association voted unanimously to recommend that the government establish a Royal Commission of Inquiry into the case, presided over by a judge or judges from outside New Zealand.

2003 Petition. On 24 June 2003, a petition organised by National MPs Don Brash and Katherine Rich calling for a royal commission of inquiry into the case was presented to parliament. Its signatories included retired high court judge Laurence Greig, nine QCs, former Auckland police chief Bryan Rowe, nine professors of law, historian Michael King, and many experts in relevant scientific, legal and social fields. It also included two previous prime ministers of New Zealand. In all, 140 highly prominent New Zealanders signed. During a period of approximately ten days, eight hundred other members of the public added their names to those of the prominent signatories, amongst them a girl who had been one of the complainant children in the deposition hearings.

2003 Nigel Hampton, QC wrote about the case in the Christchurch Press on 2 July 2003. Mr Hampton is a former Chief justice of Tonga and chair of NZ Law Practitioners' Disciplinary Tribunal. He argued against the Minister of Justice's continued call for fresh evidence before possible re-examination of the case. Hampton said that there was little likelihood of fresh evidence ever surfacing. He said that the evidence presented at the trial was restricted, and that the case had never been properly examined in its entirety. He argued that a royal commission of inquiry would allow for that to happen, and that in essence, that was all that was required and all that was asked for.

2003 Editorial consensus. On July 5 2003, Listener editor Finlay MacDonald joined at least ten other national, regional and metropolitan newspaper editors who have added their voices to the call for a Commission of Inquiry since January 2003 (the single contrary opinion being that of the New Zealand Herald). MacDonald explained why he had personally signed the petition. He observed that there have been no outbreaks of satanic ritual abuse allegations since the Ellis trial despite all the overstatement surrounding the prevalence of ritual abuse at the time of the trial. He criticised Goff's insistence on new evidence as being meaningless since there was no verifiable or proper evidence presented at the trial in the first place.

2003 NZ Skeptics Inc. In September 2003 the Skeptics awarded Justice Minister Phil Goff with the *Bent Can-opener Award* for refusing to yield to calls for a Royal Commission of Inquiry. Membership of skeptics appears to consist of a high proportion of university academics.

It is apposite to note that many early media reports were not critical of the verdicts (for example, the first North and South story in Sept 1993 by Cate Brett; and the first TV stories). This reversal of opinion, after an initial rather tabloid sensational approach is common to a few other news stories such as the Lyprinol (green lipped mussel extract) "cancer cure", Dr Mylan Brych's pseudo cancer cures, and Nicky Hagar's rather inflationary claims of a case of massive GE "contamination" in corn crops.

2005 Parliament: Justice and Electoral Select Committee. In reporting its recommendations in August on the 2003 petitions the committee noted:

> *"…the committee is of the view that the operation of the legal system in respect of this case did not inspire adequate public confidence in the operation of the legal system. A justice system should lead to certainty. In this case it seemed to increase the sense of uncertainty." ... "There is clearly public anxiety about the handling and outcome of this case."*

The Eichelbaum Report

The Eichelbaum Report includes the reports of two "experts": Dr Louise Sas from Canada, and Professor Graham Davies from England. I refer to these as "the Sas report" and "the Davies report" and each has its own page numbering system. In the course of preparing the Eichelbaum report, only videotapes of the evidence presented in court by the children that resulted in guilty verdicts were analysed by the experts. This allows for the presumption they were the only tapes viewed by the experts and possibly by Eichelbaum himself. In addition, this ambit was even further restricted as the tapes of the girl (N/Zelda Cypress), who retracted after the trial, were not examined either. Therefore Sas, Davies and Eichelbaum only viewed a fraction of the children's accounts, as at least 127 children in total were officially interviewed. Eichelbaum provided a copy of the depositions hearing and of only "the relevant parts of the trial record" to the two experts.

Throughout the report, it is virtually impossible to discover which parts of each interview lead to precisely which charge. This makes it a very difficult and confusing document for any reader unfamiliar with the trial record. I found no discussion of the depositions hearing in the report.

The overall structure of the Eichelbaum report is unfocused. For example, I had to keep referring back to pages 13 and 14 for basic information on each child. I still do not know the ages of all the children at the time of their first formal interview (see appendix 2). After listing the items of good interviewing practice, Eichelbaum failed to consider how the investigation measured up to each item in turn, in order to give an overall picture of the standard of the interviewing. Instead, we get separate summaries of the interviews, each child in turn, in Sas's and Davies' reports. These analyses were not well integrated with Eichelbaum's separate analysis of each child, and each writer discusses the children in a different sequence.

As already noted the Eichelbaum report has no clear summary of the detail of what exactly was claimed by each child in relation to each charge. I would like to examine this in more detail. This omission makes it difficult to know what testimony was believed and what was rejected. Allegations about events outside the childcare centre occurred later in the interview process, and are less believable, not only because they are bizarre and unlikely, but also because there is no corroborating evidence that the children were in the locations claimed. For example, it is not proved that the children made more than one brief visit to Ellis's temporary Hereford Street address, and on that occasion other childcare centre staff were present (Hood pp.203 - 205). Yet some of the testimony placing the offences at this address resulted in guilty verdicts.

In section 7 (p75 – 84) Eichelbaum summarises good practice principles for investigating children's allegations of sexual abuse. For the first part (investigative practice), he seems to over-rely on Sas (p76) and focuses on formal interview processes, giving insufficient attention

to the prior interviewing of the children by parents, police, social workers and therapists. All of these types of interviews occurred before any formal allegations arose, and before any charges were laid.

With regard to interviewing techniques, Eichelbaum narrows his focus to only include the aspects that he thinks were at issue in this case (p79). In my view, that is too limiting, as an overall picture is required. When determining what is good practice for these formal interviews it is not clear whether he has any more than applied the 1996 Joint NZCYPS and Police Guidelines. In this section Eichelbaum gives no references to the scientific sources upon which these principles of practice are based. I find this inadequate.

The Eichelbaum report contains very brief summaries of the content of submissions by interested parties: Counsel for Mr Ellis; The Solicitor-General, New Zealand Police and Department of CYFS; Group of parents; the Commissioner for Children. Eichelbaum has been criticised by commentators, such as Hood, for not taking submissions from non-complainant families, other Civic childcare centre staff, or the family of the child who retracted. In this regard the terms of reference may have been too limited.

Included also is a critique of overseas reports - the Cleveland, Orkney and Dale Akiki (San Diego) cases. Miscarriages of justice appear to have occurred in all three, primarily due to flawed interviewing techniques. In addition, there is reference to the New South Wales report on their public inquiry into police corruption which included criticism of paedophile investigations. Eichelbaum simply gives a précis of each report and later lists the points, pertinent to criticisms levelled against the interviewing practises in the Ellis case, in regard to good investigation and interviewing practice.

These cases will be addressed in more detail later, but it seems incredible that Eichelbaum finds little in common with the problems reported overseas and the Ellis case. He does not refer to the many direct comparisons as made by others. For example, Newbold (2000 p86), Goodyear Smith (1993b).

The terms of reference

Many commentators have claimed that the terms of reference in the Eichelbaum report were not wide enough, while Eichelbaum claims in his report that they were. They are reprinted in this report, appendix five.

The terms of reference resulted in Eichelbaum not examining photographs of the Civic childcare centre (p21). I consider this to be wrong, because whilst this may have been considered during the 1999 appeal, the layout was highly relevant to an overall consideration of the verdicts. Davies makes this abundantly clear in his report (p39).

> *"They* [allegations] *need to be studied in the wider context of the investigation. For instance, do the toilet facilities at the crèche correspond in their layout and construction to those described by the children?"*

A key term used throughout the report is "best practice." Best practice needs to be looked at in terms of *current* scientific thought and research. I would suggest an alternative term, *sound*

practice, which suggests a scientific rather than legal (precedence following) approach. Eichelbaum was instructed to consult "*at least two*" international experts on the interviewing of children. He consulted *only* two. He refused to consult Dr Stephen Ceci, who is probably the foremost expert in the world, judging by the number of research papers he has published in highly regarded scientific journals. The reason given, which I find unacceptable, is that Ceci had already expressed a tentative opinion on aspects of the case. This viewpoint was also expressed by Justice Thorp who having noted Ceci's prior contribution to a television programme wrote in his 1999 opinion for the Secretary of Justice:

> *"..his [Ceci's] opinion could be of particular value. There seems no reason why the Ministry, or Crown law if it preferred, could not seek his opinion."*

Why not give Ceci all the information, so he can make a more informed conclusion? Ceci's scientific and dispassionate approach is beyond question. In this regard, Eichelbaum failed to use the full scope of the terms of reference available to him.

However, the central question is, did Ellis criminally abuse any of these children? To answer this question fully and fairly, it may be necessary to go outside the terms of reference used by Eichelbaum.

The central issue

The central issue in this case is not (as often claimed by Minister of Justice Phil Goff, in regard to any re-examination of the case) about looking for new evidence. Many commentators have noted that there appears to be little or no credible evidence that any crime was ever committed in the first place. Rather, the issue is that there exists much disquiet from lawyers, psychologists, sociologists, journalists and the public about the way the central evidence has been gathered and subsequently interpreted. If the professional consensus comes to a point where a majority say the verdicts are not safe due to misinterpretation, then this would surely amount to reasonable doubt, and give impetus toward overturning the Ellis convictions. There has been little controversy about what the evidence is. All the interviews used in court were taped. No one has claimed that those videos are falsified. Everything that the jurors heard has been meticulously recorded.

I have read the claim that the scientific community is divided about the issues (eg the Court of Appeal ruling in 1999 – see Hood P602). This claim needs to be scrutinised. When rhetorical and unscientific reports are removed from the mix, there may not remain any substantial differences in the conclusions of the scientific community. This perception is well expressed by Newbold (2000 P85):

> *"The danger of claims based on bad research is that they can lead to a kind of frenzy wherein suggestions of rampant sexual abuse gain popular acceptance irrespective of their factual basis and lead to judicial and policy decisions that prejudice human rights." And on page 86, "Perhaps the classic example of the sexual abuse frenzy, however, is that of Peter Ellis and the Christchurch Civic Crèche."*

So, the central issue needs to be determined by looking at the conditions under which the evidence was gathered, and the conditions existing before the formal interviews, in order to determine how *reliable* that evidence was. The individual reliability of the children involved is

also relevant. This is due to selection processes that were operating upon the children during the investigation. The group of children who supplied allegations may represent those who were particularly susceptible to suggestion or fantasy, and this raises reasonable doubt over their testimony. Also, it is important to determine if uncorroborated testimony of children alone is sufficient to allow for safe convictions.

If the children had come to believe false allegations through interference from adults, then all that the interviews can do is show what allegations resulted from this process. Inadvertent memory construction in the children due to influence of parents, police, social workers and therapists is of key concern. The effect of the public Satanic abuse hysteria has been well argued (Hill 1998, and Hood). I have no hesitation in looking closely at these prior conditions, and into the selection process of choosing only the most credible allegations from the most credible children to form the basis of the trial indictments.

All memories are a combination of direct (episodic) and indirect (generic) elements, as well as accurate and inaccurate elements. Also, the memory system is dynamic, and changing, so distortions may be more complex than simply storing false information. Therefore, according to Neath (1998 p340), use of the term *false memory* may not be a good choice. This report uses the terms *unreliable* and *inaccurate* memory instead. In some controlled experiments, some children's statements or "memories" are known to be false, and in this situation, perhaps, the term *false memories* could be justified.

My goal is to attempt a dispassionate review of the facts, and relevant scientific findings; then to draw conclusions justified by the facts, science and logic. Only the reports of the two experts are reproduced by Eichelbaum in their entirety. Thus the emphasis in this analysis is given to examining the details of Eichelbaum's findings and that of the experts, rather than relying upon matter which is contained within the submissions of the not always impartial interested parties.

The approach used is to integrate relevant research findings with the facts of the case, and from related cases, in order to allow a greater focus on each issue in turn. I then will give a case analysis of one of the children, choosing one whose evidence appears to be amongst the most questionable, to determine if it stands up to close analysis.

A priori problems

An analysis of the mechanisms of a priori bias operating within the context of the case is required before looking at the scientific evidence.

(1) A priori bias

"positive court outcomes"

Dr Louise Sas in reference to convictions.

In an emotionally laden case such as this, the impartiality of those involved must be critical for a fair trial to take place. Impartiality does not necessarily imply taking time to decide. A tennis umpire is not considered partial because he calls "out" or "in" or "let" quickly. Impartiality includes the preparedness to alter one's conclusion in the light of new evidence; a better analysis of the same evidence; or upon the revelation of a logical flaw in prior reasoning. We often start with some kind of expectation. A good umpire can still be fair, even though s/he believes before the match that a particular player will probably win. An a priori bias is a pre-existing assumption or attitude that can lead to making unfair decisions. In order to detect such bias I look for indicators of its modus operandi, such as not challenging unsubstantiated theories, not looking for alternative explanations, or selectively ignoring data.

Possible motivators toward bias are many, and deeply held political and religious beliefs are common sources of bias. Others motivators include the protection of very high self-esteem and the desire to avoid possible negative consequences to ones actions. This can also lead to a tendency to not admit to one's own mistakes, which can also result in biased outcomes. A fear of any possible negative fallout from whistle blowing may also cause one to defend the errors of others, again resulting in biased behaviours. The possible reasons for, and sources of, the biases that have occurred in the course of the Civic Centre Case are many. I refer those who are interested in the socio-political conditions that may have contributed toward their occurrence to Hood's book, *A City Possessed*.

I have identified a number of *indicators* of an a priori bias on the part of civil authorities, the investigation teams, Justice Williamson, Sas, Davies and Eichelbaum that all operated toward returning guilty verdicts. It is useful to first identify bias found within the terminology and slogans of the period.

(1.1) Terminology

"Disclosure"

From the moment they arose and throughout the investigation and subsequent legal actions the allegations made by the children were referred to as "disclosures". On page 18 of her report, Sas recommends that children who make allegations of sexual abuse should be immediately told that

> "*they did the right thing to disclose* [sic]"

The same term appears to have been in common use by the interviewers and Karen Zelas, who used the term frequently in my interviews with her.

Use of the term “disclosure” is a bias mechanism. It works by implying an acceptance of the truth of an allegation (termed disclosure), when in fact; all that has happened is that an allegation has been made. Once the truth of an allegation (through accepting it as a “disclosure”) is thus accepted, logic dictates that the guilt of the alleged perpetuator is also immediately accepted. That is an a priori assumption that may not be supported by the evidence.

The term “disclosure” is of relatively recent usage in this context, and its increased use directly reflects the growth of specialist professional activity in the field of child abuse (see also section (1.2), on the child protection movement). It may be argued that the term has closer ties to political philosophy than clinical reality.

“Consistent with”

Throughout the trail, the appeals and the ministerial inquiry the ambiguous term “consistent with abuse” has been used to describe certain behaviours exhibited by young children. This definition/description of a behaviour or set of behaviours is highly misleading. Its use ignores the fact that an observation said to be consistent with abuse may also be consistent with *not* being abused. Its use signals a lack of understanding of science at a very basic level.

Consistency is a logical property of statements that can only be true or false, it is not a function of scientific probability. To use the term “consistent” in a probability context is to commit what philosophers call a category mistake. This bias mechanism works by suggesting a causal link that is as yet unproven. Corballis (2003) has pointed out that such an implied argument is also an example of another logical fallacy known as affirming the consequent.

> *“If abuse causes nightmares, she* [Dr Louise Sas] *suggests, then a child who has nightmares has been abused. The absurdity of this is illustrated by the analogous argument: if someone is murdered, then that person is dead. A dead person, the argument goes must therefore have been murdered.”*

Whatever use these statements about behaviours consistent with abuse are put to does not change their inherent meaninglessness in these contexts. Lawyers and pseudo-scientists using the consistency bias mechanism are hiding a lack of real evidence. Good scientists, rather than discussing “consistencies,” are more likely to provide probabilities, as in the case of DNA evidence. A good example of this bias occurs when the Crown expert witness Karen Zelas describes certain behavioural “symptoms” as “consistent with” being abused (by Ellis). This neatly averts attention from what the jury really needed to know, i.e. - are these “symptoms” *likely* to indicate abuse. Of course, it should always be remembered that they could easily indicate something else completely. The only concrete fact that can be drawn from Zelas’s testimony in this instance is that she provided the testimony in a biased manner, whether by intention or otherwise.

“Mass Child Abuse”

The phrase, “mass child abuse allegations” can be seen as a substitute for the less credible, “satanic ritual abuse.”(SRA) Most paedophiles seem to have multiple victims, so the term seems redundant. *Multiple* allegations may be a less emotive term, as the word *mass* can be inflationary. I have not noticed the term “mass child abuse allegations” being used by research

scientists such as Dr Ceci, so I suspect that those using it may be thinking of SRA (see below, sections (1.2) and (1.3)) when they use the term. Later, I discuss how Eichelbaum and others have neglected to seriously consider that SRA allegations first emanated from adult sources rather than from the children.

"In Denial"

The widespread use of the term "in denial" to explain away the grounds that anybody may use to refute that abuse took place could amount to a misuse of the English language. It operates as an a priori bias mechanism in much the same manner as does the term 'disclose'. The term indicates, on the part of the person (an observer) using it, a prior determination of the veracity of the statement/s made by a subject, who is termed to be "in denial" of the "true" state of affairs. It serves to trivialise rational argument. In addition, to deny guilt, or to deny that something happened, does not automatically indicate some underlying psychopathology. It is just as easy to lie through making positive assertions as it is through denial. Furthermore, if children lie through a "mechanism of denial", then they are most unreliable witnesses indeed.

(1.2) Child Protection Movement

There are many workers involved in dealing with child sexual abuse. The level of funding and resources available to the field must be dependent upon the perceived extent of the problem, and presumably, the efficacy of those involved in dealing with it. At the time of the Ellis trial, there were busy teams of specialist interviewers at the Department of Social Welfare (in the Specialist Services Units at what is now CYF). The careers of therapists and counsellors (often ACC funded) and the viability of specialist police teams are also dependent on the perception of the problem and of its solution.

In an environment where government funding is tight and aggressively competed for, there must be a temptation to inflate the extent of a problem and efficacy in dealing with it. Along with this possibility, a genuine desire to protect innocent children could in some cases lead to over-zealousness in prosecuting those accused of these offences. The following analysis looks at evidence for possible biases from such causes.

Clearly not all child sex abuse workers are likely to be over-zealous, and the mere existence of any bias within the field is not at all strong evidence that Ellis is innocent. However, serious commentary does indicate how these sorts of bias may have led directly to an unfair trial. Nor does an absence of bias in this regard prove that Ellis had a fair trial, even if it might then be more likely, as there are other possible sources of bias (public attitudes for example) that also need to be examined.

Hood (2001) describes at length the Child Protection Movement (CPM), which she appears to conclude is biased, due to its political agenda. On page 46, she describes how the work of Henry Kempe

> *"... set the pendulum of child protection swinging away from supporting needy families, and back towards policing them."*

I gain the impression that she goes on to link expert witness Karen Zelas, and some of the interviewers in the Ellis case, with this movement. Under the entry for CPM in the index Hood has written "see Geddis, Kempe, Zelas." In the second part of chapter 2 (from p48), Hood describes the CPM in terms of feminism and religious conservatism uniting as a new, and perhaps surprising, alliance in the cause of combating child sexual abuse.

A similar analysis is found in Goodyear-Smith (1993). Here it is described as the "sexual abuse industry." On page 35, she lists the "*faulty assumptions underpinning the field*."

Newbold (2000 pp 84 – 88) iterates the same concerns.

Ross Francis writing in the *NZ Law Journal* (2003) defined the term *sex abuse industry* as

> *"a legitimate term that applies to psychologists and counsellors who profit from allegations of sexual abuse without verifying or corroborating such allegations. It also applies to so-called victims who unearth memories of sexual abuse for which there is little or no scientific basis."*

He goes on to quote from Accident Compensation Corporation figures;

> *"…in 2002/03, the Accident Compensation Corporation had 4894 new sensitive claims and 7351 ongoing sensitive claims. Sensitive claims "are where the claimant suffered an injury as a result of being the victim of specific types of criminal behaviour...[t]hey relate mostly to sexual crimes...[c]onviction does not have to result" (ACC Injury Statistics 2003, para 13.1). The cost of sensitive claims in 2002/03 was $22.048 million or $1800 per claim. Interestingly, ACC states that conviction is unnecessary but that claims are the result of criminal behaviour. If there has been no conviction, how can ACC be sure that any criminal behaviour has occurred?"*

The term 'industry' suggests that there exists widespread bad practice within a range of professions, including counselling (some paid by the Accident Compensation Commission (ACC)), special policing and social working teams, and expert witnesses. The term also implies that some of this work is unnecessary, as it is based on inflated claims about the extent and effects of the problem. Below I provide a summary of some of the basic errors, bias and bad science that have been alleged to exist within the Child Protection Movement/*Sexual Abuse Industry*. The interpretation is based upon the analyses Newbold, Hood and Goodyear-Smith.

- **Denial** The CPM commonly contends that abused children will not talk about the abuse, and will even initially deny it, (usually it is supposed that the children have been kept quiet by threats from the abuser), hence they support the coaxing of allegations from a child "*in a supportive environment*." Ultimately, their contentions can be summarised in the following manner: if the child (commonly one that has been identified as displaying 'symptoms' (later termed 'indicators') of sexual abuse) is forthcoming and talks about abuse, then the child has been abused; however, if the child denies being abused, then the child is still deemed to have been abused but is considered to be in a state of 'denial'. Such argument leaves little or no scope for alternative explanations or for impartial investigation. Nor is it much help in trying to assess the reliability of allegations. In the Ellis case even the child N/Zelda Cypress who

recanted was said by supporters of the convictions to be "in denial." Surprisingly, in 1994 the Court of Appeal also gave strong credence to this viewpoint.

> *"…we are by no means satisfied that she did lie at the interviews, although she may now genuinely think she did."*

She has never since wavered from her retraction.

- **Recovered (and repressed) memories** The typical case representing classic recovered memory is that of a mature woman "remembering" that she was abused as a child, usually after therapy. This theory is based on the now discredited Freudian theory of repressed memories. Even Freud himself later rejected this theory. The theory contends that when a child has been abused the memory of the terrible event is often suppressed, due to mental trauma or as a result of external threats. However, the theory supposes that the memory can be later "recovered" by skilful therapists or interviewers. I detect acceptance of the theory by some key players operating in the Ellis case. I have no detailed information regarding the backgrounds and previous work of therapists who were seeing the children before, and during, the evidential interviews. Nevertheless the interviews were conducted under the guidance of Dr Karen Zelas, and Zelas has been linked with classic "recovered memory" cases.

  It is justified to dismiss the repressed memory theory. Modern texts, such as Neath (1998) give it barely a mention (on page 4). Loftus' 1993 study describes how repressed memories have not been verified as being true. For example, (p524) she states,

  > *"... one therapist said, 'if a woman said it happened, it happened'…(from a small study of 16 therapists) therapists believe their clients and often use symptomatology as evidence."*

  Loftus also points out that children do not in fact repress memories of dramatic and frightening events such as the murder of a parent (p533 –4). Furthermore, Auckland psychologist Dr Michael Corballis (1995) criticises the term "recovery" as it implies memories are stored in a perfect state. Instead, he points out, "*All episodic memories are constructed of incomplete fragments, and convey the true past with varying degrees of verisimilitude.*" The term retrieval would be better than "recovery". He quotes Ron Fox (ex-president of the American Psychological Association) as saying the acceptance of this theory by some is

  > *"a black eye for psychology that is likely to persist as a threat to the profession for some time."*

  There is no evidence that I have read to indicate that "recovered memories" are any more accurate than other memories. Probably quite the reverse is true. In fact, recent research from Harvard University (McNally 2003), casts much doubt on recovered memory theory. McNally concludes from his literature review and case reports that traumatic experiences are unforgettable, and rarely slip from awareness for very long. He finds the evidence for repressed memories of trauma, or even for repression at all, is surprisingly weak.

The fact that memories are not repressed does not mean that all memories must be accurate. Memory for real events is logically consistent with "memories" for events that did not happen. The problem is that we may not know how to distinguish the two.

- **Children never lie** A dramatic case illustrating the ability of children to lie in sexual abuse cases was examined by Donna Chisholm, "*Lying with conviction*" Sunday Star Times 9 July 2000 (p. C3). In this case a boy deliberately lied (with aforethought) when falsely accusing his own father of sexual abuse. The real victim went to prison. Recent research in New Zealand by psychologist Jane Rawls (1996) has confirmed the findings of overseas studies by Ceci and others that children will make false accusations of sexual abuse (bad touching) with very little prompting.

  When I interviewed expert witness for the prosecution, Karen Zelas, I found that she relied in part on the work of Gail Goodman. Goodman has claimed that children rarely lie about being abused. However, her claims (see Goodman et al 1990, for example) appear to be based on challengeable science. Goodman failed to include or allow for the *motivation* to lie, and in the words of Ceci and Bruck (1993) *"tilted the odds towards finding truthfulness in pre-schoolers."* The experimenter's expectations need to be controlled for in these studies, because subtle cues - flagging expectations - can be transmitted to the subjects (i.e. they can motivate certain responses in the subject.). Marks (2000) makes this point in his detailed review of the poor science behind so-called parapsychology experiments in extra sensory perception. In chapter three Marks describes how even independent blind judges of data can still pick up clues about the experimenter's expectations and produce erroneous results. In the Ellis case it was likely that children had heard that other children had already made allegations, the interviewers may have implied approval of the making of allegations and kept probing even when no allegations arose, suggesting to the children that the answer that "nothing happened" was wrong. In addition, when Goodman stated "*fewer than 1% of children can be led to report false touching*" she was admitting that some children can make false allegations. In the Civic childcare centre case, at least 127 children were officially interviewed, only six of whom provided evidence that was found to be reliable at trial. One or two of these children may well represent the one percent of children identified by Goodman.

  True lies was the title of an article appearing in *New Scientist* 7 April 2001. The article reported that experimental psychologists had found that 30% of a group of children recalled "uncomfortable touching" episodes which had not in reality happened to them but had been mentioned to them in a story scenario. Their recall accuracy was even worse when they were asked questions that required a yes/no answer.

  In Ceci and Bruck's 1993 review, the authors say that court experts often make claims that are not in accord with the research they have reviewed. This includes the claim that children are incapable of lying or are not suggestible. They state that

  "...experts rarely present a careful summary of the research because doing so would probably force them to attenuate their often strident claims…"

They conclude (p432) *"Our review of the literature indicates that children can indeed be led to make false or inaccurate reports about very crucial, personally experienced central details."*

It is important to state that I (and most other critics of the Ellis verdicts) do not claim that the complainant children were deliberately lying. The word "lie" implies an awareness of specific untruths, but it can also be argued that the term "lie" has a non-pejorative use, meaning the espousal of something untruthful: in that sense the children did lie. However awareness of lying - in the pejorative sense -may not always be present within the children, even when their testimony can be shown to be untrue. Therefore lying is not the word automatically used within this report in the context of the Ellis case.

- **Children do not talk about sex unless they have been abused** It has been claimed (for example by Zelas) that if children display sexual knowledge "beyond their years" and/or talk explicitly about sexual acts they may be the victims of sexual abuse. If however, the display is treated as evidence or considered proof of sexual abuse, then alternative sources for the statements may not be explored. There is often little attempt to acknowledge other sources of a child's knowledge of sex (e.g.: books about abuse read to children, parents' questions, seeing parents making love, other children, television., adult magazine pictures, etc). Hood discusses a child from the Civic childcare centre talking about explicit sexual behaviour (p222). This "disclosure" did not result in charges, because it turned out that the child had observed her parents engaged in sexual activity. There may well be other cases in which no abuse has occurred, but the source of the statements is not so obvious.

- **Pseudo-science** It does seem that the claims of repressed memories, denial, and children never lying about sexual abuse are not scientifically based. For example Corballis (1995) discusses *Courage to Heal* by Ellen Bass and Laura Davis. The authors themselves acknowledge that there is no scientific basis for the claims. On page 4, Corballis states:

  "The harm caused by this extraordinary attitude has already been immense and it may get worse." And that the divide between clinical and scientific psychology is *"now in danger of becoming a chasm."*

  The parallels with other pseudo-sciences are striking. "Parapsychologists" found that their studies on "psychic" abilities were rejected by mainstream scientific publications due to incorrect statistical analysis, flawed methodology, and in some cases plain dishonesty. Consequently they set up their own journals. Many of these journals eventually self-destructed. For example, Victoria University has copies of the *Journal of Parapsychology* for the years 1972 – 1978 only. The CPM has its own similar journals such as *Child Abuse and Neglect, Journal of Child Sexual Abuse* (in which John Read, director of clinical psychology at Auckland University, has published) and perhaps also to some extent *Issues in Child Abuse* which similarly lack the scientific rigour required to support some of the conclusions put forward. The CYF journal (NZ), *Social Work Now"* also seems remarkably uninformed by science.

- **Abuse is rampant** There may be a tendency to exaggerate the incidences of abuse in the USA. Finkelhor reported in 1988 that child abuse was rampant in pre-school facilities. However, his definition of "substantiated abuse" included cases that had been rejected by

police, prosecutors or the court, and then extrapolated the data so as to include undetected abuse. He also found that respectable professional childcare supervisors were not reporting it as frequently as were parents. The parents of allegedly molested children were described as emotionally unstable and marginally employed. Yet he failed to consider that the parents might be less reliable than the trained professionals, and his acceptance of parental reporting may have resulted in over estimating occurrences of actual abuse (see Hood page 185, Goodyear-Smith p78). If his description of the parents is generally true, strategists who wish to see changes for the better in the arena of false sexual allegations should attend to those people and their circumstances so as to help stop the tide of false child sexual abuse allegations. The incidence of child sexual abuse is difficult to measure in a valid and reliable and way. Authorities cannot yet agree upon exactly constitutes sexual abuse. Some argue that it is not valid to make the definition of abuse too wide, so as to include for example, unwanted cuddles, but others have little problem casting the net so wide. Also, given the unreliable nature of childhood memory, asking adults to recall incidents of abuse that occurred during their early childhood may well yield unreliable data.

The true incident rates may not match the reported totals, actual rates could be higher or lower than reported. Questionnaires or surveys are often quoted in this regard, but they are inherently unreliable. If questionnaires are mailed out, then an unrepresentative group may reply.

The figure of one girl in four being sexually abused during childhood seems to be a frequent claim within the CPM. In the publicity for the 1988 telethon, psychologist Dr Hilary Haines (later Lapsley), was at the time deputy director of the Mental Health Foundation. She supplied this figure to the advertising agency, but was eventually forced to admit: "Of course they are only guessing with these figures, but in a sense it doesn't really matter. The main point is that they shock." (as quoted by Barbara Faithful, Herald 14 August 2003, and also Hood).

However, the debate over incidence rates has no direct bearing on the guilt or innocence of Peter Ellis. Even if there were a high incidence rate of paedophiles among childcare workers, this does not prove Ellis to be guilty; nor would a low rate prove him to be innocent. Nevertheless society's perception of the incidence rate does have great bearing on the manner in which case was handled, as it influenced the attitudes of those who conducted the investigation, the trial and even attitudes within the jury itself.

- **Sexual abuse has catastrophic long-term effects** The CPM appears to make a value judgement when it is often inferred by those within it that sexual abuse is on a par with murder or grievous bodily harm, and that sexual abuse results in severe and lasting psychological damage to its victims. In terms of bodily harm this claim is absurd, especially when sexual abuse is compared with even moderate, let alone serious, physical assaults and murder. I discuss the weak evidence for serious psychological harm in section 5.5 on the “symptoms” of abuse. In any case, the claim that the effects of sexual abuse are very severe and long lasting is scientifically testable. If true, the claims alleged by the CPM could justify the large sums of money being spent on counselling and compensation. The question ought to arise as to whether children are being similarly compensated for the more commonly occurring physical harm. According to the Land Transport Authority, adults cause around 45 child deaths each year through bad driving. Ministry of Health’s figures for the 1998 –1999

financial year indicate that road accidents were the biggest killer of children under 14 years (53 deaths) followed by drowning and choking (24). Suicides were next (12 deaths) followed by homicides (10). In the same period there were 6,500 hospital admissions due to accidental falls, 1250 for road accidents, and 947 for poisonings. (Figures available on the Ministry's web site.). While many children presumably make a full recovery from poisonings (most are non-fatal), many of the physical injuries from burns and falls are obviously permanent. Goodyear-Smith, a research fellow at Auckland University's Faculty of Medicine and Health Sciences states (Goodyear-Smith 1999)

"Sexual abuse is only about 10% of all child maltreatment".

Rind et al (1998) found that belief in the evil effects of childhood sexual abuse (CSA) is widespread in America, but that:

"the basic beliefs about CSA in the general population are not supported by the evidence."

Kendall-Tackett, Williams and Finkelhor (1993) in a review of studies, found a third of victims had no symptoms of psychological disturbance. Of course, if a number of convicted abusers are in fact innocent, due to the problems outlined in this document, then that might help to account for this group. However, the authors also state that two thirds made a recovery after 18 months. The same cannot be said for permanent physical disablement as a result of physical assault that has no sexual component.

Whilst sexual abuse is certainly an abhorrent act, it is important not to confuse that moral abhorrence with the scientific evidence when regarding the psychological damage sexual abuse causes to its victims. It must be placed in perspective alongside many other forms of preventable harm to our children. In common with Goodyear-Smith (1999), I contend that the concept of absolute safety is unrealistic, and unachievable. Keeping children at home, as the forgoing illustrated, exposes them to very significant risks. Perhaps the misconception of absolute safety could be added to the preceding list. It could well be another factor driving the fervour of the sexual abuse field.

While most of the preceding tenets appear unwarranted, the fact that someone possesses such beliefs does not automatically discredit every statement that person makes. Extra caution may be required in examining the evidence purporting to support the statements made by such people. Some of the forgoing may also provide clues as to which areas ought to be examined for indications of bias within the interviews. For example, if an interviewer believes that a child never lies about sexual abuse, that interviewer may be lax in checking out the source of such statements (doing reality checks or source monitoring).

There may be an over-representation of radical feminists who are also lesbian, among child protection workers. Not all lesbians are of a radical - or what Hood calls a revolutionary rather than an evolutionary - orientation. Revolutionary lesbians may have or aspire to a "lesbian lifestyle" that excludes men as far as possible. Such views could be found in early Broadsheet issues. While the authors here make no claims on this, it may be something that merits research. There are at least seven New Zealand psychologists and social workers currently dealing with child sex abuse known to the authors to be lesbians. Most of these appear to have expressed views that may be of an extreme nature. Several psychologists and academics have expressed

concern in private to the writers over this issue. This seems to indicate the presence of a notable level of concern that is generally only expressed clandestinely, between co-professionals. The concerns expressed include that radical feminists who are lesbians in positions of responsibility in the Executive are acting in or unfair ways, towards males in particular, over matters that include sexual abuse allegations; however, this behaviour has nothing to do with lesbianism per se.

In conclusion, there does seem to be a tendency for some of those working with sexually abused children to be unscientific and in some ways pseudo-scientific in their thinking about sexual abuse. During the 1980's and 1990's a number of pseudo-experts travelled the world holding workshops at conferences, and spreading much of the preceding misinformation. Social workers in particular seem to have been heavily influenced by their gravitas. Those organising such workshops for the professionals appear to have given little attention to the scientific credentials of these people. This represents part of a major systemic failure that seems to persist today.

(1.3) Satanic Ritual Abuse

A belief in SRA clearly motivated many involved with the Civic childcare centre case. Many believed that SRA had occurred on a large scale with many perpetrators. This belief contributed toward many of the formal charges laid against both Ellis and his co-workers; toward the mountain of allegations that failed to make it to court; and ultimately toward Ellis's convictions. The belief helps to explain why the women were charged. During Ellis's trial this potential driving force seems to have been hidden from the jury. In my later section on the trial, I discuss the evidence for the ontogenesis and spread of SRA belief more fully.

Belief in such unsubstantiated theories clearly motivates the believer toward uncovering "evidence" of ritual abuse existence, and thus operates as a bias mechanism. It will suffice here to simply list some examples of its probable presence in some of the key players. There is good evidence that, in varying degrees, the following people sympathised with belief in SRA at the time of the Ellis trial:

- **The investigating police detective, Colin Keenan Eade**. For much of the course of the police investigation Eade was in sole charge. Hood (p27) describes her face-to-face interview with Eade. She found his conspiracy theories

  "... chillingly reminiscent of the arguments and beliefs I had read about in demonology manuals…"

  In 1997, TV3 journalist Melanie Reid reported that Eade's superiors were concerned about Eade's mental stability during the investigation.

  Eade had shown signs of "*an obsessional personality*" (Hood p585) Later, the police announced an in house investigation into the behaviour of Eade (sexually propositioning the parents). Nothing significant, however seemed to emerge from this investigation. Detective Superintendent Millar declared Eade's judgement had not been impaired, despite the fact that Eade was "*at times not totally objective*" (Hood P325)

When Civic childcare centre staff were interviewed by Eade they were offered, and advised to read, the book *Nursery Crimes* by Finkelhor. The subject matter of this book included SRA activity within preschool settings.

After Eade left the police force, he decided to study sociology at Canterbury University. However, one lecturer, Arnold Parr, analysed some aspects of the Civic childcare centre case in one of the lectures. Eade then laid a complaint with the University against Parr. This is indicative of a bias, including an unwillingness to consider alternative points of view.

- **The officer later in overall charge of the police case, Chief Inspector Brian Pearce** claimed on the television current affairs show Holmes (TV One) June 1992 that the Civic childcare centre case was evidence society was reaping the fruits of mocking morals campaigner Patricia Bartlett, conservative politician John Banks and God (McLoughlin 1996).

- **The leader of the Parents (mostly mothers) group, Ms Magnolia/D** (see section (5.1.i) on contamination of the evidence by parents). Magnolia can be described as having been a true believer in SRA. During the investigation, it would be difficult to imagine Magnolia even attempting to hide her beliefs. On page 371, Hood states, "*a checklist of ritual abuse symptoms was in circulation among Ms Magnolia's supporters from the earliest days of the investigation*"

- **Parent Ms X/Dogwood,** as with Ms Magnolia this woman was highly active in regard to networking and the sharing of information between parents. At depositions Ms Dogwood demanded that USA SRA "expert" Pamela Hudson be brought to Christchurch as an expert witness. Her son's allegations contained many elements, purportedly typical, of ritual abuse.

- **Psychiatrist Karen Zelas,** the expert witness for the prosecution and consultative supervisor of both interview and some therapy agencies involved in dealing with the children (See section (6.1)). Some of her distortions, discussed later in this report, appear to have SRA tenets as their source. Zelas's insistence that certain behaviours could indicate sexual abuse had occurred, and her style of interrogation, in accepting no denials, suggests to me that she may have suspended scientific judgement, in a similar manner to the witch hunting approach used by SRA believers.

- **The Social workers** involved with the case. Hood discusses how Sue Sidey, a senior participant in the forensic child interviewing team involved in the case, attended a DSW review meeting in 1991 where the report on the meeting stated (Hood p251) "*Some felt guidelines should acknowledge its* [SRA] *existence*." In 1992, Social worker Jan Gillanders brought Pamela Hudson's *Ritual Child Abuse* for the Civic childcare centre case library. (Hood p371). In June or July 1992, Social worker Genevieve (Gen) Crossen was recommending another SRA book, *Breaking the Circle of Ritual Satanic Abuse* by Daniel Ryder, to parents (Hood p371). Crossen, along with parent X/Dogwood, was a founding member of End Ritual Abuse Inc., founded in September 1994. The stated aims of the society included

  "The purpose of this society is to educate the public on ritual abuse and to provide written, audio and visual information on the subject matter." "The aims are to gather information

from overseas, write a quarterly newsletter, provide a resource library, act as a support group for those survivors and families who have been involved in ritual abuse, support those needing to go through the judicial system, to support overseas visitors to New Zealand on this topic, and to assist those wanting to attend conferences on the said subject"

- **Rosemary Smart**, in section (1.5 ii) I discuss how Rosemary Smart was influential in the decision to close the Civic Child Care Centre. After the trial Smart organised a seminar for Pamela Hudson at the Campbell Centre, Christchurch, in 1993. (Martin van Beynen, The Press 1993). Hudson was the author of *Ritual Child Abuse* (1991), and a self styled "ritual abuse expert", she believed in the widespread existence of Satanic Ritual Abuse.

- **Dr Louise Sas**, one of the experts Eichelbaum consulted for his inquiry, was director of the Child Witness Project at the London (Ontario) Family Court Clinic !987-1999. A publication promoted through the clinic's website defines Ritual Abuse as an "*under-acknowledged*" form of violence (*The Final Report of the Canadian Panel on Violence Against Women,* www.lfcc.on.ca/chanland).

While to many observers it may at first seem bizarre to even want to believe in SRA, one parent (Ms X/Dogwood) reported (Bander 1997) that there were some rewards – occasional social evenings, clearly lots of attention, and possibly the thrill of being on to something big. This observation simply proposes possible reasons, or motivation, for those with strong SRA beliefs to continue in these beliefs, even in the face of contrary evidence.

(1.4) The Evidential Interviews

(i) Selectivity bias in interviewer challenges

Simply by reading all the excerpts of the interviews quoted in the Eichelbaum report, the reader can conclude that the interviewers were more likely to challenge the improbable allegations than the more credible ones. This mechanism is unfair and obviously biased. Sas, Davies and Eichelbaum failed by overlooking this and this failure may have been due to pre-existing attitudes on their part. The slogans of the time, “children never lie about abuse” and “believe the child” were indicative of an a priori approach that hindered the search for hard facts and circumvented careful examination of relevant scientific research.

(ii) The evidential interviewing team

Eichelbaum concludes (p4) that the interviewing was “*of a good overall quality*.” He also states, that in regard to interviewer bias (p105)

> “*Neither the experts nor I saw evidence of bias* [in the videotapes of the interviews]”.

This observation presumably allowed Eichelbaum to conclude that the interviewers were impartial, a conclusion that may have resulted from the narrow terms of reference of the Inquiry. I note that, despite Eichelbaum’s claim, neither expert makes such an assertion. Both experts did identify many deficiencies in the conduct of interviews (see this report, sections (3),(5), (6)). The existence of underlying prior bias on the part of interviewers cannot be ruled out as being

the cause of these poor practices, merely through examination of the videotaped record. Moreover, it is valid to argue that the poor practices were in themselves, bias mechanisms.

It can also be argued that four key players involved in the child interviewing team have shown evidence of holding many of the already identified attitudes that are associated with the CPM.

Karen Zelas

Some children involved in the Civic childcare centre case received therapy under the supervision of Karen Zelas *before* there were any convictions. That would tend to confirm a CPM bias; in carrying out *remedial* therapy it must be assumed that the therapists believed that abuse had taken place. In at least one case, therapy sessions *preceded* the completion of the child's evidential interviews (Hood p343, Eichelbaum p9). Davies fails to address this point in his summary on contamination (p38). Sas also fails in this respect. Zelas must have surely been aware of the risk of contamination of evidence. Perhaps she believed that the effects of the abuse was extreme, and that therapy would be extremely beneficial. If, as seems likely, the therapy carried out was primarily counselling (talk therapy), then some research (eg: Ricks 2000) suggests that it may not have been very effective. It seems of dubious value to risk weakening the value of the children's evidence by beginning therapy before they can give evidence through completing the evidential interviews and before any cross examination in court.

Hood (p550) refers to Zelas's assertion that

> *"retractions were common, and did not mean that the original allegations were untrue."*

This is indicative of a belief in the theory of denial.

During the Civic childcare centre investigation and trial, Zelas seems to have exhibited (at least publicly) an attitude that allegations by children, made in any circumstances, are in essence a proof of abuse. However in regard to the interviews with children X/Bart Dogwood and Z/Kari Lacebark, Zelas wrote to Detective Sgt. John Ell on 28 August 1992 and made the following statement. It is in direct contradiction to what was reported elsewhere by the parents. She stated that at the time of the interviews;

> *"... parents generally were not considering the involvement of other adults nor speculating about, nor questioning their children on what they believed to be characteristics of `ritual' abuse."*

I find that this statement is extremely unlikely to be true (see Section (6) *A Fair Trial?*, and sub-sections on public hysteria and SRA theories). She continued,

> *"It is clear that* [Z/Kari Lacebark's] *parents elicited disclosures of abuse by Peter Ellis by highly leading questioning.* [X/Bart Dogwood's] *brother and parents did the same. In* [Bart's] *case, the parents subjected him to intensive interrogation pertaining to `ritual' abuse between the three August interviews, which were on consecutive days.* [Bart] *would then disclose in the next interview with Sue Sidey the information elicited by his parents the previous night."*

Zelas then looked for similarities between the two children's (Z/Kari Lacebark and X/Bart Dogwood) stories, and included:

- travelling in `Peter's' car [Ellis had no car, and did not drive].

- reference to white clothes being worn [classic SRA behaviour but not fitting real paedophile profiles].

- Both children have mentioned other children being involved, but they do not refer to the same children. This needs to be determined, perhaps from Z/Kari Lacebark's mother. [Children are *not* consistent on central detail].

- Both children named adults but the only consistency is their naming of Peter Ellis. Z/Kari Lacebark named: Joseph, Julie, Amie, James. X/Bart Dogwood named: Peter's Mother, Roger or Robert (a name possibly influenced by parental questioning), Andrew…Crèche staff…Spike `not his real name' Boulderhead.

This correspondence reveals that Zelas was aware of major flaws in the evidence, and yet she was still prepared to persist in what appears to have been a precipitate fashion. According to Lynley Hood (p387-388), this letter (along with Rosemary Smart's report for the City Council) was probably very influential in the closure of the Civic Child Care Centre, which occurred immediately afterwards.

Thus there appears to be good evidence of bias in the work of Zelas. Eichelbaum does not discuss such evidence.

Sue Sidey

Sidey conducted most of the evidential child interviews used at the trial.. Council administrator Alistair Graham (Hood p334) described her in an audio taped interview in 1996. "*She seemed very concerned with the travesty of abuse…she was emotional*." Sas states in her concluding remarks (p58)

> "*There were a few situations where the interviewers appeared very anxious to obtain the information and used too many repeated probes*."

Clear examples of Sidey's over-zealousness appear in her interviews, she said to one child: "*could you come back another day, and tell me the other things if we have a break now?*" (Hood p293)

Sidey constantly continues probing when children say they can't remember details or a whole incident. When interviewing R/Eli Laurel, Sidey found Eli could not remember an incident he had mentioned in a previous interview. She then said to Eli, (Hood p 347)

> *"Right, I think perhaps I could help you. I remember some things, and we talked about mean things to do with penises"*.

In early December 1991 Sidey stated (Hood p258):

"Peter Ellis is not a suitable person for a child centre."

This statement was made almost two months before there were any formal allegations of abuse and Sidey had not then even met Peter Ellis. I think the evidence for similarly biased attitudes by other significant evidential interviewers (see below) is also compelling.

At the time Sidey had limited experience and no formal qualifications in child psychology, having only had "*on the job experience*" to equip her as a child interviewer.

Cathy Crawford

I personally interviewed child interviewer, Cathy Crawford after the Ellis case. I found her ignorance of many of the most basic concepts of psychology to be profound. (For example, she had no understanding of the relevant concepts of verbal reinforcers, negative reinforcement, etc, or of past and current research on children's memories and interviewing). Crawford told me that she relied upon Zelas for information on how best to carry out interviews.

Cathy Crawford's performance during the depositions hearing (Hood p437) is now notorious to observers and critics of the case. A videotaped interview was seriously presented in court in which a child is obviously telling a tall story. Crawford continually repeats the phrase, "*it is beyond my expertise*" (to interpret the story). Yet she also claims nebulously that as the wild and impossible story *is* "*consistent in detail*" it therefore is truthful, and reveals abuse. One child did make a clear strong allegation of abuse. Unfortunately, Crawford ignored it altogether (Hood p 466). The allegation involved an uncle and the alleged incident occurred outside the childcare centre. Crawford's lack of training and judgement appears to be well established. None of her interviews were used at the trial. However, the effects of her suggestive techniques are likely to have transferred to other children. This was possible whenever the resultant unreliable allegations were repeated to children; either directly or via parents, other interviewers and therapists.

Lynda Morgan

Morgan joined the interview team on 6 April 1992 (Hood p340). Morgan was the founder of the Incest Survivors Group. Morgan is author of *Katie's Yucky Problem* (1985), which describes "bad touching" for pre-schoolers. Morgan congratulated the staff in Ward 24 at a conference in 1982 (Hood p128). Ward 24 staff appear to have made a number of major errors. The reader is referred to Hood (p151-153) for an analysis of Justice Kean's 1988 judgement, and a description of the investigation by the *Frontline* television programme. Both events highlighted deficiencies in the Ward 24 child abuse investigations. Karen Zelas's name also appears in these disturbing reports.

(1.5) Bias within Institutions

(i) The Ministry of Justice

Lynley Hood must have been the first to reveal that an official from within the Ministry of Justice phoned the psychologist originally appointed by the defence team. The psychologist was told, (Hood p367).

> *" Peter Ellis was guilty as hell…there were unspoken implications…that I would be compromising my ability to receive ongoing referrals and appointments and assignments from Government Departments and reputable referrers in town – that I would be committing professional suicide* [if he acted for the defence]*"*.

The psychologist told Hood he was "*scared shitless.*" He also claims that at the time attempts were being made (he did not say by whom) to suppress research findings regarding the unreliability of child witnesses.

I spoke further to this psychologist, who expanded a little:

> *"Putting aside the fact that the official was caught up in the hysteria of the times, the official did me a favour by alerting me to what turned out to be perilous waters for all professionals (including Peter's solicitor) involved.*
>
> *The case turned out to be a graveyard for people's reputations"*.

This information, if correct, reveals a successful attempt to influence, perhaps illegally, the course of justice, and reveals how widespread the bias was at the time. This issue is not mentioned in the Eichelbaum report.

(ii) The Christchurch City Council

By precipitously closing the Civic childcare centre on extremely questionable grounds, the Christchurch City Council played a role in generating prejudice against Ellis and the women co-workers. It is not unreasonable to contend that this event affected the jury also. Non-specific and unsubstantiated rumours are also not proper grounds upon which to either suspend or dismiss Ellis, when acting as a fair employer. The City Council commissioned a report on the operation of the childcare centre, completed in August 1992. It contains much of the CPM and SRA rhetoric that is discussed earlier in this report. The report ventured into the subject areas of paedophile profiles and 'symptoms' of abuse. Rosemary Francis Smart, the author of this document, had already publicly professed a disdain for science, and certainly failed to consult the relevant scientific journals in the writing of the report. Smart does not appear to have any academic qualifications in psychology; her training included an MA in Social Work and Education. This suggests that the processes of how sexual abusers are properly identified and of how to carry out an impartial evaluation of the scientific literature about the signs of abuse in children were well beyond Smart's expertise.

Furthermore, when she focused upon the identification of child abusers and upon identifying signs of sexual abuse in children she may have gone beyond her brief, which was to look at how the Christchurch Civic Child Care Centre operated. Although it was almost a year before Ellis's trial, it is apparent that Smart had already presumed him to be guilty of child sexual abuse.

The Smart report continually quoted research sent to her by Beth Wood (then with office of the Commissioner for Children), by Finkelhor (see section (1.2) *Abuse is rampant?*), but little else of scientific substance

> *"...*[pre-school child sexual] *abusers are not like paedophiles …5.5 per 10,000 children in day-care centres in America are sexually abused… two thirds of abuse in pre-schools takes place in toilets…"*

Smart, again quoting Finkelhor, claimed that behavioural signs of abusers included:

> *"...emotional problems, substance abuse, criminal behaviour, sexual difficulties, poor judgement, and punitiveness and insensitivity towards children."* Smart then went on to list the *"warning signs of* [sexual] *abuse"* in children: *"genital irritation and discomfort, unusual sexual knowledge, fearfulness related to the centre, and other symptoms mentioned in 'feeling safe'* [apparently based on a series of videos made by Ruth Corrin of the Child Alert Trust]*."*

I approached Council manager John Gray for a copy of the Smart report, and I was discouraged from seeing it and told I would have to pay for a copy, which I refused to do. Eventually, I was allowed to go in and read a copy at the council offices. When I later requested an opportunity to discuss my concerns regarding the report with Gray, I was refused, and Gray told me "*We know best*". The City Council may not have paid much attention to the issues of scientific accuracy and impartial reliability in their consideration of, and reaction to, the report. However this report was influential in the police decision to investigate allegations against the women crèche workers.

Rosemary Smart later organised a seminar for Pamela Hudson at the Campbell Centre, Christchurch, in 1993. (Martin van Beynen, The Press 1993). Hudson was the author of *Ritual Child Abuse* (1991), and a self styled "ritual abuse expert", she believed in the widespread existence of Satanic Ritual Abuse. This is strongly indicative that Smart was sympathetic toward SRA dogmas.

(iii) The Police

The Great Christchurch Child Pornography Ring

Chief Social worker Mike Doolan said of Detective John Ell who was involved in the case: "*I thought that there was a degree of heightened excitement that wasn't altogether comforting*." (Hood p339). Detective Ell suffered a "*physical and emotional collapse*" on 4 September 1992, and left the Civic childcare centre investigation. That was the day before the closure of the childcare centre, and a month before the arrest of the women. Ell had also been involved with the earlier and unsuccessful investigation into the "*great paedophile ring*". This had significant bearing on the conduct of the police investigation.

Hood states (p275) that an earlier failure of police to find any evidence for such a ring still rankled with them at the time of the Ellis inquiry. There is evidence in Hood's book, and elsewhere (Newbold 2000), that the police felt that, during the Civic childcare centre inquiry, they were at last on to something significant in this regard. The following description of police

treatment of one Civic childcare centre worker aptly illustrates how this perception influenced the inquiry.

The Treatment of Sharleen

Civic childcare centre worker Sharleen (Hood's pseudonym p423) was repeatedly interrogated by police, and amongst the many bizarre things the police suggested to her, were that she knew of tunnels under the childcare centre, cages to imprison children and that Ellis was involving children in a pornography ring. The police even felt it appropriate to give her a book to read on satanic cults (*Nursery Crimes* Finkelhor).

Sexual preconceptions

A consideration of other allegations is very instructive, and highly relevant. Ellis (who professes homosexual preferences) was alleged to have, and was charged with, having sexual intercourse with co-worker Debbie Gillespie (who had lesbian preferences over that period). This was said to have occurred at the childcare centre, and in view of the children. This charge alone, reveals much in regard to the credulity of the police, child interviewers and the prosecuting lawyers involved. The event is highly unlikely to have occurred. It would appear that they had misconceptions in regard to sexual orientation and behaviour and that somehow confounded their grip on reality. The charge did not arise from an allegation by a child but rather from an interviewer's interpretation of the child's play with dolls. The charge did not proceed to trial. In addition to raising question as to the judgement of the police this raises the question of how far are the police are entitled to proceed on flimsy evidence.

According to Hood (p424) Detectives Jenkins and McAuley had problems with homosexuality and lesbianism. Hood surmises they held the moral tenet that homosexuals were very likely to be sexual perverts and to be committing sex crimes. It is relevant to this argument that until recently before the Ellis case the police had sought the prosecution of homosexuals, according to previous law. Consensual homosexual acts between adults are no longer a crime, but held-over attitudes by some on the police force can constitute a bias mechanism. This bias mechanism is what Hood alludes to.

Police lack of objectivity

Hood (p422) describes how the police investigation room contained pictures from Civic childcare centre children with negative captions concerning Ellis.

On page 330, Hood describes how the police removed an iron last (cobbler's anvil) that had served as a perch in a birdcage from Ellis's residence. They labelled it "*phallus symbol/object*."

Interviewer Sue Sidey became so concerned that contamination by parents was rendering one child's evidence unreliable that she declined to undertake further interviews of the child (X/Bart Dogwood). The police then instructed her to continue with further interviews of the child against her (initial) professional judgement (Bander 1997).

When in early October 1992 police applied for a warrant to search the homes of five of Ellis's co-workers they chose not follow usual procedure, which was to apply to either a District Court

Judge or Court Registrar, both situated 500m from the central police station. Rather detective Kenneth John Legat had it signed by a retired Justice of the Peace in a suburb well removed from the station. One of the grounds for searching the home of one of these women was:

> *"3. Once the investigation into Peter Ellis became public knowledge,* [she] *has continued to maintain contact with him and was observed visiting him eight weeks into the investigation when it was known that he was facing serious sexual abuse* [sic].
> *4.…"*

and in reference to another worker:

> *"2. She has been described by a number of witnesses as being very close to Ellis.*
> *3. …"*

Amongst further false and baseless claims included in the grounds of the application were that one co-worker had announced that she was going to marry Ellis and that the ex-husband of another of the women was a homosexual who was 'involved' with Ellis. The latter underscores the aforementioned police attitude toward homosexual males.

The excessive delay in interviewing Ellis, and then not adequately allowing him to give his explanation of events is confirmation that the police were very one sided in their work. From the police perspective, there were two possible crimes: Ellis may have committed abuse, or the parents (and children) could have been laying false complaints. The police failed to attempt to protect Ellis from this possibility. He had equal right to such protection.

Recently Police have successfully prosecuted a number of false allegations of rape and sexual abuse. One such case was that of Simone Doublett, who in 1991 aged 17 told Christchurch Psychologist Lynne Haye that she had been sexually abused in a SRA scenario which included ritualistic chanting and babies being killed.. She alleged the perpetrators included her own father. She subsequently received $10,000 from ACC. Later, whilst a student at the University of Canterbury's psychology she recanted. The effect of sexual allegations on a man's life and career are obviously severe. Had Dr Haye convinced Simone that her father was a perpetrator, the effect of sexual allegations on a man's life and career would have been obviously severe.

The border between reasonable suspicion and outright bias may at times be blurred, but the fact that the police were biased and frequently closed-minded in their investigation of Peter Ellis is well established.

(1.6) Justice Williamson

Many of his rulings and the manner in which Justice Williamson conducted the trial exhibited much that can only be adequately explained by concluding that his actions had prior bias as root cause. This is more fully discussed in section (6).

(1.7) Bias evident within the Eichelbaum Report

(i) Graham Davies' contribution

On page 15 of his report Davies claims that:

> "*This strategy* [of asking leading questions] *could have been justified if it produced new convincing detail…"*

This statement endorses the use of leading questions, however it is interpreted. Again, on page 25, he admits that the interviewer's prompts are a departure from best practice, but goes on to say that this "*could, however be justified on this occasion, by the information elicited*." This approach is surely unfair to the accused as it suggests a search for convincing allegations rather than for the truth, such an approach is commonly referred to as a 'fishing expedition'.

Davies also tends to try to justify the interviewers' use of poor techniques. He quotes research that indicates the interviews were unacceptably long, states the delays of six months and over between interviews was far too long, and the frequent use of direct, closed and multiple choice questions was "*of concern*." Yet he then excuses these failings by stating,

> "*one can sympathise with the interviewers."*

He never seems to seriously consider that these proven distortions to sound practises are unfair to the accused, toward whom no sympathy is proffered.

On page 37, he admits that usually in law, bizarre implausible and improbable allegations (as were made by these children) decrease the credibility of a witness. He then quotes "some *pilot* studies" as suggesting bizarre allegations may exist alongside true allegations. In the pilot study from which he quoted, there exists a major methodological flaw. It did not compare allegations from the corroborated cases with cases where innocence was established. Pilot studies are simply not good enough for dismissing a cause for reasonable doubt. The pilot study is also illogical in its analysis. Impossible allegations are a category of untruth. Where such untruths exist in a finite narrative, then there is logically less space remaining for the truth. Children who make wild allegations cannot be assumed to be good witnesses simply for that reason.

On page 15 Davies fails to recognise the presence of what look like rehearsed statements by the children: The child (Q/Lara Palm) says:

> " [Peter is] *a very mean man who wants children to feel all scared."*

That appears unlikely to be the spontaneous statement of a six year old. Although Davies notes some examples of rehearsed statements, he misses this one and others (see this report section (5.1.i)). He therefore appears to underestimate the extent of the problem.

There is no mention by Davies (see his references, on pages 40 – 42) of the highly relevant and important research by Elizabeth Loftus and associates on children's memory. However, he does quote some of Ceci and Lindsay's important work on interviewing children.

Davies reaches a most peculiar conclusion when discussing the evidence of child Z/Kari Lacebark. Despite his statements that this child's evidence was heavily contaminated by discussions with her mother, he goes on to state (p30) "*Given existing research on coaching* [sic] *it is hard to see how such an account could have arisen from this source alone*." Later in

this report I discuss some important and pertinent research, under the heading “Scientific Analysis of the Testimony” that examines how this phenomenon can occur. One such finding is that “coaching” is not at all necessary to produce false allegations (or false statements) in young children.

In any event “*coaching*” is an emotionally laden term and it is not used in any of the serious research that I have read. Its use implies that the parents were attempting, at best, to produce a convincing story from their children or, at worst, to rehearse lies. I have no evidence to confirm that this was their conscious intention. Nor do most other critics of the Ellis verdicts believe this to be the case. In Davies’ references I could find no articles that discussed in depth the extensive research on the construction of false memories in children.

(ii) Louise Sas’s contribution

In early January 2001, shortly before Eichelbaum’s report was completed, former nanny Vilma Climaco had her name finally cleared, in the Canadian Courts, of charges of sexual abuse of children in her care. Dr Louise Sas played a prominent role in assessing the complainant children’s allegations on behalf of the prosecution, as she had done in numerous previous cases, and always on behalf of the prosecution. Before considering Sas’s contribution to Eichelbaum’s report it is apposite to consider aspects of this case for reason that its timing was almost contemporaneous with Sas’s work for the Eichelbaum inquiry, and for the adverse criticism Sas drew for her role in the case. The following is drawn from an article by Margaret Wente, The Globe and Mail [Toronto], Saturday, January 20, 2001.

> *“...There were no witnesses, and the kids' tapes* [evidential interviews] *were shaky. But there was an expert -- Dr. Louise Sas, a child psychologist who has testified for the prosecution in numerous abuse cases. Dr. Sas found the evidence against Ms. Climaco quite damning.*
>
> *In a report prepared for the Crown, she had this to say about the incident in the restaurant:*
>
> *"The way in which the first disclosure came about initially is of significance. It is what can best be described as an unsolicited accidental delayed disclosure, triggered by a conversation which brought to mind the specific incidents of sexual abuse.*
>
> *"In this case, the discussion of food and appetite by their mother at a restaurant brought on the disclosure of oral sex with the babysitter, whom the boys reported had withheld food from them. According to the evidence, the boys had already been describing sexual acts in the car which they would do to each other, and the tone of the conversation in the car was overtly sexualized.*
>
> *"This in and of itself is highly irregular, and this type of discussion suggests that they had been eroticized and introduced to that type of behaviour."*
>
> *The inconsistencies, the nonsense language, the many months that had passed since Ms. Climaco had left before the kids spoke out -- to Dr. Sas, it all fit together.*

"The disclosures were delayed, which is consistent with the abuser being known to the child. . . . There may well have been intimidation as well (the eye injury) and a grooming process (such as using the term 'toy' for vibrator or 'sandbox' for vaginal area, or involving a hose as part of a sexual game) which made it difficult for the children to explain what happened."

Tim Moore, a psychology professor at York University in Toronto, is also an expert on children's testimony. He was scheduled to appear for the defence. I asked him about the complications of children's testimony, especially children so young.

"Children are inclined to be co-operative and compliant," he says. "The problem is that with the right ingredients of social pressure, suggestiveness, repetition and unintentional reinforcement, children may say what they think is expected of them."

I asked if frequent talk about genitalia is abnormal for four-year-olds.

"There's a natural fascination with body functions at that age," he says. "Scatalogical terminology is hysterically funny. Kids can amuse themselves endlessly with body-part references."

Cindy Wasser, Ms. Climaco's lawyer, says: "Dr. Sas can interpret every fact and every behaviour as evidence of abuse."

[Vilma Climaco's resultant (first) trial was declared a mistrial due to the prosecution producing a new "surprise" witness. A new trial was then scheduled].

.....the new witness was interviewed three times on videotape. His stories were contradictory, and in the third interview he declared that he had been lying all along.

Once again, the Crown called on Dr. Sas to give her expert opinion of the tapes. Her verdict? All the testimony again pointed to Ms. Climaco's guilt.

"There are strong indices of reliability in his allegations about sexual victimization," she wrote. "His retractions and then reaffirmation of the veracity of the information he was providing was a clear example of his difficulty sharing the information."

In other words, all the boy's contradictions, as well as his assertion that he had been lying, were really signs that he had been telling the truth.

On Jan. 2, Ms. Climaco's second trial began before Mr. Justice Paul Rivard. It, too, was very short. Before a jury could be summoned, the judge assessed the evidence and the circumstances surrounding the case. He viewed the tapes and decided they were completely unreliable. So he threw the case out.

Vilma Climaco was free to go.

> *You could say the justice system worked. After all, a judge was wise and an innocent person did not go to jail. Ms. Climaco's defence was excellent and was funded by legal aid. Still, the price she paid is almost unbearably high.*
>
> *"She's been completely vindicated," Ms. Wasser says. "But it's a bittersweet win."*
>
> *Today, the former nanny works part-time in a Wal-Mart. She is $17,000 in debt for student loans [accrued in an attempt to re-train for an alternative career]. She can see her son Jonathan now, but he is in California, and she is broke."*

In the case of Sas's contribution to Eichelbaum's inquiry the a priori bias seems more widespread than in the Davies report. She begins with some dramatic overseas cases of "Multi victim multi offender " abuse, with special reference to the "porn ring" in the Project Guardian case in Canada. I interpret this as indicating a belief on her part in SRA. There is little reference to any hard evidence to back some of the claims she makes in regard to these cases. According to Hood (pp 608, 609), the Canadian case did not reveal what Sas claimed it did, as there was no MVMO "porn ring" Other observers have said that the men alleged to be involved, some of whom were teenage male prostitutes, were not working together and that any offences committed were consensual. Sas also appears unable to distinguish consenting adult male homosexuality from male-to-male paedophilia, the latter involving pre-pubescent boys with older men. Eichelbaum was thus being misinformed by Sas right from the beginning of her report.

In her brief discussion of the "Kelly Michaels" case, where all convictions were overturned, Sas fails to point out the obvious similarities with the Ellis case (p6). Such similarities include, amongst other factors, communication between parents of what other children had said, allegations of planting objects in penises and bottoms, etc and the demonisation of the accused.

Police prepared a handout headed "What to do if a child tells of his or her abuse." for the Knox Hall meeting of parents. It was based upon a leaflet prepared earlier by *Feeling Safe* director Ruth Corrin, in which the title read originally "when" rather than "if" a child tells. This handout was severely criticised by Sas (pp 16 & 17) as failing to list behaviours "*not associated with abuse*" and for its bias. In discussing contamination, Sas also states (p8) "*steps must be taken right at the beginning to contain the hysteria* [sic] *and amateur sleuthing...people will go to great lengths to uncover the 'truth.' "* Yet she fails to follow through with an analysis of the results that these histrionics may have caused in the Ellis case interviews.

On page 10 of her report, Sas states that a "*lack of spontaneous disclosures is consistent with the dynamics of secrecy*…" This identifies an important problem and the manner in which it was handled is the crux of much of the argument in the Ellis matter. An absence of spontaneous allegations may (or may not) be due to the children having been threatened or sworn to secrecy. Because abusers will undoubtedly try hard to avoid getting caught, there is a temptation to interview children at length and to use leading questions, etc., Unfortunately this approach can easily render the evidence totally unreliable and may result in miscarriages of justice. Sas fails to seriously consider the more straightforward alternative, that a lack of spontaneous allegations could, (and perhaps more commonly), indicate that no abuse had occurred.

Sas uses the term ‘disclosure’ in place of allegation throughout. She uses the term in a manner that regards every allegation as a disclosure of truth (p4). On page 24, Sas states her support for asking some leading questions in evidential interviews. She also suggests that parents should be given a handout, recommending the use of leading questions, in instances where earlier attempts have failed to result in any “disclosure” (p18).

Further examples of Sas’s use of language that betray underlying bias (my emphasis):

- Page 28, regarding an interviewer’s failure to follow best practice *"... I felt the child’s rapport with the interview* [sic] *was compromised by the interviewer's **need** to get a disclosure*." Sas is not criticising the interviewer’s “*need to get a disclosure*” but is arguing that such a “need”, on the part of the interviewer, is reasonable reason to mitigate the occurrence of poor rapport in the interview. The interviewer should not be motivated toward obtaining “disclosures”, rather the interviewer should be conducting an impartial investigation into the possibility that an offence had been committed. Sas appears to condone the interviews becoming ‘fishing expeditions’ for allegations, this is contrary to widely accepted best practice guidelines.

- Page 39, regarding a flawed interview "*The **saving grace** was that the child had previously given these disclosures in the first interview...*" Here Sas betrays herself by revealing what she does and does not regard as positive outcomes (also see page 33 below).

- Page 44, regarding a flawed interview that was not used in court " *This was understandable but was **unfortunate*** [that it wasn't used in court] *as the child made clear disclosures*”. Again Sas betrays bias toward certain favoured outcomes and she also attempts to excuse poor practice. An impartial commentator would simply state "this was an appropriate outcome given the flawed interview practises" and allow for the possibility that the poor practices had contributed to the production of unsafe testimony.

- Sas reveals bias when she refers to accused persons as “*offenders*”, even in situations that are prior to both investigation and conviction.

  > *“From the moment an allegation of child sexual abuse first surfaces ...the natural tendency on the part of parents and professionals* [is] *to look for signs of abuse in children who have been exposed to the offender, ...”* (p7).
  >
  > *“The problem of course is when an **offender** is dismissed from a facility **pending** an investigation ...”* (p8).

In sexual abuse cases defence teams often argue that allegations from children are unreliable due to interaction with external sources of influence (contamination). This is a perfectly reasonable contention that may or may not be supported by the evidence. To Sas however such a proposition is not afforded the dignity of being considered an argument, but rather,

> *“A common defense **accusation** is that complainant families through* [sharing of information] *can create false disclosures in their children”*. (p4)

The more emotive term *accusation* exposes an adversarial attitude on Sas's part. It suggests that she regards it as her role to counter such arguments rather than simply to examine or evaluate them.

On page 47, Sas states that nightmares were "*consistent with having been sexually traumatised*." It should be appreciated that so is a myriad of other benign activities. Presumably, she means that this (nightmares) is a weak part in a strand of evidence, and that the strands all add up as a web of circumstantial evidence. However, a fair evaluation would consider other possible causes. Nightmares are fairly common, an external cause cannot always be found, and they certainly do not prove abuse has occurred. Again, the term "consistent with" seems to indicate a less than open way of influencing opinion without having to provide any solid evidence. The logical absurdity of the term has been previously exposed in section ((1).i), in reference to the affirmation of the consequent.

Page 50 of Sas's report reveals more in regard to a priori bias on her part. She states that child X/Bart Dogwood was "*not helpful*" when he refused to "disclose", and had responded that "*there were no other things, anyway*." Significantly, she states that rapport was "*mediocre*" in this case. Rapport, whilst no doubt useful in obtaining a sense of trust, could also be seen as an indicator of control over the child through reinforcers, both verbal and non-verbal. (A '*reinforcer'* is a response such as a smile, or an affirmation such as saying yes, that will strengthen preceding behaviours).

Sas seems to invent some of her theory as she goes along; in order to make the facts fit (her) foregone conclusions. For example, on page 52, she states that one child (X/Bart Dogwood) showed little emotion because he was feeling emotional, that he repeated questions and changed the topic as a means of coping. This is possible; although I think unlikely and not a conclusion able to be drawn from proven research. The more parsimonious explanation would be that the events under discussion were not real and therefore had little emotional impact upon the child. This child, in the same manner, also related how Ellis drove a car (Ellis did not drive), that Ellis stuck a burning piece of paper up his anus, that Ellis's mother was present (very unlikely, surely), and that other women, "Spike" and "Boulderhead" were there (no such people were ever identified) etc. Even Sas finds this all "*pretty incredible*." This child was nevertheless, and in contrast (but never explained by Sas), capable of the more usual "*emotive responses*" of screaming, crying and vomiting at the time of his mother's interrogation (p55, Sas).

Sas admits that child X/Bart Dogwood's evidence is contentious (p56). Her explanation ("*one theory I have*") of the unlikely allegations from this child, invokes the highly controversial post-traumatic stress reaction theory. If this were the case, *none* of the evidence can be reliable, and there is also no proof that Ellis was the source of the trauma. Furthermore, once the SRA allegations are removed, what remains may not be, from a child's point of view, very traumatic sources for allegations. Another seemingly non-rigorous and unprofessional statement begins (p8): "*it is common knowledge that*."

On page 6 Sas briefly describes the Kelly Michaels and the McMartin cases (USA). In both cases the accused were ultimately exonerated by reason of contamination of children's evidence, including the use of seriously flawed forensic interviews. Sas then reveals that she regards the purpose of trials as being to find "offenders" guilty, rather than to ascertain the likelihood of any allegations being true.

> *"The two Canadian MVMO* [multi-victim multi-offender] *cases in Ontario, were much more successful in their sexual abuse prosecutions* [than in the McMartin case]. *...in the first* [Canadian] *case, the positive court outcomes were also due to ..."* (p7)

Use of the phrase "*positive court outcomes*" implies that Sas considers successful prosecutions to be positive and unsuccessful prosecutions to be negative. *This is a clear and blatant bias and it lies at the very core of what Eichelbaum, with Sas's assistance, was entrusted to evaluate*.

Louise Sas seems to have spent her busy career not by carrying out research, but rather by pursuing alleged child abusers and by appearing in courts and taking workshops for professionals. She exhibits the mindset of a prosecutor, not of a scientist. Sas's analyses are made less credible when it is observed that she seems to produce a theory for everything, as long as it leads toward a guilty verdict.

Theories that attempt to explain everything actually explain nothing. They are rather like panaceas.

(iii) Eichelbaum

Eichelbaum (p27) notes that the report of the Cleveland Inquiry recommended that the term "disclosure interview" is undesirable and should be avoided. This term was repeatedly used by the Crown prosecutor during Ellis's trial when describing the evidential interviews, but Eichelbaum does not raise any concern in his report as to the possible prejudicial effects such use may have had upon the jury. Eichelbaum makes no comment on any of the biased terminology identified earlier in this section.

The appointment of the two experts.

Eichelbaum was correct in appointing psychologists (rather than appointing psychiatrists, as were used in the trial), but it seems inappropriate that Eichelbaum should appear to rely primarily on legal opinion in choosing his appointments (p23). It should be asked why was there no consultation with people with expertise in the field of psychology, making use of academics in our universities. It is questionable as to how legal people alone can be the best people to assess psychologists. Legal experts may be of some use, for example in looking at the issue of impartiality (but in regard to that issue, I fear, Eichelbaum was misdirected. As noted elsewhere, Eichelbaum could have better ensured impartiality by consulting more than the minimum number of two experts.)

In considering who would qualify as an expert, it might be appropriate to consider two analogies from the field of medicine. An inquiry into NZ's cervical screening procedures recently did not call for the opinions of GPs. Instead, it heard from scientific researchers who had direct knowledge of the relevant scientific facts. Secondly, new drugs are tested and evaluated by research scientists before being used by GPs or hospital doctors. The clinicians might report back their concerns (eg side effects with certain people) and further tests can be done. The use of thalidomide for pregnant mothers resulted in deformed babies being born. Since, testing has been made more thorough. The hard data come from the researchers rather than clinicians. In the

fields of psychology and psychiatry, this is also the case. It seems that in court, clinicians (whose role is to apply knowledge) may not, in general, be as reliable as research scientists.

In the Civic childcare centre case the validity of the prosecution's case clearly relied on the scientific answers to two major questions. Firstly, were the children's memories likely to be accurate long after the alleged events? Secondly, was the way they were spoken to prior to the evidential interviews (by parents, police, social workers, therapists and other children) likely to have influenced their later statements in the evidential interviews to the point where those statements could not be relied upon?

Elizabeth Loftus (1979) discusses various criteria for court experts, and the importance of the expert's qualifications and experience. It is mooted in her book that experts should have an advanced degree in experimental psychology and should have carried out and published research in this area. To have someone significantly less qualified could, in my opinion, be worse than having no expert at all.

I have concluded, from my finding in the previous sections, that bias exists in the work of the two psychologists chosen by Eichelbaum. Both performed below par in their analyses. Eichelbaum, however, appears to have relied heavily upon their reports in order to reach many of his conclusions.

One obvious choice as an expert for Eichelbaum was Dr Stephen Ceci, who has conducted and published much research on interviewing children. His work focuses on factors that affect the reliability of children's statements. Ceci was nominated, on behalf of Ellis by his legal counsel Ablett Kerr, but rejected by Eichelbaum, in part because he had "*provided input for a television programme on the case*"(p24). I do not regard this is as strong argument. Few experts in the field would have been totally ignorant of this high profile case and leading experts would almost inevitably have been asked for comment at some stage. Such an association should not exclude them.

Eichelbaum was in error if he thought that Ceci had expressed a final opinion on the case. As already discussed in regard to bias, even if Ceci had stated that he thought Ellis was innocent, that does not in any way indicate that he is biased, as he may be prepared to revise his opinion in the light of new evidence (eg access to all the videotapes of the child interviews).

The terms of reference instructed Eichelbaum to seek nominations as to appointment of experts from Mr Ellis, the Crown Law Office, families of the children and the Commissioner for Children. It appears Eichelbaum then opted to seek experts who had no previous connection with the case or with any of the parties, especially that of Mr Ellis (Eichelbaum, p23,24). This can operate as a bias mechanism against any party who had previously undertaken to legitimately approach, for opinion, the leading authorities on the issues. It can also operate toward selecting experts of inferior calibre, as those that lead in the field may be excluded. The questions should be raised; was the purpose of the nominations only a means of identifying certain experts in order to exclude them? or alternatively, was Eichelbaum deliberately ignoring the intent of the clause within the terms of reference?

It is therefore no surprise that Eichelbaum states (p23)

> *"The nominations caused some difficulty."*

In the end we were left with the selections deemed appropriate by Eichelbaum, Legal Counsel within the Ministry of Justice and an anonymous "*USA Law professor*" with whom Eichelbaum had "*a long discussion*". Eichelbaum provides no detail or summary of the nature of the advice he received from either of these two sources in regard to this critical issue.

The unnamed professor referred to has since been identified as Thomas Lyon of Cornell University. Lyon wrote a review of the scientific literature on children's memory and the effects of different interviewing techniques (Lyon 1999). In it, he admits several times that his views are out of line with those of his colleagues and mainstream psychology (for example see p5, in relation to the Kelly Michaels appeal, and his references to the American Psychological Association position statement). Lyon argues that forensic child interviews (such as the ones in this case) are generally free of suggestive questioning, and because they are usually not videotaped, we cannot claim that they may be deficient. Fortunately, the interviews in the civic case were recorded, and show otherwise. He also states that childcare cases where there are large numbers of children interviewed are atypical. That makes the Civic case atypical, too. Had Lyon seen the videotaped civic interviews, it may be likely that he would have described them as similar to the *"highly coercive and suggestive questions documented in the Michaels case,"* (Lyon page 34).

Lyon quite openly elevates claims based upon subjective clinical experience in comparison to the objective results of scientific study. He then appears to reject some of the scientific results that do not accord with his view that children must be accurate when they make allegations of sexual abuse. He does, however, describe well the trade off between using interviewing techniques that provide more information, both true (that can lead to correct convictions) and false (false convictions); against those that provide less information, less false convictions, but also more false acquittals. Traditionally, the law has erred on the latter side by being cautious to convict. The change of emphasis in cases of child sexual abuse appears unjustified, especially in considering the effects of wrongful conviction. In our prisons, (see Newbold (2000, and also "The Big Huey" by the same author), paedophiles are commonly beaten by other inmates. Social attitudes commonly reported in the media suggest that many citizens hold the view that it is on a par with, or worse than murder.

However, as with the Eichelbaum report, it is easy to see that the majority of material in Lyon's paper points clearly *away* from his conclusions; towards the need for greater caution in accepting uncertain uncorroborated evidence from young children. On page 40, he states

> *"My position is not that the new wave's research is irrelevant to decision makers assessing the reliability of children's claims of abuse, but that its relevance is tempered by the realities of sexual abuse and abuse investigations and by the fact that no science is value-free."*

His description of recent (especially post 1985) studies in memory as a "new wave" is very odd, considering that these kinds of memory studies go back at least 100 years (see Neath 1998). Lyon also states (in regard to researchers such as Stephen Ceci, Elizabeth Loftus and Maggie Bruck,

> *"Not only does the new wave conduct research with scientific rigor, but it also admirably discusses its research and its implications in an even-handed tone."*

Not withstanding Lyon's own inconsistencies, had Eichelbaum placed weight upon Thomas Lyon's advice then clearly Lyon's biases would have strongly prejudiced against the acceptance of any of the experts submitted by counsel for Ellis.

In regard to Eichelbaum's stated desire to avoid using experts already acquainted with the case it has been revealed (Hood p608) that Louise Sas had opportunity to hear highly partisan opinion on the case well before her appointment by Eichelbaum. After the trial Wendy Ball, now a law lecturer at the University of Waikato, acted as spokesperson for the complainant parents. Ball has been an outspoken supporter of Ellis's convictions and she was also a friend of Ms Magnolia (Hood p219), the parent who has been described by Ablett Kerr QC as being at the very

> *"heart of the spider's web of networking [between parents] and spreading cross contamination".*

Ball had opportunity to meet and acquaint Louise Sas with details and her evaluation of aspects of the case when both were speakers in a workshop that included the subject of multi-victim, multi-offender child abuse with emphasis on cases within the past decade (Second International Conference on Children Exposed to Family Violence, held in London (Ontario) in 1997). Ball has indicated that the topic and nature of her input was (private correspondence 2004)

> *"evidential aspects of 1989 Evidence Amendment Act pertaining to child witnesses/victims of sexual offence"* and that *"the Christchurch Civic Creche case was covered in this presentation".*

Wendy Ball went on to claim that the presentation was on *"the way video/CTV recording worked in such cases"*. Her claim is misleading, examination of the paper Ball presented reveal that the focus was far broader. Moreover, the Ellis case was extensively and exclusively cited as a triumph of the 1989 legislative changes. Throughout Ball made clear her opinion that Ellis was a *"disgusting paedophile"* and that families of the complainants continued to suffer the *"vicious backlash"* generated in the media by well organised supporters of Ellis. Prior to her appointment to the inquiry Sas would have been well aware of the significance of the Ellis case in upholding the changes to evidential procedures that she and fellow advocates had worked on for a decade or more to introduce.

I have noted that Sas is something of a campaigner in the field of the prosecution of paedophiles. Ergo, someone who would rigorously examine the other possibility could have counterbalanced her approach.

I have raised strong criticism of Sas and Davies in regard to their credentials in the area of scientific research. Sas has published little or no relevant scientific research. Professor Corballis has noted (personal correspondence and NZ Listener 2003) that the scientific status of a journal can be checked by referring to *Journal Citation Reports*, a compendium of 5876 academic and scientific journals which provides indices as to how often each journal is cited, and in respect to the journals within which the only two papers of any substance that Sas has published, neither appear on the lists. Davies seems to have carried out some, but little of it seems to have been

published in mainstream journals. For example, is *Child Abuse Review* an impartial journal with a good scientific reputation? (see Davies's appendix p3). The Social Work and Law journals are not strictly relevant either. Corballis (2003) finds Davies that has *"a moderately respectable record…although not in the major journals of memory or developmental psychology"*. I note that Davies does pronounce not on the veracity of the children's accounts (p3, 39), whereas Sas clearly states (p59)

> *"The evidence of the six complainant children (S, Q, Z, X, R, and O) was reliable."*

In contrast, and exercising caution common to many scientists, Davies was not prepared to make such an assertion on the insufficient data that was supplied to him. It would appear to be significant that Davies' scientific base seems much more secure than Sas's.

Eichelbaum's respect for Justice Williamson

It is noteworthy that in 1997, three years prior to his ministerial report into the Ellis case, Eichelbaum gave the inaugural address at the Neil Williamson Memorial Lecture held in Christchurch. Williamson was the judge throughout the Ellis trial. Interestingly, Eichelbaum had chosen the topic of judicial independence, which he said was under threat, for the address. In his tribute to his former colleague Eichelbaum said that he personally had the greatest admiration for him, and that in the field of law, Justice Williamson

> *"... had exceptional gifts of judgment, integrity and humanity. He conducted many of the most difficult trials of his time, and he did so impeccably. He was a model Judge"*
> (Eichelbaum 1997)

In light of this statement the question has to be asked, how prepared was he to subsequently criticise the work of Williamson? Any reluctance to do so either directly or indirectly would constitute bias

The major issues

Any determination of whether or not the children's allegations arose from memories that were of actual events or otherwise needs to include a study of the children and their relevant personal history. It can be strongly argued that this is essential to any thorough analysis, at least from a scientific perspective. In the course of this case I am unaware of any but the most superficial attempts to do this, certainly Eichelbaum attempts no such analysis.

There were no spontaneous allegations apart from Ms Magnolia's son remarking that he did "not like Peter's black penis". The boy failed to elaborate, so no charges ensued from this child. Formal interviews of the other children followed an extended period, in some cases several months, of parental questioning well prior to the formal evidential interviews. Most of the child witnesses whose evidence resulted in convictions were first formally interviewed between six and 15 months after last attending the childcare centre. In one case there was an 18-month delay. *Eichelbaum does not directly detail these significant time lapses.* Given these delays it was, arguably, too late to determine beyond reasonable doubt, whether such recollections were of actual events. Eichelbaum does not acknowledge that these delays are significant.

A comprehensive inquiry would have studied more closely how the evidence was gathered, and of how the behaviour of the police and parents may have resulted in it being collected improperly (see following sections of this report). For example, the delay in questioning Ellis allowed alternative explanations for the allegations to be lost to the record. There should have been comment in the Eichelbaum report on the possible consequences of, and impact of, the long delay in interviewing Ellis.

The way the trial was conducted may also have prejudiced the manner in which the evidence was presented. This could have been discussed in more detail, especially as to rulings that constrained presentation of evidence that had a direct bearing on the reliability of the children as witnesses. These matters are examined in more detail in section (6).

False argument

This treatise also contends that Eichelbaum was disingenuous in his analysis of the experts' opinions and in his interpretation of their conclusions when later weighing the arguments. This is especially evident in Eichelbaum's use of Davies' contribution. In this regard other commentators, including Hood, Ellis's counsel Ablett Kerr have raised similar concerns. More generally, the editor of the *New Zealand Law Journal*, Bernard Robertson has suggested that Eichelbaum's judgement was faulty (NZ Law Journal, February 2002).

On page 111 Eichelbaum states

> *"Professor Davies stated that the mistakes which occurred were insufficient to explain the content of the allegations regarding events at the crèche. The reservations he expressed affect only one of the 13 convictions."*

But Davies expressed numerous concerns. Eichelbaum's assertion that Davies concerns affected only one of the convictions does not stand up to any careful scrutiny of the material presented within Davies report. For example, Davies' states p39

> *"Of more concern, is cross-talk between families, against a background of persistent accusation against a suspect."*

This likely involved more than one complainant and it appears that Eichelbaum's repeated assumption (also p119 Eichelbaum), that Davies' concerns relate only to the accusation set at the Hereford St location (child Z/Kari Lacebark), is simply not supported by the record.

Of more import, Eichelbaum, in the forgoing statement, seems to deliberately overlook an important qualification that Davies deliberately included on p39, (my emphasis)

> *"...I do not think that cross-talk **alone** is sufficient to explain the similar accusations..."*

Eichelbaum misinterprets this along with "*the gist of his* [Davies'] *concluding comments*" as meaning the tapes provided "*credible evidence of the offences on which the convictions were entered"*. Davies does not rule out such contamination as having *contributed* to accusations (in particular those set in the Civic childcare centre premises). In other words Davies' statement does not rule out the possibility that cross-talk might have contributed toward the similar

accusations when considered in combination with other factors, for example the children having been read similar books or having had similar scenarios put to them by adults (such as investigating police officers and counsellors). Eichelbaum uses the statement to imply that cross-talk did not result in the accusations and therefore cross-talk can be disregarded as cause. This is a basic logical error and by this means Eichelbaum seemingly manages to dismiss all concerns that Davies might harbour in regard to contamination. However Davies had also continued by writing that the accusations need to be considered in the light of the wider context of the investigation, including Civic Child Care Centre layout, timetables etc (matters that Hood refers to as "reality checks"). Eichelbaum failed to carry out such checks (e.g. he did not study the Civic childcare centre layout). The qualification "alone" is important and should not have been ignored by Eichelbaum, especially as Eichelbaum later transforms 'credible evidence' (i.e. capable of being believed) into "*reliable evidence*". This is certainly not Davies' position as I and other commentators (see forgoing) interpret it. Eichelbaum goes on to use this distortion, seemingly now elevated by him to the status of fact, as reason in his weighing up of the arguments, as is evident in his summary of salient points (p119)

> *"... the experts and I independently reached the view that the children's evidence in the conviction cases was reliable."*

However, Davies had stated quite clearly (p3, my emphasis)

> "[My report will] *not attempt to pass judgment on the guilt or otherwise of Mr Ellis* ***nor to pronounce on the reliability of individual children's accounts****"*.

I would go so far as to contend that this borders on dishonest reasoning on Eichelbaum's part. Unfortunately, as this section has revealed, blatant distortions such as this one, in this case made by Sir Thomas Eichelbaum, a retired Chief Justice, are not an uncommon feature of this case.

(1.8) Conclusions

It appears to me that many people closely involved with this case have exhibited fundamental flaws in regard to the logic of their reasoning. These flaws appear to have been habitual in nature, and therefore may well have existed before this case arose. Eichelbaum also exhibits some of these flaws. Such flaws may reflect incompetence, but where they arise due to a conscious desire to reach a certain conclusion, then an avoidable and deliberate bias could be inferred.

Throughout this case, biased terms such as "disclosure" (instead of allegation) "consistent with" (out of a logical context and with the implied meaning "is likely to be due to") and "in denial" (in place of "the person/child denies or does not agree …") have gone unchallenged, even by Eichelbaum himself. It might be fair to suggest Karen Zelas was the person most culpable during the investigation and trial. She had several key roles, and was said to be well trained and respected. Yet she appears to have propagated and supported these biases rather than have rejected them.

The appointments of Sas and Davies failed to address these issues. In fact both reports, most especially that of Sas, contained multiple errors and bias. Sas appears to lack experience in conducting relevant scientific research. Both were less than rigorous in applying what they did

know. The account of Sas's appearance as an expert witness at an overseas trial, as well as her work for the Eichelbaum report, establishes a pattern of extreme bias and recklessness in her analyses. Eichelbaum rejected experts Ceci and Bruck who were nominated in the submissions but did not succeed in finding two comparably high quality psychologists through his enquiries to his legal contacts. It was inadequate of him not to have approached a university psychology department for informed opinion.

It was inadequate of Eichelbaum not to disclose the nature of advice he received from the Ministry of Justice and from Thomas Lyon in regard to the appointment of experts. At the time of writing the advice provided by the Ministry of Justice remains unreleased.

An examination of the agencies involved (police, CYPS, Crown Law Office, and the Christchurch City Council (who oversaw the childcare centre), shows that there existed widespread bias, and a belief in many cases in a non-existent great pornography ring that practised SRA. In addition, there was widespread misinformation about the "symptoms" of sexual abuse and reliable methods of investigation of child sexual abuse allegations. There is clearly evidence of prior bias by the child interviewers and their supervisor psychiatrist Karen Zelas, who supervised the therapy and also acted as expert witness for the prosecution. The preceding summary of some of the unfounded assumptions present within the Child Protection Movement provides a convincing explanation for the sources of these biases.

Significant factors are hidden by a muddled analysis in the Eichelbaum report. His focus was far too narrow, due in the main to his terms of reference.

These matters of bias alone are sufficient grounds to cast doubt on the value of the whole Eichelbaum report.

Only the existence of very convincing hard evidence can overcome the doubts raised by this bias.

(2) The corroborating forensic evidence

"Phallus symbol/object"

Police description of property seized from Peter Ellis's home, 1992

(2.1) Bodily Signs

I am reminded of the hunt for bodily markings sought from the "witches" in Salem when Sas makes a claim of *"medical support for vaginal penetration."*(child S/Tess Hickory p50 Sas). I presume this refers to the child (or her mother?) recalling a sore and red vagina. The term "medical support" implies a doctor saw this and ventured an opinion as to the likely cause. The evidence does not strongly support the claims of penetration occurring at all. In Davies' report, he states (p37) that he "*understand(s) medical evidence consistent with sexual abuse was found for three of the children,*" but he goes on to say, "*there were no indications to support the view* " from the videotapes he viewed. Davies and Sas may have been misinformed (although Sas appears to readily accept such a claim). One local GP indicated that she found some evidence that she initially concluded was "consistent with" sexual penetration. Upon further consideration the doctor later withdrew her conclusion, recognising that it was inaccurate.

Ultimately, the prosecution admitted that there was no reliable evidence for any physical abuse..

(2.2) Toilet layout

If, as claimed by the prosecution, most of the offences occurred in the toilets, then they would have to show that it was possible to hide from the view of parents and other visitors who came in frequently and at random times during the day. One local dentist in particular would often drop over unannounced. There were many student teachers at the Civic childcare centre and almost a dozen other employees. It is clear from the visibility of the toilet area, and the fact that the door to the toilets was essentially always open, that Ellis could not have carried out all these offences unnoticed, yet no one observed any abuse. Ellis would have had to abuse the children with the toilet doors open. It is inconceivable that such frequent abuse could have occurred undetected. There was not a single adult witness and no one saw anything that corroborated the children's stories.

The police apparently "mislaid" more than 200 photographs taken by staff and parents over the years of the Civic childcare centre layout and of its daily operation. Pre-trial the police denied all knowledge of the existence of these photographs in response to requests for them from Ellis's defence counsel. The photographs were consequently found by Ellis's defence team in November 1996 in Christchurch City Council archives along with a property receipt that clearly indicated that they belonged to a set of photographs removed by police from the childcare centre on 4 September 1992.

During the trial Detective Neville Barry Jenkins was asked by the defence to explain why, given that the police had photographed almost every square metre of the centre, the police had no

photos that illustrated the highly important lines of sight from the main playroom into the toilet lobby and cubicles (the latterly discovered mislaid photographs did illustrate these aspects).

His best explanation to the court was;

> *"I don't think there would be any particular reason for it...it* [is] *simply my opinion as to how they* [the photos] *should be. Certainly there would be a number of inadequacies about the photographs but nothing would be deliberate in that, it is very difficult to depict a scene such as that* [in photos]*."*

It is reported (Hood p205) that Ellis hated toileting the children and tried to avoid this task. That fact weakens the prosecution case considerably, as the most credible of the allegations, those made early in the interviewing process, sets the abuse in the toilets.

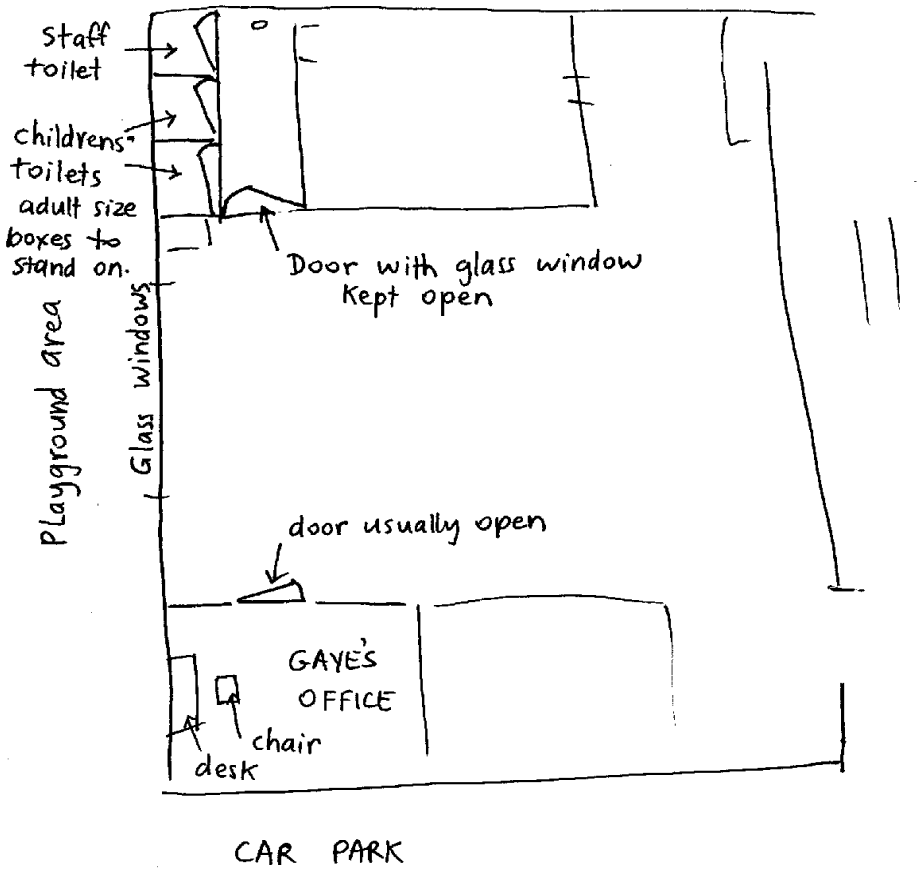

Figure 1. Christchurch Civic Child Care Centre layout
drawn by supervisor Gaye Davidson August 2003

The layout is still visible in the Cranmer centre building. Davidson recalls that the handles on the toilet doors may have been too high for the children to reach, and so they were left open. The toilets were adult size, so there were boxes for the children to stand on. At the "womble" end, where smaller children were, the toilets were smaller. Davidson had a view of the toilet area through her office window, where she was about half the time. NB. Dr Parsonson's report (see section 8.1) places some of the alleged events outside the toilets. The door to the toilets was always kept open.

(2.3) Homes Searched

For detailed eyewitness accounts of the police searches the reader is referred to Hood pp 407-412, 422 - 424. The police thoroughly searched the homes of Ellis and the other four women, but failed to find anything even remotely suggesting sexual depravity. Sas (p14) overcompensates for the lack of solid evidence with the indisputably biased statement that:

> "*The police made a gallant* [sic] *effort…to find the locations…traps doors, etc…*".

Police evidence with regard to the Cranmer centre roof, and the Hereford Street address was most unconvincing, as was later revealed, both in a subsequent television programme and in the court transcripts.

(2.4) The Great Video Hunt

Hood reports that the police carried out an epic hunt, searching for local video recordings of child pornography. They viewed so many videotapes that they wore out their machines. Hood describes (pages 409 –410) how Detective Jenkins appeared to believe that he is on to something big when he visited the home of a Civic childcare centre family, who supported Ellis. He informed the family's mother that because she wasn't co-operating with the police, then she must be a child abuser. Rather like a Kafkaesque scene in a black comedy, the family then decide to hide their family videos of Thomas the Tank Engine, etc, from the police.

(2.5) ERO Report

The case against Ellis originally included charges against four of his colleagues. It is of relevance, given this inclusion, to note that just after Ellis was suspended, the Education Review Office (ERO) investigated the Civic childcare centre and issued a glowing report. At that time his co-workers were not under suspicion, although the ERO had been informed that there had been a complaint against Ellis. Given such conditions it is reasonable to assume that the ERO team would have noticed something amiss had Ellis or his co-workers been committing the crimes they were later charged with.

(2.6) Window of opportunity

Ellis was convicted on four counts involving offences at an outside address. Ellis had to be capable of pulling off a masterpiece of remarkably precise logistics, especially in regard to the "bath" and circle allegations presumably at the Hereford St address. He had to have marshalled an unknown number of adults and children to what must have been a very precise timetable. It included

- contacting his co-offenders (using the childcare centre telephone?) to arrange their presence at a remote venue,

- walking with the children to the venue through busy city streets, the prosecution case suggested the unlikely use of public buses,

- running baths, undressing and abusing the children,

- cleaning up (this included removing all traces of blood, urine and faeces) and returning to the Civic childcare centre in order to deliver his charges back to the centre in a perfectly calm state.

All this had to be done within the typical walk duration of 60 minutes or less. The single fact that he did not own a car, could not drive and that no one saw him drive renders the time frame implausible. No child ever made any negative comment after returning from a walk with Ellis. His alleged co-offenders must also have been extraordinarily accommodating and patient, given the childcare centre's organisation and its timetables, Ellis would have had little idea as to which days opportunities to offend might arise.

Given their logistics, the lack of corroboration from any adult witnesses for these allegations and their apparently far-fetched nature, the alleged scenarios are extremely unlikely to have been even possible.

(2.7) Other parents and children

It was reported (Dominion Post 4 Oct 2003) that nine children and 17 parents who were involved with the civic centre at the time of the case have signed the petition calling for an inquiry. Of the 127 children interviewed, only nine ended up in court and those who remain strongly convinced of Ellis's guilt may now well be in a minority. Post-trial the police believed about eighty children had been abused (Ansley 1993), had there been such widespread abuse it would be reasonable to expect that a strong majority of the other parents and children would have noticed something amiss, and would have spoken out, both then and now.

(2.8) Conclusions

In his university textbook on human memory, Neath (1998, page 338) states

> *"if the only evidence is from an eyewitness and there is no other objective or corroborative evidence, then there is no way to assess the accuracy of the memory."*

Perhaps if the children had all agreed on most of the details, this would constitute evidence for the case against Ellis. However, the children had every opportunity to develop similar stories; with allegations being passed to interviewers before the interviews as well as being passed on through parent networks, police, therapists, and sleepovers with the children. This all occurred before the formal allegations, so we are drawn back to the forgoing statement.

It is clear that the some of the police had a strong prior assumption of guilt. Despite consistent failure they persisted in searching for hard evidence of trapdoors, tunnels, cages and other unlikely props.

Given the number and variety of alleged offences in various locations, it would be reasonable to assume that there would be adult witnesses and some other hard evidence. Such evidence might be in the form of the photos or videos that children alleged were taken, or the scenes and props that some children spoke about. That no evidence even remotely matching these descriptions was ever found, is a point worth restating.

I conclude that Sas is clutching at straws in regard to her "medical support for vaginal penetration".

Eichelbaum fails to explain away the lack of corroborating evidence. All evidence from adult eyewitnesses points in the opposite direction (eg the ERO report on the childcare centre).

Given the bias discussed in the previous section and the lack of hard evidence this report has already established reasonable doubt over the Ellis convictions. To explore further sources of doubt, the whole context of the interviews and of what preceded them needs to be examined.

(3) The Evidential Child Interviews

"I could help you [to remember]*..."*

Sue Sidey, evidential child interviewer, to a child, Ellis case.

Section (1) of this critique has already exposed indicators of bias within the child interviewing teams in the Ellis case. Changes to the protocols regarding training of interviewers since the case will be examined later in this report. However a recurring observation from academic commentators of the case (and others) is that those involved in the interview processes where inadequately qualified to fully understand the nature of the work they were undertaking. Auckland University professor of psychology, Michael Corballis:

> *"I think too much credence was given to clinicians ignorant of the nature of memory and of the persuasive influence of certain interviewing techniques. Perhaps there also needs to be a better appreciation of which research is bad and which is good.*

At the time such credulity extended beyond the boundaries of the investigation and trial process itself, even into academia. Retired reader in psychology, Jim Pollard comments on the prevailing attitude at the time within the Canterbury University psychology department:

> *".... the Psychology Department was in the throes of extreme political correctness. And that included believing what rather ignorant social workers and clinical psychologists claimed about children's testimony."*

Corballis again;

> *"I think the widening gap between clinical and academic psychology is partly responsible for the failure of psychologists to see and arrest what was happening. If clinical psychologists and counsellors thought about the nature of memory at all, they probably held to a 1970s model in which memory for attended events is permanently stored, and failures of memory are regarded as failures of retrieval. Hence it may have seemed reasonable to use whatever means were available to help people 'recover' (retrieve) memories for early events. Since the 1970s, however, psychological science has shown that memories are not permanently stored; they are fallible and subject to distortion. It became clear to experimentalists that it is easy to induce false memories of events that never happened."*

It is generally accepted that children's memory processes differ from those of adults, and that they are more prone to suggestion through a variety of factors. I will discuss the evidence for this more fully later in the scientific analysis section. However, it is important to realise that once memories of events (that never occurred) become firmly established in the minds of children (and some adults), they can become so strongly held that, with even the very best interviewing techniques, it may not be possible to discover from the interviews alone that the testimony is not reliable. For example, Ceci et al in 1997 found that once false suggestions had been implanted in pre-schoolers,

> *"These children's false* [videotaped] *statements were quite convincing to professionals, who were unable to distinguish between true and false accounts…some children appeared to internalise the false suggestions and resisted debriefing."*

The widespread use of faulty interview techniques that inadvertently reinforce memories of non-existent events could nevertheless by itself destroy or distort existing accurate memories. This would then discredit the interviewers, and make any resulting convictions unsafe.

It is worth bearing in mind that the first official evidential interviews occurred months after the alleged events. The convictions were based on statements obtained from between six and over 50 months after the alleged events (see appendix 2). As discussed elsewhere, the intervening months were filled with many sources of contamination (i.e. possible misinformation and fear from other people including parents, therapists and police). These informal interviews or therapy sessions were not systematically recorded, and the court heard only conjecture about what had taken place. Some parents admitted asking leading questions, but appeared unable to recall the exact details. This information may well have been more significant than all the videotaped interviews that came much later. In addition, little is publicly known about the first interviews (December 1991) conducted by Sue Sidey, which failed to find "*any statements consistent with abuse*." (p38 Davies)

The following interview techniques and practices are the ones that the scientific literature has identified as being important in influencing the reliability of children's testimony. This section also provides insight into the flaws that occurred in the interview processes, citing specific interviews from the investigation itself.

(3.1) An effective "truth" test

At the beginning of each evidential interview, and again before cross-examination at the trial, a procedure called a *truth test* was used with each child. This was like a junior version of swearing on the bible, and was also designed to ensure that the child was able to discriminate between actual events and imagined ones. Children can find it difficult to distinguish reality from fantasy. This procedure did not always work in this case. (Davies p28, 31,etc). On page 35 Davies states,

> *"... the necessity of children to tell only what they remembered and to make explicit the 'don't know' option could have been more heavily emphasised from the start."*

In relation to child Z/Kari Lacebark (who at the age of five was first interviewed six-months after the time of any of the alleged incidents), Davies (p28) notes that in the first interview, Kari "*seems to have a rather uncertain grasp*" on the idea of telling the truth

More recent research, I understand, suggests the use of practical demonstrations that can be shown to generally increase accuracy. I cannot say if the test used here was adequate, but quite possibly it was not effective enough. What is evident is that some of these children had an insufficient grasp of this important distinction, and this raises serious issues when regarding the credibility of their evidence. It may have helped if the truth testing procedure had been repeated

at intervals (especially when children seemed to be losing the ability to distinguish between fantasy and reality).

(3.2) Open and closed questions

Many researchers strongly advise that open questions be used as the primary form of question in child abuse interviews. Free recall, where the interviewee is simply asked to tell what happened in his/her own words, is likely to produce the most accurate information. Open questions are those which begin with who, when, where, what and how. They do not suggest an answer, or imply that a given response may be right or wrong.

Closed (yes or no answer questions) are more unreliable according to research. For example, Poole and Lindsay (1995) confirmed that 4-7 year olds responses to open questions were more accurate than to closed questions. A high proportion of the children were willing to answer questions about events they had not experienced. In an interview situation, the interviewer often has no way of knowing what really happened other than a child's statement. In this situation, the use of closed questions would seem to be pointless.

There is much evidence of closed questions being used in the Ellis case interviews and insufficient caution about the associated problem from Sas or Davies.

Similar problems can be noted for multiple-choice questions. The true answer may not be contained in the choices given.

(3.3) Repeating a question

This can give a child the impression that the answer just given is not what the interviewer wants to hear. This is a form of feedback, indicating a withdrawal of reinforcing smiles, etc until the "right" answer is given. Children are then likely to change their answer in order to please. Poole and White (1991) have shown that repeated questions are suggestive, and can lead to unreliability. Our own Law Commission paper (quoted by Eichelbaum p 40) stated.

> *"...young children* [younger than 10] *wish to comply with the suggestions of an adult authority, or because they interpret an adult's repeated questioning as an indication that their first response was judged 'wrong'."*

The U.K. memorandum (Eichelbaum report page 43) is saying the same thing.

This information may not have been made particularly forcefully to the jury as with reference to Zelas at the trial the second Appeal Court noted [50 (v)]

> *"Dr Zelas stated that repeating questions could suggest to the child that the original answer was wrong. However, repeating questions may also be beneficial, since it may validate the response to the question, and may help elicit information from the child, particularly if the question is asked in a different way."*

On page 27 of her report Sas states

> *"There were a few occasions when an interviewer had difficulty accepting the child's information* [denial], *and repeated the question, 'did anything happen?' several times."*
>
> She goes on to say that in these cases the worst that could have happened was that it "may *not have happened exactly as described* [when finally an allegation was elicited]".

I cannot agree with Sas' indifference to the problem. This faulty technique was employed all too often, and its use reflects a bias on the part of the interviewer. On this issue, Ceci (McLoughlin 1996) had this to say:

> *"There wasn't any effort to falsify the* [interviewers'] *hunches* [that Ellis was an abuser]. *Often there was a repetition of questions, it was almost as though the interviewers were surprised that the child said `that's all' Mr Ellis did to them and therefore they would repeat the same question over and over again.*

(3.4) Length of interviews

In her *Best Practice Model for Investigative Interviews* Sas states (p29)

> *"The length of interviews should depend on the child's age and tolerance, usually not more than an hour,..."*

Although Sas subsequently omits to detail the interview durations in the Ellis case, Davies states (p36)

> *"...the interviews do go on too long in my opinion ..."* In fact, more than 50% of the interviews detailed by Davies lasted longer than one hour, one even lasted 105 minutes (child Z/Kari Lacebark's first interview) .

It was also obvious that in many interviews, children expressed a desire to terminate the interview. Such a desire can further motivate a child toward pleasing the interviewer, in order to escape. In Davies' report, child Z/Kari Lacebark was clearly motivated to escape from the interview; she complained early on of wanting to be sick, and (p29) "*Z* [Kari] *shows increasing signs of wanting to terminate the interview*." Sas (p28) states that,

> *"... some children were tired and did not wish to continue, others resistant, others distracted, and many upset. Despite this, the interviewers attempted to persevere."*

Apparently this was acceptable to Sas because on page 29 she states, "*there were no blatant negative effects*." If this is Sas'reasoning in this instance, then it is flawed. It is not justified to conclude that the length of interviews may not have a significant effect on the quality of the testimony merely because no 'blatant' effects were observed. Many interviews were clearly too long, and the allegations that arose late in them were increasingly unreliable, especially in instances where the children asked for the interview to finish.. In any case, allegations need to be freely made, without hint of duress. Allegations that arose under these conditions are not reliable.

(3.5) Number of interviews

Few of the allegations arose in the first interviews with each child. Three of the children involved in the trial had more than three interviews. Not all of their interviews were shown to the jury. There appears to be a steady increase, over time, of the more bizarre and unlikely allegations made by the children. Ceci et al (1997) found that in children aged three to six;

> *"The number of interviews and the length of the interval over which they were presented resulted in the greatest level of suggestibility. While some types of events (negative, genital, salient) were more difficult to implant in children's statements, some children appeared to internalise the false suggestions and resisted debriefing. These children's false statements were quite convincing to professionals, who were unable to distinguish between true and false accounts."*

Sas (p57) observes this effect:

> *"The repeated interviews were an issue only in the case of child X* [/Bart Dogwood]*, as it was evident in his fifth interview that the process was contributing to increasingly bizarre and disjointed accounts in the child."* This is clear on pages 53 (the "circle incident" in the fourth interview) and 54 (fifth interview) with its *"widening of allegations with respect to the number of teachers involved"* and *"some inconsistencies with respect to the other female teachers that were present."*

However Sas'contentions seem to be at odds with what I observe; that in most cases the least likely allegations arose after the first two interviews:

- Child R/Eli Laurel (p92 Eichelbaum), in the third interview bizarre allegations emerged of four men (with strange haircuts) and women being involved in poking sticks up kids' bottoms.

- Z/Kari Lacebark's less credible story of abuse at Ellis's house emerged in the fourth interview. Davies states (p31),

  > *"There is nothing in this interview which convinces me that Z* [Kari] *visited Peter's house or was assaulted by a man called Joseph."* Two further interviews, in Davies' view, *"subtract from, rather than add to Z [Kari]'s credibility as a witness."*

- S/Tess Hickory in her third interview states that Ellis drove a green car. We know that he didn't drive, and she had said that they walked in the first interview. She also stated that Ellis's mother kicked her. However, the allegation about being asked to drink wees, also bizarre, resulted from the first interview.

- Q/Lara Palm spoke of going up escalators with Ellis to a room where lots of people were working at desks and did secret touching (Eichelbaum p91). Davies (p17) reports she talked of "*little wee kids working there for the City Council*." My theory may not apply in this case as this story was related during the second interview.

- X/Bart Dogwood in his third interview described trapdoors, mazes, Ellis's mother dispensing "yucky pills", the presence of Spike, Boulderhead and nineteen of their friends

etc. Bart's fourth and fifth interviews produced even more bizarre material. In Davies opinion (p23)

"These later interviews show a gradual spiral into more elaborate allegations embracing a wider and wider circle of helpers and teachers at the creche."

- Child O/Molly Sumach was only interviewed once and so no conclusion in this regard can be made.

If correct, then this effect applies to five out of the six children discussed in the Eichelbaum report. As Eichelbaum does not examine N/Zelda Cypress, who retracted, the report provides no data for the seventh child whose testimony resulted in conviction.

In a study by Rawls 1996, (reported by McLauchlan1996), an attempt was made to reproduce the interview techniques used in the Civic childcare centre case. She concluded, "*Their errors seemed to evolve over time with repeated interviews*." This supports my hypothesis.

Davies (p36) notes there was no justification for repeat interviewing of children after a delay of 6 months or more (as occurred) and he notes that most guidelines recommend a maximum of one or two interviews. "*Our concern about the research is the number of interviews that were carried out,*" wrote police legal adviser Mark Copeland and child abuse interview training coordinator Wendy Burgering in a letter to The Dominion on May 31 1996 after the paper published an article on Rawls' research.

In conclusion, there are allegations that arose after too many interviews that were too widely spaced. These allegations and resultant convictions are therefore suspect.

(3.6) Use of imagination to "aid recall"

Asking children to imagine "what it feels like" before a "disclosure" may be a powerful means of creating a false memory. Such an approach recurred frequently in the taped interviews. The methodology of constantly using children's imaginations in order to "aid recall" has no basis in science. The opposite is the case. One of the more powerful mechanisms of memory construction is termed imagination inflation. In this mechanism all that is required to significantly distort memory is to ask the subject to imagine an event. The study by Garry, Manning and Loftus (1996) provides evidence that the act of asking a subject to imagine an event (which in reality had not occurred) increases the probability that the subject will believe that it did take place.

Where the interviewers have asked the children to imagine something has happened, and/or describe how it feels is clearly a case of bad practice. An evidential interview should be designed to discover what a child has actually experienced, or at least believes was experienced. This imagination technique seems more likely to create memories, rather than record what is already there. Its frequent use casts serious doubt on some allegations and resultant convictions.

(3.7) Little challenging of the children's statements (source monitoring)

It is crucial to probe the aetiology of the children's allegations when they are made. That is the best time to take the opportunity to source test, by asking questions such as "Did that really happen? Did you talk to anyone about this?" If yes, and if the person happened to be the mother "What did mummy say?"

On p28 of Davies' report, it is revealed that "*... mummy has told her about 'baby stuff" and the child* [Z/Kari Lacebark] *added, '... me knew the colour and it was plain white*". This is significant, because the prosecution argued that these children had advanced knowledge of sex that could only have resulted from being abused (the jury apparently believed that in this instance the child was talking about semen). The interviewer did not explore the source of this serious allegation. There is acknowledgement in the report that the mother was repeatedly questioning her child (p29). Paragraph 48 (p 29 Davies report) clearly indicates that the child was rehearsed in what to say by the mother. The child's statement, "*I know lots of things about Peter*", according to Davies "*... may be significant in that it may not imply first hand knowledge*." This is emphasised again on page 30: "*The use of adult terms like 'penis' and 'vagina' may reflect conversations with her carers*…[and] *adult input*." On page 31 Kari says she knows "*... because mummy telled me*." The evidence against Kari's credibility carries on over the next pages, and is convincing.

So, the allegations from this child are unlikely to be spontaneous ones that would indicate a knowledge of sex that could only have come from an experience of sexual abuse. It is more likely that most of it came from information put to her by her parents, therapists, other children or police. Another possibility is that the child was referring to books for children describing bad touching, such as *Katie's Yucky Problem* by Lynda Morgan (1986) and *A Very Touching Book* by Jan Hindman (1983). Hood (p206) describes how the complainant parents read these books to their children from an early age. It is not clear from the report whether Davies was aware of this.

It is surprising how the jury could have allowed Z/Kari Lacebark to be such an effective witness considering the unreliability of her testimony, and the fact that there was a seven month delay between this child's attendance at the Civic childcare centre, whilst Ellis worked there (until 1992), and the child's later allegations. She was the only child to obtain four guilty verdicts and no not-guilty returns.

An interesting example of this lack of source monitoring is found in Hood (p436 and p437). Crawford was interviewing a child. The child keeps telling her directly that he is making stories up, most of it is clearly fantasy, and yet Zelas, Detective Eade, and crown prosecutor Chris Lange apparently gave the allegations total credence. Significantly, Justice Williamson was not presiding when this joke (the child's description) arrived in the depositions court. Had he heard this, he might have been less credulous. The point is that as this allegation was presented seriously in court (before the trial) and it could only have proceeded that far if the officials believed that it had some reasonable chance of being credible.

American research psychologist Stephen Ceci as reported by McLoughlin (1996) said,

> *"This case entailed an array of factors that give me cause for concern. Children frequently reported highly implausible events that were never checked, for example the presence of the defendant's mother during baths, repeated sodomy occurring only minutes apart with*

> *other children who were said to be present, and they were never reined into reality. That some of their claims were plausible is no assurance that they did not emanate from the same sources as the implausible claims."*

Sidey and her team were not maximising accuracy with their techniques. They didn't query allegations to test their veracity, instead they repeatedly pressed for details of abuse.

(3.8) Leading questions.

The use of leading questions seemed to be scattered throughout the interviews. This is not surprising, as Zelas in court claimed that reliable evidence could still be obtained through leading questions (Hood p504, paragraph 7). On page 48, Sas states that child S/Tess Hickory (two guilty verdicts) was interviewed using "*more leading questions*" during the second interview.

On page 18 of the Sas report, she states that parents should be told to

> *"... try one leading question"* if there is no initial *"disclosure"* prior to any expert interview.

Then again, on page 24,

> *"... professionals have to be realistic, and everyone recognises that some leading questions will need to be asked in order to assist children retrieving their memories."*

Despite all this, on page 31 Sas states that there "*... were occasions when the number of direct or leading questions employed was too high*." Yet in her conclusions on page 58 she states,

> *"This* [leading questions] *likely served to trigger the children's memories, or at times might have decreased their apprehension about talking about things."*

In other words, she regards this is acceptable, because she goes on to conclude that the children's evidence was reliable. It is difficult to determine exactly where Sas draws the line on this issue. Her apparent flexibility in regard to the use of leading questions allows her to draw any conclusion, provided it is in agreement with her bias.

Davies notes in his concluding remarks (page36)

> *"Children are sometimes asked leading questions...most codes of practice strongly discourage* [this]*".*

He concludes that other factors such as the excessive numbers of interviews the delays between interviews and the over-use of direct, closed and multiple choice questions is "*of more concern*".

Despite these major concerns, Davies concludes

> *"the general standard of interviewing was good"* (page 37*)*

Lindsay and Poole (2001) show that parents need only to use open- ended prompts in order to construct false memories in their children. Combined with the "*frequent use of direct, closed and multiple choice questions*" (Davies p36) the value of these interviews is very low indeed.

Another mechanism for constructing memories is the use of narrow questions. Davies notices (p36) that,

> *"...of more concern* [than leading questions] *is the frequent use of direct, closed or multiple choice questions in some interviews, where the age of the child and age of memory would be unlikely to provide an accurate response."*

The use of leading questions is a form of extremely bad practice, and Eichelbaum should have paid more attention to the inconsistencies I have quoted from Sas and Davies. When these considerations are weighed his conclusion that the evidence was reliable seems rash.

(3.9) The use of body-part charts

Rawls study (1996a) showed that using charts of body parts can increase errors in recall. These kinds of charts were used in some of the civic interviews. This is yet another questionable practice that was accepted by Zelas, the jury, Eichelbaum and Sas. Furthermore, in the interviews, references to body parts formed multiple choice questions used by interviewers, compounding the problem.

(3.10) Anatomically correct dolls

Clearly, these should not have been used. Bruck et al (1995) showed that they increase the incidence of false statements about being touched genitally. In her report Sas appears ignorant of relevant research findings. For example, on p49 she even states:

> *"... in this interview, the use of anatomically correct dolls would have been an asset."*

When I questioned (Crown expert witness and interviewer supervisor) Karen Zelas about this issue in January 1994, she provided me with copies of research by Canadian Gail Goodman that Zelas claimed provided a basis for the use of anatomically correct dolls. Zelas said that the dolls should only be used after a disclosure has been made. I alerted Zelas to a later study by Goodman that seemed to cast doubt on any use of these dolls. Zelas said that she had not seen this later study. In the later 1987 study, when asked objective questions, the 3 – 5 year olds scored worst in terms of accuracy when questioned using anatomically correct dolls, and best when there were no dolls at all. Goodman's conclusion that the dolls of themselves do not lead to false reports seemed therefore to be at odds with some of her data. An example of the problems generated by the use of such dolls is well illustrated in the Civic childcare centre case. One of the charges made in court (during the depositions trial) alleged that Ellis had sex with a lesbian co-worker at the childcare centre. The child in the interview concerned made *no* allegation of this incident. The charge arose solely from the interviewer's interpretation of a child's play with dolls. (Hood p427)

The second appeal judges noted [50 (iv)]

> *"Dr Zelas gave evidence at trial as to the use of anatomically correct dolls, stating that the general belief is that anatomically correct dolls are suggestive, but that this is uninformed, as research evidence indicates that the dolls are not suggestive to young children. However, she accepted that they should be used sparingly to avoid any possible criticism of the interview techniques. While her recommendation that the dolls should be used sparingly is consistent with the evidence of the present experts, her opinion that they are not suggestive to young children is inconsistent with the current weight of opinion."*

The use of these dolls, then, should have alerted Eichelbaum to the existence of a bad practice. In section (4) on changes to best practice, this critique makes clear that the use of anatomically correct dolls is no longer acceptable.

(3.11) Accepting denial

If a child says that something did not happen, then this statement needs to be accepted, because continual probing of the same material could produce unreliable testimony. The child may decide to provide what he/she thinks the interviewer requires. As the interview requests, the child's story may become gradually more specific. Likewise, if a child retracts an allegation, then that must be the end of the matter, no matter what the belief of the interviewer, who has to remain impartial to the very end. If abuse did occur, then there is a good chance that another spontaneous disclosure will occur (note that in this statement the use of "disclosure" is in accordance with its dictionary meaning).

(3.12) Verbal and non-verbal reinforcers

One important mechanism by which inaccurate memories are constructed as in the response shaping paradigm described, is through the use of subtle (and possibly unconscious) reinforcers such as smiles, nodding, appearing to be about to terminate an interview, etc. This effect is in the category of established fact in psychology, backed by literally hundreds and probably thousands of studies, going right back to the work of the famous behaviourist, B.F. Skinner. As noted elsewhere in this critique, much memory construction could have occurred *before* the formal interviews, resulting from interactions with parents, therapists, police and probably the other children. In the Ellis case interviewers knew details of the allegations before they started each interview (Sas p27), There is a high probability that construction of inaccurate memories through reinforcers occurred and operated on the most susceptible young children.

The making of allegations may have been positively reinforced to the extent that children experienced a feeling of gratification for making them. Child R/Eli Laurel.

Sidey: *"...what do you feel like when you think about that stuff?"*

Eli: *"Um, good."*

Sidey: *"Good? What makes it feel good?"*

Eli: *"Because I told the teacher."*

Hood (pp 436-437) gives an excellent and detailed example of the use and effect of reinforcement. Interviewer Crawford slowly helped the child to create an unlikely story. In his first interview, the boy stated that he couldn't remember anything about the childcare centre. After having being told that Ellis killed "*all the boys*" with axes Crawford asked, "*how did that make you feel?*" The boy appeared in due course to become alarmed that Crawford believed everything he said. The boy then repeatedly stated,

> *"I'm just really joking ... I only joke, joking saying that, only joking he doesn't, do you hear?... I was just really tricking "* etc, etc.

It is probable that this interview actually provides a good record of the ontogenesis of a memory construction process. Yet Crawford in consultation with Zelas "*... accepted that Ryan had made a genuine disclosure about sexual abuse*" (p437). I think that this example reveals a strong bias in the interviewing team of a desire to produce allegations by any means.

Had the interview continued it is entirely possible that a point would have arisen where the child would have given up saying, "I was just joking /tricking." After all, Crawford was ignoring these statements, but positively reinforcing the allegations. The allegation even went to court (at depositions) where it apparently created some merriment at the expense of the prosecution.

It is possible (and given the record, highly probable) that in at least some of the other cases involved (perhaps all), parents had already completed this process.

When I interviewed Cathy Crawford, she clearly had no knowledge or understanding of memory construction or verbal reinforcers. Sas reveals such awareness once in her report (p44), when she describes child Q/Lara Palm (two guilty verdicts), who had stated that she could remember having been in an incubator as a baby. Sas indicates an understanding of how this memory was constructed (apparently through being told family history and through viewing a photograph.) Yet it does not seem to occur to her that some of the Civic childcare centre allegations may be unreliable, and could have been constructed through a similar process. By the trial, all the interviews conducted by Crawford had been eliminated from the evidence. This was unfortunate, because these interviews highlighted the problems that were present in the other interviews and they also exhibited evidence of allegations that arose from extraneous sources (i.e. Crawford passing on and creating unfounded rumours).

In the scientific literature, the misinformation effect is the reporting of false details that are believed to be true by a witness after the event. Loftus (1989) gives 21 references to experiments proving this misinformation effect. Younger children are more prone than older children. There are a variety of ways in which misinformation can arise. They include the mechanism already described. There is no reference to this proven phenomenon in the Eichelbaum report. Nor could I find a significant analysis by Sas and Davies to assess the responses of the interviewers immediately after each "disclosure." Saying "good" or "yes" or smiling, etc, are very-powerful reinforcers, and will result in a greater frequency of similar statements regardless of the veracity of these statements. Children are very strongly motivated to please adults in authority (Oshima Takane 1987). The avoidance of these reinforcers at these crucial moments in interviews should be laid down in guidelines as an essential element of good practice. This was not done. The NSW guidelines (Eichelbaum report p39) encourage interviewers to be supportive, "*while not rewarding or punishing the child for giving details*."

A detailed analysis of the effects of possible reinforcers and punishers of the children's allegations may reveal significant effects if access to enough transcripts is given. If it can be shown that the interviewers were (consciously or unconsciously) rewarding and punishing the children to produce allegations, then it is fair to conclude that the interviews were biased, and the resulting allegations.

Certain words used by the interviewers may act as discriminating stimuli, signalling positive reinforcement (access to smiles, hugs, toys, etc), negative reinforcement (removal of an aversive stimuli such as terminating the interview itself) or punishment (frowns, increasing the length of a boring interview, etc)

One way to analyse this is to see what kinds of statements from the child precedes certain words or phrases used by an interviewer. It is perhaps most useful to look for a reinforcer (or discriminating stimulus that signals reinforcement). Unfortunately, the most powerful reinforcers (and/or discriminating stimuli for reinforcers) may have been non-verbal (eg smiles), and thus the videos would be needed for a meaningful analysis. An analysis of some of the transcripts published by Colman (2003) – suggests that "mmm, mm", "yeah" and "right" (from one interviewer) may signal punishment, thus suppressing the type of statements from the children that preceded these words.

I conclude from this that the strong bias operating on the part of the interviewers towards finding Ellis guilty was made manifest in the way that the interviewers directed and shaped the children's responses. It may not have been deliberate, but it should have been deliberately avoided. The later interviews were all unreliable as by that stage the reinforcers had acquired the capability to be very powerful, and when considering this cause, they can produce the greatest distortions to the children's memories. As I have noted earlier, most best practice guidelines do not recommend more than two interviews.

(3.13) Priming of Interviewers

I assume Eichelbaum believed that the interviewers were searching for the truth, and for reasonably spontaneous, unprompted allegations. Any alternative explanation would undermine his conclusion that the interview techniques were "*of a good overall quality*." It would therefore be safer for the interviewers to know only of the general nature of the allegations. The material gained during the interviews could then be compared, *upon completion of all the interviews,* with that it was alleged they had told their parents. Sas in her guidelines for best practice states

> *"The interviewer should not be aware of the specifics of the allegations about which they are to interview the child about..."* (p26)

Yet on page 27 of her report, Sas makes a revealing admission (my emphasis):

> *"In **all** interviews I reviewed, it was obvious that the interviewers had been given information by parents prior to the interview with the child."*

She goes on to say ("*my clinical impression*") that this practice was perfectly acceptable in the Ellis case.

Information also flowed in the other direction, again contrary to Sas'own guidelines (p21) regarding best practice:

> *"From the testimony, it was clear to me that the interviewers shared with the parents the outcomes of their children's interviews each time they came."* Sas (p21).

In her conclusion, (p58) she refers to claims by Ellis's appeal lawyer that interviewers repeated details of interviews to parents after interviews. She admits,

> *"This was a valid criticism ... The effect may have been to lead parents to encourage their children to disclose, and then the additional interviews followed".*

The end result, here alluded to by Sas, is that this process of information exchange, *in both directions*, between interviewers and complainant families set up a feedback loop whereby "disclosures" could be amplified by parents between formal interviews, and by the interviewers during the interviews.

I conclude from this that the procedures used were neither scientific nor fair. It can be argued that this behaviour is indicative of a situation where the interviewers, including Zelas (and even Sas), were only interested in proving a prior assumption of guilt.

(3.14) Conclusions

There is no reference in Davies' report as to the use of the dolls in his summary of the techniques (pp35 – 37). He does go on to imply, as noted previously, that there were too many interviews. However Davies concluded (p35) "*that by today's standards, the quality of interviewing stands up surprisingly well.*"

Ceci (McLoughlin 1996) comments:

> *There wasn't an effort to rein the children back into reality when they roamed into these fabulous claims. Whether or not the interviewers' minds were made up prior to the interviews I can't say, but what I can say* [is] *there was no serious attempt to test an alternative hypothesis to the* [Crown's] *claim that Mr Peter Ellis molested these children."*

Ceci's conclusion is of interest, and succinct

> *" Some of the things the children said I would be exceedingly sceptical that they ever occurred. I don't think the bizarre stuff happened. Does that mean nothing happened? Well, I simply don't know. No one else knows either except God and Mr Peter Ellis."*

One point is obvious, that throughout the interviews, and (apparently) regardless of the interview techniques, both credible and highly unlikely allegations arose. One would expect that the use of good practice might at least suppress the highly unlikely allegations.

If I am correct in that these inaccuracies occurred more frequently in the later interviews, then this implies that the interview techniques used were ineffective. Not only that, but the poor

interview techniques could themselves be directly responsible for the bizarre allegations and distortions. A behavioural analysis of this would be that; as the interviews progress, the children's' responses are steadily shaped through use of verbal and non-verbal reinforcers. These reinforcers become increasingly more effective over time. This is a falsifiable hypothesis, as it predicts that when reinforcement for suspect allegations is reduced, or removed, then the rate of this type of allegation will reduce. This model also predicts the fact that the allegations became more varied, and as a result more bizarre, through response generalisation over time.

Thus it appears that we are left with acknowledgements from the two experts and Eichelbaum that the interviews all contained practices that could give rise to concern, but none seem prepared to conclude that these practices undermine the reliability of the evidence. Even leading questions were regarded as acceptable. I conclude otherwise.

I conclude that the interviewers began with a prior knowledge of the allegations and an assumption of the guilt on the part of Mr Ellis. The interviews were also conducted poorly in a manner that encouraged unlikely allegations, and led the children towards sexual allegations. This was achieved by a variety of means that included:

- closed and leading questioning,
- the incorrect use of anatomically correct dolls
- not exploring (and in certain circumstances challenging) allegations in order to identify their source and the possibility of distortion
- a probable misuse of verbal and non-verbal reinforcers (smiling, saying "yes", etc)
- continuing for too long even when children indicated that they wished to stop. This creates a negative reinforcement paradigm wherein the child's wish to escape the disliked interview situation can lead to making allegations in order to escape.
- conducting too many interviews
- not accepting denials by the children

There are convincing explanations for the frequent departures from good practice on the part of the interviewers. The interviewers' behaviour could be predicted from the preceding description (in section (1) on bias) of bias and false assumptions within the child protection movement.

It is difficult to understand how Eichelbaum managed in his conclusions to ignore so much evidence of poor interviewing techniques. This evidence was contained within the reports of Davies and to a lesser extent, Sas. Furthermore, inferred from his own comments, it was also extensively produced at the previous appeals.

I am at a total loss as to how Eichelbaum could have concluded (p4) that the interviewing was "*of a good overall quality*."

(4) Changes in "best practice."

"Eye-poppingly bad"

Dr Maryanne Garry describing the work of psychologist Prue Vincent (December 2001)

(4.1) The Prue Vincent case

The startled face of psychologist Prue Vincent staring out of page one of the Dominion of 4 December 2001 is indicative of the changes in "best practice" since the Ellis case. Vincent had "*botched a sex abuse investigation that left a man wrongfully accused of molesting his young children*." (Leah Haines, *The Dominion*). As was quickly pointed out by other commentators, Vincent in many respects had operated in a manner similar to that of Zelas, Sidey and others in the Ellis case. She pleaded guilty to charges of conduct unbecoming of a psychologist. Vincent was once head of Social Welfare's psychologists team. Here are some of the charges she pleaded guilty to, alongside similarities to the conduct of Zelas and Sidey in the Ellis case:

- Vincent used books dealing with sexual abuse during her assessment. I assume that they were books read to the children about bad touching, as happened in the Civic childcare centre case where the parents read such books to their children. In Christchurch, some children brought along books they had made themselves, with their parents' help, to the evidential interviews. These contained pictures and statements accusing Ellis of abuse. They were not told to stop doing this by Sidey or Zelas. Some parents had also introduced their children to books describing sexual abuse in children's terms, before any allegations arose (Hood 2001, Sas page 44 and see section (6.1) this report).

- Vincent used leading questions when interviewing children. On page 301, Hood discusses this issue. Leading can include questions that are closed to the extent that a yes or no answer is elicited. Most parents, and certainly at times Sidey, asked leading questions in Christchurch.

- Vincent did not consider other explanations for the children's behaviour. Hood's book is full of countless examples of this in regard to Sidey's and Zelas's work (see this report). The Eichelbaum report does not even mention most of the alternative interpretations discussed in Hood's book.

- Vincent did not observe the children in their wider environment. In the Ellis case, there was ample opportunity in the early parts of the police enquiry to observe the children at the Civic childcare centre with Ellis. Only the E.R.O office did so, and found no evidence that anything was amiss.

- Vincent did not interview the father as a reference source. Until he was arrested late in the enquiry, no one thought to talk directly to Ellis. This would have been the obvious thing to do, especially in looking for alternative explanations. Ellis did in fact have plenty of alternative explanations for much of what the children said, but these were not heard until

the trial, and then only through his lawyer. There may be ground here for an official complaint to the medical council about Zelas's approach.

- Vincent accepted without question the mother's testimony whilst asking the father to put his rebuttals in writing. Ellis was not even asked to express his rebuttals at all during the interview phase. Had Zelas and Sidey followed this procedure, the case may never have come to court. In this respect, they are even more culpable than Vincent, and would certainly have to plead guilty to this charge as well.

- Vincent allowed the mother to be present during the child interviews. I have no evidence that this happened during the evidential interviews in the Ellis case, but during the Ellis trial Justice Williamson, on the advice of Zelas, allowed a mother to sit with her child in the video room. (Hood p485). In addition Detective Eade interactively influenced the course and focus of some interviews by being in communication with the interviewers during interviews.

Vincent was fined $5,000, and given a letter of censure from the Psychologist's Board. CYPS have stated that they will not be employing her again. Victoria University senior lecturer, Maryanne Garry has described Vincent's work as

"eye-poppingly bad."

Hood appears to describe the work of Zelas and Sidey in much the same way. The Dean of Law at Otago University, Mark Henaghan, has called for a judicial review of the Family Court as a result of the Vincent case.

(4.2) Non-verbal leakage and lie detection

A new development has occurred in the field of lie detection. Videos of interviews are analysed for evidence of non-verbal leakage in the form of fleeting facial expressions, difficult to see under normal conditions. This is based on the work of Dr Paul Ekman. There are other forms of non-verbal leakage such as maintaining eye contact for longer than usual (an attempt to appear 'sincere' whilst lying). A problem with non-verbal leakage analysis is that once a subject knows what you are looking for, they may try to suppress those behaviours. Because children can believe their own untruths, such an approach may be less reliable than when used interviewing adults.

With regard to the children, there is probably little value in a re-evaluation of the videos using Eckman's techniques. The child who retracted, described feelings of self-revulsion, and feeling sick whilst in the courtroom due to her act of lying. Unfortunately, she was the eldest witness, so the others, if mistaken, probably were sincere, as younger children are more susceptible to memory construction. Nevertheless, there may have been some leakage occurring in some cases. If the research into non-verbal leakage is as good as claimed by Ekman, then this type of analysis needs to be part of modern best practice.

(4.3) Truth testing

In section (3), I discussed effective truth tests. Kim Hill interviewed Professor Stephen Lindsay on her National Radio programme in 2000. He claimed that his research had shown that his new technique applied at the start of an evidential interview reduced the incidence of false assertions made by children on one question from 67% to 30%. This has implications for best practice. Obviously the children in the Ellis case were frequently telling untruths about cages suspended from the ceiling, and teachers dancing naked in circles, that Ellis had dug up Jesus, that Ellis had made children explode etc, etc, the truth tests applied were rather ineffective, and possibly capable of considerable improvement. In some cases where they were mistaken, however, the children may still have thought that they were telling the truth. In those cases, the truth test would not have been relevant. The important point is; if Lindsay is right, then the truth testing procedure used in the Ellis case interviews was clearly less than ideal.

(4.4) The official word in changes to interview protocols

In 1996 police legal adviser Mark Copeland and child abuse interview training co-ordinator Wendy Burgering publicly stated that a maximum of *one* formal interview is now the standard. (McLoughlin 1996). This is very significant, because few allegations arose during the first interview with each child in the Ellis case.

In 2002, Child, Youth and Family's Karen Wilson provided on request the following statement about current practice. Her role at the time was manager and part-time specialist interviewer at the CYF's, Manuwai Specialist Services in Hamilton.

> *"The New Zealand model includes explaining **ground-rules** to children eg. permission to correct the interviewer, permission to use don't know, can't remember, and don't understand. Interviewers are taught to use a neutral tone and expression throughout, to ask **source monitoring** questions and to avoid introducing any **prior knowledge** into the interview.*
>
> *Anatomical or genitally detailed dolls are not recommended as tools in New Zealand interviews. Clothed cloth dolls can be used to clarify body positioning if the child's verbals* [sic] *are unclear. Body outline diagrams (not genitally detailed) may be used late in the interview following a verbal allegation and if clarification is required eg. if the child has used the word "bum" s/he may be asked to put a mark on the diagram where they meant by that part."*

This description differs radically from the way interviews were conducted in the Ellis investigation. Genitally detailed dolls were used, the interviews are generally lacking in source monitoring, and interviewers were obviously often briefed in advance as to what allegations the children had made to parents.

CYFS are now understood to be planning on training interviewers to carry out up to six "diagnostic" interviews before the evidential one. This seems to be an attempt to carry out more than the one or two recommended interviews. Davies, in the Eichelbaum report, states that most guidelines recommend a maximum of one or two interviews. The extra six initial interviews can be seen as an attempt to create a loophole, as they "don't count" and are not recorded. Yet there is ample scope within those interviews to get impressionable young children to make allegations (or, "disclose" as some interviewers say) through invalid means. There is also no way a jury

later can judge the conditions under which the allegations may have initially come about. psychologist Dr Parsonson also makes the point that in his opinion, some of the people having an input into current interviewing protocols *"don't know how to analyse research."* i.e., in his opinion they are not well equipped (perhaps through inadequate research training) to discriminate good science from bad.

(4.5) Continuing inaction from the NZ Psychological Society

Some psychologists and commentators have suggested that the New Zealand Psychological Society could sort out the issues through a panel of level-headed scientists. Cheryl Woolley, a senior consultant clinical psychologist and then president of the society, was asked about the idea of a panel late in 2002, and gave only one curious and ambiguous statement, *"convening a 'panel' would solely report on the issues of that individual grouping which already occurs"*. Unfortunately she did not elaborate on what grouping she was referring to. It appears that the society is unlikely to act under Woolley's leadership.

The society did publish a book containing practice guidelines and a review of issues in 1997. This publication is currently under review and a second edition will be published in 2003. Some of the material is relevant to the Ellis case, especially a contribution on memory of traumatic childhood events co-authored by Professors Corballis, Dr Mel Pipe (then at Otago) and Ms Judith McDougall of Victoria University.

Corballis says,

> *"The New Zealand Psychological Society does not really speak for all psychologists. Many (perhaps most) academic psychologists do not belong to the Society, or have resigned. There is really no alternative body representing psychological science, as there is in the US and other countries. I do think that the Society has done its best to deal with the Ellis case and related problems, and some influential members (such as Barry Parsonson) have spoken out. But the membership is probably too skewed away from mainstream psychological science to be able to deal easily with matters that involve basic psychological processes."*

(4.6) Elizabeth Loftus's recommendations

In her 1993 study, Loftus concludes with this comment:

> *"Techniques that are less potentially dangerous would involve clarification, compassion, and gentle confrontation along with a demonstration of empathy…"*

I contend that the concept of gentle confrontation would not have been accepted at the time of Ellis's trial.

(4.7) Conclusions

Eichelbaum did not have the benefit of knowledge of the Prue Vincent case when he prepared his report. However, the case illustrates how widely he missed the mark when he claimed (on p109) that *"Even by present day standards, it* [the interviewing] *was of a good overall quality*."

As discussed earlier, Eichelbaum should have been made aware that a number of practices in the Ellis investigation are no longer in general use by CYPS or psychologists in New Zealand now.

- The most obvious is the use of anatomically correct dolls.
- The number and average length of the interviews was excessive, the truth test procedure may have been inadequate.
- There was insufficient source monitoring in the form of challenging allegations.
- Books were brought into the interviews
- Interviewers mentioned other children's allegations
- Interviewers were primed with details of other children's allegations

Although evidential interview standards appear to have improved, there appears to be cause for concern in that there may still be insufficient scientific input and monitoring. In addition, new moves seem to allow unrecorded multiple informal interviews that precede evidential ones. This may be a backward step.

Memory expert Maryanne Garry stated to the parliamentary select committee looking at the case on 10 December, 2003 that interview techniques have changed significantly since the Ellis case. Specifically:

> *"Anatomically correct dolls are no longer used as children are curious and their actions could be misinterpreted; instead, they would [now] be encouraged to do such things as draw pictures.*
>
> *"When there's no evidence, we don't try and dig evidence out.*
>
> *"We don't use techniques that we know now are dangerous, in the same way we wouldn't be putting asbestos in buildings any more. It was fine then. It's not fine now."*

Michael Corballis (2003) states that our understanding of how memory works has also greatly improved in the last few years.

> " *It is now widely recognised…that episodic memory (memory for specific events) is highly fallible, and experiments showing how easy it is to create strongly believed false memories are becoming standard undergraduate laboratory exercises."*

Karen Zelas, Louise Sas and Eichelbaum all recklessly disregarded these advances in knowledge when accepting the dated and now unacceptable interviewing practices carried out in the Civic childcare case. None of these practices (bulleted in the forgoing) would be likely to be acceptable today. Eichelbaum could be considered reckless in saying in his conclusion that they would be.

(5) A scientific analysis of other factors affecting reliability of the testimony

"How dare they suggest such a thing."

Comment by Parent Ms X/Dogwood in regard to the suggestion made by interviewer Sue Sidey and Police, that it was possible that some of her child's allegations arose from his efforts to please her.

The preceding two sections have already included a scientific analysis of the factors within the formal interview situation that have been shown to influence the reliability of the children's testimony. The absence of corroborating evidence of abuse in this case means that the children's testimony is crucial. In this case the alleged abuse occurred well before the formal interviews, therefore what happened during that intervening period must be examined. There was ample opportunity for the children's memories to be contaminated by input from other people. The effect of this delay itself on memory accuracy needs to be examined as well as the intrinsic reliability of the memory processes of children of this age, and in particular, of the six children whose testimony resulted in convictions. In this case there was a major retraction by the most reliable witness and this also needs to be examined in order to compare its apparent original veracity (to the jury) with the testimony of the other complainants.

By way of introduction, I quote from a current university textbook on memory (Neath 1998 p326),

> *"... memories change or are constructed, usually without any awareness of the distortion…what is most impressive – or most disturbing – is how pervasive these changes can be."*

There have been numerous cases of older children and adults inadvertently providing evidence from memory where central details such as the identity of an offender were incorrect. Such cases illustrate the need for caution. Loftus (1979) provides many examples from American cases.

A recent New Zealand case has direct parallels with the Ellis case in that the uncorroborated word of a complainant was given undue credence. In this case, a female student at Waikato University falsely accused a male student of raping her. He was charged, but the case fell through when it was discovered that the young woman had deliberately made it up.

Undue credence being given to uncorroborated testimony appears more common in sexual cases (where juries may become emotionally involved, and by their nature such crimes can be surreptitious).In another case in Santa Ana (California, America), Kevin Lee Green's wife was badly beaten, and raped. Initially she could not remember the attack, but later (possibly after counselling and/or therapy) she accused her husband. After 17 years in jail, Green was released after another man confessed, and new DNA technology proved the other man's claim. The judge publicly apologised to Green.

The 1993 New Zealand case where Nicholas Reekie was eventually convicted of the (1992) rape of an 11 year-old girl also appears to have been a case of mistaken identity. The girl in her statement the next morning thought she had recognised the voice of a neighbour (Dougherty) who was known to be violent towards his partner. From an examination of the girl's statement, it is possible to see how she may have been genuinely mistaken. She stated that she was also blindfolded but that it slipped down. That night the full moon shone brightly as she was taken through the hole in the fence along the street from her home to three business areas where several bright floodlights provided very strong illumination. She stated at this time that the rapist had short hair (as did Dougherty, whereas Reekie had long hair), and that she positively recognised him as Dougherty.

The rapist also replied to her question, "Are you David?" that he was. (Reekie had lived with Dougherty at one stage before the offence, so knew him). It is also possible that once that story was accepted (Dougherty was originally convicted of the rape) it became reinforced in the girl's mind as a vivid and unshakeably genuine, but possibly inaccurate memory. To make matters worse for her, one police officer, Mark Franklin, and the media (who seem to have added a spin to the story- eg Donna Chisholm in *Sunday Star Times* 25 October, 1998) suggested that she was making up the rape allegation. This occurred immediately following a police re-investigation into the case, six years after the rape and after Dougherty's convictions had been quashed (it was another four years later that Reekie was charged). There has since been an apology from the police. Understandably, at the end of all this, her parents were upset at this claim, and do not feel sure, despite the new DNA evidence, and the many trials and appeals, of exactly what happened that night. Perhaps the possibility of two assailants remains open. The courts did eventually decide that the new DNA test and the girl's testimony only indicated the presence of one rapist, and so the courts ruled a two rapist scenario out. Dougherty was exonerated, and paid compensation.

The relevant conclusion that can be drawn from this episode is that an eleven-year-old had been sexually assaulted and raped, and yet still appears to have been inaccurate in her recall of some of the central detail of the incident. In the absence of clear hard evidence such as DNA profiling, it may be impossible in otherwise similar cases to be sure which aspects of the evidence are most reliable. The problem may be magnified in cases involving pre-school children.

(5.1) Memory distortion and memory construction through contamination

Before the formal interviews took place, there were many factors that could have generated false allegations from the children. If the children were exposed to worried parents, other children (who may have been developing mistaken memories), therapists, police and social workers (who strongly suspected abuse had occurred) then this exposure could, over time, be said to present a significant risk of contamination to the children's memories.

Neath (1998) discusses how "*memories change because they are continually constructed and reconstructed*." Memories are not like tape recordings. In Neath's words, "*the generally reconstructive nature of recollection has been consistently supported*" (by scientific evidence). So, there is ample scope, especially with young children, for extraneous (as well as internal) contamination.

Loftus (1993) discusses how *post event information* can become incorporated into memory, and shows how it is possible for people to *construct entire events* that never happened. Her first example is an anecdote from Piaget, who had a childhood memory of a non-existent kidnapping that was fabricated by his nanny in order to receive a reward. Loftus then discusses a paradigm of creating false memories of being woken at night by loud noises, "*used extensively by other researchers who readily replicate the basic findings."* Loftus writes of another example of research that revealed that some people misremember that they have voted in elections when they have not. Haugaard et al's 1991 study is quoted as showing that people can be led to believe they have witnessed an assault, when they did not. More stunning is a study quoted by Loftus where there had been a sniper at a school (Pynoos and Nader 1989). Some children who attended the school had detailed memories of the event, yet they were nowhere near the events at the time. Loftus next discusses her own study where a false memory of being lost in a shopping mall was implanted. Finally, in the case of an adult (Ingram) arrested for child abuse, Loftus shows that certain adults are susceptible to believing they have committed crimes that they have not. All this research points to the strong possibility, that must increase over time, that false memories of entire dramatic events can indeed be constructed through talking to others.

Memories can be modified or distorted by the use of *schemas* (organised knowledge structures). An example of how our schemas can distort our memories in everyday life is found in French and Richards (1993) study. Adult subjects were instructed to look carefully at a clock face with roman numerals, and then draw it in detail from memory. Most subjects wrote the IV they expected instead of IIII that is used on clocks for the numeral four. A possible example of a schema at work could be the children's unlikely descriptions of Ellis's many accomplices. They seem to have been told (often by those they trusted and/or authority figures) that Ellis "*is a bad man*" who should "*go to jail*." It is possible their schema of criminals was one in which "baddies" act together in gangs. This effect may have influenced some aspects of the children's multi-offender allegations.

Adults can *confabulate* (add additional information about things that did not occur – see Neath p328). There is no currently known evidence to reason that children could not also exercise this ability.

Attribution errors can be common in adults. An example, Neath (1998), involved a woman who had been raped whilst watching TV. She misattributed the face shown on the TV at the time of the rape to that of the rapist. Young children must also be capable of such errors. Neath states (p337) that

> *"Researchers in this area have concluded that there is no way to assess whether a memory is accurate or not without objective corroborative evidence."*

As the work of many scientists (eg Ceci et at 1977) indicates, false beliefs can be sincerely held and resistant to change. In the Ellis case they may have easily survived the formal interviews, even when challenged, especially so given that the interviewers had deliberately tried to create a friendly atmosphere (conducive to "disclosure.") Only rarely, were the more credible allegations challenged, as noted by Ceci in section (3). Neath (1998 p 335) summarises that research confirms that subjects reporting misleading information are as confident and as quick to reply as were the subjects that reported accurate memories. Even offering the subjects a financial incentive will not improve accuracy of recall.

A recent study on parental questioning of children, (Bruck et al 1999) clearly reveals the dangers of repeated prior questioning by parents:

> *"Importantly, they* [parents] *had difficulty recalling how the information was elicited from their child, whether their child's statements were spontaneous or prompted, or whether specific utterances were spoken by themselves or by their child."*

So there can be little doubt that construction of children's inaccurate "memories "of abuse which never happened was highly likely in this case. Furthermore, such inaccurate memories are extremely difficult to discriminate from accurate memories of abuse that did occur.

These considerations are supported by a number of professional organisations:

> *"Research has shown that over time memory for events can be changed or reinterpreted in such a way as to make the memory more consistent with the person's present knowledge and/or expectations."*
> American Psychological Association, 1995.
>
> *"Memories also can be significantly influenced by a trusted person."*
> American Psychiatric Association, 1994.
>
> *"The AMA considers recovered memories of childhood sexual abuse to be of uncertain authenticity, which should be subject to external verification."*
> American Medical Association, 1994.

(i) The Evidence for Contamination by parents

The children in court, under cross-examination, revealed indisputable examples of parental contamination. For example, in court one child volunteered for the prosecution

> *"... some other parents rang up my mum and told her about that* [the allegation] *and she told me"*.

Examples also appear in the interviews themselves. The interviews of the children by parents occurred before the interviews that were conducted by professional child abuse workers. The initial allegations arose from these parental interviews. These interviews should therefore be logical targets for comparison with "best practice" interview techniques (as already discussed). It is relevant in this regard that Ceci et al's 1987 study (quoted in Ceci and Bruck 1993 p 427) indicates that suggestions from parents may have more influence than suggestions from other young children in producing erroneous statements from young children. Once a false belief is well established (and there was up to 18 months for this to take place) any later "evidential" interviews, no matter how well conducted, merely serve as a vehicle for recording what the pre-schoolers have come to believe over that time. This is true regardless of whether the memories recalled are of real events, constructed events or a mixture of both. The NSW report (Eichelbaum p37) states,

> *"Under no circumstances should children be informed of other children's complaints or involvement."*

In the Ellis case the horses had well and truly bolted in this regard, well before the first formal videotaped interview.

Parents admitted using leading questions in the Ellis case (eg Sas p45). Sas states (p19) that:

> *"some of the parents talked with their children about the events as much if not more than the trained interviewers."*

> *"There are some examples in interviews where the interviewer repeated the specific allegations they had heard from the parents…This tended to happen when children were not forthcoming with their disclosures."*

In the case of Z/Kari Lacebark, Van Beynen (1995) states,

> "[Kari's] *mother …admitted asking her daughter a number of suggestive and leading questions soon after the possibility of abuse at the crèche was first raised.* [Kari's] *first allegation matched a question put by her mother seven days earlier. Yet not a single 'how come' question was asked by the interviewer".*

Davies report highlights a case of parental contamination even though Davies himself failed to recognise this instance. It has already been noted in section (1.7.i) on bias, that Child Q/Lara Palm made comments in her first interview that appear rehearsed. According to Davies, Child Q/Lara also alleged during the interview that abuse occurred, *at her own estimate,* when she was aged "*three or four*" (p15 Davies). Davies describes that the child then went on to rationalise,

> *"...that Peter threatened that she would turn into a gherkin if she told anyone; she told her parents, she says, when there was no sign that this had happened by age 5 ("I realised he was not telling the truth").*"

These are not the thought processes of a five-year-old. According to research cited by Davies himself (p3), in the case of 5 and 6 year olds "*Information about when events occurred (day month, year,) is likely to be very poorly retained...*". Moreover, he continues

> *"Elapsed time is generally poorly represented: children of this age have difficulty in estimating the duration of an event and how long ago it occurred."*

Therefore Q/Lara Palm's rationalisation in regard to appropriate time lapses, in order to justify alternative strategies to her continued silence and the exercise of logic in such a manner strongly suggests adult input. Yet Davies concludes, quite inexplicably,

> *"I see nothing in this interview that was redolent of coaching."* (Davies p16).

The common statement that "*nasty things happened*" is also an indication of an adult narrative source.

Goodyear-Smith (1993b) significantly describes how one mother admitted in court how she cuddled her son and praised him for being brave each time he "disclosed" some more. Another girl, she notes, said in court that she had learnt her story

> "*before I went on screen"* and that the interviewer *"taught me what Peter did."*

Another obvious source of parental contamination came through the use of books. Child Q/Lara Palm, for example (and others) was read two books by her mother prior to the first interview, *What's wrong with bottoms* and *A very touching Book*. Her mother had also spoken to Q/Lara "*no more than four or five times*" about Ellis and the Civic childcare centre prior to the first formal interview. The often-repeated word, "yucky" uttered by most children would seem to have its source in a book, *Katie's Yucky Problem* read to some childcare centre children by their parents.

The use of the two books that parents read to their children is significant. Sas and Zelas talked about children having "*sexual knowledge beyond their years*" (p50) which could "indicate" or was "consistent with" gaining that knowledge from an abuser (and note no other source was considered). Terms used by some children appear suspiciously identical to those found in these two books. But Sas blithely discounts this possibility as "*not a concern*" (Sas p45).

In his comments regarding contamination (p38,39) Davies accepts that there were no spontaneous allegations, no allegations arising from the first formal interviews, and that there was widespread questioning of children by their parents. Then he states

> *"Of more concern* [than leading questions] *is cross-talk between families against a background of persistent accusations against a suspect* [Ellis]*".*

He makes an exception in regard to accusations set in the childcare centre toilets. In these he regards the crosstalk *alone* as insufficient to cause the similarities contained within the allegations. However he includes the qualification that (my emphasis)

> "[the] *degree of detail in some of these accusations* [set in childcare centre toilets] ***is not in itself*** *proof of the charges against Ellis, but* ....[means] *such accusations deserve to be taken seriously. They need to studied in the wider context of the investigation."*

It can be inferred from his comments that Davies has little faith in any accusations other than those that involved the Civic childcare centre toilets, and even then this faith was qualified.

"Believe the children" was a highly visible CPM slogan of the period (see below 3rd Parent meeting at Knox Hall). Often the slogan was coupled with the instruction to parents to praise a child for his/her "bravery" when having made a "disclosure". This is fraught with risk. It can result in unreliable testimony through a variety of mechanisms including; reinforcement of certain behaviours and through the failure to ascertain alternative explanations because of a lack of proper source monitoring. These have been already discussed in section (3). Although some CPM professionals during the Ellis case may have been aware of risks in this regard the damage had already been done. The slogan had been very effectively promoted to the public and little could be done retrospectively to temper its effects. This slogan seemed to acquire the status of a

prime directive with some of the complainant parents, evidence for this is found throughout complainant parent Joy Bander's book, for example (p38)

> *"We told him* ["Tommy"/child X/Bart Dogwood] *many times how much we loved him, how brave he was for telling us all those things, and how he was now safe from Peter and would never be hurt like that again."*

This parent had even instructed the child's siblings to respond in the same manner whenever the child spoke of Peter Ellis. Yet this parent would not accept her child's initial statements that Ellis had not interfered with him and was in fact "*his friend*". Instead she chose to question him relentlessly over a period of three months (ibid):

> *"I decided to sound Tommy out from time to time .... and so about once a week I would introduce the subject."*(p31)

> *"I couldn't do that* [let the subject rest after the child's first formal interview] *and so from time to time I began again to speak to Tommy about the Crèche and Peter Ellis as I had before. Once again I got nowhere. Each time I asked, I got the same answer: "no, there is nothing more to tell.""* (p33)

> [After three months] *"I kept on trying to sound him out about the Crèche as before, but got nowhere."* (p34)

> [After four evidential interviews] *"I felt he needed to be helped to talk some more, so I tried to draw him out further."*(p50)

The case of X/Bart Dogwood as described by his mother is very illustrative of the contamination process carried out in varying degrees by some parents. It is therefore informative to examine the process of questioning outlined here in more detail.

His mother reports that she had talked to him since he was "quite little" about bad touching, and that he had been shown books on the subject (Bander p31). His parents first attended the third meeting of parents At least fifteen months had elapsed since the period when any of the incidents could have possibly occurred. Ms Dogwood then asked her son *"a direct question which was, 'did Peter touch his penis or bottom?'"*(Bander p30). She then informed Bart about the meeting, and asked him questions over the next several days and then continued "about once a week…for a few weeks". *"At first he said no* [he had nothing to tell and...] *that Peter was his friend."* (Bander p30). Eventually he said something to his older brother who had been previously informed as to the nature of the inquiries

> "*he smacked my bottom really, really hard. I couldn't hear the smack, but it really hurt."*.

Ms Dogwood selectively reinforced these "disclosures" (as previously quoted)

> *"We told him* ["Tommy"/child X/Bart Dogwood] *many times how much we loved him, how brave he was for telling us all those things, and how he was now safe from Peter and would never be hurt like that again."* (p38)

At the first evidential interview, a few days later, Bart began by saying (Davies p19)

> *"He* [Ellis] *was alright when I did go there…and now he's not."*

The interviewer then by degrees coaxes Bart to agree that Ellis "*wobbled*" his penis whilst changing him. He then repeated an allegation made by his parents involving another child, but "*seems to have no personal experience of this*" (Davies), stating that he knows

> *"cos mum and dad told me."*

Parsonson (1999) states that the interviewers are giving the children permission (not normally granted by adults) to talk about scatological and "rude" things that they may naturally enjoy talking about. It is therefore unsurprising to find that a week or so later in the middle of a dinner party Bart said, to the horror of his parents, "*You know, this carrot is like a big fat penis in your mouth to suck*" (Bander p12). A feedback loop between the child's home environment and the interviewer is now becoming established.

By the fifth interview, Bart talked of entering a secret room with the number 20 on the door. This room was accessed from the childcare centre via a ladder, and secret tunnel. In the room, Peter's mother hung five children in individual cages from hooks in the roof. Various childcare centre staff stuck sticks and burning paper up their "bums." When challenged by the interviewer, Bart insisted,

> *"they really happened".*

Davies (p23) points out in relation to this "repeated requests to recall may lead to construction of non-factual accounts, with the young child unable to distinguish between their retrieved memories, self-generated imagery and content derived from other, later sources. In X's [Bart's] case, it emerged at trial that all the video sessions were preceded by extensive discussions with his parents…interestingly, they [secret passages and cages] also figured in the testimony of children in the [now extremely dubious American] McMartin case. " The convictions were overturned in the McMartin case.

Ms Dogwood reveals the likely thinking behind her approach to the questioning of her son,

> *"I wish to explain what I have since learnt through my research on satanic ritual abuse, and the way children disclose abuse…Tommy [Bart] was scared. That is true and an understatement. A child disclosing about ritual abuse is an incremental and slowly progressive process. It may take a year or more before the entire story is told."* (p85)
>
> *…"Tommy relied on my questioning, and in fact would say, 'ask me a question about (this or that).'"* (p86)

While Ms Dogwood does state that some of this rationalisation for her attitude and approach arose after the trial, the record shows that she began to adopt such an approach around the time of the first allegation of smacking made to Bart's brother. Ms Dogwood quotes from Hudson (1991) on page 86, indicating that Hudson was another highly questionable source of [mis]information..

It may have been easy for Ms Dogwood to develop unreal and untested ideas about Ellis, as she

> *"had never had any dealings with him, nor any feeling about him, I began to wonder about him."* (Bander p31)

Perhaps, had she met Ellis, she may not have developed such a harsh attitude,

> …*in my opinion* [re the Ellis sentence] *it was a pity the death penalty wasn't in."* (p103 ibid)

Some parents brought along booklets they had made with their child to the interviews. These were discussed with the interviewers. Sas writes (p48), "…[it] *was* not *something that I had seen before, but at least it gave the interviewer an opportunity to review…*" Although this is permissible to Sas, it is not acceptable practice now (see section (4) Changes in Best Practice).

Hood (p443) reproduces information that one mother asked Eade to look into incidents of children being buried over their heads in the Civic childcare centre sandpit, with straws to breathe (physically impossible as the pit was too shallow), and being buried alive in coffins. This incident (and others) suggests that some parents had entered an emotional state in which they were becoming credulous.

Motivators toward behaviours resulting in contamination by parents may have been provided by two existing social support systems; social workers and the ACC. A parent support group was set up according to Ms Dogwood (Bander 1997) "sometime [prior to] August 1992). "It met either weekly or fortnightly, and was facilitated by a social worker." Early on in the case social workers provided a list of "indicators of sexual abuse." This allowed parents to find a simplistic explanation and a scapegoat for everyday problems that included: bedwetting, sleep disorders, etc. This in turn may have led parents toward inappropriate questioning of their children. Eichelbaum does not seriously discuss this more probable possibility in his report.

The fact that ACC provided lump-sum payments of $10,000 per allegation, for victims of *alleged* sexual abuse. Proof of abuse such as a conviction in a court of law was not required. This may have been a highly motivating factor for some parents to inappropriately question their children in order to ascertain if they might have the grounds to lodge a complaint. ACC paid more than $500,000 to around 40 parents of Civic childcare centre children, some receiving multiple payments of $10,000 (McLoughlin 1996).

Parent Meetings

The first formal parent meeting is often cited as having occurred on 2 December 1991. However, there was a significant earlier date. I recommend that anyone interested in all the details of these meetings read Hood, chapter six. There is a great deal more there, including much direct eyewitness testimony. Below is just some of the most relevant detail.

- **1st Meeting**.

A Christchurch Civic Child Care Centre management meeting on 28 November 1991 (Hood pp 243 –246) included several key parents and Detective Eade. Ellis had been suspended just over a week earlier, it was two months before the first formal allegation of sexual abuse surfaced, and a further three months before the first formal allegation of sexual abuse that was to result in a conviction. The possibility of widespread abuse at the childcare centre was discussed. Reports regarding what some children had said were treated as allegations, although no allegations of abuse had yet been made. At the end of this meeting, it was decided to phone all parents about the concerns raised, without revealing details. It was consequently and unsurprisingly only a matter of days before every parent had a very exaggerated picture of what had been revealed. In fact, as Hood notes (p244), childcare centre parents were being asked to believe what adults were telling them, not children. At the close of this meeting, according to Hood (p244)

> "*each parent took away a list of names* [of other Civic Centre parents]*…over the next couple of days, they phoned them with an alarming and mysterious message: 'there is going to be an urgent meeting…to discuss concerns that have come from the children'"*.

This fact alone indicates that parents were likely to have been comparing notes from very early on in the investigation.

- **2nd Meeting.**

The first mass meeting was at the Christchurch Civic Child Care Centre on 2 December 1991 (Hood p249 –262). It was attended by parents who had laid complaints, city manager John Gray, the Police and some social workers including evidential interviewer Sue Sidey, who addressed the meeting. It began with an air of secrecy, although the parents had heard many rumours and the morning's paper had supplied further detail. Ms Magnolia made a dramatic entrance, bursting into tears immediately. Detective Eade told parents that there were "concerns," but refused to give details. This must have served to fuel the anxieties even further. Sue Sidey also spoke, telling parents to observe their children for indications of a whole host of common childhood behaviours. She clearly thought they were all indicators of sexual abuse, and the parents must have inferred this. She advised parents to read their children books like *Katie's Yucky Problem* by Lynda Morgan and A *Very Touching Book* by Jan Hindman. Parents shouted, screamed and cried. Some left in disgust, saying that they did not want to be party to a witch-hunt. The effects of this meeting are indisputable and had huge bearing on the future course of the case; a core group of 13 parents who believed in the truth of the 'allegations' was immediately formed, and they began to meet regularly (Hood p255). The composition of this group closely matches that of complainant families. Yet this meeting was held prior to any credible allegation. In fact, by the end of that month, the Police investigation was closed down.

- **3rd Meeting.**

This was at Knox hall on 31 March 1992. It may be described as infamous and for a description, I refer the reader to Lynley Hood (pp333 – 335). A handout given to parents that said, among other things: "*Believe what they* [your children] *say*." Parents were given Accident Compensation forms in order to lodge claims for $10,000, which at that time was the full and usual amount paid by ACC to anyone claiming to have been sexually abused.

This meeting had an effect on Ms X/Dogwood (Bander 1997). She had already heard that Ellis had been suspended as he was suspected of sexually abusing some children. Dogwood/Bander relates how she attended this meeting sure her son had not been abused. However, the nature of this meeting seems to have made her more ready to believe it may have happened.

> *"It was an unforgettable event…Why such a crowd? And why the police? There was a police car outside and several police were standing at the back of the hall…my impression of the meeting…was that it was a serious matter and there must have been some validity to the complaints…that's when the seriousness occurred to me... the meeting made me distinctly uneasy.*

Ms Magnolia / Parent D

The first complaint turned out not to be an allegation at all. It came from a boy in November of 1991, who told his mother, he "*didn't like Peter's black penis*." Although he then explained that this remark was "*only a story*", his mother interpreted his statement as meaning that he had been sexually interfered with by Ellis. His mother "parent D" (referred to as "Ms Magnolia" by Hood) had worked in the sexual abuse counselling area for most of her adult life and was a founder member of START, a private sexual abuse therapy organisation which emphasised "always believing the child" and working toward "*unlocking all the pain, bad memories and feelings*" of sexual abuse. She also identified herself as a victim of childhood sexual abuse (Ansley, 1993). This woman took it upon herself to contact other parents of children attending the Civic childcare centre, and co-ordinate sessions discussing possible abuse of their children by Ellis (Brett, 1993).

Ms Magnolia appears to be a key source of contamination. She is referred to by Sas (p17) as the parent "*informally assuming that role* [of designated social worker]" for the parents. Ms Magnolia was described by some parents as "*a wonderful resource and support*" (Sas p20). She

> *"... blatantly ignored the directive not to spread information…provided parents with literature…discussed other symptoms, phoned other parents...outlined all the places the children alleged they were taken…labelled the accused as a child hater and molester"* (Sas p20).

There should be strong questions and doubt raised about the reliability and mental stability of Magnolia/D. She was a woman who had "recovered "memories of abuse herself, had made a suicide attempt, and had in her own words a "*politically motivated obsession*" with collecting press clippings on sexual abuse cases. Magnolia said (in 1992, Hood p403) that

> *"there's a paedophile ring and they're out to get us."*

On page 225, Hood describes what clearly looks like an example of ACC fraud perpetrated by Ms Magnolia.

Ms Magnolia and the relevant concurrent Crèche investigation (1992)

The parent Magnolia/D went on, in September 1992, to make similar allegations about another male crèche worker, at another crèche. This was after the closure of the Civic childcare centre

but before the deposition hearings. Subsequent police investigation resulted in no charges being laid.

Hood (2001 pp403 - 406) gives a detailed account of this investigation. The investigation was handled very differently to that of the Civic childcare centre:

- Police interviewed the named worker the day after a formal complaint by Ms Magnolia.
- There were more detailed staff records at the second crèche.
- After *one* formal interview with the child, undertaken two *days* after the formal complaint, no allegations were made, and the accused went back to work.
- The crèche supervisor directly discussed the rumours with parents on a one to one basis. "*Nothing was hidden, but there was no public pronouncement,*" the supervisor told Hood.
- When Magnolia and her friends tried to arrange a meeting for concerned parents, Detective Sergeant Bob Hardie had the meeting cancelled. Hardie had worked on the Ellis case.
- Hardie advised the crèche supervisor that she could continue to employ the named worker after Colin Eade had told the worker that he was going to arrest him. He continued at work.
- When Magnolia began repeating allegations by telephone, and showing photos of the named worker to children involved in the Civic childcare centre case, Hardie advised the crèche administrator to threaten Magnolia with defamation proceedings.

This woman was instrumental in passing on information between parents of the Civic childcare centre and clearly had a leading role in the development of the case. Her behaviour at the second crèche, as described by Hood (p403 – 407) and others, should raise serious doubts about both her credibility and her sanity. This consideration is relevant and discussion of it needs to be out in the open. Eichelbaum makes no mention of this in his report, nor did it feature in reports of the trial (eg Hood 2001, Newbold 2000). Sim (2002) however dismisses Hood's revelations regarding Magnolia on the grounds that Hood's picture was "*derived from descriptions of her rather than first hand experience*". This is insufficient reason to dismiss Hood's extensive and meticulous research.

The parents directly contaminated the interviews themselves. According to the 1999 court of appeal (introductory point no 7),

> *"Generally before an interview commenced there would be a short discussion between the interviewer and the parents covering any disclosure the child had made and their responses to it, and any behaviour they had noted, with possible explanations for it, and the child's background and friends and contacts with other crèche children".*

The evidence for widespread contamination of the children's evidence by parents is very strong. Some parents appear to have been panicked, and others seem to have pre-judged Ellis. As time proceeded the potential for the construction of inaccurate memories was very strong. As these factors can confuse matters in cases of abuse, it is highly desirable, if not essential, that

allegations are detected early and evidential interviews are carried out promptly. In this manner the possibility and effect of contamination is minimised. That did not occur in the Ellis case.

(ii) Contamination by Children

It is fascinating that Zelas looks for consistencies between the different children's stories as proof of veracity. In doing so she often succeeded in proving unreliability, as shown elsewhere in this report. The records state that parents were organising playgroups and sleepovers in order to "*help them remember*" (Hood p341). Davies' claim (p35 Davies report) that "*Children are not fed tid bits of information from other children*" seems a strange thing to say, as the parents admitted to Hood (p341-345 and elsewhere), that they did just that.

(iii) Contamination by Police

For the first crucial three months of the police inquiry, Eade was in sole charge. There is evidence of visits by Eade to parents and of him speaking directly to the children during the enquiry. (Hood p 310, 269) There can be little doubt that from the start, Eade passed on the strong message that Ellis was guilty of terrible crimes, and would go to jail. This, delivered by an authority figure, is a powerful message to a young child and it can influence recall by way of memory construction through, amongst other factors, the child's use of schema. Z/Kari Lacebark had been exposed to this notion, from some source, as is evident in her 4th interview

Kari: Yep, now I'll just have to get the beds ready and the jail ready and stuff. Should Peter have an empty jail?

Sidey: What do you think?

Kari: I think he should have a bit of furniture.

Sidey: A bit of furniture, okay.

Kari: But he was really bad. When will it be decided?

Sidey: What?

Kari: Um, for Peter to go to jail or not.

Sidey: Um, I don't know. That's up to [male name]. Okay now … um, where else have you been with Peter?

The search by police for cages, special trapdoors, etc, also indicates that they took seriously allegations of a great ring of Paedophiles and SRA operating in the childcare centre. Additionally, the police neglected to interview Ellis and the other Civic childcare centre staff until very late in the investigation. The delayed interviews were more an interrogation and arrest, rather than a search for the truth. There is a clear bias operating in the input of the police (see also section (1.5.iii) A Priori Bias).

(iv) Contamination by Child Therapists

The NSW royal commission in 1997 reported that therapeutic intervention could contaminate a child's evidence. This creates a problem if it is desired that (for whatever reason) therapy take place.

Loftus (1993) refers to a number of studies into contamination of evidence by therapists. For example, (p526) she talks of therapists who don't take no for an answer, encouraging clients to 'guess or tell a story'. She quotes research that shows that

> *"... the simple act of imagination makes an event subjectively more likely."*

On page 527, Loftus quotes another study (by Mulhern 1991) that shows *"the alarming discrepancies that often exist between therapists' accounts of what they have done in therapy and what is revealed in video or audiotapes of the same sessions."* In her discussion of how false memories can be constructed (p533) Loftus states that

> *"... false memories* [are] *created …with techniques that are not all that different from what some therapists regularly do – suggesting that the client was probably abused because of some vague symptoms, labelling a client's ambiguous recollections as evidence of abuse, and encouraging mental exercises that involve fantasy merging with reality."*

Some children involved in the Civic childcare centre case received therapy under the supervision of Karen Zelas *before* there were any convictions. In at least one case, therapy sessions *preceded* the completion of the child's evidential interviews (Hood p343, Eichelbaum p9). There is a strong likelihood, in this case, that the therapists involved treated the children under the assumption that they had been abused. This may have strengthened any existing belief, on the part of the child, that they had been abused. It would seem to be exceedingly difficult if not impossible to treat a subject for sexual abuse without *affirming* to the subject an acceptance of the occurrence of the said abuse. As earlier noted, some of the children who gained convictions had parents who were therapists working in the sexual abuse field. Eichelbaum failed to properly consider these issues, there is hardly any discussion or information on the issues in the report.

(v) Contamination by Adult Counsellors

The widespread dissemination of panic and bias is well illustrated by the story of one ex-Christchurch Civic Child Care Centre worker, Sandi (Hood's pseudonym, described p 424). Sandi had not been accused, or arrested, but was pursued relentlessly by police "[the police] *visited Sandi seven or eight times, and stayed for an hour or two each time.*". When she sought counselling for her fears that the police might remove her child from her care, she was told that she was "*having trouble coming to terms with the other women's guilt*." This is evidence of at least one therapist's belief in the accused guilt, well before the trial. She also described how she found it difficult to find a counsellor who was available, as they were very busy with the Civic childcare centre families.

(vi) Contamination by social workers

Ms X/Dogwood (Bander 1997) reports that she had been assigned a social worker, who had visited Bart several times. The social worker also came to visit her one evening and talked to her for an hour after another "disclosure" by Bart. It seems possible that such social workers spread information between various agencies.

(5.2) The significance of delay between the alleged events and the allegations

Using information from the Eichelbaum report, the delays between the dates of the alleged offences that resulted in convictions and the time of the first formal interviews range between 7 to 50 months (see the table in my appendix 2). Recall becomes less accurate over time, especially for young children (Loftus 1979, etc). Ceci and Bruck, in their 1993 review of the scientific literature discuss Oates and Shrimpton's 1991 study and state that it shows that

> *"... the effect of the delay of interview was especially consequential for the misleading action questions; children interviewed after a long delay were more susceptible to suggestion than those interviewed after a short delay."*

The time it took for most of the allegations to emerge from the multiple interviews suggests the strong likelihood that the children may have made use of that time to divine what it was that they believed the adults wanted them to say (see Ceci & Bruck 1999). Pointedly, even Sas (p11) admits that there is only a brief "window of opportunity" when reliable evidence may be obtained. Any reasons or excuses for the delay are irrelevant to the potential effects of the delay.

Ms X/Dogwood makers it clear that her son (Bart Dogwood) did not make any spontaneous allegation for some time, if at all (Bander (1997). She states that in March 1992 when the third meeting of civic parents happened, she still did not think "Tommy" (Bart) had been abused.

> *"He would have told me if he had been"* (p9)*…"I also felt sure…I would have noticed [if] something was amiss."* (p27*). "During his more than two years of attendance he had never given us the slightest clue that he had experienced anything untoward there."* (p25*)*

It was not until two months after that meeting that *"Tommy said something to his older brother George, that clearly indicated something serious might have happened to him at the Creche"*.

His first evidential interview was a few days later.

Even in ideal terms the only useful interview evidence was probably the interviewing of the children by their parents, given the up to 8 months delay before the "expert" interviews commenced, and given the ages of the children. The forensic value of these parent interviews was clearly non-existent.

I conclude that given this delay alone, it was too late for any allegations to be reliable. Other evidence would have to be found. Surprisingly, this issue was swept aside in the Eichelbaum report's conclusions.

(5.3) The significance of the ages of the children

In his conclusions, Davies states that "*young children's memories are inferior to adults*", and they forget more rapidly (p34). This is well backed up in research by Loftus and others (eg Lindsay et al 1991,). Ceci and Bruck (1993) review five recent studies that all confirm this. Furthermore, they state (p409):

> *"... our review of studies conducted during the first 70 years of this century indicated that almost without exception, researchers believed children were more suggestible than adults."*

Foley and Johnson (1985) found that six-year olds are easily confused between memories of real events and memories of imagined events. This seems particularly apposite to this case. Younger children are also more susceptible to suggestion (Bruck and Ceci 1999, Ceci et al 1997). This has been known for a long time, Ceci and Bruck (1993) quote research going back to 1948 (Burtt).

(i) Infantile amnesia and memory recall in young children

Neath (1998) summarises the research on infantile amnesia on pages 352 – 353. He defines it as

> *"... the finding that most people cannot recall events that involved them prior to the age of about 3 or 4 years."*

Many of our seemingly real early memories are really only constructs after the event from external sources, -such as parents repeating stories and discussing the family photo album. It is important to have objective information available in order to validate the memories. It is also slightly more complicated than it first appears, as memories may have existed before being lost. Neath asks, (p353) "*why is recollection so poor or even nonexistent after age three*? [for events that occurred before the age of 3]" He can find no theory that adequately explains all data.

Simcock and Hayne (2002) in a well controlled experiment using 80 subjects (aged between 2 and 4 years) have shown that young children can recall earlier autobiographical events after a six month delay, when tested through re-enactment. This performance drops considerably for younger children, aged around 2 to three years at the time of the event, if a one-year delay occurs before the test of recall. On verbal tests the recall is especially poor. They conclude that children's verbal reports of an event are limited by their poor verbal skills at the time of the event. The authors state,

> *"... language development did not render these perceptually based memories accessible to verbal recall."*

In other words, they cannot use the words they have since learnt to describe their old memories. This was a strong effect. To quote again,

> *"There was not a single instance in which a child used a word or words to describe the event that had not been part of his or her productive vocabulary at the time of encoding."*

If this study is replicated, then it will mean that in interviewing children about their pre-school memories, as in the Civic case, a reliance on verbal reports is fraught with problems. In fact, if

Simcock and Hayne are correct, wherever children use language other than what was used at the time of the reported event, it is unlikely that the statements are representing true memories. Their general finding that verbal memories are poorer in pre-schoolers is not new. Nurcombe (1986) found that pre-schoolers remember as much as adults when the task does not emphasise verbal recall.

Another finding in this study was that as children grow older the process of improvement in recall, both verbal and non-verbal is a gradual, continuous process, not a sudden, dramatic event as implied by the word amnesia.

The overwhelmingly consistent finding is that younger children's memories are significantly less accurate than that of older children. This is probably due to both the maturation of the brain and the gradual development of strategies for memorising and retrieval. Memories become increasingly more reliable (but never perfect) up to the teenage years or later when, according to Ruffman et al (2001) the frontal lobes fully mature. This part of the brain is used for source monitoring and episodic memory. Neath again on p 354 discusses how few 5 year olds display particularly good rehearsal strategies (in this case multiple item rehearsal) when memorising a list of words. In a simple word recall experiment, there is a steady increase in accuracy with increasing age of subjects (in a comparison of 4, 7, 10 year olds, and adults).

(ii) Apparently spontaneous false allegations in young children

Bruck and Ceci (1999) have shown that preschool children are disproportionately vulnerable to a variety of suggestive influences. In their 1996 book published by the American Psychological Association, the authors found that

> *"... through suggestive interviewing techniques and repeated questioning, children can be led to get wrong not only peripheral details, but the central gist of events they experienced, even events affecting their bodies that could have sexual implications."*(APA press release 1996).

This means that some children when asked direct (but not necessarily leading) questions, will falsely assert that they were touched sexually. These allegations may be volunteered without prompting, and so appear spontaneous.

In the Ellis case, at least 127 children were formally interviewed (McLoughlin 1996), 118 of them subsequent to the December 1991 parent meeting (Sas p 10), yet only a handful were presented to the court. In court many charges were dismissed or thrown out. After the convictions, one child retracted of her own accord. The small number of complainant children could have simply represented that small percentage that will make such false allegations.

Consider Hood's thesis that the least credible evidence was systematically removed in the prosecution's preparations for the trial. It took some time and much questioning by parents and therapists before the allegations emerged, although some parents deny this to be the case. The children who gave evidence at the trial may therefore represent the most suggestible of the at least 127 children officially interviewed. That could be compounded, to the degree by which these children were simply exposed to more interrogation, although an investigation into this could control for this effect.

Perhaps the term “spontaneous “ is misleading. Ceci and Bruck (1993) point out that children may tell untruths (inadvertently or deliberately lying) when they are motivated to do so (p426). They may lie to avoid punishment, they may have overheard discussions of an event and want to gain acceptance in the group, they may fear reprisal and wish an avoidance of embarrassment.

(iii) Children in the courtroom

The Ellis trial operated according to our amendments to the Evidence Act in 1989 and the then new evidence regulations regarding the videotaping of child complainants. It is my opinion this allowed for children’s evidence to be regarded as equal to that of adults, and disallowed the usual face-to-face court challenges and cross-examination. Hood discuses this issue on page 111,

> *“Over the more than two years between the introduction of the regulations, and the start of depositions in the Christchurch Civic Crèche case, judges weighed the requirement to ‘minimise stress on the complainant’ against the requirement to ‘ensure a fair trial for the accused.’ More often than not, they ruled in favour of the complainant.”*

My judgement is also that this was what happened in this case. I am also unconvinced that facing a jury in person is necessarily stressful for young children. In the experience of young children, television is commonly associated with fictional presentations and unreal depictions (eg cartoons). It seems an inappropriate medium to use in a courtroom in these cases as children have problems distinguishing fact from fiction. They were questioned, or at least cross-examined by a man on a television screen, rather than someone in person. Hood page 484

> *“When each child witness was called, an attendant took the child and his/her support person to the video room... no one except the crier was allowed to enter the room... the three wigged and gowned men who appeared on the screen...”*

Even the appearance of the judicial garb may have lent an air of surrealism to the children’s perception of the moment.

(5.4) Suggestibility in young children

The evidential interviews with X/Bart Dogwood have entered the public domain, with their publication by Barry Colman. The Eichelbaum report also contains analysis of them. Many suggestive questions were asked during these five interviews. This does not seem to be in accord with the standards of the time. Bart often changes his answers to accommodate these suggestions. This supports my assertion that perhaps the more suggestible children were eventually chosen to appear in court. The crown prosecutor acknowledged that some of his evidence was “bizarre and difficult to comprehend.”

Loftus (Loftus and Calvin 2001) describes that our ability to accept or resist false information is variable in the population. The screening of children (from at least 127 to just 11 who came to court –to the seven who obtained convictions- to six after the retraction) may represent a similar selection process to a stage hypnotist when choosing suggestible volunteers. Perhaps only the

children most susceptible to the misinformation effect (Loftus, Hoffman & Hunter 1989, Poole and Lindsay 2001, etc) passed through this screening process.

There is some scientific literature on testing for suggestibility. Endres 1997 for example describes six formal tests for suggestibility (p53). He discusses **The Bonn Test of Statement Suggestibility** (BTSS) (p54), this test is useful for schoolchildren as it is administered verbally, and includes both misleading and factually correct questions. It has been found to be reliable by other researchers with both school age and pre-school children. Tests like this are in forensic use in Germany.

Endres (p48) quotes evidence that

> *"... indicates that habitually anxious and inhibited persons with weak cognitive abilities tend to be especially vulnerable to suggestive interviewing."* They may also be more imaginative, *"Stable individual factors related to vividness of mental imagery and reduced standards of reality monitoring thus apparently play a role in the implantation of false memories."*

It may still be possible to make an assessment of the children's suggestibility, using the existing available data on the Civic childcare centre children (for example, a blind analysis of the videotapes by an expert who could evaluate the children in terms of suggestibility. It may be that suggestible behaviour patterns could be discerned, such as always agreeing with the interviewer, not volunteering information spontaneously, etc) If so, the results would certainly have some bearing on the case. In relation to changes in best practice, whilst it may not be routinely carried out here, in Germany at least, an analysis is often attempted of the intrinsic reliability of each child (i.e. assessing their suggestibility). I would recommend that we look at adopting the same practice here in cases where there exists a selection process of witnesses, no spontaneous allegations and a delay in conducting formal interviews.

A new test of children's suggestibility has been announced by the American psychological Associatiuon (Scullin, Matthew H. Kanaya, Tomoe and Ceci, Stephen J. 2002). The authors used the Video Suggestibility Scale for Children to predict the performances of 50 pre-school children in terms of accuracy and their responses to suggestion. In their conclusions the authors state that the test

> *"may provide important information to forensic interviewers and psychologists about a child's tendency to provide inaccurate information about true and suggested events…observing children to its [the test's] questions can provide investigators with a sense of how sensitive some children are to suggestive influences."*.

(5.5) Do the children's "symptoms" of abuse have any scientific validity?

A number of professional bodies have come to the conclusion that there exists no cluster of symptoms that indicate sexual abuse.

- *"There is no single set of symptoms which automatically indicates that a person was a victim of childhood abuse. There have been media reports of therapists who state that people*

(particularly women) with a particular set of problems or symptoms must have been victims of childhood sexual abuse. There is no scientific evidence that supports this conclusion."
American Psychological Association, Questions and Answers about Memories of Childhood Abuse, 1995.

- *"Psychologists recognize that there is no constellation of symptoms which is diagnostic of child sexual abuse."*
  Canadian Psychological Association, Position Statement on Adult Recovered Memories of Childhood Sexual Abuse, 1996.

- *"Previous sexual abuse in the absence of memories of these events cannot be diagnosed through a checklist of symptoms."*
  Royal College of Psychiatrists, Reported Recovered Memories of Child Sexual Abuse, 1997. (UK)

Loftus (and others) discuss how adults seek psychotherapy initially because of symptoms. These symptoms are then interpreted as evidence of abuse even though there is no real evidence to suppose this, and a number of alternative explanations are just as likely. The problem is that people in general and therapists "*have a tendency to search for evidence that confirms their hunches rather than search for evidence that disconfirms it*." (ibid. p530) I contend that just these processes were operating in the Ellis case.

The prosecution claimed that various "symptoms" that the children exhibited were interpreted as evidence of abuse in the Ellis case (Hood page 521). The proponents of this theory included the parent D/Magnolia, the therapists who conducted their work concurrent with the investigation, and most certainly Zelas. This "evidence" would undoubtedly increase expectation (on the part of therapists, interviewers and parents) for "disclosures." From all accounts, the children displayed few signs of distress whilst attending the childcare centre. There are numerous contemporary reports of both children and parents liking Ellis. However, some time after Ellis had been dismissed from the childcare centre, signs of disturbance, anger and unhappiness began to appear. A behavioural analysis would direct that one must examine what subsequent experience these children had in common that could be a cause. The obvious one is the experience of the evidential interviews. The "therapy" sessions could also have much the same effect, as they seem to have been conducted in a similar manner. A behavioural scientist would hypothesise that those children, who withdrew from the interview/therapy process, would show an overall improvement in these behaviours. The experts in the Eichelbaum report did not carry out that important analysis or even consider this possibility.

A list of behaviours said to be indicators of abuse was given to parents at one of their many meetings (both formal and informal) during the investigation. Sas (p16) states that this was inadvisable. I can find *no* scientific study that establishes a cluster of symptoms (or "syndrome") that reliably indicate sexual abuse.

It is interesting to note that Ms X/Dogwood seems to think Bart's vomiting on one occasion was a sign of abuse (Bander p39). But she also reports that on the same evening, her baby had a tummy bug, and had also vomited.

Sas appends to her analysis of each interview a section entitled "*Clinical indices of reliability*" In essence, within these sections Sas is applying precisely the theory of such "symptomatology" to the Ellis case. Eichelbaum does not note this. Sas (p9) suggests that "*nightmares, toileting problems, sexualised behaviours, unexplained fears and misunderstood comments*" are likely to indicate to parents that sexual abuse has occurred. These behaviours are commonplace amongst normal, non-abused young children, and all have more likely non-abuse aetiologies.

Alarmingly, Zelas propagated this unsubstantiated theory in court. In one such occurrence (the Geoff Scott case, a male hospital crèche worker, aged 35, convicted in 1994) reported by the Dominion newspaper 3 May 1996, Zelas stated during the trial in Wellington;

> *"...excessive and persistent sex play by children was one sign that they had been subjected to sexual abuse."*

In the same report, it is stated that,

> *"...she* [Zelas] *agreed that in most cases, a formal evaluation of the family situation and its effect, or otherwise, on the child had not been made."*

This is fascinating in the light of Zelas's admission to me a year earlier in 1994 that *"there is no set of behavioural or emotional symptoms which reliably indicate abuse has occurred."* (Harper 1994)

Another unpalatable fact, often difficult for some people to accept, is that children who have genuinely been sexually abused, may suffer no or little psychological trauma as a result, and are in fact free of any symptoms of trauma. Kendall-Tackett, Williams and Finkelhor (1993) in a review of 45 studies found that

> *"...no one symptom characterised a majority of sexually abused children.… One third of victims had no symptoms."*

Increased trauma seems to occur when others spell out the depravity of the crime to the child, frequently counsellors and/or interviewers (Loftus 1993 p534). Ergo, a healthier approach might be to down play the evilness of the deed to the child, and emphasise that it may not be difficult to get on with one's life. Exactly the opposite seems to have occurred with the Civic childcare centre children.

McNally's book (1998 pp. 22-26) describes the violent condemnation by the US Congress in 1999 of an article by Rind, Tromovitch and Bauserman in a prestigious psychology journal which came to the same conclusion based on a meta-analysis of 59 studies. Apparently this kind of information is not always palatable to politicians and is not considered in "treatment" or "therapy" programmes.

(5.6) Is consistency proof of reliability?

The prosecution claimed (Hood p523) that the children had given consistent central detail in their allegations. This was presented as evidence of reliability. A British Home Office paper quoted by Eichelbaum (p44) prepared by psychologists Davies and Westcott in 1999 concludes

> *"No reliable method yet exists of judging the truth or otherwise of children's allegations, either from their demeanour at interview, or from features of their accounts."*

It appears to me that the jury, due to Zelas's testimony, may have believed the assertion that since the children's stories were consistent in regard to "central issues", then abuse was more likely to have occurred. Zelas's use of the term "consistent with" is highly ambiguous and one cannot really be sure exactly what she means by this. Nevertheless, the jury may have placed weight on these statements without fully understanding them. The jury was not well directed in that they were not made aware of the fact that children can produce allegations that are convincing but false.

Not withstanding, I contend that the central allegations made by the children were not consistent. The prosecution eliminated references (in the charges) to Ellis's Hereford Street address at the trial. That was surely to avoid alerting the jury to inconsistencies in the children's evidence as to this central fact. Panckhurst (Hood p542) in his appeal pointed out that

> *"The final seven children named 21 other children as observers or participants in their abuse, but none of the named children confirmed the allegations."*

My contention was supported by the *New Zealand Law Journal* editor (2002 p1) who stated,

> *"No one who has read the confusion and contradiction displayed by the witness statements that Hood recites can be happy that the convictions are safe."*

When the Crown prosecuting lawyer Stanaway referred to inconsistencies in central detail, (Hood p479), he said this was because the child was talking about different episodes of abuse. This is nevertheless an admission of unreliability. It would weaken the effect of an adult's evidence, and there is no reason for it not to equally weaken that of a child. Eichelbaum concludes (p119) that there was a "*body of broadly similar allegations*." Sas had noted (p58) that "*it was difficult to know at times if children were talking about different occasions and incidents*." The perhaps more likely interpretation of the inconsistencies might be that they indicated unreliable evidence, evidence that may have had no base in reality. This was not adequately explored in the Eichelbaum report. Stanaway contradicted himself when he claimed (Hood p479) that young children remember central detail better than peripheral detail (the data does not support this statement).

The jury may have given Stanaway's explanation for the confusion between different incidents undue weight. Williamson erred in not noticing or stopping another possible source of bias in manoeuvres made by the prosecution. For a number of the charges Prosecutor Stanaway manipulated, between the depositions and the trial, the central details of who committed the crimes, and where they were committed (Hood pp 479 - 481). This was probably done to avoid alerting the jury to the original thrust of the Civic childcare centre charges, that the women were co-offenders. The women had been discharged at this stage. This was the prosecution's plan B. It appears to be a dishonest move because it hid inconsistencies in central details of the allegations. Eichelbaum fails to discuss this in his concluding remarks. In fact, he seems to state that as the Court of Appeal had already considered the case twice, no further analysis of such matters was appropriate (Eichelbaum report p120).

(5.7) Coercion

The prosecution claimed in the case of Child X/Bart Dogwood (Hood p522) that Ellis had terrorised the children into silence. Thus, the continual questioning and encouragement was necessary until X/Bart felt safe to tell. The evidence that Ellis told the children 'not to tell' is contradictory and weak. (e.g. on page 16 of Davies' report it is claimed that child Q/Lara Palm believed for some time that Peter would turn her into a gherkin if she told, and there exist reports that Ellis was liked by the children at the time when he was at the childcare centre). McLoughlin (1996) states,

> *"By most accounts, Ellis was extremely popular with children and parents alike."*

McLoughlin claims that, "*experts agree that such threats make disclosure of abuse more likely*". Ceci (quoted by McLoughlin) discounts the theory that Ellis (if guilty) would have succeeded in keeping them quiet about the acts that he was found guilty of committing. He states,

> *"It, in my experience, is exceedingly unlikely that you can coerce a group of children this age into silence for prolonged periods of time when the following were allegedly involved… anal penetration, forcing children to walk over precarious ladders perched high above buildings, defecating and urinating on children… these are events which cause almost instant revulsion in children, night tremors, unwillingness to go to school, fear of the perpetrator.*
>
> *In my view it is very very unlikely that you could persuade children to be silent about that for long periods and also to assert affection for the perpetrator which many of these children did. So on that level I'm exceedingly sceptical. I don't think the bizarre stuff happened. Does that mean nothing happened? Well, I simply don't know. No one else knows either except God and Mr Peter Ellis."*

If Ceci is correct then the prosecution's theory is weak indeed, and did not justify the long period of probing. Furthermore, just how Ellis had threatened the children to keep them silent, and had managed to keep the threat alive by some form of remote control has never been explained.

McLoughlin says he sent Ceci's 14 pages of comments to Attorney-General Paul East, who passed them to the Crown Law Office, which apparently gave it to Social Welfare. Neither organisation has publicly challenged Ceci's findings.

The onus of proof that Ellis effectively kept the children silent for months or years surely must lie with the prosecution. They do not appear to have done this.

(5.8) A statistical analysis of the reliability of the experts' evaluation of the evidence

Koehler (2001) discusses the lack of understanding of Bayes' statistical law among health professionals. The reader might like to test his/her knowledge of it.

Assume 1% of all women who undergo a breast screening test have breast cancer;

The screening test has an 80% success rate of correctly identifying those who have cancer that it tests. If a patient has cancer he/she has an 80% chance of this being identified.

The test has a 10% false positive rate (i.e. 10% of the patients who are free of cancer will be incorrectly identified as having it). This means that of those without cancer 90 % will be correctly cleared of the disease.

But for those who have been diagnosed as having cancer, what is the likelihood, or probability, that they do in fact have it? The answer appears below.

Somewhat surprisingly, at first glance, the probability is 0.074. In other words there is a 7.4 % chance of the said patient having cancer and by simple logical implication there is a 92.6 % likelihood of the same patient not having cancer. Yet, according to Koehler many professionals would highly over inflate the likelihood of cancer being present after one doctor's positive diagnosis from this test, and others like it (for example a test for HIV infection.)

Here is the reasoning toward the result:

Say 1000 patients are tested. As 1% of those tested have cancer this means 10 have the disease. The test correctly identifies 80% of the cancers it screens. This means 0.8 x 10 or eight of the 10 patients with cancer are identified…So far the doctor is doing well….

However 990 out of the 1,000 do not have cancer and a 10% error rate of *false positives* results in 100 of these patients being incorrectly identified as having it. So we have a total of 108 positive diagnoses, only 8 of which are correct. The percentage probability of a positive diagnosis being right (correct positive) is 8/108 x 100 = 7.4 %

So, given these conditions, if the doctor tells you that you have cancer, there is a 92.6 % chance that in fact, you do not have cancer. One should not however lose sight of the fact that the patient now has a seven-and-a-half fold higher chance of having cancer than has a non-screened person in the general population.

Second opinions, and other tests are then required. The same sort of analysis could be applied to prosecution witness Zelas's apparent assessment that the children's testimony was reliable. The only device Zelas seems to have used to determine reliability of the allegations themselves was an examination of "consistency of central detail." This device does not give the impression of being as reliable as a breast-screening machine. Yet, she certainly never stated that she thought that there was a low probability that the allegations were unreliable. The second opinions in this case are divided. Sas agrees. Those who disagree include the defence expert Le Page, psychologists Dr Ceci and Barry Parsonson (who viewed many of the videotapes). Davies said he would not pronounce on the issue, presumably because he had insufficient information to make a reliable assessment.

Some early studies showed that clinicians couldn't determine whether or not a child has been sexually abused. (eg Dawes 1989). This was verified by Ceci et al (1997), who found that professionals were "*unable to distinguish true from false accounts*" from children's testimony through interviewing children who possessed some true, and some inaccurate (implanted

through suggestive techniques) memories. These studies provide an indication of the rates of true and false positives.

In other words, in the Ellis case, the rate of false positives (false allegations *being officially accepted as true*) must be close to an absolutely appalling 50%, as seen by simply from viewing the videotapes. In order to begin to approach the legal requirement of beyond reasonable doubt, other factors must be considered, such as gullibility of the witnesses, (not considered in the Ellis case), delay between alleged events and formal allegations, and the ages of the children. But in the Ellis case, as I discuss elsewhere in this document, these factors are negatively correlated with accuracy in this case. For example, accuracy of recall is poorer for pre-school children compared with older children. Considering this, with Zelas's apparent confidence in court and Eichelbaum and Sas'certainty, one is forced to conclude that this trio is most likely deluded in regard to their ability to be sure the children's evidence was reliable. This effect also has consequences whenever the terms of reference of the Appeals and Inquiry is considered, as whenever the terms are narrowed this effect is probably inflated.

Ziskin and Faust (1997) have examined the reliability of psychiatrists and psychologists in courtrooms. They found many are ill fitted to this work because they are used to being sympathetic and helpful to their clients or patients. This is illustrated in the Christchurch case of Simone Doublett, who said that she lied about satanic ritual abuse. She stated (in 1995) that her therapist, psychologist Dr Lynne Haye was not good at telling that she was lying, and that she lied to gain attention. Haye now accepts she was gullible, She had attended a seminar, and read literature that had convinced her SRA was real and not uncommon. According to Ziskin and Faust the accuracy of psychiatric judgement is poor, and did not improve with experience, age or special qualifications. In the courtroom, the need to uncover truth is a task that may conflict with this role. They also concluded that human behaviour has so far resisted a solid theoretical foundation that can make reliable and accurate predictions.

Zelas falsely denied in court having given a television interview with Paul Holmes about the case (Hood P503). I find it unlikely that she could forget participating in a major television interview. Whatever the reason, this is not the action of a reliable witness (court transcript p318 Hood).

For four reasons, Eichelbaum did not exercise sufficient caution in agreeing with Sas' overconfident assertions regarding the reliability of the children's evidence. He ignored this evidence of Zelas's unreliability, he over estimated Sas' reliability, he did not consider the statistical significance of the other second opinions that differed, and his ignorance of the use of statistics led him to overestimate the reliability of experts in general.

This suggests a need to train judges is some basic aspects of diagnostic statistics and relevant findings from the science of psychology. Koehler discusses the implications this type of overconfidence in expert diagnosis, and gives an example of a counsellor who had dealt with a patient who had received a positive result from a test for AIDS. This led to the suicide of a patient who did not have AIDS, but was led to believe that he/she had the disease due to the one positive test result. An educated use of statistical formulae by the health worker would have alerted the patient to the unlikelihood of having the disease despite the single positive test result.

(5.9) The effect on reliability of the proportion of impossible and unlikely allegations

There were many clearly impossible allegations in this case. For example, Ellis did not own a giraffe, there were no cages hung from ceilings, he did not turn a frog into a cat, no children visited the Masonic lodge and he didn't dig up Jesus. Other allegations that at first appeared believable were later found to be highly unlikely (Hood p 435). This includes all the events alleged to have happened at Ellis's Hereford Street house. The Crown apparently convinced the jury that Ellis had cleverly blended tricks and fantasy into the abuse so that the children would recall the two together (Hood p521, 522). A fair analysis of this case would consider all the allegations arising from all of the at least 127 children officially interviewed. The proportion of the allegations that were unlikely, impossible or probably untrue should have been calculated. This information would have been helpful to the jury in assessing the credibility of the evidence as a whole. This is a standard scientific practice. It is improper to only report positive results because the total set of data could simply be a random set of numbers signifying nothing. Unfortunately, this seems to be a standard legal (advocacy) practice. As already discussed, this is precisely how many unsupported theories of psychic abilities arose. The jury also needed data from control groups, that is, studies where children were questioned in a similar fashion, but it is known beforehand that no abuse took place. As I have also already shown, there exist control data in regard to the level of false allegations from children in such situations. Such a comparative analysis with the Civic children has not been done to my knowledge.

Christchurch Press court reporter Van Beynan (1995), who attended the trial, discusses complainant Z/Kari Lacebark whom he calls Lucy. In regard to this child, four out of four charges laid resulted in convictions (see appendix 2 for a comparison with the other children who appeared as witnesses). Van Beynan states,

> *"almost every allegation she made was undermined by detail she provided…the activities she described...were not physically possible…Throughout her six interviews Lucy changed her story about what offences occurred and their frequency. She gave differing accounts of the state of her and Ellis's clothing* [etc]*…As confusion reigned, anatomically correct dolls were introduced to the interviews which produced further conflicting accounts. In the first interview Lucy asked 14 times for the questioning to stop …everything divulged by Lucy was open to the alternative hypothesis that she was in essence making it up as she went along…"*

If Lucy was at the high end of the jury's reliability scale, it raises the question of where does this leave the testimony of the other children upon which convictions were based?

(5.10) The retracted evidence

N/Zelda Cypress (referred to as S by McLoughlin) dramatically retracted her allegations 18 months after the trial. She said she had lied about the abuse, because "*she thought everyone would be mad* [angry]" had she told the truth. (Hood p549). Hood notes that our courts, and prosecution expert witnesses encourage us to believe the child when making allegations of sexual abuse, but when a retraction occurs, we are told not to believe the child.

The following points are important in any consideration of the retraction.

- In the trial the mother admitted reading to her three books about sexual abuse from the age of three.

- Zelda "*was obviously very fond of him*" (Ellis) according to the mother.

- It was *three years* after last attending Civic childcare centre before the mother (Ms Cypress) made her initial allegation. The child was nine years of age at her first formal interview.

- In common with most interviews, anatomically correct dolls and repeated and leading questions were used.

- The initial disclosure occurred when Zelda's mother asked suggestive questions and described Ellis in a negative light.

- Her first disclosure matched the scenario of one of her mother's initial questions.

- Throughout the interviews, when making allegations, she hid her face, and tried to slide under the table. Ellis relates to Hood that he recognised this as typical of her when she knew she was not telling the truth.

- During the first session (of six in total), Zelda asked 14 times that the interview stop.

- When her statements did not fit the details of the accepted scenario, the interviewers ignored them.

- Many of the activities that she described were not physically possible.

- She gave conflicting accounts of the state of her clothing, the state of Ellis' clothing, the location, and the perpetrators during her interviews.

- She alleged that Ellis drove a car to transport children to another location.

Eichelbaum accepted that this girl could be "in denial", meaning her allegations could still be true. Given the preceding points, this seems most unlikely.

Others retracted before the trial (Hood p435). Detective Eade himself stated (Hood p585) on TV in 1997 "*I'd be surprised if not all of them have done it* [retracted] *at some stage*," This comes as a revelation after reading the conclusions made in the Eichelbaum report. No analysis is made in the Eichelbaum report of any comparison of the interviews of N/Zelda Cypress with those of the other children who obtained convictions. Such a comparative study would be a useful means of determining the reliability of much of the evidence. It should be remembered that prior to retraction, Zelda's evidence was regarded by the jury as being the most credible of all of the complainants (see the appendix 2). If Zelda's retraction does not differ in any significant way from the other retracted complaints then, assuming the retractions are genuine, doubt is cast upon all the evidence.

(5.11) Repressed Memory and Child Sexual Abuse Accommodation Syndrome

The whole case could be seen as a special case of the repressed memory theory driving the investigation. This overwhelmingly discredited theory could lead to bias and unreliable evidence with children in the same way that it operates with adult abuse "survivors." The effect of the delay on reliability is similar (the delay may have been shorter here) as in a classic case of a "recovered memory". The techniques used to attempt to "recover" memories appear similar to those used by the interviewers in this case. To quote Loftus (1993) on repressed (later termed "recovered" memory);

> *"The therapist convinces the patient with no memories that abuse is likely, and the patient obligingly uses reconstructive strategies to generate memories that would support that conviction. These techniques can be found in numerous autobiographical accounts."*

Robbins (1998 p5) also likens a SRA scare to a case of repressed memory.

However, Karen Zelas did not consider this to be the case. Along with Sas and the prosecution she appeared to believe that the children could remember all the while, but were reluctant to "disclose" due to embarrassment and/or threats made by Ellis. These factors and many others are explained by the CPM in the "Child Sexual Abuse Accommodation Syndrome" (CSAAS). This syndrome was first defined in a thesis by sexual abuse worker Dr Roland Summit (1983). Summit himself admits that his theory is based on a perception rather than hard data. According to Goodyear-Smith (1993) CSAAS has been summarised in the following way

- Sexually abused children tend to contradict themselves
- Sexually abused children cover up the incident
- Sexually abused children often show no emotion after the event
- Sexually abused children often wait a long time before making their accusations.

Although it is entirely possible that sexually abused children may exhibit some or all of the preceding it is scientifically invalid to use such behaviours as diagnostic of abuse as all the behaviours can occur in non-abused children.

The forgoing tenets all appear and are applied to the various children in the report of Sas at some point. Acceptance of the syndrome on Zelas's and Sas's part can explain much of their interpretations of the children's responses and acceptance of bad interviewing techniques.

(5.12) Comparison with overseas cases

The recent Shieldfield nursery case in Newcastle, (England) strikingly bears much resemblance to the Christchurch Civic Child Care Centre case. There can be little doubt that no actual abuse occurred. The two accused workers were acquitted and later awarded damages in a libel case. Justice Eady awarded the two 200,000 pounds each, which was "*the highest permitted level.*" He said:

> *"What matters primarily is that they are entitled to be vindicated and recognised as innocent citizens who should, in my judgement, be free to exist for what remains of their lives untouched by the stigma of child abuse."*

The Wee Care Nursery case (or Kelly Michaels) in America (quoted in Ceci and Bruck 1993) is another. The 115 convictions against Kelly Michaels involving 20 children were eventually quashed.

The similarities of the Wee Care case with the Christchurch Civic Child Care Centre case include:

- An unsubstantiated allegation from a parent that sparked off a great deal of concern among other parents.

- Initially, the publication of unsubstantiated rumours in the media. In his official judgement, (paragraphs 146 to 321), Justice Eady lists endless biased media coverage of the Newcastle case. He cites headlines such as, "*branded abusers*" and "*report reveals scandal of child abuse*."

- The interviewing of a large number of children, as a result of a belief that there were a large number of victims. Even after Ellis's trial, the police continued to believe 80 children had been abused at the Civic childcare centre (Ansley, 1993). The number of children was dramatically reduced when it came to the trials, suggesting a selection of more suggestible children, (or, but less likely in my opinion, a selection of the children who really had been abused).

- The clear existence of belief in SRA among some parents, and others involved in the case. In the Wee Care case, this involved the supervisor playing a musical instrument in the nude, and making children drink urine, and eat faeces.

- No alleged act was witnessed by any adult or reported by the children to their parents at the time.

- No parent noticed the smell of urine or faeces on their child or signs of genital soreness at the time.

- The suppression of obvious SRA allegations in the charges that made it to trial, so as to unfairly render the remaining evidence more believable.

- The presence of bizarre and unlikely allegations in the children's testimony.

- Parents were asked by social workers to watch for signs that could indicate abuse had taken place. Eg: bedwetting, nightmares, masturbation, any changes in behaviour, etc.

- Questionable child evidential interviewing techniques.

In the Wee Care case, Ceci and Bruck (1993) state (p405),

> *"... there was repeated provision of an atmosphere of accusation with interviewers informing children, - it's OK to tell…you'll feel better once you tell…most of the children were told by the interviewers prior to their own disclosures that their peers had already disclosed that Kelly Michaels was a bad person who had hurt them."*

(5.13) Conclusions

Charges were tried in regard to eleven children and their ages ranged between 4 – 9 years when they were first formally interviewed. Their ages had to be less than five years when the offences were said to occur or they would have been at school. My analysis, from the data in my appendix 2, puts most of the children at less than four and a half years of age at the time of the alleged offences.

It is perfectly clear to me that the memories of the young children in this case were unreliable *regardless* of how they were interviewed. This is particularly relevant because of the predominantly verbal nature of their reports. The one attempt to get around this problem using anatomically correct dolls has proved to be an unreliable alternative. Ideally the children should have been interviewed at the scene of the alleged crimes, and not in a new environment, as contextual cues have been proven to have a significant positive effect on recall. (Neath 1998 pp 119 – 126). Furthermore, the time delays clearly are cause for extreme concern about their reliability, given their ages. Significantly, the one child (among those who gained convictions) who was old enough to be reasonably reliable, retracted her evidence later. This girl (N/Zelda Cypress) was nine at the time of being interviewed, although she was asked to recall events said to have occurred over four years previously.

During the delay before the interviews, there is ample evidence of widespread contamination of the children's memories by parents, other children, therapists, adult counsellors the interviewers and police. In respect of Detective Eade the *New Zealand Law Journal* (Feb 2002 editorial) is most scathing,

> *"... the investigation ... suffered from a clear fault which was that it was driven by a junior officer with a bee in his bonnet."*

It is still being asserted (by Sim 2002) that the Law Commission's report (preliminary paper no26 quoted in Sim ibid. p4) is correct in stating,

> *"... there is currently no evidence to support the proposition that children spontaneously and without prompting fabricate claims of sexual abuse…"*

One could debate the meaning of the term *fabricate*; however, the tenor of this statement appears at odds with the studies quoted here. Perhaps the science is just not getting through to our judicial system.

Eichelbaum failed to seriously consider the limited power of children in regard to understanding the difference between fantasy and reality. He also failed to acknowledge, in his reasoning, information supplied by Davies as to the ability of children aged under 7 years old to reliably discern issues regarding temporal accuracy.

Eichelbaum's apparent failure to properly consider memory research is of very serious concern. It brings into question the whole procedure of appointing judges to review matters where knowledge of psychology is of crucial importance.

I believe his poor selection of experts, neither of who was an experienced research scientist in the relevant areas, contributed to this failure. These relevant areas of expertise should have included the expert having conducted childhood memory research.

So the indications are that the conditions surrounding the formal interviews made the convictions very doubtful.

To summarise:

- The children's evidence was thoroughly contaminated by their parents, other children, therapists, and the police.

- The six children examined in the Eichelbaum report were less reliable than adults or older children. They were possibly a selected group of the six most suggestible of the over 127 children originally interviewed

- These children were unlikely to have any accurate and reliable memories of anything that happened at the Civic childcare centre by the time they were formally interviewed.

- No credible evidence of coercion to maintain secrecy about alleged events emerged

- The experts who claimed that the evidence was reliable had questionable expertise.

- There are no clusters of symptoms that reliably indicate sexual abuse.

- A broader examination of evidence than that presented at trial shows little consistency of central detail in the children's accusations.

- Acceptance of the theory of denial must have a bearing upon the reasons that the retracted evidence and quashed convictions were (illogically) adjudged to have little or no bearing on the remaining evidence and convictions.

- Similarities with overseas cases was not examined adequately

Eichelbaum failed utterly to thoroughly consider the compelling evidence for the forgoing conclusions. The *New Zealand Law Journal* editor (p1, February 2002) nicely sums it up.

> *"... either Sir Thomas did not read the statements* [of the child witnesses] *because, like everyone else he restricted himself to the filleted evidence that the judge allowed in, or, with respect, his judgement is at fault."* …

Ceci and Bruck conclude their 1993 review of the scientific literature (for the respectable *Psychological Bulletin*) by stating,

> *"It seems particularly important to examine the conditions prevalent at the time of a child's original report…If the disclosure was not made in a non threatening, non suggestible atmosphere, if the disclosure was not made after repeated interviews, if the adults…are not motivated to distort the child's testimony through relentless and potent suggestions and outright coaching, and if the child's original report remains consistent over time, then the young child would be judged to be capable of providing much that is forensically relevant. The absence of any one of these conditions …ought to raise cautions in the mind of the court."*

As will be shown in the following section, those cautions were not raised adequately, nor heeded in the Ellis case. They should have been made, according to this evidence, most forcefully indeed.

(6) A Fair Trial?

"I have investigated too many miscarriages of justice to have any faith in the capacity of the legal system to make accurate decisions."

Professor Graham Davies *Lancet.* May 2000

There are three main areas of concern in considering if the trial itself was fair. Firstly, the public climate, and the issue of the jury possibly being prejudiced in advance by biased media reports. Secondly the pre-trial rulings that were made by the judge as to how the case was to be conducted. Finally, there is the conduct of the trial itself. I do not intend to go into great detail on these issues, because my main emphasis here is to look at the scientific evidence for the views of the prosecution. Hood had already successfully canvassed the following issues, and I refer the interested reader to her award-winning book. In regard to the causes of the public hysteria from a sociological perspective, I refer the reader to Hill (1998). I have already discredited the findings of Eichelbaum on numerous counts, so this section could be regarded as redundant. However, the following outline helps tie together all that I have stated so far, and shows how the noted inaccuracies, errors, misjudgements and biases manifested themselves during the whole trial process. Hood (p525) states that

> *"...despite his pre-trial assurance that he would take care to warn the jury against being swayed by the intense media interest in the case, the directions Williamson gave were routine."*

(6.1) The City Possessed

In the Ellis case there is good evidence throughout the children's testimony that their allegations were driven by the belief on somebody's part, that a SRA circle was operating within the childcare centre. Sas (p55) notes that the mother of child X/Bart Dogwood (whose allegations resulted in three guilty verdicts) "*obviously believed in the possibility of ritualistic abuse…*" At the depositions, Bart's mother demanded that American ritual abuse "expert", Pamela Hudson, be brought to Christchurch. She also cites Hudson in her memoirs of the case *A Mother's Story* (Bander 1997). Interestingly, Ms Dogwood reports (Bander p50) that Bart told her "I killed a boy", and also of "being buried in coffins and tied up in cages." (this was before the fifth interview). She goes on to say, "I knew he could never make up such stories."

According to McLoughlin's analysis,

> "[X/Bart Dogwood's] *allegations contained all 16 of Hudson's "indicators" of ritual abuse; everything from being defecated and urinated on to being held in cages and partaking in sacrifices."*

A key parent (Magnolia) in the case was also a great fan of Hudson's work, *Ritual Child Abuse* (1991)

Comparing some of the children's stories with Pamela Hudson's 1991 list of 20 indicators of ritual abuse is enlightening (Hood p286). Included within the list of allegations that Hudson claims indicate "ritual abuse" are being locked inside a cage; being buried; the use of needles; having to ingest urine or faeces, etc. The Civic childcare centre allegations closely matched this list, but these 'indicators' are quite different from those that describe true paedophiliac behaviour.

Hudson's book, *Ritual Child* Abuse, went on sale in Christchurch in January 1992 just before the police investigation was re-opened. This book, and others similar to it, has a small reference section listing mostly tabloid news stories, and obscure, non-academic and non-scientific publications.

The case of Simone Doublett highlights prevailing attitudes. Doublett made false accusations of SRA in Christchurch in 1991, (see section 1.5 on police lack of objectivity). Doublett stated (in 1995),

> *"Everyone was talking about abuse* [in Christchurch in 1991] *…everybody was very sorry for somebody who had been abused. …in the fifth form I described an incident which happened when I was four and which I would not now consider to be abuse. From the fifth form I started building myself up to believe that I had been abused."* (Christchurch Press May 13 1996)

Her parents stated that the media was full of sexual abuse cases and rumours were circulating about a child pornography ring. Simone's counselling began about eight months before Peter Ellis was suspended from his job at the Christchurch Civic Child Care Centre

Doublett's parents contacted the Ritual Action group in Wellington, and changed churches to have Simone exorcised. Simone's parents say they learned that Dr Haye had informally contacted a senior Christchurch policeman, and was told that even the police could not be trusted because of suspected Satanists in the force.

Goodyear Smith (1993b) describes the classic SRA type of allegations in general:

> *"Classically, the stories start to include details such as activities involving the children naked in a circle, and making them eat faeces or drink urine. Sometimes it is claimed that the children have to watch babies or animals being sacrificed or practice cannibalism. There are often claims of the adults being dressed as witches or monsters, or wearing masks. It is believed that they sexually violate the children with fingers, mouths, or genitals in every conceivable orifice. Often it is claimed that the adults take photographs or videotape these events".*

This has direct parallels to the Christchurch case. Goodyear Smith (1993) also mentions a number of other aspects that the Christchurch case and overseas SRA cases have in common.

- It begins with a pre-school child presenting fairly ordinary problem behaviours.

- This (and other) behaviour is then misdiagnosed as a symptom of sexual abuse

- The child is referred to an expert, who confirms the suspicion

- When the child is interrogated, there will usually initially be a denial, but this itself may be misinterpreted as confirming abuse

- "*Ongoing disclosure interviews using leading questioning and selective reinforcement result in the child giving more and more details of increasingly perverse and bizarre events.*"

Robbins (1998) lists the similarities between a SRA scare and a classic historical witch hunt (eg Salem in America)

- the prevalence of allegations of sex or sexual abuse;

- mere accusations become equated with factual guilt;

- the denial of guilt is seen as proof of guilt;

- single claims of victimization lead to an outbreak of similar claims; and

- as the accused begin to fight back, the pendulum begins to swing the other way as the accusers sometimes become the accused, and the falsity of the accusations is demonstrated by skeptics."

Eichelbaum (p36) notes that the NSW inquiry referred to an investigation into SRA allegations. Eichelbaum erred in not reporting the similar parallels of the Christchurch Civic Child Care Centre case with that of the Orkney Inquiry (the "circle incident"). He failed to consider that the original source of these SRA stories is not the children, but can clearly be traced to books in circulation amongst the Civic childcare centre parents (such as *Courage to Heal* by Ellen Bass and Laura Davis.).

(i) SRA as a Mass Hysteria

The term 'mass hysteria' may sound quaintly old fashioned to some, but it is still in use and episodes of it continue to occur. Similar terms for the phenomenon include moral panic, mass sociogenic illness, and phantom epidemic. Hood describes several recent examples (p223), where many people believed false information, and imaginary symptoms were reported. In one case, parents reported symptoms of gas poisoning, and picketed a school, yet there was no gas leak as they claimed, nor were the children sick (Wessely and Wardle 1990) SRA has many of these features. This case was similar in that the "symptoms" of abuse had no scientific basis, and clearly, many more parents (at least 127 children officially interviewed) were scared than could possibly have been directly affected. The way in which the allegations took off like a bushfire is also reminiscent of the mass hysteria phenomenon described.

A Sociological analysis of the apparent hysteria

The apparent hysteria surrounding this case has been analysed by Wellington sociologist Michael Hill (Hill 1998). He begins with an historical description of Witch-hunts over the centuries, which have exhibited similar behaviours and have victimised early Christians, Jews,

heretics, witches, freemasons, gypsies and modern religious cults. In the same or a similar list, could be the recent discrimination seen against Negroes, communists, homosexuals and "immigrants".

The satanic accusations provide a way of perceiving the accused perpetrators as less than human. This makes it easier to attack them without guilt. In wartime the enemy is treated in this way by the propagandists, describing them as rats, vermin etc. Hill discusses this in terms of scapegoats, who in ancient times symbolically bore the peoples sins away. (Originally in some cultures, they really were literally goats). In Salem, most of the victims have been shown to have belonged to new merchant classes. Their accusers, usually the established pilgrims, envied such classes. There is often an element of deliberate social warfare in these moral panics (a term used by Hill 1998). Hill's point is that if and once the public believed that they were dealing with witches, who were directed by Satan himself, then the usual checks and balances would be abandoned. They were then replaced by special laws that allowed otherwise unreliable and unacceptable investigation methods. These included believing uncorroborated child witnesses, accepting physical signs (even warts) as proof of witchcraft, and the use of torture to extract a confession.

An obvious and lasting impression of the Civic childcare centre case is its similarity to the witch-hunts that swept Europe and America during the 16th and 17th Centuries. Five themes that they all have in common are:

- A belief in the reliability of uncorroborated accusations from children, no matter how far fetched they sound.

- The selection of victims to lay accusations against according to socio-political criteria.

- The setting up of special court conditions where the usual rules of evidence can be circumvented, and strange signs (including usually hidden body markings) being sought as evidence.

- Theories that the accused are possessed by satanic forces,

- Runaway success in finding "evidence" of an epidemic. In Germany, for example, 100,000 witches were burnt at the stake.

Hill (1998) sees recent changes in our law as facilitating convictions for sexual abuse of children on evidence that is too flimsy to stand up under normal established rules of evidence. This, he states is a clear parallel to the witch-hunts. At the time of the Salem trials, the normal rules of evidence were eventually re-instated after the appetite for false convictions wore off. The witchcraft fever came to an end when it became so dangerous that it lost its focus on certain unpopular groups. It had become a blunt weapon. In Salem, the persecutions were socio/politically driven. In the end, they badly misjudged a target, who turned out to be more powerful than they had bargained for (the Governor's wife). Since the Salem witch trial era and until recently, these types of accusations had become very uncommon. The spate of SRA allegations that occurred around the world in the 1980's and 1990's corresponds with the development and dissemination of the SRA theories as traced by Hill (1998).Some of the classic examples include: Oude Peleka, Holland in 1988; Jordan, USA in 1990; Orkney Islands 1990;

and Rochdale, England in 1990 (see pp 83 - 85 Goodyear Smith, 1993),and Martensville, Canada, 1992 (reported in *The Globe and Mail* on August 1, 2002).

The social warfare element is not so clear in the modern SRA scares. During the Salem witch-hunts, and recently in Africa, the accusers often gained access to their victim's property. In Salem, the more established puritans tended to accuse the less devout, more recent trader settlers. Perhaps the SRA "warfare" in the Ellis case was directed against men encroaching on a traditionally female domain, and the liberalisation of childcare. In the similar Geoff Scott case (Wellington), the Civic childcare centre was described as liberal, with children sometimes playing in the nude. In other cases, women are the victims. Perhaps they were of a different social group than their accusers.

There have historically been many other public scares similar to SRA. The medieval "blood libel" stories, which took hold in England in the 12th and 13th centuries are one example. In these stories, Jews were said to kidnap Christians, kill them, and use their blood in arcane rituals. This unlikely story is being promulgated today in the Egyptian paper, *Al-Ahram* (The Observer, quoted in NZ Herald July 5, 2002 page B16). The story reported in Egypt, was the 1840 Damascus case, in which several Jews "confessed" under torture to kidnapping a priest and stealing his blood.

(ii) The Civic Child Care Centre case as a Satanic Ritual Abuse Scare

Elements of modern SRA theory probably have their origins in USA in the 1980s, and in the book, *Michelle Remembers*, which was later found to be a hoax. These claims and theories soon made their way to New Zealand. While falsely claiming to be a qualified therapist, Pamela Klein (USA) addressed a sexual abuse conference in Wellington in May 1990 (Hood p176). Laurie Gabites, an Upper Hutt policeman who had visited the USA, spread the doctrine in New Zealand through his Ritual Action Group (or Network), RAG. The claims are almost totally without foundation and certainly have no scientific base.

> *"In her address at the Wellington conference, Klein described her method of extracting from children as young as five what she believed were repressed memories of ritual abuse. These 'memories'- revealed in drawings, play activities and conversations – included ceremonies involving anal and vaginal rape, spiders, ghosts, skeletons, knives, crucifixes, tombstones, fires, high priestesses, infanticide, cannibalism, being buried alive and death threats."* Transcript of address, Hood p176).

Klein's teachings were clearly transmitted to the CPM people already discussed in the earlier section on bias. Karen Zelas must have been exposed to SRA theories through professional conference workshops such as the Ritual Abuse workshop taken by Ann-Marie Strapp and Jocelyn Frances at the high profile family violence prevention conference in Christchurch in 1991 (11 weeks before the first complaint was laid in the Civic childcare centre case – Hood P180). This conference was opened by Christchurch Mayor, Vicki Buck, and Family Court Judge, Patrick Mahony. Workshop leaders included Miriam Saphira, Raewyn Good, and Laurie Gabites. During the conference, delegates were informed that abuse was being practised by devil worshippers and that there was a sex ring operating in Christchurch which manufactured pornographic photographs (and by implication, videos).

Another person who played a key role in disseminating SRA theory was journalist Cate Brett (Hood pp 152, 183, 196). Brett's *North and South* article on the Christchurch Civic Child Care Centre case is a textbook example of misleading reporting (see the subsequent article in the same publication by McLoughlin). I understand that Brett had a child who attended the Civic childcare centre. She failed to mention this source of possible bias in any of her articles. Melanie Reid (Hood p183) was initially credulous, too on TV 3's 60 minutes. Reid now regrets her previous gullibility. (McLoughlin 1996).

(iii) Other SRA cases

Goodyear smith (1993b) states that the Civic childcare centre case

> *"demonstrates a clear parallel to similar cases in other parts of the world ".*

These cases include:

- The McMartin case in USA is perhaps the most notorious. There were no guilty verdicts. Hill (1998) quotes an interesting study by Earle (1995) of the McMartin case, which should have been compulsory reading for Eichelbaum. (The study is not mentioned in the references of Sas or Davies). Most of the American cases also involved middle-class parents and relatively less-affluent crèche staff, male and female. In this respect, there is a connection to my previous comments regarding socio/political factors in the Salem trials. However this aspect is not obvious in the Civic childcare centre case.

- Orkney Islands: This was a case where social workers took a great number of children from their parents after stories of ritual abuse. No evidence of this was proved, and all children were eventually returned. There was official criticism of the social workers' actions.

Robbins (1998) describes how these cases first emerged in the early1980s and peaked in the 1990s. She states that:

> *"Recovered memories of SRA most typically included brainwashing, being drugged, sexually abused, and being forced to watch or participate in satanic rituals, drinking human blood, and ritual murder. Such early ritual initiation was supposedly preparation for an eventual role as a "breeder" who delivered infants to the satanic cult solely for the purpose of ritual sacrifice. Children in day care who made accusations of SRA against their teachers and caretakers gave accounts of ongoing, and often daily sexual abuse that typically included violent rape, and vaginal and anal mutilation with sharp objects. Such acts allegedly took place during normal day care hours and included the presence of magic rooms, tunnels, clowns, jungle animals, animal mutilation, and flying.."*

Much of this description is strikingly reminiscent of the allegations made by the children in the Ellis case (ie the circle incident, murders, the sharp objects, tunnels and animals).

(iv) The Media's role in fanning hysteria

The closure of the Civic childcare centre, and the allegations against Ellis, were highly publicised in the media. Such publicity must have contributed toward parent's fears, and as

revealed elsewhere in this report, these parental fears may well have influenced the children. This issue is not addressed in the Eichelbaum report.

SRA theories were given credence by much of the media before the trial. Evidence for this is given by Hood (p401), who writes of reporters asking Civic childcare centre staff if they were obtaining foetuses from abortion clinics, snakes from Australia and prostitutes for judges and policemen. In addition, the Christchurch Press had the headline, "*Parents in Terror of Abuse Discovery*" and described 200 children as being possibly involved. Hood (p469) describes the negative portrayal of Ellis on national television before the trial. A strong case can be made that there was little chance of a fair trial after such coverage. The fact that character assassinations occur in other trials (eg Scott Watson) does not make it acceptable or be of no effect.

The media tends to immediately report incredible allegations, and then to check up on their validity afterwards, often when it is too late to correct people's false impressions. The announcements of both Milan Brych's and the Lyprinol cancer "cures", as well as the recent GE corn allegations are just three of many examples of the use of sensationalism in journalism.

In conclusion, I have established that a SRA conspiracy theory existed in New Zealand prior to and during the trial, and that the media effectively propagated it.

(6.2) The effect on the trial of depositions pre-trial rulings.

This is covered in Hood's book, chapters 10 and 11. Of issue during this period is the abandonment of many of the indictments and the extreme reduction of the amount of material to be presented as evidence by the prosecution. Hood points out that the depositions involved charges relating to 20 children. Almost all the videotapes of interviews recorded with the children were played in closed court. She claims that

> *"The more videotapes were played, the more openly sceptical the media and court staff became."* (Sunday Star Times 10 August 2003)

I have been able to talk to one of the court staff who confirmed this. Perhaps if the jury saw the same videotapes, the same scepticism would have resulted.

All the charges against four women co-workers were included in this reduction. As columnist Diana Wichtel points out (The Herald, 9 August 2003)

> *"The charges against them just disappeared…on the grounds that their chances of getting a fair trial were prejudiced by their association with Ellis…that's like saying Nazi war criminals shouldn't have been tried because* [of] *their association with Hitler…If we are to believe the children in the case of Ellis, surely we must believe them in the case of the women too. "*

This may not have been fair, because if the jury had seen all the evidence against the women, (which arose from the same children whose statements ultimately convicted Ellis) they may have returned not guilty verdicts through being exposed to unreliable and fantastic claims. Hood highlights the reduction of the circle incident charges from 16 joint charges to two unequal ones:

> *"one [major charge] against Ellis...the other [minor charge] jointly against the women. This change allowed Justice Williamson to dismiss the charge …against the women while leaving the charge against Ellis…intact."* (Sunday Star Times 10 August 2003)

(6.3) The appointment of expert witnesses

Loftus (1989) points out (p200) that in the courts, the value of good expert witnesses is to ensure that the jury and judge "*understand how various environmental and internal factors operate to affect the perception and memory of witnesses*." This puts it very well. Faust and Ziskin (1988) suggest that expert witnesses' claims should be pretty likely to be accurate, and able to help a jury or judge reach a more valid conclusion.

The scientific credentials of expert witnesses are obviously important in order to be able to carry out these functions. Faust and Ziskin (1988) suggest that clinicians who are not scientists (and whose training and experience are not related to scientific accuracy) are not a good choice because:

- *"Clinicians who usually focus primarily on the patient's subjective reality, must now attempt to determine objective reality, a task for which they may be minimally trained."* Corballis (2003) emphasises the same concern.

- *"clinicians disregard or underuse information about the frequency of occurrence, or base rates* [actuarial data]*"* (see sections 5.8, 5.9 for a detailed analyses of this problem). In the Ellis case, an overestimation of the frequency of sexual abuse in pre-school institutions combined with a lack of appreciation of the effect of error rates could lead to significant overconfidence in the belief that abuse had occurred.

- *"Selective attention to supportive evidence also fosters 'illusory correlations,'"* A classic example of this would be the idea that certain behaviours that may be exhibited by children who are known to have been sexually abused, are therefore in themselves proof of abuse, and to ignore other causes of these behaviours. The behaviours and sexual abuse may not even be causally related. *"The repeated 'discovery' of 'confirming' instances, embedded in the context of salient personal experience creates a compelling illusion…studies…show that the conditions under which clinicians practice do not promote experiential learning "*

- *"The patient who challenges a conclusion is viewed as 'resisting' the truth or 'repressing' it…the result…is overconfidence in [clinicians'] judgemental abilities.* Ziskin quotes a study (K.Hart 1987 conference paper) in which most clinicians were extremely confident in detecting malingering whilst actually having an error rate of over 90%.

Zelas is primarily a clinician, and does not appear to have published relevant research of significance in any reputed scientific journal.

Zelas is also a psychiatrist, and not a psychologist. The same criticism applies to defence expert Keith Le Page, although my conversation with him satisfied me that he did seem to have a good grasp of current relevant psychological research. A psychiatrist is a medically trained person,

with limited training in psychology. A psychiatrist's primary expertise lies in medical causes of behaviour and medical treatments (drugs, surgery and other physical interventions). A psychiatrist would be a good choice in cases of crimes committed by psychotic persons who probably have a causative medical condition. As noted elsewhere here, Zelas's reliance upon psychological research of poor quality may indicate that she chose to read studies that supported a prior point of view, and that she was not trained to evaluate their scientific worth properly.

Barry Kirkwood, retired senior lecturer in psychology at Auckland University, has also questioned the credentials of Zelas. It is not her qualifications that are so much disputed, as rather the state of her knowledge of the relevant current research.

> *"Can anyone find a single recognised expert, such as Dr Stephen Ceci* [an American psychologist and researcher in child interviewing], *who will vouch she is competent?"*

In preparing this treatise, such endorsement has been sought from academics and other relevant experts, but not found. Kirkwood puts up three criteria for expert witnesses: exam passes from acknowledged relevant post-graduate courses, completed supervised post-graduate research and publications in reputable peer reviewed scientific journals.

Dr. Harlene Hayne, professor in psychology at Otago University and leading memory expert, endorses similar concern (in a more general way)

> *"New Zealand needs to think very carefully about who qualifies as an 'expert'. For some reason, clinical psychologists are the only kind of psychologists that were consulted. Their* [experts consulted during Ellis case] *training in memory per se may have been extremely limited. Given that memory and the way in which you elicit memory reports from children was the lynch pin of the case, the "expertise" of the expert witnesses is highly questionable".*

I contend that Williamson should have rejected Zelas as an expert witness on the grounds of her inadequate background. The expert needed to be a psychologist who was better informed on the relevant recent research. It is interesting to note in this respect, Williamson's error (p478 Hood) in referring to Zelas as a psychologist.

The divergence between her opinions and those of the other expert (Le Page) should have rung alarm bells with Williamson. Corballis (2003) states,

> *"If psychological expertise is to be invoked- and I think it must be- then it is imperative that it lean as far as possible towards the findings of psychological science…Experience in clinical practice of itself will not do – human interpretation of experience is notoriously prone to bias and superstition, and it is the scientists, not the clinicians, who are most likely to have the most comprehensive and up to date knowledge of the relevant areas of research."*

It is hard to see that Zelas meets that criterion. The jury and Williamson may have been swayed more by her personality or presentation than by her scientific objectivity.

Another major difficulty with accepting Zelas as a suitable expert witness is her apparent support for the theories of recovered memories. This is evidenced by her court work in several controversial cases, where men have been sentenced for crimes supposed to have been committed many years ago and for which there was no memory recalled *until* therapy sessions began.

Zelas has been directly involved in many other cases of dubious repute. Her involvement with Ward 24 is reminiscent of the Cleveland case (see Eichelbaum report p26) in which the doctors suffered from "*certainty and over-confidence*."

- Child F 1988 (Hood p147) Zelas convinced Judge Mahon that a ward 24 patient had been sexually abused, despite the fact that the only evidence arose from a number of obviously flawed child interviews. Patricia Champion, a psychologist, questioned the interview techniques that included anatomically correct dolls and jellybeans. DSW officers had also expressed extreme concern.

- Child G 1989 (Hood p151) In a rare move, Judge Kean rejected Zelas's methods whilst dismissing the complaints. Child G was another ward 24 patient. The child had William's syndrome. Apparently, Zelas failed to suggest this as a diagnosis; it should be noted in mitigation that she only saw the child once.

- Child C 1989 (Hood P138) Zelas claimed in court that a child had been abused by her father. This was in relation to the now notorious Glenelg Health Camp cases. This may have been based in part on Dr Dianne Espie's examination of the size of the girl's hymen, and an interview using anatomically correct dolls. Whatever Zelas based this claim on, the evidence for it was very unreliable. The girl eventually insisted on going back to live with her father and continues to maintain that she was not abused.

- It was reported in the NZ Herald (Press Association) 20 August that Zelas acted in another case of sexual abuse where the convictions were overturned on appeal. The report quoted the appeal court judges as saying Zelas's comments suggested

  "a pervasive quality of justification for potentially challengeable aspects of the girl's evidence".

(6.4) The conduct of Justice Williamson

Even if Justice Williamson held a strong belief in Ellis's guilt, as noted earlier, it should not have prevented him from ensuring a fair trial. However this document moots that Williamson made many unfair decisions that were prejudicial to a fair trial. Williamson went on to preside over the trial of David Bain, where some of his decisions have also proved controversial.

(i) Williamson's interactions with Zelas

Williamson's obvious trust in Zelas's expertise may have led him to suspend his more usual rigour and scepticism. This trust evolved through contact with her in previous cases, as a result he might be regarded as having been too closely associated to Zelas. It is claimed by Loftus (1996) that the use of expert witnesses in court can cause judges and juries to be more credulous

and gullible. This is a caution to choose experts carefully, and as stated earlier, I believe that the use of Zelas in particular, probably did have such an effect. At the time other Judges probably shared Williamson's trust in Zelas, but many were also probably unaware that psychiatry is not the discipline of first choice for much of the expert testimony relevant to these types of cases. Lynley Hood suggested to me that Judges were probably in the habit of passively accepting whatever expert they were given. Faust and Ziskins' (1998) comment on the possible effect of overconfident experts may possibly apply in this case,

> *"Confidence and accuracy can be inversely related, and yet the jury may well accept the opinion of the expert who exudes confidence over that of an opposing expert who expresses appropriate caution."*

Evidence that Williamson accepted some of Zelas's dubious ideas can be found in his sentencing report (Sunday Times 11 July 1993 p6 and Bander).

> *"Many of the effects of sexual abuse on these children were the subject of evidence…they suffered obvious repercussions of headaches, tummy aches, night terrors, fear and anxiety and sleep disturbances…"*

Conflict of Roles

Zelas trained the interviewers (according to my interview with Crawford) and maintained a consultative supervisory roll over their work. Hood states that Zelas

> *"advised the police, trained and supervised the CYF interviewers, counselled a witness and advised the judge on his questioning of child witnesses."*(Sunday Star Times 10 August 2003)

Her impartiality as an expert witness is therefore automatically in question. She was thus a questionable choice as an expert witness for the prosecution. The NSW report (quoted by Eichelbaum p38) clearly recommended that

> *"... any Crown expert called should be independent, in the sense of not having been involved in the investigation."*

This raises yet another concern in regard to Justice Williamson's rationale in accepting her, perhaps only explained by the fact that he had worked with her before.

It is of interest to note that in overturning a conviction for sexual abuse in a later case, Zelas also came in for criticism from the Court of Appeal, they stated

> *"It is of course essential for any expert witness to be entirely fair and objective and to avoid the fact or appearance of being an advocate for one side or the other. We regret to say that we have reservations about aspects of Dr Zelas's evidence on this account."*

I conclude that Williamson erred in allowing Zelas to appear as an expert witness for five reasons:

- Her a priori bias (see section (1))
- Inappropriate professional discipline
- Lack of relevant research experience and understanding of the current relevant research findings.
- Potential over-familiarity with Williamson
- Conflict of roles

(ii) The biased and unfair influence of Zelas

I contend that Williamson must have been aware of Zelas's background as already discussed. Therefore he should not have been so uncritical of Zelas's work, let alone have seriously considered her for the role of expert witness.

During the Ellis trial, Zelas claimed that most sexually abused children deny or don't disclose abuse at the time, they then "*initially deny*" it later. She also claimed that they normally have "*warm feelings, loving feelings*" toward the perpetrator, and often retract allegations (Hood p502). From the details of the Cleveland case (Eichelbaum p26), I infer that children who have not been abused, but questioned at length can also behave exactly as Zelas described. This would further support the contention that Zelas *does* "*interpret most things children say and do (or don't say and don't do) as signs of sexual abuse,*" (as described by Hood).

If members of the jury were influenced by this convoluted logic, then they may have interpreted denial as a symptomatic evidence of abuse. In the interests of natural justice, Williamson should have firmly rejected such misleading assertions, and left it to the jury to decide.

In one of her interviews with me in 1994 (reported Harper 1994), Zelas put forward another theory. She claimed that a child will be less likely to disclose abuse to a caregiver due to a fear that it will endanger such an important relationship. This assumes, possibly incorrectly, that the child knows that the abuse is bad. I have yet to see any experimental verification for this claim.

(iii) Warning to the Jury about children's evidence

There are many references in the literature (Loftus 1996) to the lesser reliability of children's evidence compared to that of adults. Much of this critique also deals specifically with these issues. That unreliability is the reason for the longstanding and previously standard practice of Judges to warn juries that children's testimony should be treated with caution. At the time of Ellis's trial there was more, rather than less, evidence for this view than in previous decades. However, changes to the Evidence Act in 1989 included section 23 H (c):

> *"The Judge shall not instruct the jury on the need to scrutinise the evidence of young children generally with special care nor suggest to the jury that young children generally have tendencies to invention or distortion".*

In accordance with the law Williamson did not issue such a caution to the jury.

(iv) Ruling on parental questioning and meetings

Williamson made the questionable ruling that the meetings between Civic childcare centre parents were "*entirely proper*", and that the persistent questioning by parents using leading questions was unlikely to lead to false testimony from the children. It appears from references cited in this report that Williamson's ideas regarding the principles of evaluating the reliability of child witnesses were ill founded and possibly reckless (see section 5.3 covering problems with verbal evidence from young children, and section 5.1 on contamination of evidence).

(v) Indulgence with parent witnesses

Hood (p496) describes Williamson's indulgence of a parent (Ms Dogwood) who lied in court. Another judge at an unrelated trial is later quoted (ibid.) as finding the same woman not credible, stubborn and inconsistent. She has been described as a serial litigant. Ms Dogwood apparently later sued her previous employer (she worked for a trade union), and directed a complaint against journalist David McLoughlin after he had published something critical of the case. According to McLoughlin, police flew from Christchurch to his home in Auckland to interview him, but no charges were laid. She also initiated action against Civic supervisor Gaye Davidson for publication of her name in a letter to the editor (Christchurch Press).

(vi) Indulgence with the prosecution

Williamson allowed the prosecution to misrepresent the defence. The defence had argued that parental contamination had resulted in genuinely held false beliefs. The prosecution was allowed to distort the defence's position by saying that the defence's contention was that the children had been 'trained, prompted and coached.' It could be argued that the prosecution is allowed to do this, in fact that it is their role to do so, but Williamson ought to bring any prejudicial distortion to the notice of the jury.

Williamson also allowed a gross distortion in regard to Le Page's (defence expert witness) stance on Zelas's use of the term "consistent". At the Ellis trial, in accordance with section 23G of the Evidence Act 1989, expert witness Karen Zelas described certain behaviours such as bedwetting as being "consistent with sexual abuse". Williamson let the prosecution argue that Le Page was not entitled to suggest that certain behaviours *did not prove* that a child had been sexually abused. Hood (p526) quotes Williamson's summing up which seems to imply that Williamson actively engaged in this line of reasoning.

> *"he [Williamson] also criticised* [defence expert witness] *Le Page for suggesting that 'a certain behaviour did not prove the child had been sexually abused'. 'Under our law he was not entitled to say that, and in any event that is not the point of the section* [23G of the Evidence Act] *Williamson said."*

The position Williamson took is absurd. Le Page had not only demolished the prosecution's proposition that certain behaviours (such as bedwetting and nightmares) were relevant to the alleged crimes, but also pointed out the illogical way in which section 23G is framed. For a judge to actually support the prosecution's line of argument here is reprehensible. Furthermore,

a more astute judge might have quizzed Zelas as to how she knew that these behaviours were relevant (i.e. on what kind of research she based her comments, and what exactly she was trying to say to the jury).

Psychologist Barry Parsonson has this to say about the Act:

> *"What needs to be done is to toss out s23G and to remove the constraints it imposes on experts...there are no behaviours that are reliably consistent with sexual abuse. Even so-called sexualised behaviours, which are not always well defined in the research literature, are not exclusive to and thus diagnostic of abuse"*.

Parsonson considers the exercise pointless because there are no behaviours that can be said to be inconsistent with sexual abuse. Once, he says, *"lists of behaviours were portrayed as indicators, and thus consistent with, sexual abuse"*. A 1993 review of 45 studies in the reputable Psychological Bulletin stated *"the findings suggest the absence of any specific syndrome in children who have been sexually abused"*. And, *"no one symptom characterised a majority of sexually abused children."* The term 'consistent with' could well be an inappropriate choice of words, one that is logically invalid. In 2002, Val Sim (the chief legal advisor for the Department of Justice) has reported the Law Commission is considering repealing section 23G.

I contend that Williamson should have clarified Zelas's statements about behaviours being "consistent with abuse". If Zelas used the term in the logical and dictionary sense, then almost any normal human behaviour is consistent with abuse. In that case, she was saying *nothing of interest or relevance* to the court, and should have been pulled up frequently for wasting the court's time. If she was trying to claim that the presence of certain behaviours made it more likely that the children had been abused, then her contention should have been stated directly, and evidence for the contention must surely be required. There does not appear to be any other possible meaning, and none has been put forward. Judges need to exercise basic logical reasoning and Williamson in this instance did not.

It would be interesting to compare the number of interruptions made by Williamson to the defence with those to the prosecution. Ellis felt that Williamson's interjections seemed to occur more frequently when his lawyer was on a roll (Hood p498). As this analysis has already shown, there seems to have been proportionately more genuine occasions where the prosecution acted unfairly or illogically. On these occasions Williamson erred in the prosecutions favour.

Williamson allowed prosecutor Stanaway to continually ask the children leading questions during the main evidence (evidence in chief). Stanaway was further able to mark some non-credible tapes "*not to be played.*" (Hood p547). Eichelbaum claims that (p12), "*the defence was not prevented in bringing before the jury the tapes in which some of the more seemingly bizarre allegations were made*." However, earlier on the same page, Eichelbaum admits that the judge ruled during the trial that the crown did not have to produce tapes "*which did not make allegations on which the crown relied*."

Firstly it must be noted that one statement is referring to the defence and the other to the prosecution. Maybe the defence team should have tested Williamson's rulings more strongly on this matter. I remain confused. There appear to be significant differences between the claims and accounts given by Hood, Eichelbaum, the Court of Appeal and Phil Goff the Minister of Justice

as to whether to defence was unfairly compromised in regard to its ability to play children's videotaped evidence to the jury. It is as though these sources are deliberately obfuscating whatever lies at the heart of this highly important matter (see also section (6.5.i) below).

Pankhurst pointed out in the appeal, when the defence wanted to show a videotape; (i) the child did not have to watch, and (ii) the jury did not get a transcript.

These two points suggest that Hood's arguments are valid and Williamson was not allowing the defence the same freedoms and opportunities as the prosecution.

Williamson claimed in court that the trial was not about the conduct of parents, police or specialist interviewers. (Hood p 526). That severely and unfairly limited the scope of the defence as the reliability of complainant evidence is inextricably linked to these issues.

The prosecution were allowed by Williamson (Hood p458), during pre-trial hearings, to remove specific reference to the address at Hereford Street where some of the alleged incidents took place. This may have been unfair, as it made it difficult for the defence to point to inconsistencies and unlikely allegations from the children about the address. The defence couldn't cite the ludicrous nature of specific elements that the children supposedly described, such as "hidden cavities" and "tunnels". At that address these could only have been a storage cupboard under the stairs and the laundry chute . Yet Eichelbaum gives specific credence to the existence of hidden cavities at the specific Hereford Street address (p119). This means that the Crown (through Eichelbaum) is trying to have the argument both ways. Eichelbaum fails to show any clear connection between the children's fanciful allegations about these cavities, nor does he acknowledge that the laundry chute was blocked off at the bottom; so allegations of children being put down the chute were false (Hood p407). In addition the cupboard was plainly obvious.

Davies admits (p35) that there was no positive proof that the children ever visited Ellis's house, although he thought there is "*some supporting evidence*" as alleged in some of the statements that led to convictions. This "supporting evidence" is not specified, and given the loose definition of "evidence" throughout the report, he may not mean more than unlikely allegations. Davies may not have known that Ellis is known to have taken some children to this address once, probably in 1987 (p203 Hood). According to Hood, only two of the 21 children involved in charges against Ellis are likely to have visited on that occasion. Davies does not refer to this type of detail, or the lack of evidence from adult witnesses of any other visits to Hereford Street. So, it is safe not to give weight to his statement about "supporting evidence".

When Williamson allowed Detective Eade to present his "schedule of behavioural matters" (Hood p506), he allowed the police to present totally unscientific evidence under the guise that it somehow had scientific credibility. In effect he allowed lay persons (police) to present expert evidence (scientific) of a most dubious nature. Eade's table, in effect, attempted to correlate complainant children's reported (and presumably reported by complainant parents and/or their therapists and interviewers) behaviour with thoroughly scientifically discredited behavioural indicators of sexual abuse. Furthermore when considering the objections of the defence to this procedure Williamson stated that;

"...charts to assist the jury in complicated cases can be very desirable and is not improper provided the contents are proved and the judge is satisfied there is no unfairness."

In this case, the contents were hardly proved.

I am unaware as to whether the Appeal Courts reconsidered this ruling (oral judgement No.5) but Eichelbaum makes no mention of it in regard to this evidence.

(vii) Sentencing

As part of the sentencing procedure Williamson considered a victim impact report. This report was prepared by Gregory Wynne Heath of Christchurch police. Heath took part in the police investigation and appeared as a Crown witness. The bulk of the report was written by;

"… counsellors who have been assisting the children since the start of the inquiry: ....."

The report purports to be clinically diagnostic. Given the roles of these counsellors the scientific validity and impartiality of the report is questionable. Williamson emphasised its content in his sentencing.

The Civic investigation was a multi-victim-multi-offender case set in a nursery facility and the only one of its type to ever occur in New Zealand. Ellis was convicted on four counts that placed him at an "unknown address" outside the child care centre. Two of these involved abetting an "unknown person" to indecently assault children. The subject of these counts was clearly ritualistic in nature. It is reflective of the climate of that period, including numerous news reports of overseas cases of alleged satanic abuse, that the last of four principle aggravating factors cited by Williamson in his sentencing was;

"Fourthly, crimes of this type are prevalent."

(viii) Williamson's health

Judge Neil Williamson died in Feb 1996 aged 57 after heart surgery in Auckland. During the Ellis trial, he suffered from cancer, which reportedly affected his face.

(6.5) Incomplete review of evidence

(i) Videotapes of the interviews

It is of interest to consider the rulings that resulted in the defence feeling constrained in their ability to more extensively play some videotaped interviews to the jury. In Judgement No 5 Williamson ruled that the crown was required to play only the tapes on which the charges were based. In addition, the children did not have to view tapes called only by the defence and so the children could not be properly cross examined on such tapes. This simply ruled in favour of the prosecution. Hood describes the ruling on p473, but no reasons are cited.

Eichelbaum however (p11, 12), states that this ruling was revisited in Judgement No 6 and that ultimately the defence could call for taped evidence not played by the Crown and then cross

examine on it, subject to the curious qualification that *"Particular matters within specified tapes could be subject of further examination."* (ibid) As noted previously this seems to be at odds with the gist of some of Hood's contentions.

It also contradicts what the Minister of Justice, Phil Goff, is reported as saying

> *"Mr Goff said that although the trial judge ruled against playing transcripts of claims which did not lead to charges against Ellis, the jury was well aware "that some of the material was bizarre and fanciful"."* (NZPA August 4 2003)

The answer to all this apparent confusion, to all the claim and counterclaim, may lie somewhere in the issue of relevancy which, according to commentators, Justice Williamson insisted upon. The defence obviously felt constrained by this insistence as they raised the issue in the 1999 appeal, but the Court of Appeal did not accept the contention that the defence were constrained in this regard (Eichelbaum p12).

Nevertheless, *in the event*, many highly relevant videotaped interviews were not viewed by the jury. An example of the sorts of distortions that resulted from this is reported by Sas (page 54 Sas report). She states that some videotapes of child X/ Bart Dogwood (three convictions, one not guilty) were not shown to the jury. There exists a significant tape that was not shown, that of the fourth interview in which Bart alleges that he was put in an oven and had needles placed in his penis.

In addition, the tape includes a description of the now notorious "circle incident" allegation. These are both classical SRA accusations, and raise serious questions as to the source of *all* of X/Bart's allegations.

As defence lawyer Harrison put it:

> *"…the jury never got to see the developing picture, the spread of ideas, the processes the kids had been through, the inconsistencies in their statements, the way they made bizarre allegations as earnestly as they made credible ones, and the contamination of evidence."* (Hood p474)

This clearly handicapped the scope of the defence. It is apparent that videotapes prejudicial toward the prosecution case were subjected to a multistage elimination process. Some may have been eliminated as they revealed flaws in the interviewing techniques and/or contradictions or inconsistencies with the remaining ones. The process began with the gathering of a large number of homogenous interviews. The interviewing teams then discarded the ones that contained no allegations. Next, the police and interview team eliminated the less convincing ones. The lawyers then eliminated some more, and at depositions, the judge eliminated yet more. This selective process has parallels with well-documented distortions of scientific method used by discredited researchers in many fields. By eliminating the failures and publishing only "successful" data, such researchers seem to produce statistically significant results. Only an analysis of the "failed" experiments could show the true picture and demonstrate the failure of the "good" results. The interview transcripts demonstrate that some interviews not shown to the jury appear to seriously undermine the credibility of those that the jury saw. In the interests of justice, Williamson should have been aware of the serious dangers in this regard. He could have

simply ensured that all 22 videotapes were viewed by the jury, instead of the 12 (with an excerpt from a 13th)

(ii) Alternative Explanations

There appear to be many credible alternative explanations for some of the children's allegations that were not raised in court. As Ellis had been denied his right to proffer such explanations, first from his employer, next by the police, then by the interviewers and ultimately by Williamson, some of this information will be forever lost. McLoughlin (1996) interviewed Ellis in prison about this:

> *"I was supposed to have driven them in my car to houses to abuse them, but I don't drive, I've never had a car. But at the crèche we played in make-believe cars made out of boxes. That's where it would have come from. And talk of the staff being bad, it came from the Wizard of Oz. For weeks* [after it was on television]*, all the kids would play Dorothy, Toto and the Wizard. But none of them of course would play the wicked witch, so Marie had to. Crèche staff always played the baddies in the games."*

Hood's book is full of examples.

The police failed in their duty to be impartial and to seek Ellis's explanations on three counts:

- The first child allegation occurred on 20 Nov 1991, yet police did not interview Ellis until the end of March 1992 (Hood p296). There is no justification for this delay.

- When police finally interviewed Ellis, crucial questions to establish other possible sources of the allegations do not seem to have been asked. There is no evidence that police sought alternative explanations from Ellis. When Ellis was finally arrested on 30th March 1992, Eade did show him a video of one interview, but the child interviewed had never been enrolled at the Civic childcare centre, and had only gone there in the company of her parents, who went there to pick up the child's younger sibling. The child obviously hardly knew Ellis. Thus at this point Ellis was given no information about any of the allegations that were to go to trial.

- Nor at the time, or during the course of the two lengthy investigations, did the police seriously seek possible alternative explanations from the other Civic childcare centre staff. The other staff were isolated from Ellis at the request of the police. The Eichelbaum report provides little analysis of any of their explanations given at that time, presumably because they were simply not asked. Consequently, the chance to discover alternative and perhaps more mundane explanations for the children's stories was lost. The scientific principle of parsimony requires after the consideration of all alternative hypotheses, the choice of the simplest one.

This section has dealt with two major issues in the evidence. Firstly, it was clearly unfair and distorting to have eliminated so much of the videotaped evidence. Eichelbaum fails to seriously consider the effect of this on the jury.

Secondly, alternative explanations for the children's allegations had not been sought early in the investigation, as they ought to have been. Ellis was denied the opportunity to explain them at the time, when his memory of working at the Civic childcare centre was more reliable and fresh. The interviewers themselves failed substantially to question the children about the sources of their allegations (source monitoring). There needs to have been a warning about this to the jury.

(6.6) Paedophile profile

If Ellis were a long-term paedophile, then in all likelihood there should be other corroborating evidence to this effect. The police searched for this, but failed to find any. Such evidence, if it does not relate directly to the present allegations, can be regarded as prejudicial to the accused, and often is not presented in court for that reason. What is being considered in this argument is the total lack of both general and specific evidence (other than the children's testimony). This should be an important consideration for a Court of Law in such cases, and a judge should both consider and weigh the evidence in this regard. Although this topic was outside the terms of reference for the Eichelbaum report, it is worth considering here. With only the words of children to go on, and these having been obtained long after the alleged events, it is highly apposite to consider two things:

- Does Ellis's personality fit that of known paedophiles? This could be outside the court's concern if he were found to be a paedophile on the basis of personality alone. Such assertions would be prejudicial. However, if his personality does not match that of a paedophile, this would point weaken the prosecution's case. I am not sure that such information would be acceptable in court, but I do not see why it should not be.

- Do the alleged offences match those of known paedophiles?

Here are some discussions about probable differences in regard to both points:

- Hood (p285) quotes research by Dr Money that shows that making children drink urine (as alleged in this case) is not paedophile behaviour. Urophiles do not even do this, nor is it likely that they would use a cup. Sim (2002) points out that Ellis had spoken of "golden showers". In addition, Sim asserts that Hood only relied upon an e-mail statement from Money, some market research, and her own reading of sexual abuse literature when claiming that urophilia and paedophilia cannot co-exist. Not withstanding, Sim appears to miss the main point that Hood makes, that drinking urine from a cup is not a common practise in *either* urophilia or paedophilia. Hood is arguing that the allegation of drinking urine from a cup is therefore unlikely to be true.

- Chris Knight, a solicitor, commented (Hood p236) that paedophiles he had known did not talk about their alleged victims as Ellis did. Ellis always showed concern about them, and never called them liars.

- Ellis turned down an offer (probably late in 1991, Hood p164) of $10 000 from the city council, conditional upon him resigning his position. Instead, he stated that he wanted his job back. Such a response would appear unlikely to be that of a man guilty of paedophilia, as he would arguably take more heat off the investigation by leaving the scene of his crimes. The prosecution alleged that Ellis had sworn the children to secrecy, and implied that

paedophiles operate in secrecy. At first glance this appears a very sound hypothesis. However Ceci and Bruck, (1993 page 433) quote two studies, one co-authored by Gail Goodman suggesting that 5 year olds are better at keeping secrets than 3 year-olds. If that is so, then the Civic childcare centre children may not have been of an age that is good at keeping secrets at the time of the alleged offending.

- Criminologist Dr Greg Newbold has asserted (when interviewed by the author in August 2002) that in considering a number of paedophilia cases, "*you often get single ineffectual pathetic types who can't get girlfriends*." They also are commonly of "*relatively low intelligence, and middle aged*."

  Ellis does not fit this profile. However, Newbold states that there are exceptions. For example, Gary Glitter (convicted of possession of child pornography) was flamboyant. If this information is correct, then, we cannot be sure Ellis is not a paedophile, but only that his personality makes it unlikely. This is just another of the many sources of reasonable doubt.

There was no good scientific discussion as to whether Ellis's alleged behaviour was in fact in accordance with the known common patterns of paedophiles. If, as the defence assert, the offences were imaginary and based on a satanic fantasy, these allegations could be expected to differ from those alleged where the accused is proved to have been a paedophile. I contend that they do. In this connection, it is interesting to note that the influential Smart report listed supposed signs of paedophiles who prey on pre-schoolers, but they did not match Ellis particularly well. There was no evidence of Ellis indulging in substance abuse, apart from at one stage his enjoyment of a few drinks over lunch, and he was certainly not regarded by anyone as punitive with the children, furthermore whilst he was openly bisexual, he did not appear to have sexual difficulties. Neither was Ellis a loner with no partners. The defence was at fault in this regard in not seeking this type of evidence. It was no doubt outside Eichelbaum's terms of reference, but should not have been. Whilst as Newbold points out in the foregoing, we can not rule out anyone from being a paedophile, a lack of any commonly occurring paedophile traits must make it less likely.

(6.7) Unbalanced and unscientific interpretations of evidence

(i) Contamination ignored

Hood (p527) points out that Williamson said the jury were entitled to infer that an event had happened when the children's evidence happened to agree on a point, but failed to point out that they were equally entitled to infer that such agreement may have resulted from a common source of contamination (parent, rumour, social worker repeating allegations, etc).

The second appeal court noted (note 50(i))

> *" Dr Zelas initially appeared to state at trial that direct and leading questions were a normal part of an evidential interview, and necessary to elicit information from a child. However, under cross-examination she stated that leading questions could be suggestive to a child, but that the answer to a leading question would need to be analysed to assess whether the lead had been taken up and if any supporting detail had been provided."*

Dr Le Page for the defence may have failed Ellis when he accepted under cross-examination that direct and leading questions may, at times, be necessary where information is not otherwise forthcoming.

(ii) "Symptoms" of Abuse

There is now no way of knowing what weight the jury gave to Zelas's contentions that the children were exhibiting behavioural symptoms "consistent" with abuse (including tearfulness, anxiety, stomach aches, and tantrums). Under cross-examination, Zelas said that she hadn't thought about what behaviours are inconsistent with abuse (Hood p 504), yet Williamson allowed the scientifically unsupported theory regarding symptoms to stand.

On the issues of "consistency", "inconsistency", "symptoms of abuse" and evidential merit Barry Parsonson has this to say

> *"There are no behaviours that are reliably consistent with sexual abuse, there are some behaviours that may be more common (such as so-called sexualised behaviours, which are not always well-defined in the research literature), but they are not exclusive to and thus diagnostic of abuse. Equally, because there are all sorts of behaviours that may be evident in sexually abused children, and in non-abused children, there are no behaviours that can be said to be inconsistent with sexual abuse. This is what makes that section (s23g) of the Evidence Act so meaningless. It dates from the days when lists of behaviours were portrayed as indicators, and thus consistent with, sexual abuse. These have since been shown, by analysis of the research literature, to have no evidential or probative value." (personal correspondence, 2002).*

Ellis was convicted a year before a San Diego County report which discredited submissions based upon such "symptomatology" and perhaps before the general acceptance of the research conclusions as referred to by Parsonson that debunk this approach. Nevertheless, Williamson was reckless in allowing this novel theory such credence. He should have advised the jury that the theory was new and untested, and not to place much weight on it. He did not. It appears that the reason for this is that Williamson himself accepted the theory was valid as is evidenced in his address at sentencing

> *"...they* [the children] *suffered the obvious repercussions of headaches, tummy aches, night terrors, fear and anxiety and sleep disturbances, but also some of them show signs of what might be termed psychiatric disorders connected with sexual abuse such as depression, lack of confidence, self esteem, as well as eating and sexual disorders."*

Eichelbaum does not raise concerns in regard to the general acceptance of these viewpoints. Eichelbaum signals credence in the theory by *"readily accepting"* (p107) Sas'protocols for the dissemination of information regarding behavioural symptoms. Yet curiously, Eichelbaum states in reference to the San Diego report, "*theories utilising behaviours as proof of child sexual abuse were discredited*."(p34), but significantly, when weighing the grounds for reasonable doubt, he fails to return to this issue.

(6.8) The case against the women

Williamson effectively conceded, by dismissing the charges against the women, that the evidence against them was weak. I also find no evidence for the guilt of the accused women. I see no problem in rejecting exactly the same evidence in regard to Ellis.

> *"Between depositions and trial, crown solicitor Brent Stanaway reduced the number of charges, complainants and defendants, and reshaped the indictment…he reduced the 16 "circle incident" charges which had been laid equally against Ellis and three of his female colleagues, to two unequal charges: one against Ellis (as principal offender), the other jointly against the women (as parties to an offence by Ellis). This charge enabled Justice Williamson to dismiss the charge of group sex against the women while leaving the charge against Ellis (based on the same allegations by the same child) intact"* (Hood, Sunday Star Times 10 August 2003).

The charges against the women simply vanished. This may well have been prejudicial toward Ellis, because if the evidence against the women been presented in court the unreliable nature of many of the children's allegations may have been revealed.

(6.9) Comparison with a New Zealand MVMO case

Perhaps the closest case to what was alleged to have happened at the Civic childcare centre would be the trials of Bert Potter, and some of his male followers, for sexual assault of children in 1992. Bert Potter, aged 67, was charged and convicted of indecently assaulting five minors. The children were as young as three and a half years old. He was sentenced to seven and a half years in prison in November 1992.

- Keith McKenzie, aged 71, was charged and convicted of indecently assaulting a minor. He was fined $2,500 and later struck off the medical register, as he was a registered doctor at the time.

- David Mendelssohn, aged 48, was charged and convicted of indecently assaulting three minors. He was sentenced to four years in prison.

- Ulrich Schmid, aged 52, was charged and convicted of sexually assaulting two minors. He was sentenced to one year in prison after a retrial.

- Richard Parker, aged 45, was charged and convicted of attempting to rape a minor. Sentenced to four years and five months in jail.

- Henry Stonex, 51, was found guilty of indecently assaulting a minor. He was sentenced to nine months jail.

  A later conviction followed as victims told their stories, years after the events took place.

- Kenneth Smith, 75, charged and convicted of indecently assaulting two minors. Sentenced to 200 hours community service and had to pay damages to each minor of $1,500. January 1995 – North Shore District Court.

All the names of the children involved and their testimonies were suppressed. The complainants came together in March 1990 to make their complaints following a meeting organised by one of those subjected to the abuse. In 1998, in reaction to police confiscating computer equipment from Centrepoint after finding pornography stored in it's database, Sarah Smuts-Kennedy (NZ actress with a high profile) voluntarily spoke out about the abuse she had suffered at the hands of Bert Potter. She was concerned that the community is still operating and the same thing could happen to children again.

The civic case was similar in that several adults were accused, pornography was looked for by police, and there were meetings of alleged victims.

There were very significant differences. In the Ellis case, no pornography was found in the possession of any accused. No admissions of guilt from alleged perpetrators were made. The alleged offenders were also much younger, and not members of a close-knit community that openly preached sexual freedom. It is possible that police had cases similar to the centrepoint one in mind when investigating the civic case. The obvious differences may have been overlooked..

(6.10) Police misconduct

Eade's questionable relationships with the Civic childcare centre parents, and one of the involved DSW staff did not come out during the trial. Early in the investigation, Eade unsuccessfully sexually propositioned at least one mother (of the first child to formally make an allegation). After the case, he had sexual affairs with two of the childcare centre mothers, and a DSW employee. This brings into question his impartiality. He may well have been trying to please these women for personal reasons. He spoke to the children formally, and one can assume informally. He may have had cause to support the mothers' allegations or fears when speaking to the children, rather than investigating without fear or favour. Zelas, the prosecution, Justice Williamson, and Eichelbaum clearly had excessive confidence in the quality of the police investigation.

(6.11) A conviction illustrating the preceding points

The case of complainant child Z/Kari Lacebark is a most instructive one in this case. It reveals CPM and Great Paedophile Ring believers persisting doggedly in the face of mounting evidence to the contrary. The four guilty verdicts resulting from this child's testimony made her an effective prosecution witness. (X/Bart Dogwood and N/Zelda Cypress were next, with three guilty verdicts each, but all of Zelda's were quashed when she retracted. Zelda was presented first in court, so the prosecution, and as a consequence the jury, presumably regarded her as the most credible).

Ms Z/Lacebark, a librarian, was well acquainted with parent D/Magnolia, who had been instrumental in organising the many parent meetings, both formal and informal, before the trial.

In November 1991 Ms D/Magnolia told Ms Z/Lacebark that Ellis had abused her son. After attending the first parents' meeting, Ms Z/Lacebark questioned her daughter and no allegations were forthcoming.

In December 1991 Ms Z/Lacebark attended another meeting of Civic childcare centre parents concerned about possible abuse by Peter Ellis.

In February 1992, Ms D /Magnolia told Ms Z/Lacebark that child H (not a complainant) had said that Peter had shown her his penis in the toilet at the Civic childcare centre (Eichelbaum report p49). Ms Z/Lacebark put this to her daughter directly as a statement full knowing that this was the wrong way to elicit the truth. Z/Kari Lacebark then agreed with the statement and also implicated another child. The allegations were immediately passed on to the police.

Z/Kari Lacebark was formally interviewed seven days later by Sue Sidey. She was then aged five, and it was six months since she had last attended the childcare centre. Most of the alleged events would have occurred a year or more before the first interview. That lengthy time lapse in itself is sufficient grounds to question whether the memories would even exist. In total there were to be six interviews of the child.

The First Interview

This interview lasted 45 minutes. It has since been published by Colman (2003) and it was played in full to the jury at the trial. (for Colman aliases see appendix 2). It was clear then that Z/Kari Lacebark had been "*groomed'* (Sas'term) by her mother as Kari introduced the subject before the initial formalities were even completed. Davies' report describes that at the start of the interview, Kari "*seems to have a rather uncertain grasp of the formal distinction*" [between truth and lies]. The child then alleged that Ellis "*showed me his penis in the toilet…sticked it out in the side of his body*…" This suggests a lack of knowledge of male anatomy.

Due to prosecution argument, the jury may have believed that Kari's allegations had sexual content that could have only arisen from her having been sexually abused. Kari stated that Ellis' penis went "*in my mouth*" adding, "*it feeled rough*" and "*baby stuff came out of it*." Yet when questioned about this, she said, mummy had told her about it. Then she continued that it happened "*lots of times*"…"*only on Fridays and Mondays*" (Davies p28).

Throughout this interview, the child displayed none of the feelings of disgust or trauma that the prosecution alleges result from abuse. Research suggests that whilst an act such as this is probably not traumatic to children, it nevertheless may not be particularly pleasant, and would surely have seemed strange and possibly disgusting. After only 15 minutes she became restless, and later "*show*[ed] *increasing signs of wanting to terminate the interview*" (Davies p29). The lack of emotion, the clear indication that the source of allegations was the child's mother, and the lack of any convincing detail should have been enough to abandon these interviews, and to next closely question the mother, rather than the child.

The Second interview

In this interview anatomically correct dolls were introduced after a 25 minute play session. Z/Kari Lacebark remarked that she didn't like being at the interview because "*it was really a bit too long*." There were inappropriate optional answer and forced choice questions asked. (Davies p29)

The Third interview

This interview was, as were all the other interviews, clearly preceded by further discussions between Z/Kari Lacebark and her mother, who later admitted to doing this. As Davies points out, "*Z* [Kari] *by now knows the score and interrupts the preliminaries saying 'I know lots of things to do with Peter.'"* Davies goes on to state, "*The use of 'know' in this context may be significant in that it may not imply first hand knowledge*." A plan of the house made with toys should according to Davies be checked for accuracy. This has not been done. Anatomically correct dolls were introduced and Kari illustrated a physically impossible scenario with them.

The Fourth interview

This interview resulted in a charge and (still standing) conviction (this forms the basis of this illustration): that Ellis "*... between May 1989 and July 1991…did indecently assault...at an unknown address where an unknown man put his penis on her vagina*." This interview is quoted in detail in Hood (p319 –320). Sue Sidey ignored Z/Kari Lacebark's statement that Ellis had not taken her out of the childcare centre anywhere besides Willowbank. Sidey then suggested the venue to her; "*I think you've been to his house before*." That question is a clear breach of good practice. Kari then provided false detail by saying that Ellis lived by himself (he did not) and that his family did not love him (now obviously untrue – Ellis's mother has stood by him all the way). When asked about "*Peter's bad friends*" Kari said she knew about that, "*because mummy telled me*." This obvious lead was ignored by Sidey. One can only conclude Sidey operated with a strong bias at this point (and there are earlier examples). Sidey then asked, "*what about his bad friends…are they men or women?*" To which she received the reply, "*men and women*."

Later in the interview, Z/Kari Lacebark alleged that a man named Joseph "*teased'* her with his penis. When an anatomical doll was produced, Kari indicated that she had not seen pubic hair before. There is no mention of this fact in Sidey's report of the interview. Nor is there any mention of it in Eichelbaum's or Davies' analyses of the interview. It is therefore rather unsurprising that Sas also seemed to have felt this that the incident did not warrant mention in her report either.

Kari: *"What is it?"*

Sidey: *"Have you ever seen that before on a...?"*

Kari: *"No."..... "What is it?"*

Sidey: *"What do you think it is?"*

Kari: *"I don't know."..... "It's all on it. What is it?"*

We also have claims placing "Joseph" at Ellis's Hereford Street address. The charge did not mention Hereford Street, yet that was clearly the alleged location. As Hood suggests, the prosecution must have felt that being forthcoming in the central detail of this allegation may have led to a not guilty verdict. Especially so as in addition the police could not identify the mysterious Joseph. No friend called Joseph was ever found. There is evidence of only one visit by Civic childcare centre children to the Hereford Street address (Hood p203-204). It was between August 1986 and January 1987 (Hood writes it was most likely in early January).

Z/Kari Lacebark cannot have been there, as she did not begin at the childcare centre until April 1988. On the occasion of that single visit, two or three other childcare centre staff and eight to ten children accompanied Ellis. Ellis' landlord was there, but retreated upstairs. Ellis left Hereford Street in May 1987. It follows that the alleged crime would have to have been committed at least five years before the first interview, when Kari *was less than one year old*. It might have been useful if Detective Eade had focused on basic facts, rather than fruitlessly searching for incriminating videos, trap doors and cages.

As Davies noted (p30), this child used adult terms 'penis' and 'vagina' and refers to input from her mother several times, which "*clearly reflects adult input.*" In his summary (p31) Davies states,

> "*There is nothing in this interview that convinces me that Z* [Kari Lacebark] *visited Peter's house or was assaulted by a man called Joseph.*"

Clearly, Davies does not think this verdict was safe. This interview was played in full to the jury.

The Fifth interview

The fifth interview took place 7 months later. It was not played to the jury. In interview five, Z/Kari Lacebark started talking about Peter's mother as an abuser. This is unlikely, and I gather there is no evidence or likelihood that Kari ever met Mrs Ellis. After a caution that it is better to say she didn't know than make things up, Kari went on to talk about "Andrew" hitting her, and touching her vagina with a knife in the Civic childcare centre toilets. Sidey then asked,

> "*... what's it feel like having to remember these things?*"

This is a dangerous question, as this can help create false memories. Later in the interview Kari stated:

> "*I can't remember at the Crèche, I said that a million times.*"

The Sixth interview

This time, Z/Kari Lacebark claimed that a female Civic childcare centre worker touched her with a knife. When asked if anyone else did this, she said no, contradicting what she had said in the previous interview. Later in the interview she became restless, and near the end she was asked if the allegation about the childcare centre worker really happened. She did not reply. On that note the interviews ended.

Davies (p33) notes that "*these two late interviews subtract from, rather than add to Z* [/Kari Lacebark]*'s credibility as a witness.*" This does nothing to explain [or encompass] the fact that the earlier allegations – ones that were accepted – arose in the smooth way as if in a continuum. If new allegations were still arising, little different in nature than the earlier ones, what cause was there to discontinue? Was it the child's refusal to say whether the allegation really

happened? These later two tapes were not shown at the trial and Davies is "*not surprised*" by this. The jury and the defence were not allowed to make up their own minds about the reasons for the inconsistencies and lack of credibility. Such a selective process can create a false impression in the minds of the jurors.

Yet the forgoing evidence from Z/Kari Lacebark resulted in four convictions out of four charges (Hood p484).

- That Ellis put his penis in her mouth (count 20) at the Civic childcare centre
- Ellis touched her "*vaginal area*" with his penis (count 21) at the Civic childcare centre
- Ellis touched her "*anal area*" with his penis (count 22) at the Civic childcare centre
- "*an unknown man put his penis in her vagina*" at "an unknown address. This allegation arose in the *fourth* interview." (Hood p612). Eichelbaum discounted without mention the fact that Davies was unconvinced.

(6.12) Conclusions

I conclude that the trial had little chance of success in negating the effect of the massive public prejudice, fear and misinformation that prevailed at the time. Much of this public hysteria had become focused in a belief that a ring of paedophiles practising SRA had been operating somewhere in Christchurch. When the Civic childcare centre case broke, this fear became focused on the Civic childcare centre. This has been established as historical fact in Hood's book, and she has clearly shown that many professionals as well as some parents involved in the case subscribed to this satanic ring theory in varying degrees. With this prejudice leaking right through into the courtroom, there was little chance of a fair trial.

Both the media, and sexual abuse "experts" such as Karen Zelas can be seen as culpable for broadcasting scientifically unproven theories about "signs and symptoms" of abuse and satanic ritual groups.

Decisions taken by the Crown Prosecutor and rulings before and during the trial by Justice Williamson resulted in most of the ludicrous excesses of the satanic theory being kept from the jury. That only one of the original accused faced trial, was in itself, a bias mechanism, as it made it appear as though the prosecution really believed that there was only one ordinary paedophile. This belief was clearly not the case in the minds of most of the police, social workers, parents, and probably the judge himself.

The rulings were in many cases breaches of natural justice. These breaches included applying limits to the showing of videotapes (possibly constraining the defence), allowing the theory of symptoms of abuse to be presented as evidence without any scientific evidence or scientific basis, and rulings that the meetings between Civic childcare centre parents were "*entirely proper*". Allowing Detective Eade to present his totally unscientific "schedule of behavioural matters" to the court appears to be a breach of protocol that may amount to a breach of justice.

In the trial, a mass of relevant facts were never mentioned to the jury: The full extent of possible sources of contamination to the children's testimony, Detective Eade's propositioning of parents, the parallel accusations made at another Crèche, and the expert witness being scared off prior to the trial, and much more besides. After the trial, it was revealed that two jurors had undeclared connections with the case. It is this incomplete consideration of all relevant factors surrounding the trial and case that forms the basis of Hood's book and many of the appeals, including the 2003 petition to the House of Representatives.

Williamson chose not to warn the jury about the intrinsic unreliability of the evidence given by young children and the increase in this unreliability over time and with prolonged questioning. This reflects a lack of proper training for our judges and poorly considered law that does not reflect current known scientific knowledge in regard to the reliability of children's evidence; or a deliberate bias. We have a right to expect our judges and lawmakers to know these things, considering the amount of taxpayer money invested in their training and salaries. I would expect an intelligent judge to notice these facts merely as a result of his/her experience in the courtroom. Even if Williamson had spent most of his career trying cases involving only adults, and had insufficient experience of child witnesses, then it should have been all the more reason for him to be cautious.

The appointment of Zelas as an expert witness was inappropriate due to her involvement with the interviewing and her lack of appropriate scientific credentials.

In all, there was no fair trial. The fact that Eichelbaum is so confident that the verdicts were safe in the light of all this means that he, too, lacks proper relevant knowledge and training in matters (scientific) relating to conducting trials that feature child witnesses.

(7) The Appeals

The First Appeal (1994)

Ellis appealed against his convictions in 1994 and as a result the three convictions relating to child complainant “N/Zelda Cypress” were quashed as the girl had retracted.

The Second Appeal (1999)

It should be noted that in 1997 Ellis’s lawyer Ablett Kerr petitioned the Governor General for a pardon or alternatively, to return the case to the Court of Appeal. She has since stated that a Commission of Inquiry was what she has always thought most appropriate. During 1998 Ablett Kerr applied to extend the scope of reference for the appeal.

The second appeal had been preceded by the Thorp report for the secretary of justice. Thorp had raised serious questions about the interview techniques.

The case again went to the Court of Appeal in 1999.

In its judgement delivered on 14 October 1999, this court simply considered there was no new evidence, so again did not examine the scientific evidence.

> *“It seems unlikely that in a case in which there has already been an appeal which has been disposed of on the merits, the Court would regard itself as obliged to readjudicate upon any ground that has already been heard and disposed of unless some new matter had come to light which made a reconsideration of the ground necessary or desirable.”*
>
> *“In summary, as an appellate court, we are satisfied that the appellant has not demonstrated anything sufficiently new in the contamination and allied fields to justify the verdicts being set aside.”* [note 57]

Our courts do not allow expert witnesses to comment on the credibility of witnesses, as the following excerpt form the ruling (introductory point 26) shows:

> *“neither is it legitimate for the experts to express opinions as to actual credibility - a temptation which has not been entirely resisted in the affidavits”.*

This attitude may not allow anything of substance or use to a jury to be stated by expert witnesses in regard to witness testimony. But such assessment is at the very core of the matter when considering the testimony of very young children. For example, to say in an interview there are signs that the child being interviewed is more suggestible than average, and misleading suggestions were applied, is clear evidence that this child is less credible, and the jury need to know this. To use the word ‘reliable’ instead of credible would fit the preceding quote. Our narrow interpretation of the scope of expert witnesses may not be shared by some overseas courts (see Endres 1997, for example, and the forensic use of the Bonn test of suggestibility in Germany).

In regard to the type of scientific analysis contained in this document, and presented to the appeal court in various forms including the review by psychologist Barry Parsonson, the court ruled (introductory note 27),

> *"This Court is not the forum for reviewing or evaluating the conclusions reached by the various authors, some of which understandably in these difficult and constantly developing areas are conflicting"*

The appeal court judges were nevertheless well acquainted with the very critical findings of Parsonson (introductory notes 35 – 39) and also those of the American psychologist Michael Lamb (notes 40 – 46) who provided a positive review of Parsonson's reports, and also considered various documents and videotaped interviews from seven of the children (trial complainants). Lamb noted that our interviewers were significantly poorer than those in America and England in respect to using open-ended questions (note 42). Lamb emphasised the contaminating effects of the intensive suggestive and lengthy questioning of the children by their parents prior to the formal interviews. He also criticised Detective Eade for contaminating the children's memories.

American psychologist Constance J. Dalenberg provided an affidavit to the court on behalf of the crown critical of the work of Parsonson and Lamb. (Sometimes she spells her name Dahlenberg, hence the middle initial) The scientific credentials of Dalenberg are highly questionable. She has published in the National Center for Post Traumatic Stress Disorder's Clinical Quarterly (for example, in 2000 on *"Countertransference and the Management of Anger in Trauma Therapy"*) Post traumatic stress disorder is a controversial term which many critics say lacks scientific rigour. She also supports the officially discredited notion of recovered memories in her article in the *Journal of Psychiatry and Law*, 24(2), 229-275. She does not appear to be part of the scientific mainstream, and appears to prefer unscientific methods of inquiry. In her affidavit, Dalenberg makes the claim that a retraction is

> *"not evidence of the falsity of a child abuse allegation by a five year old child."*

It is worth noting the use of the term *evidence* as opposed to *proof*. This of course logically leads to the absurd position that whatever a child says about sexual abuse is evidence it has occurred in fact. Dahlenberg has carried out research at the Trauma Research Institute in La Jolla, California.

In note 48, the judges say,

> *"Dr Dalenberg's affidavit drew three responses from the appellant's advisers .First, Dr Maggie Bruck of Maryland,United States of America, also a highly qualified and recognised expert, and secondly from both Dr Parsonson and Dr Lamb. We found none of these, nor Dr Dalenberg's second affidavit in further response, as helpful in resolving any of the present issues"*

They even entertain the bizarre notion,

> *"Dr Dalenberg claims that fantasy is an indicator of truthful disclosure, since fantasy is a*

> *protection mechanism for young children who feel vulnerable and scared." (note 50 (ix))*

It is quite apparent that our judges have no idea how to discriminate good science (and scientists) from bad,

> *"The reply affidavits of both Dr Parsonson and Dr Lamb are no more than re-assertions of their own respective positions, and also serve to demonstrate the existence of difference of approach and of analysis of research data - as is re-emphasised by Dr Dalenberg's second affidavit."* (note 49)

Another conclusion is obvious: under our present legislation a Royal Commission of Inquiry is the only proper forum that can properly resolve this case. This will now have to be done. It is hoped that law changes will result, assuming an inquiry upholds conclusions similar to those of this report. These should ensure that the consideration of, and access to, good science is more effective for future trials and appeal court deliberations.

(8) Expert Opinion

If the preceding analysis is correct, then it would be reasonable to assume that some academics would have expressed doubts in regard to the safety of the convictions. It is, nevertheless, a weak argument to simply quote the conclusion of an "expert" as support for one's own identical or similar conclusions. That is one of the classic informal logical non-sequiturs. Throughout the history of science, there have been many occasions (although perhaps in the minority) in which the majority of expert opinion has been completely and utterly wrong (eg: the use of thalidomide for pregnant mothers, the flat earth, earth centred, then solar centred views of the universe). In the field of psychology, the promulgation of faulty theories has been embarrassingly frequent (eg: split personality theories, Freud's repressed memory theory, some theories of hypnotism, the pressure cooker theories on violence, theories about the benefits of high self-esteem, and "neurolinguistic programming"). So, for each of the experts mentioned, an attempt will be made to indicate the scholarly (or otherwise) source of their doubts; and the reasoning and evidence used. Unfortunately, many academics did not provide a statement for the public record at the time. When I approached the most important experts, most were prepared to comment.

I give these examples merely as evidence that among those experts and writers who have spent time examining this case, there is a great deal of very well reasoned doubt about the remaining Ellis convictions. This should be cause for great concern over the case.

(8.1) Opinion in favour of Royal Commission of Inquiry into the case and/or those holding doubts in regard to the safety of the verdicts

James Allan (Associate Professor of Law at Otago University), specialises in constitutional law and in the philosophy of law.

John Anderson is an Auckland barrister. On 4 October 2003, he described the testimony required of expert psychiatric and psychological witnesses under section 23G (2)(1) of the Evidence Act as "opinion evidence".

George Barton QC is a Wellington barrister.

Mike Behrens QC was a Palmerston North barrister, now a judge.

Brian Brooks (Professor of Law at Victoria University), specialities include the ethics of law.

John Burrows (Professor of Law at Canterbury University)

Canterbury Criminal Bar Association voted unanimously in March 2003 to recommend that the government establish a Royal Commission of Inquiry into the case, presided over by a judge or judges from outside New Zealand.

Patricia Champion is the psychologist who criticised the work of Zelas in a Ward 24 case. I have no contact details for her.

Brian Coote is an Emeritus Professor of Law at Auckland University.

Michael Corballis ONZM (Senior Professor at Auckland University - he has also taught in Canada - An expert on perception, cognition, laterality, neuropsychology and evolution.)

> *"The Ellis case was driven primarily by a world-wide hysteria over the nature, extent and effects of sexual abuse. A better appreciation of psychological science, and a dose of common sense, would have led to a more reasoned outcome, and would probably not have led to Peter Ellis's conviction".*

In a review of Lynley Hood's book on the case Corballis wrote (Listener Feb 19 2002),

> *"There will be people, some of them in high places, who will prefer that this book be repressed, a memory not to be recovered. For the mental health of the nation, it should be compulsory reading for counsellors, clinical psychologists, psychiatrists, the police, the judiciary and ministers of the Crown, but I suspect it won't be. And that's too bad."*

Stephen Ferguson is the Christchurch Prison chaplain, and had opportunity to observe Ellis during his sentence.

James Flynn Emeritus Professor at Otago University.

Maryanne Garry is a psychology lecturer at Victoria University, Wellington. She has conducted highly relevant research into human memory, specialising in memory distortions, especially as they apply in legal settings. She has stated (Otago Daily Times, 20 October 1999)

> *"The jury should have been properly educated when Ellis was originally tried by allowing psychologists to discuss the research on children's memory - something that didn't happen during the trial. If we were to retry that case today, he would not be convicted."*
>
> *"The idea that there is some child sexual abuse syndrome is just nonsense, wholly disproved by scientific research."*

Felicity Goodyear-Smith published *First do no Harm* in 1993 as a result of her work as a police doctor specialising in sexual assault victims, and her work with HELP (a sexual victim support group). Her book contains many references to good scientific research (in publications such as *Journal of Experimental Psychology, The Lancet, Science, Memory and Cognition, and Science*). Some references are to medical or nursing journals that are perhaps of lesser weight.

I understand that when *First do no Harm* was published, the Ellis case was sub judice. However, Goodyear-Smith has been extremely critical of the verdicts, and said so in an overseas Journal (Goodyear-Smith 1993b). Goodyear-Smith is basing some of her observations on first hand contact with children who have been sexually abused.

Laurence Greig is a retired High Court Judge.

Stuart Grieve QC is an Auckland barrister.

Nigel Hampton QC is a Christchurch barrister

Harlene Hayne is a professor of psychology at Otago University and last year elected a fellow of the Royal Society of New Zealand. A respected research scientist in the subject of memory, she published research on childhood amnesia in 2002.

> "[world-recognised memory experts] *were not invited nor consulted during the original trial. Had they been invited to testify for the defence, Peter Ellis probably never would have been convicted in the first place"*

Mark Henaghan, Dean of Law (Otago) Has significant doubts and has stated that Hood's interpretation is "*clearly supported by the evidence"*.

Michael Hill. Currently a Professor of Sociology at the University of Victoria. In his paper (Hill 1998), he considers the sociological phenomenum of moral panic. He gives many historical examples, and includes the Christchurch Civic Child Care Centre case as a modern example. He describes the special theory involving "satanic" elements, the special courts, and the search for secret tunnels or passageways, etc. He describes the spread of the unfounded SRA belief (in the SRA book, *Michelle Remembers*, the Devil himself makes an appearance!), and the pseudo-science that surrounded it.

The logic of Hill's approach is unassailable. There were no witches or consorting with succubae or incubi in Salem. The Christchurch case has many factors in common with the Salem trials and others like it, and in those other cases it is well-accepted that innocent people were indeed convicted. Few of these factors are present in trials where the verdicts are most certain. This gives another reason to be suspicious of the whole Ellis trial and its verdicts.

Bill Hodge is an Associate professor at Auckland University and author of *Criminal Procedure in New Zealand*.

Alison Jones is an Associate Professor at Auckland University and specialises in feminist theory and gender politics.

Gary Judd QC is an Auckland barrister.

Barry Kirkwood (retired Auckland university senior lecturer)

> "*We are living in a cargo cult country* [where] *magical thinking has replaced critical analysis…what we are looking at here is a major system failure. So many reputations are on the line in this case, that the authorities cannot afford to let Ellis off."*

David Lange is a former New Zealand prime minister and lawyer

Gregory Newbold In his textbook, *Crime in New Zealand,* Newbold devotes a paragraph to the Christchurch Civic Child Care Centre case. As a criminologist, he is concerned in his analyses with distinguishing between crimes and prosecutions. If he were to assume that all prosecutions are absolute proof of crime, and that all crime is prosecuted, then any analysis may be flawed. It is in this context, that he rejects the convictions against Ellis and would not include them in, for

example, his figures on the incidence of child abuse. Newbold (p274 ibid.) draws attention to the fact that a large proportion of cases of wrongful conviction involve allegations of sexual abuse. Also, Newbold has considered the known personality traits of Ellis, and points out several major differences between him, and the profile of known paedophiles. Another point that Newbold would appreciate is that unlike genuine sex offenders, Ellis was liked by the other prisoners and generally well treated.

Newbold is a senior lecturer in the Sociology Department at the University of Canterbury. As a criminologist, he advises the government on penal policy.

NZ Skeptics Inc. In September 2003 the Skeptics awarded Justice Minister Phil Goff with the *Bent Can-opener Award* for refusing to yield to calls for a Royal Commission of Inquiry. Membership of skeptics appears to consist of a high proportion of university academics.

John (C.J.) Nicholson is a former senior psychologist with education services in Tauranga, and former chairman of the field multi-disciplinary Child Protection Team. He wrote the following in December 2003:

> *"The need for a royal commission reviewing the many aspects of the Ellis case outside Eichelbaum's terms of reference or glossed over is obvious, but requires a wide enough brief to review the place of child testimony and psychological opinion (especially section 23 of the Evidence Act) in criminal trials. Terms of reference for a royal commission should address the following:*
>
> - *What material evidence was there of sexual abuse?*
> - *How much opportunity over six years did Ellis have to abuse children without detection?*
> - *How objective were the community agencies (police, CYPS, health providers and ACC)? Was there an a priori assumption of abuse and Ellis's guilt?*
> - *How consistent was the testimony of the children one with another? How much was it contaminated as the investigation progressed by parents, interviewers and support agencies with shared beliefs?*
> - *How much direct questioning of a leading nature took place in the children's interviews? What does current research reveal about its likely effects on the reliability of their evidence?*
> - *Were there any reliability checks on child testimony as to events, times, places and people?*
> - *How important were the child interviews not shown to the jury?*
> - *How influential was the testimony of the oldest child who later retracted?*
> - *What role did the central psychiatric expert play in creating a subjective impression that possible abuse was actual abuse?*
> - *Was the trial judge biased in (a) his decisions on admissibility of evidence, and (b) implying that Ellis's fellow childcare workers may not be innocent when he dismissed the charges against them?*
> - *Why were some charges reduced/sanitised?*

> *It is essential that an overseas neutral legalist be appointed to chair the royal commission. The New Zealand Justice System is relatively small and judges may be reluctant to criticise colleagues or the New Zealand system or government.*

Barry Parsonson Psychologist and formerly associate professor at Waikato University.

He reported on the case for Judith Ablett Kerr's appeal. He concluded the evidence was too contaminated by the interviewers themselves in particular, as well as parents, counsellors and others to be able to be considered reliable.

> *"[there was] contamination* [of the evidence] *from external influences on the children as well as* [deficiencies in] *the interviewing."*

Jim Pollard (retired reader in psychology at Canterbury University)

> *"At* [the] *heart* [of the case] *is the current inability of the New Zealand justice system to redress wrongs against a man who is almost certainly innocent of the charges on which he has been found guilty. This may well be because, at the time, the judiciary believed self-styled expert witnesses who subscribed to popular fallacies. In characteristic New Zealand style social workers here were the last to embrace the 'paedophiles under the cot' craze just as it was going out of fashion overseas." - 2003*
>
> *"I guess the critical question, and one that the mainstream legal system has been unable to confront because of the way it is constructed, is:*
>
> *If Ellis were on trial today, and if the eye-witness evidence were the same, would he be found guilty?" - December 2003*

John Prebble Professor of Law at the University of Auckland.

Jane Rawls is a Hamilton based psychologist, who has conducted research into the effects of the Civic childcare centre case interview techniques. She found major distortions of truth resulted.

Bernard Robertson is the editor of *The New Zealand Law Journal.*

John Rowan QC is a Wanganui barrister.

Brian Rowe is a retired Superintendent of Police.

Donald Stevens QC is a Wellington barrister.

Ken Strongman Professor of Psychology at Canterbury University. Strongman has stated somewhat cryptically *"People are easily manipulated, whether consciously or not, and that atmosphere pervaded Christchurch."* (Christchurch Press 25 June 2003).

Tony Taylor Emeritus Professor at Victoria University.

Thomas Thorp is a retired high court judge, who prepared a report on the case for the Ministry of Justice in 1999.

It is well known that the Thorp report was critical of the convictions against Ellis. He wrote in his 1999 report to the secretary of Justice:

> *"But if the opinions of Dr Parsonson (which are the cornerstone of these complaints) and the Ceci/Wood claim that creche/kindergarten cases involve special hazards, prove to have general support, it would in my view be difficult to argue against the existence of a serious doubt about the safety of Ellis's convictions."*

Stephen Todd Professor of Law at University of Canterbury.

Rev David Williams is a professor at Auckland University and has degrees in law, history and theology.

Peter Williams QC is an Auckland barrister and had represented Arthur Allan Thomas.

Collin Withnall QC is a Dunedin barrister.

(8.2) Those in favour of the convictions

It is only fair to balance the forgoing names with a list of those stating the opposing conclusion; that the verdicts were safe.

I may have missed someone, but I have found no research scientists who are experts on children's memory and interviewing speaking out publicly in support of the convictions.

Wendy Ball is now a law lecturer at the University of Waikato. Ball practised in the fields of criminal law and personal injury litigation, before coming to New Zealand from Australia in 1989. Ball *was* appointed to a NZ northern region parole board May 2002.

After the trial, she acted as spokesperson for the complainant parents. She was a friend of Ms Magnolia (Hood p219). Ball had opportunity to meet and acquaint Louise Sas with details of the case when both were speakers in a workshop that included the subject of multi-victim, multi-offender child abuse, (Second International Conference on Children Exposed to Family Violence, held in London (Ontario) in 1997).

Wendy Ball has made her current standpoint clear (2003).

> *"This is the sixth or seventh bite he's* [Ellis] *had of the cherry".*

Emma Davies is a psychologist and senior researcher at the Institute of Public Policy, Auckland University of Technology (previously the Auckland Institute of Technology). In August 2003 (NZ Herald), she (with Jeffrey Masson) criticised Hood's claim that the frequency of sexual abuse had been exaggerated by some child protection workers, and that the effects had been exaggerated. They went on to claim that therefore, upon such a basis, all of Hood's conclusions must be questionable. To their credit, and unlike Hood's reply, they did quote extensively from the literature, albeit some of it of dubious value. Davies is married to Dr John Read, another of

Hood's critics (listed below). However, Davies and Masson did state "we cannot comment on the guilt or innocence of Peter Ellis."

Hood's reply (13 August NZ Herald)

> *"As befits supporters of recovered memory therapy (now known euphemistically as abuse-focussed therapy), Jeffrey Masson and Emma Davies rely on statistics that have been either discredited or misrepresented to support their otherwise insupportable beliefs.*
>
> *Nonetheless, it is pleasing to see that some members of the sex-abuse industry have been reading A City Possessed."*

Masson and Davies replied 18 August that Emma Davies has never commented in public on recovered memory, and…

> *"Hood's letter reinforces our view that she is untrustworthy in her analysis of the issues involved in child sexual abuse."*

Thomas Eichelbaum.

Ian Hassall and Beth Wood Hassall was previously commissioner for children. Beth Wood, then working in Hassall's office, supplied Rosemary Smart the Executive Summary of David Finkelhor's book *Nursery Crimes* when Smart was preparing her report on the Civic Centre (Hill 1998). Both Hassall and Wood have collaborated with Emma Davies, and (somewhat belatedly) on 27 September 2003, Hassall has called for better information on identification, prevalence and effects of sexual abuse and the reliability of children's evidence. Wood is now advocacy manager for UNICEF NZ which has lobbied against a the establishment of a royal commission of inquiry into the Ellis case.

Roger Maclay Commissioner for Children, 1998- 2003.

> *"He was convicted, he's been before many judges, he's appealed, he's paedophile, he's sinned, he's paid his price. I want to continue to think now about the children. I have no regard for him…Is our justice system really so woefully hopeless, or worse still corrupt, as to allow such a miscarriage of justice? Or do we just have trouble believing the word of children?"*
> *- 2003*

Laurie O' Reilly was the commissioner for Children at the time of the convictions.

John Read is a senior lecturer in clinical psychology at Auckland University. He is a supporter of recovered memory theory. Read and some of his associates attempted to prevent world renowned expert on memory Elizabeth Loftus from speaking at the year 2000 annual meeting of the NZ Psychological society. Corballis (2003) describes the incident as representing *"an appalling disregard for academic freedom."* Read is on frequent record as being satisfied with the outcome of the trial. Retired senior lecturer Barry Kirkwood (previously at Auckland University) comments that, *"the clinical course at Auckland University is undoubtedly a great embarrassment to the administration. The academic controls and standards are lax."* While his

colleagues may not agree with this, Read's highly political stance and overt partiality has drawn adverse comment from a number of other psychologists in addition to Kirkwood and this must cast some doubt on Read's capabilities as a scientist.

Comments in 2003 (Herald letters Aug 12) from Read:

> *"Three days after reading that Otago University awarded Lynley Hood an honorary doctorate, Jeffrey Masson and Emma Davies publish the first balanced analysis of the many biases in Hood's book……this blatantly one-sided book* [A City Possessed] *generated a mass hysteria sucking in all sorts of usually sensible people"*

However, contrary to Read's assertion Hood's doctorate was an examined degree.

Gordon Waugh, writing in the New Zealand Herald in 18 March 2003 effectively sums up some informed criticism on the work of Read:

> *"Dr John Read's latest flight of imagination (Mar 14) links hallucinations in psychiatric patients to childhood abuse and purports to compare abused and non-abused patients. He claims that nearly half of the 200 community mental health clients studied had been abused sexually or physically...*
>
> *Read's "research" has consistently failed to provide independent corroboration or testable evidence of such abuse, yet has recklessly linked abuse to schizophrenia and now links abuse to hallucinations of vision and all other senses. Until he can provide acceptable proof of abuse, he has again misled the public. This reflects poorly on academic standards at the University of Auckland."*

Louise Sas.

(8.3) Experts who have not yet given a professional opinion

Opinions of both the following two experts have already been quoted. Those opinions are not to be confused with a formal scientific assessment. Valid scientific opinion is dependent upon proper consideration of all relevant data. In the opinion of the author both these academics have highly relevant expertise and would be good choices for further consultation into the reliability of the Children's testimony in the Civic childcare centre case.

Dr Maryanne Garry lectures at Victoria University, Wellington. She has conducted research into human memory, specialising in memory distortions, especially as they apply in legal settings. She is one of the most highly qualified scientists working within in the scientifically relevant field in New Zealand, and could be asked to re-evaluate the interviews for reliability.

Harlene Hayne professor of psychology at University of Otago.

(9) Conclusions

1. A Serious Moral Panic Existed

There can be no doubt at all about this. It bore all the hallmarks of a witch-hunt. The formal allegations against Ellis and his co-workers were obtained during a period of a public and professional hysteria over the existence of local and national paedophile covens practising satanic ritual abuse, for which there remains no supporting evidence. This made it totally impossible for a fair trial to take place in Christchurch or possibly anywhere else in New Zealand at that time. The police investigating the complaints were unacceptably preoccupied with uncovering the great paedophile ring. They failed. There was no evidence of the ring, and ultimately only one person, Ellis, was convicted. Eichelbaum was not required to look at this raison d'etre for the trial itself. Clearly he should have done so. Furthermore evidence previously presented supports the view that the SRA scare and dogma had found its way into CYPS, the Crown law Office, the Ministry of Justice and the Christchurch City Council, which oversaw the Civic Child Care Centre.

> *"The extraordinary thing about the Ellis case is the way that a wave of local panic about satanic ritual abuse allowed a conviction to be obtained on the basis of evidence which at any other time would almost certainly have been considered absurd."* (Newbold, 2000)

2. Media hysteria was unacceptable

There can be no doubt that some of the media reported in a prejudicial manner immediately prior to the trial. There were sensational stories about Ellis portrayed as a paedophile and other reckless reportage on SRA. Although this can also be a factor in other high profile criminal trials, it does not diminish the fact that this made the presumption of innocence very difficult, and it was therefore extremely difficult to guarantee a fair trial.

3. Absence of spontaneous allegation

> *"The children who testified had initially disclosed nothing and had only begun to talk about being sexually abused after heavy and repeated questioning from their parents and/or sexual abuse counsellors."* (Newbold 2000, p87).

The first formal complaint that triggered this case did not involve any clear disclosure of abuse. No charges resulted from it (Hood pp224- 226). When first questioned by the DSW, many Civic childcare centre children said that they were happy with the centre and with Peter Ellis. An ERO official review conducted only days after the first complaint surfaced was favourable toward the Civic childcare centre. The initial police investigation was closed down due to lack of evidence one month after the first complaint. This suggests that the allegations that eventually emerged at much later dates were likely to be suspect.

4. The evidence was contaminated

The only "evidence" in this case amounted to the children's allegations. There is overwhelming evidence that parents and state professionals, through the processes known as contamination,

accidentally constructed false memories in the minds of their impressionable offspring. Unfortunately, Eichelbaum only referred to this vital and fundamental consideration indirectly. Because of the delay after the alleged events, even if the formal child interviews been conducted in a perfect manner, they would still not have uncovered the source of the allegations. The contamination is particularly significant given the young ages of the children Many constructed, unreliable memories do not break down, even when challenged. The forensic interviews were actually of *no value at all,* because the contamination was over a long term, fired by panic, and the children were too young to even possess reliable memories.

The focus of Eichelbaum's report was the *formal* interviews. This focus was misdirected and resulted in his not fully examining the issue of contamination.

5. Children can and do lie

The Court entertained allegations that Ellis put children in cages suspended from the roof. He is supposed to have abused children in the Civic childcare centre toilets, unobserved by other staff and visitors. Such allegations are not credible given the open layout of the centre. The children's evidence is also contradictory in central detail, e.g. the children said he drove them to another location in his car, yet Ellis has no car and does not drive.

Children tell untruths and sometimes lie for many reasons. They can readily make both deliberate and honestly mistaken false allegations of sexual abuse, which can persist strongly for years. There was every reason to conclude that the children were not reporting real events in this case. The parental sources of contamination were evident. There is an obvious reluctance in the Eichelbaum report to accept this basic and obvious conclusion.

6. Absence of hard evidence and corroboration

There was no hard forensic evidence of any kind to corroborate the children's allegations. There were no adult witnesses to the alleged abuse. Ellis possessed no pornographic pictures of children. There is no evidence of him ever having offended anywhere else or of him offending since his release. This corroboration is needed to be able to safely convict. A consensus of expert opinion comes to the same conclusion:

> *"It is not known how to distinguish, with complete accuracy, memories based on true events from those derived from other sources."*
> American Psychiatric Association, Statement on Memories of Sexual Abuse, 1993.

> *"The AMA considers recovered memories of childhood sexual abuse to be of uncertain authenticity, which should be subject to external verification."*
> American Medical Association, Council on Scientific Affairs, Memories of Childhood Sexual Abuse, 1994.

> *"The available scientific and clinical evidence does not allow accurate, inaccurate, and fabricated memories to be distinguished in the absence of independent corroboration."*
> Australian Psychological Society, Guidelines Relating to the Reporting of Recovered Memories, 1994.

"At present there are no scientifically valid criteria that would generally permit the reliable differentiation of true recovered memories of sexual abuse from pseudomemories."
Michigan Psychological Association, Recovered Memories of Sexual Abuse: MPA Position Paper, 1995.

"At this point it is impossible, without other corroborative evidence, to distinguish a true memory from a false one."
American Psychological Association, Questions and Answers about Memories of Childhood Abuse, 1995.

"Psychologists acknowledge that a definite conclusion that a memory is based on objective reality is not possible unless there is incontrovertible corroborating evidence."
Canadian Psychological Association, Position Statement on Adult Recovered Memories of Childhood Sexual Abuse, 1996

7. The time delays made the children's testimony useless

Pre-school children forget over time. Even in cases involving central events. Interviewing six year olds about what may have happened one or two years ago is unlikely to reveal anything at all apart from constructed memories that may or may not be true. They simply have very little memory stored. They are *unable* to help, even if something bad (even traumatic) did happen. Eichelbaum touches on this, but fails to show the courage or the intellectual rigour to apply the science. Because of this delay the informal interviews with parents become the significant ones needing to be examined if wanting to best evaluate the children's accounts. Unfortunately these are of very low forensic value (not recorded) and so were never examined during the investigative and legal processes.

8. The abuse "symptom" syndrome does not exist

This existence of a set of 'symptoms of abuse' was one of the weakest and arguably more dubious claims made by the prosecution. In the light of the scientific knowledge available at the time of the trial, it raises serious concerns as to how this could have been taken seriously. The 'symptoms of abuse' may have occurred only after the interviews and therapy, and thus a result of those processes. Loftus (1993) asks,

"is it possible that the therapist's interpretation is the cause of the patient's disorder rather than the effect of the disorder?"

There appears to have been a bias operating in the court trial, where the judge and expert witness's unquestioning acceptance may have lulled jurors into accepting this completely unsubstantiated invention. The underlying fault for this outcome may lie in section 23G of the Evidence Act, which allows for such theory to be introduced via the "consistency" argument. This line of reasoning amounts to a bias mechanism. Eichelbaum appears not to have strongly considered this, as he fails to challenge it. In fact Eichelbaum also appears to embrace this discredited theory by his unquestioning acceptance of expert Sas's systematic application of it, which appears within her report under the sections disingenuously entitled "*Clinical indices of reliability*".

9. The child interviews were substandard

The prosecution relied on allegations that arose in the interviews because there was no other hard evidence. But the interviews provided unreliable evidence because they were substandard, even by the standards of the time.

- The "truth test" at the beginning was not effective enough.
- There were too many leading questions.
- There were too many closed and forced choice questions.
- There were too many inappropriate repeated questions after the child had given an answer.
- The interviews were generally too long.
- There were far too many interviews
- Children were asked often to imagine how something would feel. This is very distorting.
- There were too few challenges to credible allegations in comparison to those made to some obviously unlikely allegations.
- The use of anatomically correct dolls was totally inappropriate then as now.
- Denial from the children that abuse had taken place was often not accepted.
- Source monitoring was carried out too late or not at all.

Judith Ablett Kerr sums it all up neatly (Eichelbaum p52),

> "*the parents, having provided* [the]…*disclosures made by the child, the Interviewer then attempted to extract a repetition of the disclosure."*

Modern standards of best practice are more rigorous now than they were then. Ablett Kerr perhaps should have put the word disclosures in quotation marks, or used the more accurate word, "allegations". Perhaps even she was unwittingly drawn into using this bias mechanism.

The biased way in which these interviews were carried out exactly matches Hood's description of the problems with the Child Protection Movement. Right from the start, the interviewers' intent was that they were not going to fail to protect these children by letting Ellis, and the women he worked with, get away. In their terms, they did fail with the women, but succeeded with Ellis.

I *utterly reject* Eichelbaum's conclusions about the interviews. However, although they are forensically useless, they do suggest that many of the allegations had their source in certain books. Many of the remainder could simply be the products of the leading questions that were

repeated over time and arose from the children's imaginations in their efforts to please parents and interviewers.

Again it must be noted that the focus of Eichelbaum's report was the formal interviews. Despite this focus he spectacularly failed to identify their shortcomings.

10. Paedophile profile

Ellis does not fit known paedophile profiles. The details of some of the offences Ellis was found guilty of committing appear unusual for a paedophile. For example, having the children drinking urine, and defecating in the bath. Although paedophiles do vary in personality traits, Ellis, with his outgoing, confident social personality can not be seen as typical. Furthermore, paedophiles tend to have a long history of offending. There have been no allegations in regard to Ellis offending at any earlier or later time. The evidence against the four women does not appear to be substantially different from the evidence against Ellis. The same considerations thus also apply in regard to them. It is unlikely that chance would find four female paedophiles in the same childcare centre at the same time, as paedophilia is rare amongst women.

11. Bias

This report has revealed bias mechanisms operating within and through key persons and organisations involved in the investigation and prosecution of Peter Ellis and the Civic Child Care Centre workers. Bias has persisted throughout the course of the trial and appeal processes. It is clearly existent within the Eichelbaum report, most notably within Sas's report, and in Eichelbaum's selective manipulation of the (limited) material put before him.

12. The trial was unfair

Changes to the Evidence Act in 1989 tipped the balance toward the prosecution in child sexual abuse cases. It allowed for the presentation of uncorroborated testimony from young children without requiring the jury to be warned of its potential unreliability.

Highly relevant events, developments and considerations were not mentioned during the trial:

- Crown "expert" Zelas had demonstrated her bias and unreliability in a number of prior cases. Zelas had supervised the interview team and "therapy" for the children; yet she was allowed to appear in court as an expert witness for the crown. Zelas is not a psychologist, and had insufficient (I would suggest no) relevant scientific experience to appear in court as an expert witness.

- A Department of Justice official scared off a psychologist who wished to represent Ellis.

- Ellis had been given no prior opportunity to defend himself or explain the allegations prior to the trial, when such a defence had a fair chance of being effective.

- The complainant children were those that resulted from the process of reducing of the pool of at least 127 initially interviewed to a handful of more credible children before the trial commenced. This amounted to a bias mechanism against the accused, as a not-insignificant

proportion of children can be susceptible to producing false reports when subjected to processes such as those that occurring in the Civic investigation.

- Investigating Police officer Eade was propositioning mothers involved in the investigation, this brought his impartiality into question.

During this trial:

- Expert crown witness Zelas presented unproven theory about certain "symptoms" being "consistent with" sexual abuse. Detective Eade presented similar material. The judge should have disallowed such testimony, or at the very least, he should have warned the jury not to give it undue weight. Zelas was also allowed to mislead the jury about the consistency of "central detail" in the children's allegations. For the most part the details were certainly not consistent. Consistency does not indicate greater reliability, but may simply represent a more effective common source of contamination.

- There was an indulgent treatment by the prosecution and the Judge of the parents.

- The jury were never warned about the clear problems regarding the reliability of evidence given by (the) children.

- The prosecution were given free rein to present the videotapes they chose, yet the defence appeared to believe they were constrained in their ability to show and cross examine on some of videotapes they wished the jury to consider. The jury was not given the opportunity to properly judge the children's credibility for themselves. Newbold (2002 p87) succinctly states:

  "Children whose stories of sexual depravity were clearly outrageous were not called by the crown. Thus, much of the obvious fantasy which the children indulged in was not heard by the jury"

  This is iterated by Hood, Sunday Star Times, 10 August 2003;

  "By refusing to allow the jury to see all the interviews with the remaining 13 children, Justice Williamson did not give Ellis a fair trial… Fundamental unfairness created by his refusal to allow the jury to see all the tapes".

- No spontaneous allegations of abuse were shown to have had occurred. This lack is highly significant, and much should have been made of it in the judge's summing up.

- There was no corroborating or hard evidence.

The trial was biased. It is the responsibility of the judge, not the prosecution, to see that the defence has access to the same information as the prosecution. Given the principal of natural justice ,Justice Williamson had a strong moral responsibility to warn the jury of the possible unreliability of the child witnesses in these (or any) circumstances. He must have witnessed this problem many times.

13. The "Experts" were not scientifically thorough in their analysis

Eichelbaum has not had his attention drawn to the relevant research. The fault here partly lies with Sas and Davies, for not informing him.

Although I may have accused Davies of bias and perhaps misrepresenting some of the research findings, he did not say that the allegations of the children were convincing to the point that they proved guilt. He only states (p39) that, "*in my view...such accusations need to be taken seriously*." He goes on to qualify his position by stating that the children's allegations need to be examined in the wider context, a context on which he himself had insufficient information, or "*remit*", upon which to make any judgement.

14. The women were not guilty

It is clear that the investigators, prosecutors and Justice Williamson all believed that there were many other offenders - not only the four women, but also the "great Christchurch paedophile ring" itself. The total lack of any corroboration for this theory, especially the total lack of any pornographic material in any of the many homes searched, suggests that they started off with a wrongly conceived mission.

15. Post trial revelations

There have been some significant post-trial developments. The retraction of the most effective witness is the most spectacular. This girl was the eldest, and hence most reliable witness. Yet, the Court of Appeal judgement in 1994 stated (Hood p553)

> *"we are by no means satisfied that she did lie at the interviews although she may now genuinely think that she did."*

Hill (1998 in the last two paragraphs) discusses Roland Summit's Child Sexual Abuse Accommodation Syndrome. This theory claims that children never lie about abuse - hence "Believe the children" - but may lie when they retract accusations. This "syndrome was described by Summit himself as "impressionistic" and based on no research at all. This is likely to be the source of the Court of Appeal's opinion.

However they did quash those convictions. As Hood implies (p549), the CPM philosophy always said "believe the child" when they talk about sexual abuse. Apparently this only applies if it suits the purpose of gaining convictions.

Another post-trial consideration is the fact that the police have, since his release, twice interviewed Ellis about "historical" allegations. Both occasions coincided with publicity for Hood's book. Yet, if Ellis is really a paedophile, since he has been out of prison for a number of years, it is possible that they might find fresh allegations. The fact that there are no new allegations or even suggestions of them may indicate that he is not. After all, he refused all therapy whilst in prison. If his offending were on the scale alleged, he would surely remain a high risk.

16. Final Verdict

The Ellis trial and subsequent enquiries into it do not appear to have been informed by mainstream scientific evidence on the nature of memory, especially during childhood, and the effect of questioning on the testimony given by children. The experts chosen to provide information on these matters should be researchers in the field who have published in the leading international journals, which are subject to rigorous peer review. If provided, such evidence would constitute new information, as it was not available during the original trial or the subsequent enquiries. [This paragraph contributed by Michael Corballis in December 2003.]

To which it should be added that when such mainstream information was presented, as it was at the second appeal, the courts have chosen not to heed it

The Eichelbaum report is seriously flawed, and even the information contained within the report itself does not warrant his conclusions.

It may be reasonable to describe Eichelbaum's report as a *Crown report*, paid for, advised by, and reporting to the Crown, rather than a balanced, impartial one.

The standard of safety of conviction in New Zealand criminal law remains "*beyond reasonable doubt*". When weighed together, the factors outlined in this report render all remaining convictions against Ellis totally unsafe. Consequently, the Eichelbaum report's conclusion that the convictions should stand must be in error, and to paraphrase Sir Thomas -

"by a distinct margin".

(10) Discussion – consequences

The Judge shall not instruct the jury on the need to scrutinise the evidence of young children generally with special care nor suggest to the jury that young children generally have tendencies to invention or distortion.

Evidence Act, Section 23h (c)

If my conclusions are generally valid then many important issues of public concern are raised. The areas of concern include the granting of qualifications, appointment systems and issues of professional discipline and accountability. When viewed in the light of this investigation Barry Kirkwood's assessment (section 8.1) of a "massive system failure" and of a "cargo cult mentality" does not seem far fetched. Kirkwood has noted that certain individuals in positions of responsibility have also performed very badly, even when poor systems are taken into account. For that reason, as well as identifying the systemic failures involved this report names those culpable. In some cases, the issues are expansive, and all the relevant facts and arguments have not been gathered into this document. In those instances, this section provides suggestions for further consideration, and the questions are left open, perhaps to be better addressed by a Commission of Inquiry. As an independent writer, it would be presumptuous of me to make recommendations, but the following issues might be worthy of consideration by an Inquiry and/or relevant institutions.

(10.1) Treatment of the other accused childcare workers

It is worth bearing in mind that there were very serious consequences to the lives of all the other Civic childcare workers, especially the others who faced very similar charges to those against Ellis, based on exactly the same kind of evidence. They may have only just escaped trial and possible convictions not because the prosecutors, police and judge thought them innocent, but because the jury may have been seen as not likely to be convinced of their guilt, or some other reason. After all, they were well-presented, well-organised, assertive women. If this is so, the manner in which they were formally accused merits examination by a royal commission.

(10.2) Psychological science and forensic interviewing system

It is not at all clear that the interviewing of young children in these cases has sufficiently improved since the Ellis trial.

Mike Corballis (2003) comments

"In our universities, there is …a strong tradition of…research…which [is] directly relevant to the Ellis case. This work seldom features at [NZ Psychological] society meetings, and may not be widely known to the judiciary or to the public"

Frequent attempts by the writer to talk to any psychologist/s who may advise CYPS on interviewing techniques have failed. In effect, apart from some unscientific comment in regard

to current interviewing protocols (which was supplied by a social worker), I have encountered a wall of silence. No explanation for this has been offered by CYPS.

It would seem better in future to ensure that university based scientific researchers such as Maryanne Garry (Victoria), Mel Pipe and Harlene Hayne (Otago), or Barry Parsonson (ex-Waikato) are providing an input. Currently, the Psychological Society is clearly not a reliable resource. The Ministry of Health (which provides reliable medical advice to the public and others on medical matters) could perhaps act in an advisory capacity.

Faust and Ziskin (1988) suggest that

> *"certifying bodies could conduct objective evaluation of the clinician's [presumably also scientist's] performance on a representative sample of cases that can be verified against objective data."*

They conclude with a warning,

> *"The courts, having learned to distrust clinicians' claims, may refuse to admit testimony based on truly useful knowledge and methods despite more than adequate supportive studies."*

It is important to ensure that psychologists, interviewers, police and judges have an openly discussed and publicly acceptable policy that describes their position on the balance between necessary care taken to avoid false conviction, and on allowing too many false acquittals. Whilst the Ellis case represents one extreme, there are examples of the other extreme. Lyon (1999) quotes a psychologist Ralph Underwager claiming that

> *"[i]t i s more desirable that a thousand children in abuse situations are not discovered than it is for one innocent person to be convicted wrongly"* and that *"[p]aedophiles can boldly and courageously affirm what they choose."*

Another example, closer to home, is from the Reekie rape case (in which Dougherty was at first convicted, then had his conviction overturned). Some of the police were reported to have thought at one stage that the victim may have been making most of her story up.

(10.3) Psychological science and forensic interviewing individuals

Karen Zelas (who is a psychiatrist, but has had a major role in the case) appears to have displayed a reckless disregard for poor interviewing techniques. She states (personal correspondence November 2002) that

> *"I happened to provide external clinical supervision for the DSW evidential interviewers. This meant that they attended me on a regular basis to discuss and review their work… Responsibility for their work rested with DSW…not with me."*

The latter part of this statement could be regarded as an attempt to escape personal responsibility for a poor job for which she should be able to accept responsibility, and assumedly, for which she was well paid.

CYPS might like to take a look at Zelas's work on this and other cases including the Wellington Geoff Scott one.

Cathy Crawford seems to have performed particularly badly as an interviewer

Lynda Morgan has changed name to Libeau and apparently still works for CYPS.

(10.4) Other sexual abuse workers

Rosemary Smart wrote a report for the Christchurch City Council that appears to be full of pseudo-science. The report was very damaging to the Civic childcare centre. It has been already discussed (in Sections 1.4 and 1.5), and it played a part in the closure of the centre. Smart's work may need to be further scrutinised.

(10.5) Appointment of expert witnesses

Again, as the forgoing stated, it is important to consult university scientists, as distinct from those who are only clinical practitioners. The ideal premise that all experts ought to be impartial seems to have broken down, with clinicians being pitted against sceptical scientists, and with little consequent room for agreement. An example of this might be the scientifically based Parsonson report being perhaps outweighed by American Psychologist Constance Dahlenberg, who it seems appeared in person at the second appeal. Parsonson has published relevant research in well-recognised scientific journals. The credentials of Dahlenberg need looking at by any future inquiry.

If a higher standard of scientific standing is demanded of expert witnesses, then more convergent and impartial findings may be achieved between expert witnesses. The current level of disagreement is unacceptable, and if it cannot be improved, consideration would have to be given towards not allowing psychologists to appear as expert witnesses.

Corballis (2003) gives some reassurance

> *"The problem is not to eliminate psychological testimony, but rather to separate…good science from bad science. This is something that universities do all the time, in hiring (and firing), in promotion and in awarding research grants. University academics know which journals publish reputable research and which do not…consensus can usually be found."*

(10.6) The 1989 Evidence Act amendments

Clauses in the Evidence Amendment Act 1989 included

Section 23 g:

> [Expert witnesses are allowed to testify on matters that include...] *(c) Whether any evidence given during the proceedings by any person... relating to the complainant's behaviour is, from the expert witness's personal experience or from his or her knowledge of the*

> *professional literature, consistent or inconsistent with the behaviour of sexually abused children of the same age group as the complainant.*

Also Section 23 h (c):

> *(c) the Judge shall not instruct the jury on the need to scrutinise the evidence of young children generally with special care nor suggest to the jury that young children generally have tendencies to invention or distortion.*

Attention needs to be given towards repealing sections 23G and 23H of the Evidence Act. Section 23G allows prosecution expert witnesses to describe certain behaviours, such as bedwetting, as being "consistent with sexual abuse". This analysis has shown that this has the potential to mislead jurors. Section 23H appears to almost recklessly disregard known research data about child suggestibility and memory.

Hood discusses the effect of the 1989 amendment to the Evidence Act. On page 545 Hood writes,

> *"In a 1990 judgement on the admissibility of muddled videotape disclosures elicited by prolonged and probing questioning, the Court of Appeal ruled that the purpose of the new legislation was 'to ensure that the old technicalities of evidence…even the contents of evidence in matters such as hearsay shall not necessarily prevail.'".*

She then continued that the court ruled

> *"...that evidence as to whether a child's behaviour was consistent or inconsistent with that of sexually abused children of the same age 'will usually be especially important in assisting the jury to evaluate the truth of the complainant's evidence.'"*

Sim (2002) has pointed out that this abuse of logic is sanctioned by section 23G added to the Evidence Act in 1989. On page 6 of her report, she states,

> *"the expert witness may express on opinion on whether any evidence relating to the complainant's behaviour is consistent or inconsistent with the behaviour of sexually abused children of the same age group."*

Scientists do use consistency tests to see if a model of behaviour can explain all the available relevant data. These tests seem to be confused in the minds of our law-makers with tests that determine the probability that an event actually occurred, given certain conditions. In addition, the law-makers are incorrect if they have assumed that any particular type or types of behaviour have been proved to be a reliable indicator that abuse has occurred. This viewpoint seems to be commonplace and persists, a recent example being in April 2000 when Judge Doherty stated in a sentencing address that a child showed "classic symptoms of serious sexual abuse" (Christchurch Press, 27 Nov 2003).

It bears restating that serious consideration will need to be given towards amending this Act again. Compulsory warnings about the unreliability of children's testimony should be required from judges addressing juries. Unless suitably qualified psychologists can be found to address

the court about the conditions affecting the reliability of children's testimony, none should be allowed to give evidence. Expert psychologists should have carried out practical research in the area and have published it in reputable scientific journals.

If our courts have abandoned the correct use of evidence and standards of proof in sexual abuse cases, then in my opinion the courts are of little use to our society in determining these cases.

(10.7) The terms of reference – Civic Child Care Centre layout

Gaye Davidson was able to provide a sketch of the layout for this report, and photos of the centre are currently available. Some convictions are based on children alleging that abuse occurred outside the toilets. This is highly unlikely. In the 1999 appeal it was argued by Ellis's counsel that the non-disclosure of the photographs was one factor in an unfair trial. It is inexplicable in the light of Davies' and Parsonson's (1999b) comments, that Eichelbaum and his two experts were not furnished with both the plans and the photographs.

(10.8) The statute of limitations

Prior to the Ellis case, the statute of limitations was lifted allowing historical cases of sexual abuse to come to trial. There have been several where the alleged events were said to have occurred over twenty years prior to litigation. Where the only evidence is one person's verbal memories that were "recovered" during therapy long after the alleged event, it is questionable that their allegations should be considered reliable enough to put to a legal trial. The complainant argument is weakened by not speaking up at the time, whatever reasons provided for not doing so. The Ellis case was one in which a number of children "recovered" their memories of abuse long after the time of the alleged events, and had been subject to therapy, and parental questioning, etc before their allegations were made. Loftus (1993) states:

> *Statutes of limitations, which force plaintiffs to initiate claims promptly, exist for good reason: …They exist in recognition that with the passage of time, memories fade and evidence becomes more difficult to obtain…When much time has passed, defendants find it hard to mount an effective defence.*

In this connection, it appears to me that as Loftus is a recognised world authority on memory, we were precipitate in lifting these limitations without proper scientific evidence to support the change, and in the face of strong scientific evidence to the contrary.

A writer in the Economist, England (reported in the Press, Christchurch 25 Jan 1997) concluded,

> *"The rules of evidence are there for good reasons. They have been established over the centuries to protect innocent people from imprisonment. The same is true of statutes of limitation. Natural though it is for legislators to wish to hunt down sex offenders, there is no justification for doing so in a way such as this, which is liable to result in unsafe and unjust convictions. The recovered-memory bandwagon needs to be trundled sharply out of the courts that have been unwise enough to let it in."*

(10.9) Eichelbaum

There is a clear point that flows from my conclusions that the remaining Ellis convictions are not safe; that there are deficiencies in the Eichelbaum report that led him toward the wrong conclusion.

Corballis (2003) has noted,

> *"It seems extraordinary that no department of psychology in this country was consulted over the provision of expertise in the Eichelbaum [report], or even…in the original trial."*

With hindsight, it would have been better to appoint someone with better knowledge of science than Eichelbaum, and better able to know the difference between the advocacy approach of Louise Sas and a real scientist. In the terms of reference, he could have been compelled to consult two heads of psychology departments.

I would like to see Parliament pass a vote of no confidence in the Eichelbaum report.

(10.10) Other documents for review

In 1999 a petition prepared by Ellis's lawyer, Ablett Kerr, was referred to Sir Thomas Thorp. Later that year the case was referred to the court of Appeal for the second time. Ablett Kerr produced affidavits from psychologists Barry Parsonson, Dr Lamb (from the UK) and Professor Bruck. The complete Parsonson report has been presented to the select committee (2003) for consideration. It includes a literature review and an analysis of many of the key interview videotapes and transcripts from the civic case. Presumably, the Dr Lamb was Michael E. Lamb, author of "investigative Interviews of Children" published in 1998. Both Lamb and Bruck's documents could be sought for examination for this document and by the select committee, and (if it goes ahead) the Inquiry.

(10.11) Overturning the convictions

Law changes may be necessary to avoid a repetition of mistakes made throughout the course of this case.

It is likely to still take some time to clear Ellis's name. Newbold (2000 p243) states,

> *"once a person is convicted of an offence, undoing the conviction is extremely difficult…In the Thomas case, without the dogged determination of the retrial committee, which waged an unremitting and thankless battle for nine years...*[Thomas] *would never have been exonerated."*

He mentions that in spite of the fact that no credible evidence links Thomas to the murders, most police and crown prosecutors who were involved still believe Thomas is guilty.

Unfortunately, in the Ellis case, there was no planted cartridge case, although the evidence against him has already been torn to shreds. The fact that the police have spoken to Ellis recently (2002) suggests that they are fixed and intractable in their belief that Ellis is guilty. It could also, however, have pointed to the fact that some insatiable person/s were pursuing Ellis, and the police had no choice.

Justice minister, Phil Goff has held the line that new evidence is required before a pardon can be considered, and that no new evidence came before the appeal court judges. However, Lyon (1999 page5) reports that in the American Kelly Michael case,

> *"In June of 1998, the court held that the research Bruck described constituted "new evidence" proving that suggestive interviewing practices "forever tainted" the testimony of the child witnesses, necessitating a new trial at which the court would not allow the child witnesses to testify."*

On page 42 (ibid) Lyon describes the same decision being made by the Massachusetts Superior Court judge in the Fells Acres day care case.

It is precisely that kind of new evidence that this document contains in regard to the civic case.

Lynley Hood has asserted that "*The Minister of Justice does not need the judiciary's permission before he can instruct the Governor-General to pardon Peter Ellis and establish a commission of inquiry*." (*Letters to the Editor* Otago Daily Times). Hood is calling for a royal commission of inquiry to be set up. Looking at the history of Arthur Allan Thomas, at the end of the saga, the commission did turn up some sensible conclusions, despite all that had gone before. However by then he had already been pardoned.

Another option could be to overturn the verdict. The Crown could refuse to re-file charges, and could apologise. Perhaps this option would be convincing to the public. A pardon might not be taken to necessarily imply innocence in the public mind. It may not be perceived to amount to an apology either.

A further option is the Privy Council. In the Thomas case, they apparently chose to ignore the new evidence, and returned a (by then) very questionable guilty verdict. It is rare for them to overturn a criminal conviction, although there have been sporadic examples of them doing just that. The Privy Council may fail to be of assistance in overturning the Ellis convictions, just as it failed to overturn the Thomas conviction, because there is no new direct evidence; only a new interpretation of the evidence based on science, not all of that is new either.

If the Ellis convictions are overturned, then we can move on and learn the lessons made manifest.

(10.12) Ministry of Justice failures

Val Sim produced a small paper for Justice Minister Phil Goff on Hood's book. This is discussed previously here. Her advice can be considered faulty and superficial in the light of the conclusions of this document.

At the time of writing (Sept 2003) justice minister Phil Goff has just been awarded a "bent can opener" award from the NZ Skeptics. The government needs to take note of this considering that the membership of Skeptics appears to consist of a high proportion of university academics. He has always had the option of ordering a full commission of inquiry or a pardon. His choice of advisors, and refusal to read Hood's book can be seen as inadequate for a justice minister.

(10.13) Why did the legal appeals fail?

Lynley Hood (2001) discusses both appeals at length. Hood states that during the first appeal, Panckhurst (QC for Ellis) "showed that the allegations on which Ellis was convicted contained no reliable central detail whatsoever, yet the Court failed to acknowledge this attack, or to examine the interviews to determine this. At the second appeal, she states that this failure continued.

Perhaps it is pertinent that even Arthur Allan Thomas could not get the Appeal Court to act in his favour. In the end, Prime Minister Muldoon had to issue a pardon.

The problem appears to be that our appeal system is too narrow in its scope. In order to settle matters properly, anything at all which could have a bearing on the verdict(s) needs to be mandated by law as being part of an appeal process.

(10.14) History of Injustices

Newbold (2000 p244) states that

> "*there have been numerous examples of police evidence tampering and corrupt investigative practices, spanning at least three decades."*

The best known is the case of Arthur Allan Thomas, who was convicted of a double murder in 1971. A later commission of Inquiry found that police deliberately planted a cartridge case because, for whatever actual reason, they wished to secure a conviction against Thomas.

The saga ran thus:

1971 The Thomas Retrial Committee brought many anomalies in the evidence to light, and after a petition, there was an appeal that failed.

1972 A "*factually flawed report*" (Newbold 2000, p241), from retired judge McGregor, concluded that no injustice had occurred. It went back to the Court of Appeal, and a new trial was ordered.

1973 Thomas was convicted again.

1974 A petition to the Governor General was referred to the Court of Appeal, which recommended no further action.

1978 It went to the Privy Council. That failed. British author David Yallop's book was published.

1979 Prime Minister Muldoon ordered a report from QC Adams-Smith. Finally, this report recommended a pardon, and the Governor General offered a pardon that year.

1980 Royal Commission of Inquiry found that Thomas was innocent, and the evidence against him had been fabricated (Newbold 2000).

According to Newbold (quoting from books written by the lawyers involved), the reasons it took nine years and four appeals include:

- Perjury from crown expert witnesses who "used a variety of desperate tactics, some of them illegal."
- The creation of false rumours.
- Police perjury and planting of evidence.

In the Ellis case, safeguards against this problem should have been in place, and seen to be in place. A warning to the jury by the judge, in regard to the reliability of uncorroborated evidence, especially that of children, is clearly essential for safe justice.

Over-zealousness and/or bias by police and initial intractability of the judicial systems, as illustrated in these cases, is also clearly evident in the Ellis case.

Given such precedent, the problem may be that our Courts of Appeal are set up in such a manner that they are *unable* to correct certain types of mistakes.

(10.15) The Unfair Dismissal claim

The women Civic childcare centre workers are still out of pocket for their legal expenses. I understand that this is also in relation to their Employment Court action (and the subsequent appeal by the Christchurch City Council) for unfair dismissal. These women also deserve full compensation and apology.

(10.16) Improving the Safety Net

When all else fails, a pardon (mercy plea) can be sought by petition to the Governor General. However, it turns out that bureaucrats within the Ministry Justice again make the real decisions.

Warren Young, deputy secretary of Crime Prevention and Criminal Justice, confirmed (Christchurch's The Press 28 May 2003) the ministry uses a "weeding out process" to determine whether any outside expertise will be sought. Controversial or complex petitions are often handled in-house by ministry lawyers, then referred to a QC or retired judge for peer review. Alternatively, officials might encourage the Minister to appoint a QC or retired judge to do the whole assessment and provide direct advice.

This process failed Arthur Allan Thomas, and the strong case made by Rex Haig in December 2001 was also unsuccessful. The Haig petition included statements from twelve people implicating star prosecution witness David Hogan as the real murderer of Southland fisherman Mark Roderique. Hogan had been given a $13,000 police reward and immunity from prosecution by the police.

Minister of Justice Phil Goff says that a justice ministry review is currently (2003) considering reforming the legislation, along the lines of the British 1997 Criminal Cases Review Commission that followed the “Birmingham Six” miscarriage of justice.

(10.17) Final note

Ellis himself should have the last word

“I’m angry that I could be prosecuted for abusing unknown children at unknown places at unknown times. Where are all the children L said we abused with her? Where is Andrew’s body? Why hasn’t he been reported missing? The interviewers assumed if a Peter was mentioned, it was Peter Ellis. N [both L and N are McLoughlin’s psuedonyms] had bruises on his knee at one interview and told Sue Sidey ‘Peter did it.’ But it couldn’t have been me. I’d been arrested long before. She didn’t ask him the obvious – ‘Peter who?’ They never did.” (McLoughlin 1996).

References

Ansley, B. (1993). Judgement in Christchurch. *New Zealand Listener* 10 July 1993, pages 18 – 25.

Bander, Joy (Pseudonym).(1997) A Mother's Story, The Civic Crèche Sex Trial. Howling at the Moon Productions, 1997.

Brett, C. (1993) Beyond the civic crèche case *North and South,* September 1993 pages 54 – 70.

Bruck, M., Ceci, S. J., & Francouer, E. (1999). The Accuracy of Mothers' Memories of Conversations with their Preschool Children. *Journal of Experimental Psychology: Applied,* Vol. 5:1-18.

Bruck, M. & Ceci, S. J. (1999). The Suggestibility of Children's Memory. *Annual Review of Psychology* 1999 50:419-439.

Bruck, M. & Ceci, S. J. (1999). Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony Published by the *American Psychological Association* (Item No. 4318350, ISBN: 1-55798-282-1.

Bruck, M., Ceci, S. J., Francouer, E., & Renick, A. (1995) Anatomically Detailed Dolls Do Not Facilitate Preschoolers' Reports of a Paediatric Examination Involving Genital Touching. *Journal of Experimental Psychology: Applied* 1, 95-109.

Ceci, S. and Bruck, M. (1993) Suggestibility of the child witness: A historical review and synthesis. *Psychological Bulletin* 113 403 - 439

Ceci, S. J. & Huffman, Mary Lyn Crotteau (1997). How Suggestible Are Preschoolers?: Cognitive and Social Factors. *Journal of the American Academy of Child & Adolescent Psychiatry*, 36:7, July 1997.

Colman, B.N. (2003) advertisement in *Sunday Star Times* August 3 pages C10 and C11.

Conway, Matt The Quality of Mercy Feature article, *Christchurch Press* 28 May 2003

Corballis, M.C. (1995) Editorial *New Zealand Journal of Psychology* 24 (1) 3 – 4.

Corballis, M.C. (2003) Memory and the law *NZ Listener* 13 Sept 2003 32 – 35.

Dawes, Robyn Experience and validity of clinical judgement: the illusory correlation *Behavioural Sciences and the Law* 794) 000-000

Earl, J. (1995)'The Dark Truth About the "Dark Tunnels of McMartin" *Issues in Child Abuse Accusations,* 7(2)

Eichelbaum, T. (1997) VII. The Late Justice Neil William Williamson *Canterbury Law Review Vol 6, 1997,* 421-436

Eichelbaum, T., Davies, G., Sas, L. The Peter Ellis Case. Report of the Ministerial Inquiry (2001). Available through the Office of the Minister of Justice NZ, Hon Phil Goff, Parliament Buildings, Wellington, New Zealand. Also available on Ministry of Justice's internet site http://www.justice.org.nz/pubs/reports/2001/ellis-report/index.html

Endres, Johann (1997) The Suggestibility of the Child Witness: The Role of Individual Differences and Their Assessment *The Journal of Credibility Assessment and Witness Psychology* 1997, Vol. 1, No. 2, 44-67 Published by the Department of Psychology of Boise State University. Published on the web http//truth.boisestate.edu/jcaawp/default.html

Faust, David and Ziskin, Jay (1988) The expert witness in psychology and psychiatry *Science* 241 31 –35.

Finkelhor et al (1988) Nursery crimes: sexual abuse in day care Sage Publications.

Foley & Johnson (1985) Confusion between memories for performed and imagined actions *Child Development* 56 1145 – 1155.

Francis, Ross (2003). Letter to the Editor The New Zealand Law Journal November NZLJ (395)

French , C. and Richards (1993) Clock this! an everyday example of a schema-driven error in memory *British Journal of Psychology* 84 249 - 253

Garry M., Manning C. G., Loftus E. (1996) Imagination Inflation: Imagining a Childhood Event Inflates Confidence that it Occurred *Psychonomic Bulletin & Review* 3 (2), 208-214

Goodman (1990) Psychology and the media in D.Singer Symposium conducted at the 98th annual convention of the American psychological association, Boston.

Goodman (1987) paper for the society for research in child development convention, Baltimore.

Goodyear-Smith, F. (1993a) First do no Harm- The Sexual abuse Industry. Benton-Guy.

Goodyear-Smith, F. (1993b) Crèche case, Christchurch *Journal of the Institute for Psychological Therapies* 5(4)

Goodyear-Smith, F. (1999) The Danger of Absolute Safety *New Zealand Skeptic* 1999 54 1 - 7

Haden, Frank (1997) How on earth can this abuse case have happened? *Sunday Star Times* 22 June 1997, pages C1,2.

Harper, J.A. (1983) The Church that's taking over Auckland *Metro magazine* November pp 122 –135.

Harper, J.A. (1994) Children and the truth: The psychology of determining the truth or falsity in children's allegations of sexual abuse. *Parent and School* February/March issue.

Haugaard, J. et al (1991) Children's definitions of the truth and their competency as witnesses in legal proceedings. *Law and Human Behaviour* 1991 15 253 – 272

Herr P (1986) Consequences of priming: judgement and behaviour, *Journal of Personality and Social Psychology* 51 1106 - 15

Hill, M. (1998) Satan's excellent adventures in the Antipodes presentation to NZSCICOP(Skeptics) conference1998 published in *Issues in Child Abuse Accusations* 1998 10. on the net at http://users.cybercity.dk/~ccc44406/smwane/Antipodes.html abridged version in *New Zealand Skeptic* 50 1- 7

Hood, Lynley (2001). A City Possessed, The Christchurch Civic Crèche Case Longacre Press

Huffman, M.L., Crossman, A.M. & Ceci, S.J. (1997) Are false memories permanent? An investigation of the long-term effects of source misattributions. *Consciousness and Cognition* 6, 482-490.

Kendall-Tackett K, Williams L and Finkelhor D. (1993) Impact of sexual abuse on children: a review and synthesis of recent empirical studies *Psychological Bulletin* 113 164 - 180

Klein (1996) *Journal of Consulting and Clinical Psychology* 64 81 – 87

Koehler (2001) Teaching bayesian reasoning in under two hours *Journal of Experimental Psychology* 130 380

Lindsay, Johnson & Kwon (1991) *Journal of Experimental Child Psychology* 52 297 – 318

Loftus, Elizabeth (1979) Eye witness testimony Harvard University Press 1979 Revised 1996

Loftus, Elizabeth (1993) The reality of repressed memories *American Psychologist* 48 518 - 536

Loftus Elizabeth F. & Calvin, William H. (2001) "Memory's Future," *Psychology Today* 34(2):55ff (March-April, 2001).

Loftus ,Elizabeth F, Hunter G. Hoffman,(1989)"Misinformation and Memory, The Creation of New Memories ," *Journal of Experimental Psychology: General* 118(1):100-104 (March 1989).

Lyon, Thomas D. (1999) The new wave in children's suggestibility research: a critique *Cornell Law Review* May, 1999 article 1004

Marks, D.M. (2000) The Psychology of the Psychic (2nd edition) Prometheus books.

McLoughlin, David (1996) Second Thoughts On The Christchurch Civic Crèche DID JUSTICE FAIL PETER ELLIS? *North and South* August 1996, pages 54 – 59

McNally, Richard J. 2003 "Remembering Trauma" (2003) Belknap Press.

Neath (1998) Human Memory Brooks/Cole

Newbold, G. (2000) Crime in New Zealand Dunmore Press

Nurcombe, B. (1986) The child as witness: competency and credibility *Journal of the American Academy of Child Psychiatry* 25 473 - 480

Oshima-Takane Y (1988) Children learn from speech not addressed to them: The case of personal pronouns *Journal of Child Language* 15 95 - 108

Parsonson, Barry S. (1999) Reviews of the research literature relevant to child sexual abuse: Investigation, memory and recantation. (Report for Ellis's counsel for second appeal) Only released to the courts and the Parliamentary select committee.

Parsonson, Barry S. (1999b) Analysis of Christchurch Crèche Evidential Videotapes (Report for Ellis's counsel for second appeal) Only released to the courts and the Parliamentary select committee.

Poole, D. A. and Lindsay, D. Stephen. Children's eye-witness reports after exposure to misinformation from parents. *Journal of Experimental Psychology* 7 27 – 50

Poole, D. A. and Lindsay, D.S. (1995) Interviewing preschoolers : effects of nonsuggestive techniques, parental coaching, and leading questions on reports of nonexperienced events. *Journal of Experimental Child Psychology 60 129 - 154*

Poole, D. A., & White, L. T. (1991). Effects of question repetition on the eyewitness testimony of children and adults. *Developmental Psychology, 27,* 975-986.

Pynoos, R.S. and Nader, K. (1989) Children's memory and proximity to violence *Journal of the American Academy of Child and Adolescent Psychiatry* 28 236 - 241

Rawls, Jane (1996) *Law Talk* April 1996

Rawls J. 1996a. How question form and body-parts diagrams can affect the content of young children's disclosures. Presented at NATO Adv. Study Inst. Recollect. Trauma: Sci. Res. Clin. Practice. Port de Bourgenay, France

Ricks, Jo (2000) Quoted in *N.Z, Skeptic* 2001 55 9

Rind, Tromovitch and Bauserman 1998 A meta-analytical examination of assumed properties of child sexual abuse using college samples. *Psychological Bulletin* 124 22 -53

Robbins, Susan P. (1998) The Social and Cultural Context of Satanic Ritual Abuse Allegations

Issues in Child Abuse Accusations 1998 10

Robertson, Bernard. Editorial *New Zealand Law Journal*, February 2002.

Ruffman, Rustin, Garnham & Parkin Source monitoring and false memories in Children. *Journal of Experimental Child Psychology* 80 (2)

Scullin, Matthew H. Kanaya, Tomoe and Ceci, **Stephen J.** (2002) Measurement of Individual Differences in Children's Suggestibility Across Situations *Journal of Experimental Psychology: Applied* Vol. 8, No. 4, 233–246

Sim, Val (2002) 'A city possessed" – Lynley Hood's book on the Christchurch Civic Childcare Centre Case. (Report by Chief Legal Counsel, Ministry of Justice for the Hon Mr Goff, 21 May 2002)

Simcock, Gabrielle and Hayne, Harlene (2002) Breaking the barrier? Children fail to translate their preverbal memories into language. *Psychological Science* 2002 13 225 – 231

Van Beynen, Martin (1995) Ellis case: the continuing doubts *Christchurch Press 9 January 1995 page 11*

Wampold, Mondin, Moody, Stich, Benson and Ahn A meta-analysis of outcome studies comparing bona fide psychotherapies empirically, ALL MUST HAVE PRIZES. *Psychological Bulletin* 1997 122 203 – 215.

Wente, **Margaret.** (Title unknown), Feature article *The Globe and Mail* [Toronto], 20 January, 2001.

Wessely, S and Wardle, C. (1990) Mass sociogenic illness by proxy. *British Journal of Psychiatry* 157

Ziskin, J and Faust, D. 1997 Coping with Psychiatric and Psychological Testimony 5th edition. (three volumes)

Appendix 1

The genesis of this report.

I have no personal stake in, nor connection with, the Christchurch Civic Child Care Centre case. I began to seriously examine the scientific issues surrounding the case shortly after the trial. Primarily it interests me due to its similarity to other recorded cases involving public delusion and hysteria, some of which I had previously studied whilst at university. I also have an interest in the science concerning the reliability of human memory. I suspected at the time that the case resembled an historical witch-hunt such as the one in Salem, USA. However, I maintained an open mind during my investigation. Since I am qualified in psychology I initially surveyed recent copies of respected international psychological journals. I looked at all articles that may have been relevant to the case. I then applied the mainstream findings of this literature to the case. Quite early on in this research I consulted with Ken Strongman (Head of psychology at Canterbury University) to ensure I was indeed reading sound research. He was prepared to confirm this.

I interviewed expert witness Karen Zelas three times, in depth and at length, about her interpretation and application of research in general. After the second interview, I came away with a strong feeling that I was possibly wrong and was being unfair. I also met and talked with one of the interviewers Crawford, in order to see how she might have been applying this knowledge. She was not as convincing. About this stage, I published an article in *Parent and School* (the PTA magazine) for whom I had been writing a series of articles. I recall that the new editor was not pleased with my article, but published it. In it, I was mildly critical of the work of Karen Zelas. I contacted an old colleague (from the period that I worked as a DSW social worker), Sue Caton (now at CYPS), with my concerns. In addition, I expressed concerns in writing to the Christchurch CYPS office.

When the Eichelbaum report was released I was surprised at the conclusion, when viewed in regard to the research I had carried out. I decided to spend many hours examining it in detail over a long period. As I was preparing this report, Lynley Hood's book, *A City Possessed,* was published. I e-mailed an early draft of this document to Lynley Hood, and a few other academics. As a result of my discussions with them, further insights were gained and some factual errors on my part corrected. Substantial changes were made to my draft. I undertook further study of the scientific literature in order to re-examine my findings. I then almost shelved this analysis but was fortunate that Richard Christie took an interest in editing it, this resulted in further substantial changes being made to the draft.

Appendix 2

Aliases, ages, verdict and interview data

Age is at the first formal interview. Time lapse is the time since last attending the Christchurch Civic Child Care Centre until the first formal interview. Span is the period between first and final interviews.

Sue Sidey conducted all interviews of the children that resulted in the standing convictions except the single interview of O and the first interview of X, which were conducted by Lynda Morgan

Colman aliases are the initial of the first name of Hood pseudonyms, [e.g. Bart Dogwood = B]. Ms X/Dogwood (who wrote *A Mother's Story)* used the nom-de-plume Joy Bander.

[N.B. Eichelbaum's report includes interview data only in those cases where the interview(s) of complainant children resulted in conviction].

In order of the verdicts:

Eichelbaum code	Hood alias	Guilty	Not Guilty	Age	Time Lapse (months)	Span of interviews (weeks)	No of Interviews	Notes
N	Zelda Cypress	3	0	9	50+		3	Retracted her accusations, all convictions overturned on appeal.
O	Molly Sumach	1	0	7y8m	30	n/a	1	
V	Abigal Fir	0	1		18+		2	
R	Eli Laurel	1	1	5y6m	6	24 (approx)	3	
Y	Julian Yew	0	1	6y7m		19	5	
S	Tess Hickory	2	2	6y6m	18	14	3	+3 counts discharged.
X	Bart Dogwood	3	1	6y2m	15	24	5	Not guilty on the circle incident
Z	Kari Lacebark	4	0	5y6m	7	35	6	The most effective witness
T	Yelenda Holly	0	2				3	
P	Derek Ngaio	0	1				2	
Q	Lara Palm	2	0	6		39	3	

Appendix 3

Other possible NZ cases

It seems to me that many commentators appear unaware that there may be more cases over the past fifteen years that are possibly every bit as bad as the Ellis one, but have simply failed to generate the same attention.

I recall that after the Ellis case, at the time I was interviewing Zelas, I spoke on the phone to a young male part-time crèche worker in Wellington, who had been accused of sexually abusing the children in his care. I recall telling him that after speaking to Ken Strongman, and a number of other academics, that if he had done nothing wrong, he could probably rely on a fair trial. I heard later that he had been imprisoned. I may well have grossly misadvised him. I also wonder if Prue Vincent (see section(4)) had something to do with this trial. It was probably the May 1994 conviction of Geoff Scott, found guilty on 8 out of 17 charges of sexually abusing pre-school children in his care. This case followed the familiar pattern of a child's behaviour problems raising suspicions of abuse in an adult, and children subsequently undergoing repeated discussion and interrogation by parents and the authorities until they started to disclose stories of Geoff’s "yucky touching" them. Contributing to this was the fact that the children had previously had considerable exposure to sexual abuse "prevention" programmes and books, which emphasis that no one is allowed to touch their "private parts". As a crèche worker, Geoff had in fact frequently touched them in the process of toileting and cleaning them.

Appendix 4

Draft table of currently supported good interview practices for pre-school children.

Practices supported by research	Agreed to by Sas	Agreed to by Davies	Adhered to in the Ellis case	
A limit of two evidential interviews	no		no	
No leading questions	no		no	
Less than a six month? delay after the alleged events. (otherwise the reliability is not assured due to childhood amnesia)	no	no	no	
Do not use anatomically correct dolls			no	
Interviews should be conducted in situ	Not discussed	Not discussed	no	
Interviews should never exceed 45? minutes	partly	yes	no	
Only open-ended, and not forced choice questions should be used in eliciting autobiographical memories.	no	partly	no	
No verbal or non-verbal reinforcements (rewards) for making allegations as opposed to statements that are not allegations	Not discussed in detail		Not fully assessed	
Source monitoring. Eg “did that really happen, or did anyone tell you that?”	yes	yes	Sometimes, but not enough, especially when the more credible allegations were made	
There should be no therapy before the evidential interviews	?	?	no	
The interviewer should accept denials that something happened. (Further probing could ensure the child believes that the “nothing happened” answer is not what was wanted.)	yes	yes	no	
Interviewers must not ask children to “imagine” details.	no?	yes?	no	
Interviewer must never suggest to a child that others have made allegations.	yes	yes	no	

Appendix 5

The Terms of Reference

10 March 2000

MINISTERIAL INQUIRY INTO THE PETER ELLIS CASE

The Minister of Justice appoints you [Sir Thomas Eichelbaum] to inquire in the manner set out below into matters which may be relevant to the assessment of the reliability of evidence given by the children who attended the Christchurch civic crèche against Peter Hugh McGregor Ellis and to report on whether there are any such matters which give rise to doubts about the assessment of the children's evidence to an extent which would render the convictions of Peter Hugh McGregor Ellis unsafe and warrant the grant of pardon.
You are to:

(1) (a) Review the reports and memoranda listed in the schedule and

(i) identify the processes, practices and procedures currently accepted internationally as best practice for investigating mass allegation child abuses and interviewing children in these cases: and
(ii) identify any risks associated with a failure to adhere to best practice.

(b) On the basis of the evidence given at both the depositions and the trial, assess whether the investigation into the events at the Christchurch civic crèche case and the interviews of children were conducted in accordance with best practice as now understood.

(c) If you conclude that the interviews were not conducted in accordance with best practice, identify the nature and extent of any risks which arise, which might affect the assessment of the reliability of the children's evidence. In conducting this task you are not required to attribute or apportion blame to particular individuals who undertook the interviews. The focus of the task is on the evaluation of systems and techniques and their impact on the children.

In undertaking the tasks referred in (1) above, you are to invite, and consider, written submissions from the Crown Law Office (on behalf of the Police, Department of Social Welfare and Specialist Interviewers), Peter Ellis, the families of the children who gave evidence at the Ellis trial, and the Commissioner for Children.

(2) For the purpose of the assessment and the conclusions under (1) above, you are to:

(a) Seek and evaluate opinions from at least two internationally recognised experts (if possible with experience in mass allegation child sexual abuse) on whether there are features of the investigation and/or interviews of the children (on the basis of the evidence at depositions and trial) which may have affected the reliability of the children's evidence, and if so, their likely impact.

(b) In selecting the experts from whom opinions are to be sought you are to:

(i) invite and consider submissions from the Crown Law Office, Mr Peter Ellis, the families of the children who gave evidence at Mr Ellis's trial and the Commissioner for Children; and
(ii) make such further inquiries as you consider necessary to ensure that the experts from whom opinions are sought reasonably reflect the range of professional views.

(3) In light of your assessment and conclusion in (1) and (2) above, you are to report by 31 August 2000 on whether there are any matters which give rise to doubts about the assessment of the children's evidence to an extent which would render the convictions of Peter Hugh McGregor Ellis unsafe and warrant the grant of pardon.

SCHEDULE

Report of the Inquiry into Child Abuse in Cleveland 1987;

Report of the Inquiry into the Removal of Children from Orkney Isles in February 1991;

The 1992 Memorandum of Good Practice (England);

The Joint New Zealand Children and Young Persons Service and Police Operating Guidelines of March 1997;

The Final Report of the Royal Commission into the New South Wales Police Service of May 1997;

Law Commission. Total Recall? The Reliability of Witness Testimony. A Consultation Paper (July 1999); and

Analysis of Child Molestation Issues Report No 7, a report by the 1993/4 San Diego County Grand Jury, June 1, 1994.