

July 24, 1995

David McLoughlin
TVNZ News & Current Affairs
100 Victoria Street West
P.O. Box 3819
Auckland, New Zealand
Fax: 64-9-375 0778

Dear David (May 17):

In response to your request for a brief report of my findings, I offer the following.

I read the materials I was sent (depositions/transcripts, newspapers, judicial decisions) and emerged with the strange feeling "it's like deja vu all over again". This case contains many of the same ingredients that characterize cases on this side of the world. Specifically, there is a single "trigger" (i.e., a single, somewhat ambiguous, complaint starts the ball rolling), once the ball gets rolling, there is a tendency on the part of interviewers to try to confirm their suspicions that abuse occurred rather than to disconfirm that it occurred (both must be done in a good forensic interview). An atmosphere of innuendo, fear, and accusation imbue the case, which can be seen in numerous negative statements that were transmitted to the children via parents and interviewers. As I said, these ingredients are often present in mass-allegation creche cases, as I have had the opportunity to analyze many such cases and as a rule they contain a similar constellation of ingredients.

One question that I am frequently asked by judges and attorneys is: Does the presence of these poor interviewing methods mean that the children's memories have been irreparably tainted? The answer is a resounding NO. Some young children are actually more resistant to the kinds of interviewing biases that characterized this case than are older children and adults. Some children will never get it wrong, no matter how many times they are poorly interviewed. The problem is that we have no scientifically adequate means of knowing who these children are. We cannot a priori identify them and place trust in their statements alone. Children whose memories have been usurped by the existence of poor interviewing practices appear no different from their peers who were resistant to such practices. In short, there is no known scientific "Pinocchio Test" that will indicate when a child's statement is incorrect. Yet, we know from controlled scientific studies (see my recent book with Maggie Buck, entitled, "JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY") that a non-trivial proportion of creche-aged children will succumb to poor interviewing practices of the sort employed by the interviewing in the Peter Ellis case.

The bottom line is that neither I nor any scientist can tell whether the children's accounts are accurate. I fear that the exposure to those interviews may have tainted some of the children's reports, though I have no proof for this fear other than relying on the known scientific literature for extrapolation. I did find it of interest that Justice Case, in rendering his Court of Appeals decision, remarked:

David McLoughlin
July 24, 1995
Page 2

The child gave a deal of circumstantial detail and on the face of the material in the transcript we do not think there was any call for the interviewer to divert the discussion into a cross-examination... (p. 15)

It is precisely this type of reasoning that one observes in similar cases over here. Most adults fail to appreciate that testing a plausible alternative to the crown prosecutor's thesis is not tantamount to conveying skepticism to the child. This can be done without undermining the child's confidence. And it must be done lest the child be allowed to parrot suggestions that were seeded in prior interviews with social workers and parents.

In short, this case entailed an array of factors that give me pause for concern. Children frequently reported highly implausible events that were never checked (e.g., about the presence of the defendant's mother during baths, reported sodomy occurring only minutes apart with other children who were said to be present), and they were never reigned 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.

Sincerely,

Stephen J. Ceci

Stephen J. Ceci (7^m)
Helen L. Carr Professor of Developmental Psychology
& SUNY Distinguished Professor

RELEASED UNDER THE ACT
OFFICIAL INFORMATION ACT