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The Rt Hon Sir Thomas Eichelbaum

Dear Sir

### RE : MINISTERIAL INQUIRY INTO THE PETER ELLIS CASE

I have received your advice of the 29th of June 2000 and respond as follows:

Your indication, that you feel unable to appoint any of the three international experts nominated by Mr Ellis, causes considerable concern.

I doubt that it could be seriously challenged that Professors Ceci and Bruck are the two leading experts in the field of child interviewing and testimony and their contribution to the pool of knowledge from which you will make your assessment must be potentially enormous.

The prospect of an Inquiry into the risks that arise in relation to children's evidence in mass-allegation cases, that is conducted without the contribution of Professor Ceci and/or Professor Bruck is, in my respectful submission, most disturbing and must raise questions as to whether this case can ever be satisfactorily laid to rest.

I fully appreciate that the Inquiry itself be independent. However, the fact that an expert, whose opinion is sought, has previously expressed a view relative to the case, should not necessarily exclude them from contributing to the task in hand (for to do so would, in colloquial terms, be akin to throwing the baby out with the bath water).

I suggest that in the context of this referral, Independent Inquiry must mean that the assessor be independent - that he will bring to that task a fresh and independent mind, free from prejudice or pre-determination.

The terms of reference charge the assessor with seeking and evaluating the opinions of 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, which may have affected the reliability of the children's evidence and, if so, the likely impact.

There is, in my submission, a deliberate absence of reference to a requirement that these experts have no prior knowledge of the case and it is clear that the Ministry of Justice could have been under no illusion as to the value placed on the potential contribution of Professor Ceci by Mr Ellis' advisers. I suggest that the Ministry itself must have seen Professor Ceci as an inevitable contributor to this Inquiry.

Given the above and the direction that the various groups associated with the Ellis case (being the opposite camp to Ellis) also be invited to submit names of experts for consideration, there could be no reason to exclude the opinion of the leading expert in the field, namely Professor Ceci.

A true expert witness is in any event to be considered *prima facie* as one who has a recognised knowledge and skill in the area involved. An expert should retain their objectivity and be willing to make concessions where it is appropriate. In short, an expert who is truly such will provide an opinion that is outside the realm of promoting the cause of one party. Whether they achieve that objective would be a matter for you to assess.

In my submission, all three of the experts nominated by Mr Ellis would fit into that category and in particular Professor Ceci who has been clear in his wish (as expressed to us through Dr Lamb) to be involved only in an *amicus* role. Professor Ceci has not been professionally associated with the Ellis Second Appeal and his comments upon the case were not made to myself, but rather, were sought by a third party, namely Mr David McLoughlin, as part of a documentary on the case. In a way, it could be suggested that Professor Ceci was merely being asked to provide the type of information that this Inquiry would now be asking him to do on a more formal basis.

You will note that I raised with you the issue of the television documentary in paragraph 10 of my submissions. I do not know whether you have been provided with the exhibits attached to Mr Ellis' first Petition that relate to Professor Ceci's contribution, but I forward them to you now so that you can assess his involvement. I suggest that the contents only serve to demonstrate how vital Professor Ceci is to this Inquiry and the way in which he is prepared to approach the matter, namely in a thoroughly objective manner.

I would also refer you to the Report of Sir Thomas Thorp who had access to this material and who viewed Professor Ceci as being an essential contributor to the Ellis Case:

*"Professor Ceci's involvement to date appears to have been as a consultant to TV3. His studies of the American "mass allegation*

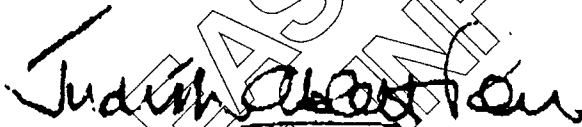
creche cases" suggest that his opinion could be of particular value. There seems no reason why the Ministry, or Crown Law if it preferred, could not seek his opinion. When obtained the appropriate course must be for the experts' opinions to be exchanged, to find out whether a common position can be reached, and if not the extent of the differences of opinion. There must also be sufficient time for the Crown to obtain further opinions if it so wishes.....

The material emanating from Professor Ceci advises that in one of the US creche cases he and other joined in an amicus brief for the Court. If he, or any other expert prefers to give evidence in that fashion rather than as "a witness for a party", consideration should be given to requesting the Court to assist with that process.

In the end the critical issue of the credibility of the children was, of course, one for the jury, not the psychologists. But if the opinions of Dr Parsonson as to interviewing techniques, or the views of Professor Ceci and Justice Wood as to the special hazards arising from the kindergarten or creche environment, prove to have substantial support, it would in my view be difficult to argue against the existence of a serious doubt about the safety of the Petitioner's convictions." (Page 17 of the Report of Sir Thomas Thorp dated March 1999).

In light of the differing roles of yourself and the experts, and in light of the outstanding and undisputed excellence (or creditworthiness) of Professor Ceci, I strongly urge you to reconsider your decision not to involve him.

Yours faithfully



JUDITH ABLETT KERR QC

Encl.