

MINISTERIAL INQUIRY INTO THE PETER ELLIS CASE

Rt Hon Sir Thomas Eichelbaum

SUBMISSIONS ON BEHALF OF

MR PETER HUGH MCGREGOR ELLIS

**IN RELATION TO PARAGRAPH (1) OF THE TERMS OF
REFERENCE**

24 July 2000

SUBMISSIONS IN RELATION TO TASK ONE

Mrs Judith Ablett Kerr, Queen's Counsel

Dunbar House Chambers

21 Dunbar Street

P.O. Box 46

Dunedin

Phone: (03) 477 3390

Facsimile: (03) 477 3391

Task One: The Review of the Reports and Memoranda to Identify a Best Practice Protocol for the Investigation of Mass Allegation Child Sexual Abuse claims and the Interviewing of Children in These Cases.

I. INTRODUCTION

1. In a recent article by Professor Maggie Bruck, Professor Stephen Ceci and Dr Helene Hembrooke, the impetus for the growth in understanding of the factors that influence the reliability of a child's account is explained:

"Concerns about under reporting and over reporting of child sexual abuse have been the impetus for a wave of research on children's autobiographical memory, children's suggestibility, and adults' judgments regarding the credibility of child witnesses. Some have argued that the surge of interest in the suggestibility and reliability of children's reports represents a step backwards to the views of the earlier part of this century, when the prevailing wisdom was that children were dangerously vulnerable to coaching and suggestions and thus should not be admitted as courtroom witnesses (see Ceci & Bruck, 1993). However, the intent or impact of the new wave of research described below was not to discredit sexual abuse allegations made by children, but merely to set up a context in which the allegations could be realistically evaluated. From a scientific point of view, this recent research has led to a greater understanding of the strengths and weaknesses of children's cognitive and social development. It has led us away from the strong positions that (a) children are hyper suggestible sponges, incapable of accurately remembering and reporting events, or (b) children have the same cognitive structures and mechanisms as adults and are as resistant to suggestions and as able to remember and report events as adults. On the applied side, this newer research is beginning to have some impact on the legal system in terms of the decisions that are made by trial and appellate courts (e.g. State v Michaels, 1994; United States v Rouse, 1996).

...

Although children testify in a range of criminal and civil cases, the research on children's suggestibility has had its largest impact in cases involving allegations of sexual abuse. This is primarily because of the lack of scientifically validated criteria for the diagnosis of sexual abuse. Specifically, in most cases there are no medical findings considered to be

sufficiently diagnostic to substantiate abuse (see Bays & Chadwick, 1993). Usually there is no medical evidence, either because of lengthy delays in reporting, or, as is often the case, because there is no penetration (e.g. fondling, exhibitionism, or oral copulation are the most common crimes). In the statistically rare case where genital or anal abnormalities are found similar abnormalities can sometimes be found among non abused children (Berenson, Heger & Andrews, 1991). And if the problems associated with lack of hard medical evidence were not bad enough, there does not seem to be a single psychological profile that is diagnostic of child sexual abuse (Kendall-Tackett, Williams & Finkelhorn, 1993). Although there are a number of symptoms associated with validated cases of abuse, it turns out that either these symptoms are common childhood problems (e.g. regressive toileting, acting out, night tremors) or these symptoms are behavioural problems that are commonly found in other childhood psycho pathologies. **Consequently, to diagnose child sexual abuse, one must rely on the verbal report of the child witness**"¹ (emphasis added).

It is in this context that the case of Peter Ellis has remained in the centre of debate and doubt for nearly nine years. Factors affecting the assessment of the reliability of children's evidence in the context of child sexual abuse complaints in mass allegation cases are the focus of this Inquiry.

2. A body of research has been built up to assist those tasked with assessing the reliability of children's accounts. As Bruck, Ceci and Hembrooke² outline, there have been immense inroads into the cataloguing of factors which can influence the reliability of a child's reports and assessment of how the various factors, in isolation as well as in combination, impact on the reliability of a child's account. Research in the area of suggestibility and interviewing of children has contributed significantly to the understanding and development of "best practice" interviewing techniques and procedure, the development of which must ultimately benefit children and all who are concerned with the administration of justice and the issue of child sexual abuse.
3. The need for the development of a "protocol" was prioritised by researchers as one of the fundamental outcomes of scientific research:

¹ Bruck, M., Ceci, S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports, *American Psychologist*, Vol 53, No 2, 136 at 137

² Bruck, M., Ceci S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports, *American Psychologist*, Vol 53, No 2, 136

"...policy implication of the research on the reliability of children's statements is the need to develop scientifically validated interviews. The ideal interviews will have to meet a number of criteria. First, they need to incorporate techniques that have been shown to be beneficial in eliciting complete and accurate testimony from children. For example, Saywitz and Snyder (1996) have developed a procedure to expand children's spontaneous reports by teaching them a narrative elaboration procedure. Sternberg et al (1996) developed a rapport-building procedure that eventuated in children providing more spontaneous information. Carter, Bottoms, and Levine (1996) have delineated some components of a supportive interviewing technique that result in children's increased resistance to misinformation. At the same time, the ideal interview should not contain techniques that have been found to have harmful consequences (e.g. the use of anatomically detailed dolls, the use of props, the use of guided imagery). Many of these potentially detrimental techniques have been described in this article.

Next, the ideal interview must integrate or select these various techniques into a logical manner and age appropriate format. That is, although a number of different studies point to the beneficial effects of certain types of procedures, one must be sure that each of these procedures continues to be effective when combined with other procedures. Furthermore, according to some methodologists, the ideal protocol should also contain the minimal number of techniques and phrases that are necessary to elicit the required information. This criterion is sometimes referred to as *incremental validity* (see Wolfner, Faust & Dawes, 1993, for the application of this reasoning to interviews of child witnesses)...

At present there are a number of different interview protocols at various stages of development and validation (see Poole & Lamb, in press, for a full description). These include the Cognitive Interview (Fisher & Geiselman, 1992), the Step-Wise Interview (Yuille, Hunter, Joffe & Zaparniuk, 1993), the Structured Interview (Memon, Cronis, Eaves & Bull, 1993), and the National Institute of Child Health and Human Development protocol (Lamb, Sternberg, Esplin, Hershkowitz & Orbach, 1997). Each of these has been developed on scientific premises and is being tested in a variety of settings. One expects that these protocols will result in more systematic and improved interviews with young children. (at page 148-149).³

Mass Allegations

4. The case of Peter Ellis and the Christchurch Civic Crèche may be characterised as "mass allegation child sexual abuse case". It, like those that preceded it, have certain identifiable characteristics, including the allegations of "Satanic Ritual Abuse" (SRA). Some countries have chosen to refer to these mass allegation cases as SRA cases.

³Bruck, M., Ceci, S.J., and Hembrooke, H. (1998) Reliability and Credibility of Young Children's Reports: From Research to Policy and Practice, *American Psychologist*, Vol. 53, No. 2, 136

5. During the 1980s a series of highly publicised "day-care ritual abuse cases" erupted in communities across the United States and Europe. The cases typically involved allegations by pre-school children that they had been terrorised and sexually abused by day-care workers in bizarre scenarios with Satanic or ritualistic overtones⁴.
6. The extensive research, arising in the wake of the day-care cases in the 1980s has identified a variety of interviewing techniques that can induce children to make false reports. (page 347)⁵
7. Australia was exposed to a similar outbreak of cases and a Royal Commission examined the investigation and prosecution of such cases. The findings of the inquiry were published in the Wood Report and identified the following as being characteristics of SRA allegations⁶ :
 - sexual abuse;
 - multiple young victims;
 - multiple offenders;
 - mind controlling tactics;
 - bizarre or ritualistic behaviour; and
 - continuity of behaviour.
8. The Wood Commission referred to the evidence of Mr Kenneth Lanning, (the author of *Satanic, Occult, Ritualistic Crime: A Law Enforcement Perspective*), of the National Centre for the Analysis of Violent Crime, FBI Academy, Quantico, in the United States of America. In his experience these SRA allegations typically involve one of four scenarios, one of which being:

"day care cases involving children of both sexes who reveal victimisation by staff wearing costumes and engaging them in strange games, which are often allegedly accompanied by photographing or filming of the activities".

⁴One such day-care ritual abuse case to attract national attention in the United States was the McMartin Pre-school case (*People v Buckey*, 1990), in which seven teachers, including several elderly women, were accused of abusing several hundred children over a 10-year period in the Los Angeles suburb of Manhattan Beach, the interviewing techniques adopted were considered in the research of Garven, S., Wood, J.M., Malpass, R.S., and Shaw, J.S. III (1998) More Than Suggestion; The Effect of Interviewing Techniques From the McMartin Preschool Case, *Journal of Applied Psychology* 1998, Vol 83, No 3. 347-359.

⁵Garven, S., Wood, J.M., Malpass, R.S., and Shaw, J.S. III (1998) More Than Suggestion; The Effect of Interviewing Techniques From the McMartin Preschool Case, *Journal of Applied Psychology* 1998, Vol 83, No 3. 347-359.

⁶ See pages 667 to 688 of the Wood Report

9. Despite later attempts to sanitise the case before the Jury, the Christchurch Civic Crèche case clearly met the Wood Report criteria for SRA cases.
10. There are important lessons to be learnt from the experiences of the United States, Australia and the United Kingdom and how those countries have each addressed guidelines for similar situations in the future. They have isolated and identified the hazards for investigators who are not properly equipped to respond to such situations. Research conducted in the wake of the *McMartin* and *Michaels* cases and other such cases, are not specifically identified in the Reports and Memoranda included in the Schedule to the Terms of Reference, but are an integral part of the development in the interviewing and investigation of such cases.
11. The lessons learnt from the Wood Report and the other mass allegation/SRA allegation cases are multiple in their dimensions, but perhaps the clearest message is that it is critical for best practice protocols to be adhered to in mass allegation cases.
12. **The Wood Report goes further and suggests that in such cases, no prosecution should be commenced unless contamination has been ruled out and there is some independent corroboration of the child complainant's evidence.**