

BOOK REVIEWS

A City Possessed

(by Lynley Hood, Longacre - 672 pages, \$59.95)

Cracks in the System

Lawyers, law students and legal academics who want to understand how the criminal justice system can become captive to untested ideas and social panics must read Lynley Hood's book *A City Possessed*. Politicians and policy makers should read the book to see what the cracks in the system are and begin the process of mending them. The central event of the book is the investigation and trial of Peter Ellis for sexual offences against children at the Christchurch Civic Crèche in the early 1990s.

The book is the culmination of seven years of research where every stone that could possibly be turned is turned. The research is wide-ranging. Much of it is based on court records and public documents in the case such as the Eichelbaum Report written at the request of the Minister of Justice.

The early chapters document very thoroughly and disturbingly, via their own written words, the rise of the sexual abuse specialist in New Zealand. They also document via public documents and media reports how the seeds of the fear of ritual abuse become implanted in both the professional and public conscience particularly in Christchurch. For example, between 31 March 1984 and 31 March 1985 sexual abuse referrals to the Child and Family Guidance Centre in Christchurch increased by over 360%. This was followed by major investigations into Ward 24 (the ten bed child psychiatry unit) at Christchurch Hospital and Glenelg Children's Health Camp where the diagnosis and treatment of child sexual abuse became priorities. Hood documents how similar trends were happening overseas. In McMartin preschool at Manhattan Beach, California, an alleged cult of sexually perverted Satan worshippers was uncovered. Based on untested assumptions about the appropriate shape, size and colour of children's genitalia "sexual abuse experts" proclaimed that out of 200 children at the preschool four fifths had been sexually abused. No convictions were obtained in the case after seven years of trial and at a cost of \$13 million.

Hood also conducted extensive interviews with parents of children from the crèche (not all the parents would do an interview), neighbours of the crèche and potential expert witnesses. A particularly concerning interview in the book is with "M" a potential expert witness, who was going to do an analysis of the children's evidence for the defence, who says that an official within the Department of Justice had put the "frighteners on me ...there were unspoken implications ... that I would be compromising my ability to receive ongoing referrals, appointments and assignments from government departments and reputable referees in town ... I was scared shitless". This potential witness did not give evidence and said, in an interview with the author, that the decision to withdraw from the case was "of all the things I've done in my professional life,

the one decision I continue to question". This potential witness would have given evidence that there were findings written in professional journals about how children "can provide false information and fabricate stories". Most disturbingly of all this person expressed concern that "we haven't learnt from the crèche case because there's been no discussion ... no one's prepared to come out and say look at this point, and that point, we goofed because it's seen as critical of the Civic Crèche process and the people who were part of it".

The identity of the children and their parents is protected in the book by giving them the name of trees – "Magnolia", "Larch" and "Sycamore". The identity of professionals who took any active part in the case is made clear. No punches are pulled in exposing professional behaviour to detailed scrutiny. All aspects of the case are carefully and meticulously documented in this book and leave feelings of unease about how the criminal justice system responded to allegations that a large number of children had been sexually abused in the Christchurch Civic Crèche.

I read the book with a growing discomfort about the criminal justice system, particularly the evidentiary aspects of the case. The editing of evidence was a major feature of the trial. For example one child called Bart, in his first interview about what might have happened at the Crèche, after ample opportunity to disclose abuse could only come up with a memory of Peter Ellis cleaning him up on the crèche changing table. After four months of parental questioning and sexual abuse therapy the same child said that:

Peter, Gaye, Jan and Marie put sharp sticks and burning paper up his bum, put children in cages at the crèche, threw them in trapdoors at the Masonic Lodge and put them in coffins and buried them in graveyards. He said that Peter put his penis up his bum, and made him do poohs in the bath and eat it, and that someone put a needle up his penis and made it bleed.

The jury however saw no transcript of Bart's first interview and only selected excerpts of his video taped evidence.

Section 23G of the Evidence Act allows experts to give evidence about behaviour which is consistent or inconsistent with sexual abuse. The reality is that there has been no scientific test, nor would it be possible to carry out such a test of what is or is not consistent behaviour with sexual abuse. During the trial the s23G expert, Dr Karen Zelas, under cross-examination by defence counsel, was asked "what behaviours in young children are inconsistent with the child who has been sexually abused?" Dr Zelas replied, "I haven't thought about that". Given the difficult job a jury faces in a sexual abuse trial, expert evidence of behaviour "consistent" with sexual abuse could well swing the balance against an accused.

One of the children, who had been described as "compelling and believable" by the Crown at trial, did retract on the basis that she said she had said what she thought her mother wanted her to say. The Court of Appeal quashed the convictions for the counts in relation to this child but not the other counts.

Graham Panckhurst QC, who had been a Crown Prosecutor, took the Ellis case to the Court of Appeal. He based the appeal on S385(1) of the Crimes Act

that the verdict of the jury should be set aside on all the counts on the grounds that it was unreasonable or cannot be supported by the evidence. The essence of the appeal is summed up in the book:

The evidence of opportunity wasn't there. A child said two or three other kids were present; the other kids didn't confirm it. A child said, "I complained to a teacher; the teacher said, no such thing". Having made that evaluation, I came to the view that there wasn't evidence there to uphold the verdicts.

Hood documents how, through previous rulings and interpretations of the 1989 amendments to the Evidence Act, the Court of Appeal had relaxed the rules for admissibility of children's evidence, allowing for example leading and coaxing questions. This relaxation both by statute and Court ruling meant that the Court was much more reluctant to consider the possibility of a miscarriage of justice. Hood argues convincingly that the "safety net" of the prerogative of mercy has been circumscribed by the Court of Appeal's ruling that where the Court of Appeal hears a case for the second time, it will consider only "new evidence". Hood concludes that the "rule ensures that not only does the Court of Appeal never have to correct its own mistakes, it never has to own up to having made any mistakes in the first place".

The final inquiry into the Ellis case was the ministerial inquiry carried out by the former Chief Justice Sir Thomas Eichelbaum. What is particularly disturbing is that none of the seven Court of Appeal Judges who had considered the appeals from the case had viewed the children's videotaped interviews. Sir Thomas Eichelbaum did view the tapes and, as Hood points out, found "evidence of direct, suggestive, leading and repeated questions, over-long interviews, too many interviews and failure to advise a child that "don't know" or "can't remember" were acceptable answers". When Sir Thomas evaluated wider issues of contamination, he found that "questioning and investigations by some parents exceeded what was desirable and had the potential to contaminate children's accounts". Hood exposes that the recommendation, proposed by an expert, to carry out "reality checks" as to whether the offences could ever have happened was not taken up.

The thoroughness of the research, the clarity of the writing and the penetration of the analysis show there are not sufficient checks and balances in our system of criminal justice when it comes to child sexual abuse cases. They are difficult crimes, we do not want to get them wrong either way. But we must remember the basic tenet of the criminal system is built on the premise of innocent until proven guilty. What we currently accept as proof is the crux of this book. Readers have only to ask themselves whether they would like to be tried under the current system as described in the book to see that the pendulum has swung too far, driven as it has been by the societal concern to find an "epidemic" of sexual abuse. The criminal justice system has moved from the position where juries were warned to treat children's evidence with special care because they were prone to fantasy to the current situation where children can be coaxed and led to give evidence and where experts are given statutory permission to tell juries what behaviour is consistent with having been sexually abused.

A City Possessed is the best socio-legal study of a case I have read. The publishers have done a magnificent job in presenting it so clearly and accessibly with clear time lines and a complete index.

The book demands a response. If nothing is done we will go on accepting edited transcripts, contaminated evidence, leading questions and the untested opinions of experts as proof. The book gives us a chance to stand back from the societal overreaction to the fear of endemic child sexual abuse and see what it has done to our system of criminal justice. The opportunity to re-address these issues along with the investigation and child protection processes documented in the book must not be lost. It is impossible to read this book and put it down with the feeling that Peter Ellis had a fair trial. Rather, Peter Ellis was a scapegoat for societal fears about the possibility of young children being sexually abused on mass scales. This book is a "reality check" on the whole process of child sexual abuse allegations and it exposes in a very direct, thoroughly documented, no punches pulled way that we are short of the mark. There are cracks in the criminal justice system which others could fall into if nothing is done.

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