***Chapter 6***

**How ‘Intelligence’ & Bureaucracies Fall Apart:**

**. . . Under the Weight of Their Own Contradictions**

***‘. . . and when we have our naked frailties hid,***

***that suffer in exposure, let us meet,***

***and question this most bloody piece of work,***

***to know it further’***

***Introduction*:**

This chapter attempts to analyse material presented in all preceding chapters. I begin by explaining the context of these lesser-known lines from Shakespeare’s *Macbeth.* Chapter 3 started and ended with Lady Macbeth’s words - at the start as she prepares to cajole and bully her husband to the point where he commits the ultimate crime – regicide; and at the end with a line from the celebrated sleep-walking scene, not long before Lady Macbeth’s own suicide. The lines with which I start the *present* chapter, are preceded by Shakespeare’s words ‘*Look to the lady’*: Lady Macbeth - realizing the dire consequences of her potent rhetoric - has collapsed, and is carried off stage, unconscious. In that moment, the seeds of the sleep walking scene were planted in her mind, a fine example of the impact on the transgressor of actions which betray the most widely held moral precepts. The lines I quote are Banquo’s, just after the murder. He struggles to grasp the enormity of the event and seeks to distance himself from its immediacy, so that a more considered response can be made.

Fast forwards to today: It is 45-50 years since most of the atrocities documented in the Royal Commission on Abuse in Care were perpetrated. Just as Banquo hoped, I now hope to have distanced myself from those events. With benefit of hindsight, I, like Banquo, ‘*question this most bloody piece of work, to know it further’*.

The chapter is long, with a complex structure. I try to simplify it by relegating important detail to a series of Appendices. I start with general comments on how connivance arises from internal conflict in peoples’ minds. I then move to the diverse ways in which people react, when caught up in situations where internalised conflict is likely, illustrated with instances drawn from preceding chapters. Detail is expanded in Appendix I. After this, I describe topics which, in material already surveyed need to be covered up, particularly because of the distorted concepts of human nature prevailing during the Cold War. I provide a detailed timeline (Appendix II) of how what I call the ‘Engineering Model of Human Nature’ unfolded. The section which follows deals with strategies for cover-up and deception - general strategies to enhance ‘security’ - a euphemism for concealing what might not withstand scrutiny. Examples are listed in Appendix III. The next section covers methods of ‘damage control’, when exposure seems possible. Detail on this is expanded in Appendix IV. I then consider the devious processes by which state agencies avoid or evade the reach of national laws, including, as their last defence, courtroom strategies (Appendix V). An important penultimate section asks whether similarities between agencies and countries, represent active coordination, or are mere coincidence. Specifically I discuss whether such evidence is sufficient to conclude that atrocities occurring in the 1970s in New Zealand were actively influenced or coordinated from overseas. In summary I remind the reader of the title to this chapter - *How ‘Intelligence’ & Bureaucracies Fall Apart*; yet intelligence agencies and related state bureaucracies have *not yet* fallen apart. I hope to have convinced the reader that the refined structures which have been constructed to preserve the integrity of this ‘house of cards’ are intrinsically fragile and unstable. At any moment, if adeptly provoked, they might collapse in a cloud of dust.

***Connivance vs Rationality*:**

In western philosophy we have been led to believe that the essential quality of human beings is rationality – our capacity for reasoning. In a larger sense, this leads to the view that our words and actions are normally a coherent whole, never departing from logical consistency. As a definition of human nature this is an extraordinary exaggeration. My overall title – *The Eye Wink at the Hand -*  refers to the human capacity for connivance – turning a blind eye to things we know about, but do not want to know about, or things we have done, but want to forget we have done. In this sense, connivance is a breakdown of logical consistency, of rationality itself. This capacity is at least as common as rationality.

When we claim to be rational, it leads us to believe that we know truth from falsehood; yet the simple question ‘what is truth?’ is unanswerable, because to even ask the question assumes there is an answer which is true – so the question is framed in a way which assumes an answer to the very question posed. So, we blunder on, using notions to guide our behaviour which we claim to be ‘true’, blind to their imprecision, and the contradictions which arise when we try to make them precise. In the last analysis, almost all of us prefer life to truth, and so, for existential reasons, most of us are ready to bend truth, sometimes with astonishing versatility.

I suggest that *this* capacity – connivance rather than rationality - is intrinsic to human nature. It must be so, for reasons rooted partly in philosophy, partly in brain science, and partly in social norms as we work together. In brief, by virtue of how our brains function, each individual mind is full of internal contradictions[[1]](#footnote-1). We strive, with greater or lesser success to construct a façade of coherence; but it always is a façade.

Connivance is closely related to our universal propensity for deception. It is found in other species, but proliferates in humans[[2]](#footnote-2): With a larger brain we have greater capacity for thought; so thought and action become increasingly separate, the seed from which grows our heightened ability to deceive. In biblical words, it is ‘the tree of the knowledge of good and evil’. We can conceive - even deliberately hint at - actions we never intend to carry out; or we avoid giving hints of what we *are* about to do[[3]](#footnote-3); or we hide signs that we were responsible for shameful past events. When conflicts arise whose resolution requires investment in time and energy, we often ‘look the other way’. Deception is often instinctive, as is our capacity for cover-up, and our wilful blindness. Such faculties can be deployed quickly, with minimal focused thought. Only with further reflection and much social interactions do we conceive truth and honesty as ideals.

Humans reveal connivance and deception continually. Usually it is innocuous, part of the smooth flow of social interactions – avoidance of taboo words, reminders of a person’s weaknesses, or of perennial problems for which there is no solution. It takes real courage to acknowledge that sometimes we are afraid. Much of this comes under the heading of ‘politeness’. In Japanese culture (with origins going far back in Chinese culture), we have the image of Three Monkeys, whose messages to us are ‘*Speak no Evil, Hear no evil, See no Evil’*. As generally understood in East Asia, these recommendations are intended to ensure propriety and social harmony. The darker side is our ability to use connivance and deception to undermine harmonious interaction. Naturally this is a matter of public concern. In the western world, the meaning of the ‘three monkeys’ metaphor may then be reversed: When we need to hide wrongdoing, we avoid hinting at it by word or deed. We become selectively blind and dumb to daily events which provide reminders.

Whether benign or malevolent, the ‘Three Monkeys’ metaphor is partly about human frailty. Rare indeed are individuals for whom this is not so, the Socrates or the Jesus of Nazareth in so far as we know them. They and their likes rejected the instinct for survival, it being over-ridden by a need to communicate, with strict attention to consistency of word-meaning, the principle of non-contradiction between what we say and what we do, between our stated moral precepts and our practice. Apart from such exceptions, connivance in thoughts and deceptive behaviour of individuals is near-universal, and hardly worth noting.

However, when people work together, contradictions can be amplified by group processes - reflecting the needs of human societies - even though their most obvious consequence is still found as internal conflict within individuals[[4]](#footnote-4). Groups working together generally work out conventions for collective action; but this *may* lead to collective blindness on some matters in order to focus on designated goals. Such *collective connivance,* is more interesting, the focus of the present chapter.

Much of the chapter explores the murky area where public or semi-public organizations are bound (to some extent) by regulations, legal statutes, or international conventions, yet need to put on a show of transparency, rationality and legality. To achieve other agendas - which may be the real *raison d’être* of those organizations *–* public servants may then have to bend the rules, laws and conventions. I also suggest that individuals have to bend - more conspicuously than normally - the integrity of their own minds. This may require modifying or abandoning personal motives or moral commitments. In the next section I explore how such contradictions, usually imposed socially, play out in the minds of individuals, as consequences of trying to live and act under conflicting demands. I classify the diverse individual responses.

***Connivance Classified: Individual Responses to Internal Conflict*:**

***Introduction***: I present the diverse strategies of adjusting to internalized conflict in a definite sequence, not a chronological one, one running from openness, towards tighter cover-up or deception, but in the end, if persons are held to account, of remorseless admission of crimes. I describe the conflicts people face, with examples drawn from previous chapters listed in Appendix I. I mix freely scenarios dealt with in previous chapters - the inquest I participated in, abuse at Lake Alice and Cherry Farm, practice of William Sargant and others in Britain, and various misdeeds of the CIA. By so organizing my analysis, I hope to show that what went on at Lake Alice, Cherry farm, and other places in New Zealand, fitted a broader pattern across many countries. This provides a basis for me to claim that the horrific abuse perpetrated in New Zealand, documented by the Royal Commission, must be understood in an international context, in which influences inevitably spread from one country to another.

***‘Toeing the line’; Adopting Attitudes Conveyed from above.*** State employees at low levels in a hierarchy have incomplete understanding of the endeavour in which they work. Upper levels may limit knowledge at lower levels (‘compartmentalization’: see later). Employees then work to the best of their ability based on what they know. With greater or lesser awareness of the endeavour’s shortcomings, they ‘toe the line’, following their job description, along with associated regulations.

***‘Refusniks’*:** This term is Russian/English. Originally it referred to Soviet citizens - usually Jewish - refused permission to leave the USSR. Subsequently the meaning switched, referring to people anywhere who, in protest, refuse to comply with state demands, when facing a conflict between those demands and individual conscience. The sharpest case is to refuse military service. This is not an issue here. However, in studying documents from the early Cold War, I inferred that this occurred in a different way.

***Whistle-blowers, and Others ‘In the Know’, Striving to see Justice Prevail***:A whistle-blower is an insider to an organisation, who sees a stark contrast between its benign public image and its sordid reality. He or she decides, as a matter of conscience, to publicise what s/he knows. New Zealand’s Royal Commission on Abuse in Care heard about early whistle-blowers, including one who breached the Official Secrets Act to divulge what she knew. I know nothing of her subsequent story. The author of a review article on whistle-blowers overseas[[5]](#footnote-5) makes clear the risks they ran:

*‘. . .whistleblowing is a blood sport. The official backlash against each of the individuals . . .was such a ferocious orgy of overkill that all three were devastated by the experience. . . .Marchetti and Snepp were thrust into a psychological and financial tailspin that left them a shadow of their former selves; Agee was, quite literally, cast into the wilderness. The sad moral of their story was: publish at your peril.’*

The term ‘blood sport’ is accurate. There have almost certainly been assassinations of insiders who knew too much, and would not stay silent (for instance David Kelly, over the ‘Weapons of Mass Destruction’ allegation prior to the invasion of Iraq). Such extreme methods seem to be reserved for times when the issue is peace or war, or release of secrets at the interface of nuclear power and nuclear armaments.

***Concerned Citizen Investigators*:** It is near impossible for outsiders to learn much of the darker side of military or intelligence organisations, since those bodies pay great attention to secrecy. Revelations necessarily come from insiders who break ranks. For mental hospitals the situation is different, since it is harder to maintain tight secrecy. Concerned citizens who learn of grievous shortcomings may be driven to expose the conflict between a hospital’s supposed benevolent role and its cruel reality. They undertake careful investigation, often with skill and tenacity. Their independence from the agencies they investigate is crucial. It may alarm - and be opposed by - those who want to conceal the reality; but there is no moral or legal basis for such opposition. In other circumstance members of the public who ‘dob in’ criminals are applauded. The only difference is that those whose actions they wish to expose are public servants (backed by far more power to pursue cover-up strategies).

***Covert Whistle-Blowers, Using ‘Fictional’ Formats*:** Citizens may encounter public servants whose behaviour contradicts principles by which are supposed to operate. Sometimes they see the contradiction in such stark terms that they are impelled to find ways to make public what they know. To ‘go public’ may be risky. One’s employer, state officials, or others might object. In New Zealand there is legislation to protect whistle blowers. For myself, I run little risk: I have no employer, and rely almost entirely on evidence in the public domain (although how I stitch it together is my own skill).

More prestigious writers have had to contend with more tangible fears, especially - in Britain - of being prosecuted under the Official Secrets Act. As a result, authors have sometimes resorted to ‘fictional’ portrayal to depict matters they know about, but are afraid to divulge explicitly. In due course details in their novels may be shown to have been factually accurate.

A celebrated example is Orwell’s futuristic dystopia ‘*Nineteen eighty four’*. A more specific example is Len Deighton’s ‘*The IPCRESS files’*, written in the late 1950s, published in 1962. In this context I mention the ambiguous situation in which the renowned scientist Donald Hebb found himself. He was one of the very few, who, to his great credit, ‘came clean’ in a semi-public forum about his questionable role.

***Would-be Whistle Blowers, ‘Skating on Thin Ice’*:** The conflict for state servants is that they are limited in what they can make public because of regulations applying in military or intelligence domains, and their perception that this is inappropriate in civilian life. Full disclosure of what they know is risky, so they use other strategies to salve their conscience. I cite three examples: Two of them - Alexander Kennedy and William Sargant - were involved in the second world war. The third - Basil James - was twenty years younger, and therefore, the only one who had to negotiate the transition to a style of psychiatry very different from where it seemed to be heading at the time of his training.

***Courageous Litigants who Struggle against Overwhelming Odds*:** In my investigations I came across several that fit this description. I admire them for their courage, tenacity and skill. I am distressed to see them defeated by forces greater than themselves. In two cases they were severely impacted by their failure to make progress in litigation supposedly governed by reason and discipline. Despite their giving everything they had, they were defeated. What purport to be highly rational legal and judicial processes (and the founding documents to support this are superbly conceived and crafted) turn to be very different. I could never be counted in this group. I do not have the expertise, the quick wit, or the temperament. When I see forces bigger than myself, I collect evidence, and bide my time for when the playing field is not so steeply tilted against me. Then, I might contribute in my small way in collaboration with other forces.

***‘Human Rights’ Barristers: Keen to see Justice Prevail; Even Keener to Make Money*:** To be a barrister specialising in human rights issues seems to be a noble calling; yet barristers often want to make lots of money: The conflict is obvious.

***Agonised Realization by State Servants that Independent Investigators Might Know their Secrets*:** I have great sympathy when I witness this from persons who are basically honest, but get caught up in a bigger game. Sadly, I can do little to help.

***State Operatives Under Orders which Defy Professional/Personal Loyalty*:** Preceding chapters gave many examples of this. In many professions, psychological ‘distancing’ is common and perhaps necessary for many. I think of intensive care nursing, and even more, of ambulance work. There are psychological casualties in such professions. Likewise, military personnel are often reticent to talk of wartime experiences. Military bands may put on a display of suave detachment, with buoyant military marches to distance personnel from the grim realities of warfare; but it ***is***  a problem, especially for those who perpetrate torture. Initially they ‘distance’ themselves from their own actions. Later, their detachment starts to unravel. Like Lady Macbeth, they start to recognise what they had done. Internal conflict for those involved in Operation Phoenix led to psychological casualties. Symptoms of PTSD appear - alcohol and drug problems, flashbacks, disturbed sleep, sometimes suicide[[6]](#footnote-6).

***Willing Perpetrators, Eventually Realise What They Did, But Far Too Late*:** A few persons mentioned in previous chapters seem eventually to have lifted their cloak of denial, grasped what they had done, but far too late. A few persons in this category are mentioned in Appendix I. Most pertinent here is Selwyn Leeks. At one stage, after he had relocated to Melbourne, he was located by one of those victims who was to bear witness at a hearing the Royal Commission – Kevin Banks. The conversation which ensued included Leeks saying something like ‘*I will never do what I have done, or most of what I have done, again*.’ He seemed remorseful, but this was far from a fully-fledged public apology. A good friend of mine (now deceased) from the German-speaking part of north Italy, with bitter memory from teenage years of interactions with NAZI forces during the war, gave me this viewpoint: For those who perpetrate horrific crimes during wartime, there is only one honest way to make amends - by one’s own suicide.

***Willing Participant, Need to Create Different Image, Cover-up to the* End:** Many of those whose young adult lives were dominated by activities in military organizations, may find transition to civilian life difficult. If they rise to important positions, cover-up and denial may be inevitable. Concealment may continue to their last days, with no let-up. Such a strategy might not be entirely their own choice. Insidious pressure on persons or their organization from higher levels might ensure this: With no threat of litigation, the individual remains staunch.

***Willing Perpetrator, No Remorse, Regret, or Apology, No Sign of Internal Conflict*:** We come to the last in my list of strategies used by those who were aware of - or involved in - conflicted situations such as reviewed in previous chapters. This group have perpetrated, organized or enabled serious wrong-doings, but never show the least remorse, or regret. Even to the end, they were open, even boastful of their achievements.

***What Needs to be Covered Up?*:**

Why do I go to such lengths in investigating matters dealt in preceding chapters? I do not deal with ordinary crimes, ordinary breaches of legal statutes or lower-level regulations. I write of specially serious offenses committed (collectively, if not individually) by state servants, state agencies, and governments. Culprits are persons or public bodies upon whose example - above all others - citizenry should be able to rely on to preserve the rule of law. If they fail in this paramount duty, despite good will of citizens, the rule of law starts to break down, at first slowly, but once trust erodes, it accelerates, as if, once grassland is tinder dry, a few sparks become a raging inferno.

Which governments? Which nations? Previous chapters dealt with events in New Zealand, Britain, Canada and the USA, four members of the intelligence alliance known as the ‘Five Eyes’. On the basis of limited evidence available to me, the fifth member – Australia – was involved to a lesser extent. Overall, there seem to have been diverse breaches of the law, or of lower level regulations. In a supplementary document to my Introductory chapter, I questioned the probity of parts of our judiciary, and raised disturbing questions about how far the rule of law prevails here. If my suspicions have substance, my questions extend to the adequacy of our constitutional arrangements. The USA has a written constitution. Hearings of the Church Commission in 1975 gave prolific evidence that The Central Intelligence Agency had breached the constitution in major ways over the preceding 25 years.

The literary frame within which I have assembled evidence - Shakespeare’s *Macbeth –* is a drama built around the worst of all crimes, regicide. Likewise, in the period which I cover, intelligence agencies have certainly participated in political assassinations in countries around the world, not by aspiring pretenders to a Throne, but by servants of supposed democratic states, including the USA. Thankfully, that is not a topic with which I must deal. Nevertheless, there is no doubt, in evidence surveyed, that torture programs, clandestine detention, and abandonment of *habeas corpus* have taken place. If not exactly state-sponsored, it occurred while numerous state agencies turned a blind eye.

***Perversion of Clinical/Psychiatric Practice to Fulfil Other Agendas*:** Possibly the most egregious transgressions were breaches of established norms of medical practice and hallowed ethical traditions (whether or not enforceable by legal statute). In particular, the area of mental health care and allied settings, is where the worst atrocities occurred. In psychiatry, the scientific status of diagnoses and treatment is often shaky; psychiatrists have unusual powers to enforce detention in institutions. For these reasons, psychiatry has often been less transparent than other areas of health care. Patients are more defenceless than in other settings. With disorders and their means of treatment being further removed from everyday understanding by the lay public, the tendency to secrecy is enhanced. Over the centuries, this often led to psychiatric detention being used for agendas that have nothing to do with psychiatry[[7]](#footnote-7). More often, the hard-to-define nature of mental disorders leads to misuse of diagnoses, in several ways (see Appendix III). It is no surprise that military intelligence agencies, for whom secrecy is also routine - and with well-developed methods - should forge an alliance with the profession of psychiatry. This unseemly union showed itself in several way in stories recounted in previous chapters.

***Common themes*:** Looking at the entire body of evidence surveyed in preceding chapters, there are distinctive themes in common:

* All episodes recounted in previous chapters, regardless of decade, country or agency, targeted the most vulnerable individuals - children and adolescents already in difficulty due to broken or troubled homes; low-level offending; disadvantaged racial or ethics minorities; groups disparaged for their sexual orientation or concurrent mental or physical disability; and those with minimal networks of support or ways to register protest. These individuals were seen as ‘dispensable’.
* In the unhealthy alliance between intelligence agencies, psychiatry, and law enforcement, none had a robust scientific rationale. Each sought support from the others.
* The most remarkable unifying theme is the continuity, across countries and decades, of an approach to what are really behavioural problems, which should be addressed by social measures, policies, and human contact; but instead are dealt with as if they are psychiatric problems, for which abstractions of ‘diagnoses’ and the whole gamut of biomedical treatments is thought appropriate.
* In preceding chapters, special use was made of simplistic and brutal application of Pavlov’s psychology as a method of treatment, and crude improperly-validated methods of physical treatment. More broadly, over four decades, there was continuity in use of what I call the *Engineering Model of Human Nature.*
* In Appendix II, I give a timeline of some of the more important stages in this process: Much can be seen as part of a perversion of medical practice by US military and intelligence agencies, which was in turn related to their biological warfare program[[8]](#footnote-8).

At the end of this chapter, I survey in more detail the possibility of interagency and international coordination - direct or indirect - which may have played a role in atrocities in New Zealand

***Methods &Strategies for Cover-up and Deception***

Given preceding comments on the psychology of connivance, it is no surprise that, in the fraught encounters related in previous chapters, there were many instances of deception and cover-up, with methods to cope with conflicting demands. In paragraphs below I group them into types, starting with General Methods to Ensure Security, followed by a section on Methods of Damage Control, when issues become more urgent. Instances are listed in Appendix III.

***Limiting the number of persons ‘in the know’*:** If effective cover-up is to be developed, it is vital that the number of persons ‘in the know’ be kept as small as possible[[9]](#footnote-9), and that the identity of those few is known by those in charge.

Persons with most detailed knowledge are likely be those at in ‘front-line’ positions, implementing the necessary instructions. I refer especially to intelligence or interrogation centres, and to medical or mental health settings. Sometimes the two come together in an odd blend. Intelligence agencies, have routine processes to limit the number of persons in the know, in the name of ‘security’. This certainly applied to William Sargant, and those who met at the secretive meeting in Montreal in 1951. For health care agencies, confidentiality is also routine, to protect patients’ intimate secrets from reaching the public, but also – dare I say it - to protect staff from disclosure of their shortcomings. Recently, the concept of privacy has extended its reach. It is often unclear whose privacy the legislation is intended to protect - the innocent persons caught up in bureaucratic machinery, or public servants who, one might think, should be accountable (individually or collectively).

***Control of Information Flow*:** A general strategy to limit the number of persons ‘in the know’ goes under the heading of ‘compartmentalization’ – setting up barriers to information flow, so that individuals confine their activities to their assigned tasks, blind to an agency’s overall strategy and objectives. In military history it is an old way to limit information that might be divulged, were combatants to be captured by their adversary - except that sometimes, soldiers were deliberately set up to fall into enemy hands, and then divulge false intelligence.

Compartmentalization and information sharing on a ‘need to know’ basis limits not only spread of information: It restricts curiosity and intelligent adaptation to circumstances by recipients. To preserve a semblance of coherence in one area, shutters are closed between that area and others. An apt metaphor is the blinkers or blinders worn by draft horses. Horses are not natural predators. In nature they are vulnerable to attack, but for the fact that they can run fast, and have eyes in the sides of their head, giving them near-360 degree vision. Blinders limit vision to what lies ahead, preventing the draft horse from distraction by irrelevant events, while impairing their natural defences. Translating the metaphor, in such scenarios, the left hand cannot know what the right hand does. The eye as observer is blind to the hand as agent. Curiosity and intelligent planning wither away. Reasoning cannot be checked against a full range of possibly-contesting evidence.

This may be a disadvantage. During the Napoleonic wars, Prussian armies were decimated. Sixty years later, to great surprise, they overwhelmed French forces in the Franco-Prussian war. This was not mainly because of larger and better equipped armies (although use of railways for troop movements was a major factor). Beyond this, information about strategy was shared widely amongst officers; compartmentalization was *reduced.* Officers near the front could devise solutions *ad hoc* according to situations they encountered there. Likewise, the remarkable way in which Toyota Motors broke into the motor vehicle market in the 1950s, was due partly to an innovative administrative style. It was recommended from top levels, that everyone should try to learn all the could about the entire enterprise.

Part of the compartmentalization strategy ensures that crucial and sensitive documents are shared only at highest levels; those at lower levels implement instructions with no basis to evaluate the wisdom of instructions. In military command, this is combined with the need to obey orders , with harsh sanctions for insubordination. In civilian life this is transformed, the sanction then being loss of employment. All this leads to difficulty in terms of legal liabilities. From Nuremberg trials came the maxim that ‘*to plead that one was following orders, is no defence in a court of law’*; but this recommendation puts soldiers - or civilian employees - in impossible situations.My emphasis, stated several times already, is to seek culpability at systems level or in structural terms, not in individuals.

***Creation of ‘Clean’ Images for Public Figures*:**Apart from unnamed apparatchiks with most detailed knowledge of crimes committed by their agency, the public figures who take ‘responsibility’ for an agency’s behaviour need to have a ‘clean’ public image. I refer of course to heads of psychiatric facilities, intelligence agencies, and the furtive combinations in which they sometimes joined forces. Their public image may be mainly their own creation, but no doubt receives ‘a little help from friends’. When I write of ‘help from friends’, persons ‘in higher places’ seldom fabricate anything that is untrue; but they ensure that profiles of those they protect never mentioned parts of their stories which might raise inconvenient questions.

As public figures, their public profiles might be called ‘covers’ for questionable activities; but this is not quite fair: They were as genuine as could be expected, but were placed in – and accepted - roles where they had to balance conflicting objectives. ‘Conflict of interest’ came with the job. Concealing part of their story was necessary in the public servant’s profile. They shared responsibility for cover-up, but its overall shape, and need for connivance, was shaped by larger forces.

In such cases, there is often a curious relationships between seniors who give instructions and juniors who implement them - an unwritten strategy to protect public figures heading organizations undertaking questionable activities. As far as possible, those persons never hear the detail of atrocities going on at lower levels under their authority. The strategy is intended to keep top-brass in the dark. If the latter ever had to answer hard questions in public about detail, then, in all honesty, they deny that they knew any detail. It was a strategy to *ensure plausible deniability,* when public awareness of clandestine actions might compromise the image of those agencies. The strategies are broadly similar across decades, agencies, and countries.Referring back to the ancient metaphor from East Asia of ‘Three Monkeys’, the strategy made sure, that leaders ‘saw no evil, hear no evil’ and thus could ‘speak no evil’.

***Securing Positions: Recruitment, Co-Option, Exclusion, Promotion*:** A protective response which requires great forethought is to arrange that the right persons occupy key positions. It is a more fundamental way to ensure that dangerous topics and dangerous decisions are avoided. In events surveyed in earlier chapters, I discern several strategic decisions about personnel, which probably had such motives in mind:In contrast to ***selection******for*** each task - there are other ways to ***exclude* *from*** employment those whose attitudes and biases do not fit the agency into which they might be recruited.

Decisions about key appointments at high levels are no doubt based on widely-known insights into the strengths, weaknesses and likely biases of possible appointees. At lower levels, there are easy ways to vet new personnel in unwitnessed, conversations, to determine how ‘flexible’ they are, that is, how easily they can be co-opted to serve collective interests. I hear how, when a decision-maker, or influential committee member meets a possible appointee in one-on-one conversation, the former suddenly sheds his public aura, and uses surprisingly colourful vernacular, as if to establish a closer bond with the latter, and find out more about him or her. On two occasions in such unwitnessed meetings, I was representing factions who might be opposed by the person I was meeting. I heard sudden subtle but sharp criticism of those I was representing, which would never have been expressed in a more public situation. On reflection, I conclude that, on such occasions, I am being ‘sounded’, to test if I could be recruited to act against those I am representing. I also hear from one who retired from public service at one stage being advised to ‘avoid allowing yourself to be co-opted’ - that is to adopt uncritically a loyalty to (and value-set, or ideology, of) an arm of government or private business (in exchange, of course for a job and salary). As an alternative, when I was shoulder-tapped to be on RANZCP committees, the college went to considerable expense of my behalf, to attend committees meetings and congresses across the Tasman; but I ask: What was their real motive, when they avoided listening to hard messages I had to convey.

It is all a matter of degree: Consider a possible meeting on 11 July 1972 at Ohakea air base, as Richard Helms and party prepared to fly back to the USA, a meeting - which I infer may have happened, but do not yet have proof - with Dr Selwyn Leeks. The latter had three teenage daughters, and needed money. Helms and colleagues undoubtedly knew how to exert pressure – golden carrots, and razor-sharp sticks. They knew because of long experience in methods of ‘bending’ prisoners to become double agents. I know no details, but Leeks’ whole story leaves distinctive clues that somehow he was suborned. In short, this is how people sell their personal ethical commitment, how ‘leaders’ are selected to keep the house of cards intact, and how ‘independence’ is perverted.

***Promotion, to deflect criticism*:** A corollary of all these ways to select personnel with the right attitudes, and to exclude those with the wrong ones, is that when an official has brought bad publicity or controversy on an organisation, far from such a person being dismissed, he or she may be promoted. It is usually a good way to damp down criticism; and I know several instance where this seems to have happened (but I refrain from giving names).

***Outsourcing ‘Risky’ Research or Operations*:** Another concealment strategy, deployed regardless of decade, agency or country, is when operations or research programs are moved from one locus of control to another, or from one jurisdiction to another, in circumstances where continuing in the same locus or jurisdiction becomes legally or politically risky. In evidence previously surveyed, I know of three years – 1954, 1964 and 1973 - when decisions on ‘outsourcing’ were apparently taken in the CIA, and I can infer the probable rationales.

In *1954*, expansion of CIA’s research role under MKULTRA led to much of it being outsourced to academic sites in USA and elsewhere. This led to grossly unethical research, which would have been hard to conceal than had it been entirely in-house.

In *1964* termination of DST at the Allan Memorial Institute, the start of ‘modified narcosis’ at Royal Waterloo, and possibly the commencement of Harry Bailey’s catastrophic regime at Chelmsford may all have been linked. The former may have been the trigger for the latter two, as alternative outsourced versions of DST. All three developments may have been side-effects of reorganisation of CIA activity in the aftermath of the Kennedy assassination.

In *1973* termination of Helms role as Director of CIA led to the destruction of many CIA documents including ones about MKULTRA. It was followed by termination of Sargant’s practice at Royal Waterloo, with similar destruction or concealment of clinical records. It may have been a specific response to the clean-up operation of the CIA under Director Schlesinger. Soon after, DST began at Cherry Farm, and possibly at remote sites in the British Isles. The end of Sargant’s DST regime at Royal Waterloo may have triggered other shifts, as outsourced versions of the same regime.

In *1973*, the start of Selwyn Leeks regime at Lake Alice may have reflected outsourcing of a planned centre in California, once it was known that the latter would not proceed.

***Financial Outsourcing of CIA Activities*:** The CIA was protected from accountability by outsourcing not only institutional authority but also financial responsibility. Some of this is well known - ‘shell companies’ such as the Geschikter Fund for Medical Research, the Human Ecology Fund (both of which ceased function in 1960), and the Macy Fund (which continued for long after this). For overseas activities, financial outsourcing might involve overseas branches of multinational companies based in the USA. An article in *New York Times* in 1975[[10]](#footnote-10) mentions a source which claimed that, in the previous fifteen years, over 20 American companies had provided such ‘commercial cover’. This process may also have supported around 200 CIA agents. The practice grew from a policy during the second World War when many private firms were recruited into the war effort. It is most problematic for state agencies (such as the CIA) which have a history (and sometimes the authority) of breaking the law. Even more troubling is the likelihood that financial experts in the CIA could operate in overseas financial markets to raise funds for covert CIA operations, without there being *any* way to trace the source back to the CIA (because funds are not provided even indirectly, by CIA). In this complex and devious area, there is little hope of obtaining detailed evidence of the finance of the various operation of CIA. We have some clues, but watchdog agencies often maintain secrecy over documents in their archives. Those who want to conceal shady deals will know how to use such restrictions.

***State Operatives Tasked with Conflicting Roles Move Offshore*:** During the second World War, great efforts were made to ensure that prisoners of interest to British interrogators, captured overseas, were brought to the London centre, as described in Chapter 4. By the 1950s, during many end-of-empire wars, the strategy underwent major change: Interrogation by MI5, MI6 or other agencies was done overseas, so that methods could be used which were illegal in Britain, and would not reach British newspapers. The strategy of clandestine rendition to sites where British jurisdiction no longer held sway was a way to escape legal accountability[[11]](#footnote-11).

In civilian life, state servants tasked to do things which flout their professional standards, often moved offshore, once this becomes public knowledge. The suspicion is inevitably raised that they were ‘encouraged’ or ‘enticed’ to move by higher levels in the bureaucracy, in order to hinder investigation of their role, or their being called as witnesses. This does not resolve their own inner conflict, but it is circumvented in the short-term. I have no direct evidence, but the abundance of cases I know raises concern that there *is* some sort of hidden policy.

***Comment: Suspicious Cross-Border Relocation of Personnel To Limit Testimony against State Agencies*:** I have no legal expertise, but, whatever the legal niceties, at age 79, I have seen enough of life to know when something is wrong. From the cases outlined in Appendix III, there seems to be a process occurring repeatedly to protect agencies or persons holding positions of public responsibility from ever being held to account over events where serious shortcoming are known. This includes criminal wrongdoing. Commonly the policy seems to have enabled persons to move offshore with impunity.

In addition, there seem to be processes deployed repeatedly, by which persons, who may be blameless, but who might be important witnesses, move (or ‘are moved’) offshore to sites where it is less likely that they can ever be questioned about what they know. I refer mainly to scrutiny by journalists[[12]](#footnote-12). In both situations, unidentified processes seem to be at work making it hard to call responsible persons or agencies to account. This is disturbing, when vulnerable people who commit minor indiscretions or misdemeanours against the criminal law in obvious ways, are so easily brought to justice in ways which change their lives in adverse ways.

Witness relocation is generally seen in the context of witness protection for those who have testified in criminal trials - for instance against drug cartels – and then need protection from retribution – for instance by drug lords. Sometimes relocated person may need a name change. In addition, innocent people who have been wronged by state agencies may move overseas, to start again, free from bad memories and unfortunate personal contacts.

The examples cited above speak of a different rationale for witness relocation: Persons who might bear witness *against state agencies* (rather than against criminals) move (or are moved), to another jurisdiction where it is more difficult for them to be called as witnesses, short of extradition (a difficult procedure, used only in the most serious cases). Those who relocate may themselves be culprits of wrongdoing, or they might be innocent, yet important witnesses.

I can find nothing about such a rationale on the internet. It may be a special feature of cross-*border relationships in the Commonwealth, or between Australia and New Zealand[[13]](#footnote-13).* In individual cases I cannot be sure of the rationale. However, taking instances of ‘judicious relocation’ collectively, I form a strong suspicion of a ‘covert relocation policy’. I have little idea how or by whom it is orchestrated. However, I am not the only one with such a suspicion. In one Royal Commission hearing, where the fate of Dr Leeks was under consideration, QC Frances Joychild (hearing on 23 June 2021) made a sharp inference that in 1977, some sort of deal was struck with Dr Leeks. No further detail was suggested. I heard no follow-up.

Given this context, on 6 September 2021, I sent a request under the Official Information Act to the Office of Prime Minister and Cabinet (OPMC). To explain the context, I wrote:

*I recently listened to hearings of the Royal Commission on Abuse in Care, involving spokespersons from the Medical Council. I noted especially QC Frances Joychild’s (23 June 2021) sharp inference that in 1977, some sort of deal might have been struck with Dr Selwyn Leeks, that he move off-shore in exchange for his avoiding prosecution or serious disciplinary proceedings. QC Joychild did not go into further detail on this matter. That is the topic of my OIA request. However, my request is not about any specific case, but is a generic request about the processes or mechanisms of the ‘deals’ by which this can occur.*

What followed in my letter was:

* a list of instances, similar to those summarised in Appendix III, where potentially valuable witnesses move - or ‘are moved’ – to another jurisdiction, making it more difficult for them to be interviewed or called to testify in New Zealand. Most examples *were* in the mental health field, but some were wider than that, involving offices of the Health & Disability Commission, and one, about relocation of Peter Whittall, manager of the Pike River coal mine, where 29 people died, which had nothing to do with either health or mental health.
* a series of eleven questions, within the. framework of OIA requests:

*[I] Do (or did) decisions to ‘guide’ responsible persons (who were somehow culpable, or ‘in the know’) to move offshore ever go through the New Zealand Cabinet? (For instance, in the case of Dr Selwyn Leeks .and Dr Basil James)?*

*[II] Short of a decision in cabinet, can administrative decisions be made by individual ministers (but never brought before cabinet) to serve similar purposes.*

*[III] In what ways can (or could) members of the judiciary approve deals in which there would be no attempt to prosecute, provide the person involved moves off-shore, and 'keeps his/her head down' (as far as New Zealand is concerned)? Dr Leeks is a case in point here.*

*[IV] Would this have been a formal arrangement, or occurred informally? If the former, what was the formal procedure. If the latter, does this imply that  these arrangement were made outside existing legislation?*

*[V] In what way could any of the above possibilities protect persons from the disciplinary hearings by professional bodies?*

*[VI] It is likely that some of the instances referred to above involved financial settlements (as is known to be the case for Mr Whittal). Without going into any detail, I ask which agencies would have approved such financial payments, and from whose budget?*

*[VII] Is it possible that the nexus of connections (informal as well as formal) by which state servants (and others) are protected from the reach of the law, also include recommendations to journalists not to follow up certain lines of  enquiry?*

*[VIII] Is some of the difficulty in holding public figures to account related to the blurring of the lines of accountability, favoured by legislation (such as that based in the 1980s)?*

*[IX] Is this related to the blurring of the boundaries between private and public, again favoured by legislation from the 1980s?*

*[X] The instances I cite do not look good, and suggest deliberate malfeasance by public servants. However, from the late 1980s, state agencies were struggling, often day by day, to adjust to radical change in the framework for their operations. There may have been an uneasy interregnum period, when two different styles were in unresolved rivalry. I therefore ask if some of the instances I cite after the late 1980s (such as that of Dr James and Ms Chin) reflect administrative chaos, rather than malfeasance.*

After sending this request, I waited and waited – long after the supposed deadline of 20 working days. In the end, on 26 January, 2022, I received a reply. My request had been transferred to the Ministry of Health. The writer was Philip Knipe, Chief Legal Adviser, Corporate Services, in the Ministry of Health, who wrote as follows:

*The Ministry is not aware of any processes or arrangement as outlined in your request. As such your request is refused under section 18 (g)(i) of the Act as the information requested is not held by the Ministry and there are no grounds for believing it is held by another agency subject to the Act.*

COMMENTS:

* My OIA request to DPMC provided enough evidence to indicate that something was worth investigating, and was perhaps being concealed
* It is questionable that an OIA request with generic application should not be answered in a generic manner, as well as a specific one, and that no enquiries were initiated.
* I infer that the decision to refer my decision to the Ministry of Health, with no attempt to answer the question generically, was taken in DPMC by an unaccountable administrator, and never saw the eyes of the Prime Minister, or other Cabinet members
* A recent event supports this conclusion: I quote Mr Bryce Edwards (Political Roundup, 30 March 2023), regarding the resignation of Minister Stuart Nash:

*This is one of the extraordinary details to come out of the Nash scandal. Prime Minister Chris Hipkins was forced to admit yesterday in Parliament that in 2021,when Jacinda Ardern was Prime Minister, her office was made aware of the incriminating 2020 email from Nash to his political donors but nothing was done about it because neither the Prime Minister nor the Chief of Staff were informed. If Ardern had been told, surely Nash would’ve been sacked.*

* In a later chapter, I document a more serious instance (from 1972), when the head of the Prime Minister’s Office wrote letters to the Prime Minister which concealed key details of the forthcoming visit of Mr Richard Helms and party. After the visit, answers to questions in parliament about this visit were worded, by an MP likely to have known the full story, in such a way as to conceal this same detail. The head of the Prime Minister’s Department was in the know. It is likely that he fed the Prime Minister just enough for him to appear well informed and honest, but not the whole truth.
* Part of the way in which governments are protected from being held to account involves quiet but influential actions within OPMC (or its former equivalent), to limit information flow in cabinet to what the unaccountable bureaucrat deems cabinet has ‘a need to know’. The head of that office wields great power.

***Methods Of ‘Damage Control’.***

Preceding subsections have been about general strategies to limit spread of knowledge, protect against unseemly disclosures of secrets, and to make sure that ‘reliable’ persons ware in the right job. We now move to specific methods to limit damage, once there is a possibility that indiscrete revelations might reach the public.

***‘Transparent Deception’*:**

* In my introductory chapter, I referred to evidence suggesting a covert plan for Samuel Fischer to be relocated after discharge to the regional forensic/rehab facility. Evidence suggested that it *was* covert. The inquest made strenuous and successful efforts to prevent the evidence ever being examined.
* Deception was sometimes used to bring troubled adolescents to the narcosis units at Cherry Farm, to the Lake Alice Child & Adolescent Unit, and likewise to Sargant’s ward at Royal Waterloo hospital (where his strategies to persuade patients to undergo Deep Sleep Therapy often paid not even lip-service to the concept of informed consent).
* From its inception, the CIA Project Bluebird was designated as ‘top secret’: Very few people even in the CIA were supposed to knew of its existence or that of MKULTRA, let alone its details. However, it *was* shared with heads in all branches of the US military, a substantial number; and therefore was likely to ‘leak’. Here is a real conflict of logic. There can be no such thing as ‘covert publicity’.
* In the CIA programs in the 1950s and 1960s there were many instances of deception to lure unsuspecting individuals to become subjects for its risky, clandestine unethical research.
* In late 1960s and early 1970s in USA, there was secretive infiltration of dissident groups by CIA informers. This also occurred in New Zealand, in the same period
* Secrecy about sexual abuse has been almost universal in stories I recount.

In short, deception, and cover-up run through and through the histories recounted in earlier chapters. Since it is often successful, much remains undetected, and its extent underestimated. However it requires at some planning and complicit action in an organization, so a select few must know details.

***Semblance of Accountability*:** President Truman had a sign on his desk bearing the words: ‘*The Buck Stops here’*. He implied that if accountability does not stop - somewhere - it is not accountability[[14]](#footnote-14). Nowadays, as an international trend, public servants (most of them) are supposed to be ‘accountable’ to the populace they are supposed to serve. However, as information technology expanded, with more and more ways to communicate complaints, public servants have often responded by building defensive walls against the endless barrage of messages from dissatisfied citizens. In New Zealand, I have noticed many strategies to avoid true accountability. There is no reason to think this is unique to New Zealand:

* *Pretence of accessibility*: In New Zealand, a small country where ‘everyone knows everyone else’, a distinct tradition - perhaps a boast – has been the accessibility of officials; but consider the following:
* In Chapter 3, I quoted an early letter from Dr Basil James in which he put on a show of openness, with the line ‘. . .*when one has such accessible professionals as in Dunedin’*. I never bought his line. Shakespeare’s line from Hamlet - ‘*Psst! Methinks he doth protest too much’ –* was an appropriate rejoinder. Later interaction showed he would give nothing away – least of all any of his power - despite this show.
* Early in my attempt to help Sam Fischer, his mother was dissatisfied with how her son was treated in a public hospital. I suggested seeing the Chief Executive. His Personal Assistant was cooperative: A meeting was arranged a few days hence. As events transpired, Sam’s mother could not be there, so I joined a one-on-one dialogue with the CEO, bringing a list of her questions and complaints. This was unusual, perhaps a genuine sign of accessibility. The reality was different: He used the occasion to advance to me his antipathy to the aggrieved mother.
* After Sam’s death, I gained access to his clinical records. I detected something which disturbed me. A clinician had died suddenly and prematurely. The post-mortem exam attributed her death to a sudden heart problem. I found evidence suggesting she had anticipated her own death, raising the possibility of suicide (by overdose). I raised the matter at the coroner’s office, expecting it to would lead to vigorous follow-up. All I got was stone-walling.
* As part of investigations related to the inquest, I visited a Community Law Office in Wellington. After a long wait, necessary because it was clear my request was more than ordinary, I met the head barrister there. We batted my issues around for a while getting nowhere; so I put the hard question to him: ‘*Do lawyers have a professional responsibility to uphold the rule of law’* Answer: ‘*You’re asking the wrong person. I’m part of the system’*. Basically, he was stating that he was no longer an independent professional. Very interesting! I add that, in my own small town, Community Law Office staff are far more sceptical (to put it mildly), in expressing their doubt that our country’s legal and judicial processes deliver anything which the man in the street recognises as justice.
* Websites avoid giving email addresses, or ensure that you cannot easily approach the person who makes decisions, with armies of middle-men in between. Automatic telephone answer services lead you through a long hierarchy, sifting and sorting your question, sometimes with interminable delay. It is often impossible to locate what you want – *a responsible person.*

I have my own strategy to break through these ramparts, learned by experience. When I have an important question to ask, I write my concerns in hard copy, and mail the missive, with associated documents ***in person*** to the individual at the top. Sometimes I deliver the envelope by hand in an envelope marked ‘*in person’* – and on one occasion added the line ‘*no middle men please’*. There may still be long delays, but in the end it does tend to be effective.

* *Persons in powerful positions subject to no higher authority*:
* Selwyn Leeks and the position he occupied at Lake Alice was not accountable to either the Area Health Board or the Ministry of Health
* There is no appeals process for decisions of HDC
* The Royal Commission on Abuse in Care has no international observers
* *A complaint is diverted to the wrong place:* My OIA request to the Department of Prime Minister & Cabinet, couched in generic terms, was forwarded to the Ministry of Health who responded only on specific instance cited, not on the generic question I posed (as detailed in the preceding section).
* *The chain of accountability is ‘circular’*: Complaints in our health system go ultimately to our Health and Disability Commission (HDC), which, nominally, is accountable to the Minister of Health. My complaint to HDC elicited a response which was unsatisfactory, so I wrote to that Minister. He referred me back to HDC
* *The chain of responsibility leads to a higher agency under the same mandate rather than an independent complaints agency*
* In 1977, when William Mitchell conducted an inquiry into treatment of a Niuean boy by Selwyn Leeks, his report went to the Minister of Social Welfare, whose department was itself under investigation, and had discretion on public release of his findings.
* A possible safety valve for mental health services is the District Inspectorate. District Inspectors (DIs) have the power to make unannounced visits to any mental health facility. An investigation into the care of Samuel Fischer by the District Inspector led to a thorough investigation, and a hard hitting report (never made public). To whom did her report go? To the Director of Area Mental Health Services, who in turn reports to the Director of Mental health. There was no independent procedure to ensure the implementation of DI’s recommendations. The system is fundamentally flawed unless reports go direct to an independent body with powers to see them implemented, ideally the law courts.
* One means which might favour state agencies being held to account was legislation passed into law in 1982, the Official Information Act, replacing the previous Official Secrets Act. In the last ten years, I have had some experience using this. Occasionally it has been very helpful, and I have no doubt that investigators with more experience and clout may be able to use it in more powerful ways. Usually, however, my requests either draw forth a ‘minimalist’ response (such as my inquiries to the coronial office just mentioned) or lead me on a merry dance to other agencies, leading in the end to the Ombudsman’s office, which as everyone knows is totally overwhelmed. Neither response is the least bit helpful.
* Similar legislation exists in other countries. In the USA, the Freedom of Information Act may be very powerful, because of the First Amendment to the Constitution. In principle at least, I can use it to obtain specified documents. I know that a letter was sent from Mr Richard Helms to the head of the SIS in New Zealand, and I know to within a few days when it was sent, and can infer some of the content. I need a copy of the letter itself, to learn more. The CIA is subject to the US FOIA. On 22 March 2023, I filed an FOIA request through the CIA website. After some weeks, to my pleasant surprise, a hard-copy airmail letter arrived, with the back covered in strong tape, to discourage attempt at interception and covert reading. The letter acknowledged my request, no more – yet, I thought, quite an achievement. Three months later, I still await a copy of the vital letter. I accept that it may be a tedious fruitless search in CIA archives, in that the document I seek may have been shredded as one of Helms’ parting gifts to inhumanity.
* *Failure Of Proper Chain Of Responsibility, Enabling Cover-Up*:
* Deep Sleep Therapy at Cherry Farm, had financial implications, but financial arrangements were never detected in orthodox records.
* Judge Mitchell, when reporting on the investigation on LACAU, made comments on clinical issues on which he had no expertise.
* A community mental health nurse at one DHB ignored or over-rode the instructions of the community psychiatrist.
* In Samuel Fischer’s last admission, decisions on matters which are essentially clinical are, in effect, taken by non-medical administrators and or legal people
* The CEO of a DHB was apparently subject to advice or instruction from ‘experts’ below her in the hierarchy, whom, she said, ‘she trusted’
* In the CIA, in the 1950s, MKULTRA was set up, on instructions from Dulles to Helms to Gottlieb, and supposedly with scientific research credentials, but it was not under the Directorate of Science and Technology of the agency.

*Conclusions on Accessibility and Accountability*: In New Zealand, the plethora of complaints systems are largely ineffective, and designed to be so. The supposed end point of complaints is unaccountable, its highest officials often have no expertise to make rational assessments. The only way they can validate decisions is in terms of their statutory authority (an exercise of power not rationality). No wonder that QC Frances Joychild spoke of the Royal Commission was ‘The Crown investigating itself’

***Determining Terms of Reference*:** Any enquiry, legal, scientific or historical must set limits to its scope. If a public inquiry or investigation is to be launched, its scope is defined by its Terms of Reference, in other words, how far it can go, and what is ‘off limits’. The ToR may be critical determinants of outcomes.

* As a generality, I detect a reluctance by unnamed state servants who define Terms of Reference to include investigations of ultimate responsibility for wrong-doings.
* In 1977, when Judge Mitchell was assigned the task by the Governor General of investigating events at LACAU, Terms of Reference failed to specify that use of ECT should be in focus, but ToR specified that the hearing would in camera, and that there would be no publication of either evidence or the judge’s findings.
* In 1991, the Mellsop-Radford enquiry into Deep Sleep Therapy avoided investigating the chain of responsibility by which the decision was taken to use this outdated, risky treatment.
* The Royal Commission on Abuse in Care, while supposedly independent, had its ToR changed, mid-stream, by the Minister of Internal Affairs, in ways which made it hard to identify current systems failures and call to account current office holders.
* In early stages of enquiries in Samuel Fischer’s death, the DHB decided that this was to be on ‘care and treatment’ excluding ‘administration and management’.
* In due course, this prescription was transformed into a ruling that no evidence would be considered prior to the date of his last admission to Ward 27, and this ruling was then adopted by the supposedly independent coroner. As a result, the inquest never looked into management decisions which, in my view, conducted ‘covert planning’ of Sam’s destiny after his envisaged discharge, into the forensic/rehab facility.

***Closing Down Investigations*:** In 1977, following the Mitchell inquiry into LACAU and subsequent protests and meetings, the police were called to investigate, but it never led to further legal action. More recently the excuse may be offered that the police are over-loaded and under-resourced. This is undoubtedly true, but in my view does not explain all shortcoming of police investigation.The overall message seems to be that the police are keen to investigate simple matters. When it comes to wrong-doing by state agencies, where investigations are likely to be long and complex and - if an issue ever reached a court hearing - there would be potent legal adversaries, the police back away.

***Wilful Blindness To History*:** An extension of police reluctance to investigate when there are reasons to do so, is an unwillingness to undertake scholarly study of history, which at times seems to be wilful blindness. I became aware of this after the ‘Anger resolution’ symposium I organised, when on committees of RANZCP. A rational and responsible reaction in the college would have been to find more of what I knew, and what I suspected about the college’s past, and then to conduct suitable enquiries from its own archives, and from other sources. This never happened; nor did it after a subsequent paper I gave in a later college congress, when I told the audience that the college’s response had been ‘too slow’. After my last committee meeting, the Community Collaboration Committee did put together a ‘position Paper’, on the college’s need to learn from shortcomings in its past, but when working on this paper, the committee never made contact with me, when I obviously had something to contribute. Since 2016, I can find no evidence of serious activity by this committee. My approaches to that committee elicited no response. I conclude that the college is unwilling to confront its past, almost certainly because the most senior figures in the college, those who are still alive, do know of dark dealings by the college in its past, which should not reach the public.

Sadly, I have to say something similar about the Royal Commission on Abuse in Care. The determined and tenacious efforts of whistle-blowers have forced the topic of this commission out into the open, and the commission itself has done a tremendous job is hearing the testimony of so many vulnerable witnesses. Nonetheless, for anyone who knows the history of interaction between the profession of psychiatry and military and intelligence agencies in the period after the second World War, it is obvious that events at Lake Alice and Cherry Farm had to be placed in a broad context of international history; yet, to the best of my knowledge, there has been little research on the topic by the commission, and, as far as I know, nothing so far on the historical background to the abuse.

***Documentation*:** There are many ways by which individuals with something to hide can achieve this by avoiding usual requirements for documentation or by modifying those requirements.

*Not keeping records.* This is the simplest method. MI5 or whichever agencies developed the ‘five techniques’ used by interrogators or torturers in Northern Ireland never had a written version of the methods.

*Lack of (or inadequate) record keeping.*

*Destruction of* documents: This can seldom be proved.

*Falsification of documents*:A community mental health nurse appeared to use underhand tactics in order get Sam’s signature onto a document, supposedly showing that he renounced the role of his energetic and devoted advocate. The evidence was complicated, but, to my mind, after careful study, was compelling. It was never subject to proper investigation by authorities. My guess is that this devious act was authorised at a higher levels in that DHB.

*Modifying documents*is a serious matter, especially if documents have major legal import.

*Selective Release/Redaction for Wrong Purposes*:

*Making Public Documents Virtually Inaccessible*: The primary public purpose for keeping records of the activities of public servants is surely to allow future legal scholars, policy-makers and researchers to detect shortcomings, either in the policies, statutes or the thoroughness by which they are implemented. If this purpose is to be achieved, public records should be accessible to the public, perhaps with special conditions in some cases. Specifically -it might be said - there should be no hindrance to activities of concerned citizens studying such records while working as free-lance researchers. For records containing personal information about individual citizens (including medical records) there are undoubtedly additional reasons to have full documentation, and in these cases strong reasons to *prevent* public access other than in exceptional circumstances. Sadly, I report that in my experience in New Zealand, it is often difficult or virtually impossible to access documents, for which there are important public interest reasons for the public to have access.

***‘Progressive dilution’*:** Standing back to look at a broader picture, in the long sequences of events from first complaints, to investigations, to reporting conclusions for a trial, and then, potentially, moving to progressively higher courts, it is clear that often, the further one gets from raw evidence, the more are original allegations become diluted, and the more innocuous they seem. In the end, what may happen is that the persons at the top, who receives and read over-digested milk-sop reports of ‘what happened’ are reading their underlings’ versions of what their superior wants to read, another way by which justice is perverted.

***Legal Immunity and Protection of State Servants and Their Agencies*:**

In a democracy, every citizen - even presidents and prime ministers - is supposed to be subject to the rule of law[[15]](#footnote-15), and occasionally even the latter are prosecuted - in France, Latin America, and recently in the USA. To the best of my knowledge it has not happened in England or Commonwealth countries for a very long time. In principle it could.

In this work we are mainly concerned with crimes of state, which seldom consist of wrong-doing by individuals, but rather by public bodies (which, today may merge into entities with many features of corporations). In such cases, there may be a collective motive to shield those at the top and the entire structure of the organization may be design to defend against all attempts to hold individual leaders, or the entire agency to account for its shortcomings. Such quasi-legal protection is gained in many ways, The situation varies across jurisdictions.

*The (Im)-Possibility of Corporate Crime*: In New Zealand law, there is no recognition of Corporate Fault[[16]](#footnote-16).There is also no crime of corporate manslaughter (as I found when investigating Samuel Fischer’s death). In the Education sector, I read (State Sector Amendment Act 1991 (1991 No 31)

*77. Protection from liability: No chief executive and no other employee shall be personally liable for any liability of any institution in the Education service or for any act done or omitted by the institution or by the chief executive or any other employee of the institution in good faith in pursuance or intended pursuance of the functions or powers of the institution or of the chief executive*

More widely, I quote from the start of a recent article[[17]](#footnote-17):

*In New Zealand, a plaintiff who wishes to sue the Crown in tort cannot sue the Crown directly. Under s 6(1) of the Crown Proceedings Act 1950, they can only sue the Crown vicariously, that is, “in respect of torts committed by its servants or agents”. This provision does not appear to allow for liability according to the concept of systemic negligence – where the fault for failing to prevent harm lies with the internal processes of the Crown as an organisation, rather than with its individual servants. In these circumstances it may be inappropriate, or even impossible, to identify a particular Crown servant whose negligence caused the harm, leaving the plaintiff with no means of redress under s 6(1).*

A further interesting document from our Public Service Commission[[18]](#footnote-18) is entitled ‘*Liability and Protection from Legal Claims or Proceedings’.* Its sections give advice to Crown Entities o*n matters such as ‘Protection from Liability’, ‘Extent of Immunity’, ‘Indemnities’, ‘Insurance’*, etc. I saw some of this at work, when, during a mediation session related to Samuel’s death, a brief phone call, from the defendants’ lawyers secured an increased pay-out from their insurance broker. In short, the document from the Public Service Commission, gives support and advice to Crown entities, as if they needed support and advice – lavishly funded as they often are to support large legal teams – on how to protect themselves from the miserable poorly-funded plaintiffs who dare suggest that something is rotten in those entities. Is this fair? Is it justice? Is it Public Service? Is there any sense in which Crown Entities are accountable?

In the case of the death of Samuel Fischer my own objective was to find responsibility at a collective or structural label, and I was completely unsuccessful; but perhaps I should not have been surprised. This may be a natural outcome of common-law legal and judicial style, where the focus is on individual rather than corporate liability. Admittedly corporate crimes are embodied in much modern legislation, but it is a recent trend in the last 150 years, and often problematic. Older legal traditions in the west have roots firmly based on ancient dualist philosophy, from which concepts of individual responsibility are derived.

***Legislation which is Equivocal, Internally Contradictory or Easily Misused*:** I am no legal expert, but I am literate, and, I hope have a tendency towards logic. I report my impressions of various legal statutes I studied in the course of my investigations. The State Sector Act 1988 and the Public Service Act 1989 were passed into law in the late days of the administration of Prime Minister David Lange. These two acts, now 30 years old, redefined finance and power relations between government ministers who devise policy and senior public servants who implement policy. Before these acts, the latter were ‘permanent heads of department’, with long experience which enabled them to offer ministers advice which was ‘free, frank and fearless’. The State Sector Act 1988 relegated their positions to 5-year appointments, subject to instructions of ministers, without the opportunity for two-way interchange of ideas as policy was formulated. This act, and the Public Finance Act 1989 reinforced top-down-control, and blurred the separation of public and private sphere. There were many contradictions in these acts, whose unfortunate consequences unfolded in later years, as I commented some years ago, in the context of mental health care[[19]](#footnote-19). Both acts were passed into law with scant regard for democratic scrutiny: The State Sector Act 1988, was passed under urgency; the Public Finance Act 1989, became law without its authors ever responding to criticism from the Legislative Advisory Committee, as is supposed to happen. Considering their importance, they should have been examined more carefully in parliament. The New Zealand politician who was architect of these acts is on record of having subsequently boasted that, to produce real change, you have to do it as fast as possible, so that no-one grasps what was done, until it is too late.

I have written in my introductory chapter about the exemplary report on shortcomings in Samuel’s care in a public hospital from the District inspector for Mental Health; but when you examine legislation governing the functions of District Inspectors (Mental Health [Compulsory Assessment and Treatment] Act 1992), the shortcomings multiply: The ultimate destination of reports from the DI is not the courts of law (as it should be), but the Ministry of Health - another circular barn dance! It is no surprise that clauses of this act are often ignore or misused – and they are! There is no monitoring by an independent body.

When I read Guidelines for Recusal in the case of a judge or coroner whose behaviour appears to be biased, or lacks independence, I was impressed by the careful thought behind the words; but, however strong the case, there seems to be no affordable way for the average citizen to ensure that biased and compromised judges ***do*** recuse themselves.

Our privacy legislation, in its last reincarnation (Privacy Act 2020), is complex and confusing. Certainly privacy law is important to protect innocent citizens caught up in public release of personal information, including that collected by public bodies. I sought answers to a simple question: Can privacy legislation by used to protect public servants from *their* shortcomings being exposed? I pursued this question first with our Privacy Commission, and then internationally in a subdivision of OECD (from which our own legislation derives some of its authority). No-one has given me a simple answer to my simple question.

Our Official Information Act 1982 includes a clause stating permissible reasons for withholding information held by public bodies. ‘*Under section 6(a) of the OIA - disclosing the information would be likely to prejudice the security and defence of New Zealand, or international relations of the New Zealand government”*This phrase (and therefore section 6[a]) conflates two issues which are conceptually different, yet generally assumed to go together. There *might* be occasions when these concepts should separate, that is when security and defence of New Zealand is not compatible with some of our international relations – bluntly, when our international alliances undermine our defence and security.

Last, in my attempts to uncover past documents, I was led to consider the Public Records Act 2006. Who has authority to withhold records from release to the public? The advice I received from one of the higher officials in Archives New Zealand was contradicted by the Chief Archivist (who had not initially been available to respond to my enquiry).

These complications are confusing, yet they have one certain consequence: The average plaintiff needs lots of expert - and expensive - advice from lawyers, and since that plaintiff is of modest means, then, even with legal aid, is in a weak position. Plaintiffs who are so bold as to challenge large public bodies, such as District Health Boards, with their overwhelming legal fire-power, don’t stand a chance. When, as often seems likely, several state agencies sing from the same song-sheet (if not in active collaboration)[[20]](#footnote-20), there is no point in even making the attempt; but the situation is hardly calm and stable. It must be addressed in ways other than via the steeply tilted playing field of regular litigation.

***Misuse Of Legal Statutes*:** As a complete novice in this area, my comments have to be both brief and impressionistic. However, I point out the following concerns:

In his last year, Samuel Fischer committed a minor crime, at a time when he should have been in secure in-patient care, had the order of his community psychiatrist been followed by the community mental health nurse. He went immediately to the police, to confess what he had done. Seven month later, he pleaded guilty in court, and volunteered to pay reparations. It was a minor offense with major extenuating circumstances, but it *was* a criminal offense. It was then used as part of the process planning his destiny in the regional rehab/forensic facility. Considering the nature of his offense, it was an extraordinary misuse of the law.

From study of Samuel’s clinical file over many years I know that the Mental Health Act was misused, sometimes to wrongfully admit someone to a mental institution under section, and at other times to discharged for incorrect reasons. Other people speak of similar occurrences. How common this is, in this area, and in many other areas of law is anybody’s guess. Overseas, in early days of the Cold War, the CIA was responsible for serious breaches of USA law, including deaths. The most notorious example – the death of Frank Olson - was brought to public notice; but soon afterwards, the CIA was told in secret that they were exempt from prosecution, which meant that the full catalogue of wrongdoing can never be known.

***‘Mediation’*:** As plaintiffs get closer to a trial, and when state agencies are involved, plaintiffs may be invited to a mediation session. I have seen this on two occasions, the Right to Life case regarding Sam Fischer’s death, and the procedures of out Human Rights Tribunal, regarding the notorious All Staff email. This would normally have included cross-examination. It never happened because the matter was settled out of court. During mediation, pressure builds to settle out of court, with reminders from the mediator (in this case a judge) of the great stress of going through with a trial, the expense, and the uncertainty of the outcome. Rather than face the rigours and public exposure of truly open justice, state agencies always prefer to concede a few crucial points in closed sessions and then negotiate pay-outs and gagging clauses with aggrieved parties (paid from the agency’s insurance company). It is the same at the highest levels. When documents were identified about the torture inflicted by British forces on MauMau detainees in Kenya, and then those in Cyprus, pay outs were made to survivors, but full details of what happened were never made available.

The story of one of the CIA whistle-blowers, Victor Marchetti, is most relevant here. The author of an article on whistle-blowers[[21]](#footnote-21) writes:

*‘With President Richard Nixon’s blessing, the CIA asked Judge Albert Bryan of the Federal District Court of Virginia for a court order requiring Marchetti to submit all his writings, ‘factual, fiction, or otherwise’, to the CIA for pre-publication review. The request hinged on the idea that Marchetti had signed a secrecy contract, which might have the same legal weight as a commercial contract that prevented employees from disclosing trade secrets. On 18 April 1972, in a landmark move, Bryan authorized the request and issued a temporary injunction.’*

Never before in US history had government used the law to silence a former government employee. The restriction was imposed before Marchetti had written a single word of what the CIA feared was coming. A reporter from *Washington Post* called it *‘preventive detention in the realm of ideas.’. . ‘To imprison ideas is to dam the democratic process.*’ Later, another judge threw out Bryan’s ruling, yet he asserted that *‘an individual sacrifices his First Amendment rights when he signs a secrecy agreement.’*

In my own investigations (described in a later chapter) when attempting to squeeze documents out of our national archives, I was asked to sign up to a very similar clause. I refused to do so. *I have never signed a confidentiality or secrecy agreement; nor will I: To do so would not just defy the First Amendment to the US constitution. It would defy my own constitution: It* ***IS*** *my Constitution, before anyone amends it: It is who I am!*

***Immunity of Intelligence Agencies*:** In Britain, versions of the Official Secrets Act go back to the late nineteenth century. Such legislation is problematic. Sanctions for breach of this act are severe, but very few cases are brought to trial. The reason is that open justice would bring to the public the very secrets which the Act was framed to protect[[22]](#footnote-22); and there are alternative courses of action – such as forced ‘relocation’, even assassination.

Whether intelligence agencies, whose *modus operandi* is inherently secret, are subject to the rule of national law has long been a vexed question. The issue is currently *sub judice* at highest level[[23]](#footnote-23). MI5’s previous policies, dating back to 1950s or earlier, often found it necessary (and permitted) for informants to commit some crimes to prevent their cover being blown. Recently, Human Rights groups, including ‘Reprieve’ challenged the little-known policy allowing agents to commit serious crimes in pursuit of intelligence. On 9 March 2021, three appeal court judges concluded that it *was* legal, but that MI5 was ‘not above the law’ because the long-established power did not equate to immunity from prosecution. This is an odd concept of rule of law, an archetypal piece of sophistry. The matter will go to the supreme court.

GCHQ, the British agency charged with obtaining communications intelligence, is immune from prosecution for hacking mobile phones and computers[[24]](#footnote-24). For MI6, the 1994 Intelligence Service Act (section 7) states that, for acts that are otherwise illegal, MI6 officers should first consult the foreign secretary; yet evidence from Iraq, Afghanistan and Libya shows that officers on active duty seldom consult even head office in London, let alone ministers[[25]](#footnote-25).

What about the USA? Because of the First Amendment to the Constitution, there was never anything like the Official Secrets Act; but the draconian Espionage Act 1917, passed into law during the First World War aimed to prohibit objections to USA joining the European war. It has been revitalized recently to serve a similar purpose.

What about the US Central Intelligence Agency? As detailed in Supplementary Document no. 5 (Chapter 4), when Schlesinger replaced Helms as Director, the memorandum he circulated to all CIA staff included:

*All CIA employees. should understand my attitude toward matters of this sort* [alleged breaches of US law]*. I shall do everything in my power to confine CIA activities to those which fall within the strictest interpretation of its legislative charter. I take this position because I am determined that the law shall be respected and because this is the best way to foster the legitimate and necessary contributions we in CIA can make to the national security of the United States.*

Two years later, the Church Commission heard much evidence of breaches of US law. A wide range of intelligence abuses committed by the CIA, FBI, Internal Revenue Service and National Security Agency was identified. Programs were revealed that had never before been known to the American public. After holding 126 full committee meetings, chaired by Frank Church and Teddy Kennedy, with 40 subcommittee hearings, interviewing some 800 witnesses in public and closed sessions, and combing through 110,000 documents, the committee published its final report on April 29, 1976. The report included[[26]](#footnote-26):

*“Intelligence agencies have undermined the constitutional rights of citizens,” the final report concluded, “primarily because checks and balances designed by the framers of the Constitution to assure accountability have not been applied.” In a separate appended view, Senator Tower acknowledged “intelligence excesses” and the “need for expanded legislative, executive, and judicial involvement in intelligence policy and practices.” He cautioned, however, that Congress should not “unnecessarily” restrain the president from exercising discretion in the realm of national security.*

The last sentence is a significant qualification.

Later before the Church Commission, Mr Helms was found to have broken US law on numerous occasion, and was therefore found guilty of Contempt of Congress. The *New York Times* (October 31 1977) reported as follows:

*Richard Helms, the former Director of Central Intelligence, pleaded nolo contendere, or no contest, today to a criminal information charging him with two misdemeanors counts of failing to testify “fully, completely and accurately” before a Senate committee. . .. He said that he did not intend to lie to or mislead the Senate Foreign Relations Committee when he testified in 1973 about his agency's covert attempts to prevent Salvador Allende Gossens from becoming president of Chile. ‘I had sworn my oath to preserve certain secrets from unauthorized disclosure,’ he told Federal District Judge Barrington D Parker at a court session attended only by Mr. Helms, his lawyers, Justice Department officials and court officers. ‘I was simply trying to find my way through a very difficult situation in which I found myself.’. .* ***.In bringing the charge, the Justice Department was asserting that intelligence officers had no right to lie under oath to Congressional committees, despite their oath not to reveal intelligence sources and methods to unauthorized persons*** [emphasis added]

In other words, the Justice Department of the USA, asserted that allegiance to Congress of the USA overrides allegiance by oath to the CIA. Clearly, the allegiance of Mr Helms – and that of some other members of CIA - was not to the USA and its constitution, but to the CIA to whom he had sworn an oath. However, nothing in law is entirely clearcut, it seems, as explained in an article in *New York Times* on 15 November, 1977[[27]](#footnote-27).

Less known, but more significant, is a conversation reported by Kaye and Albarelli[[28]](#footnote-28), giving detail of how a ‘smoke-screen’ to protect Project ARTICHOKE from public exposure was administered. Following Senate hearings in 1975, the CIA General Counsel official, Lawrence Houston – top legal adviser to the CIA - had several meetings with the young Donald Rumsfeld and Dick Cheney. Houston stressed that any intense media scrutiny of Project Artichoke would open ‘*a Pandora's box of legal, institutional, international and public relations problems that could destroy the CIA.’* The names of a few prominent former CIA employees would be released, but these were no more than the ‘fall guys’ whose exposure served to protect more powerful officials in the background. Amongst them were Sidney Gottlieb and also, arguably, Ewen Cameron of Montreal (a research contractors under MKULTRA) who was no longer alive and could not defend himself. The procedures which followed had the informal name: ‘Operation Dormouse’. Houston explained to Rumsfeld and Cheney that, early in 1954, a few months after the suicide of Frank Olson, a secret agreement was reached between the CIA and the US Department of Justice, such that, if CIA personnel were found to have breached criminal law, there would be no prosecutions. In short, the CIA was above US law, and all manner of subterfuge could be deployed to ensure its survival. Rumsfeld and Cheney acquiesced to this. How much they knew before these meeting is uncertain; but after them, they were complicit, suborned, it seems by the CIA; and they never looked back.

In New Zealand, legislation equivalent to the Official Secrets Act was invoked on only two occasions, and never led to successful prosecution. This act was replaced by the Official Information Act 1982, which made it possible to obtain at least some official information. However, one of its qualifications was the intention *‘to protect official information to the extent consistent with* ***the public interest*** *and the preservation of personal privacy’.* The phrase ‘public interest’ (my emphasis) is a double-edged sword[[29]](#footnote-29). In principle, it may be in the public interest either to withhold, or to release official information or documents. Who is to decide what is in the ‘public interest’)? Apart the New Zealand state using the concept of ‘public interest’ to justify withholding information, this concept is permitted in some jurisdictions to *enable* release of otherwise classified material[[30]](#footnote-30). In New Zealand, public interest defence may be possible, but once a matter has been referred to the Ombudsman, who has then delivered his/her final decision, Public Interest is not an admissible argument.

Agencies similar to those in Britain were the Security and Intelligence Service (SIS) for internal security and human intelligence, and Government Communications Security Bureau (GCSB) for signals intelligence - and those assisting them - are immune from some legal liabilities[[31]](#footnote-31). I have little doubt that such immunity applied in the early 1970s to what were then the Joint Intelligence Board and SIS. An Act passed into law on 1 July 2017 created a single immunities framework as announced from the Department of Prime Minister and Cabinet. I presume those immunities still stand without question.

The New Zealand Official Information Act 1982 includes, amongst its ‘Conclusive reasons for withholding official information if *‘making available that information would be likely to prejudice the security or defence of New Zealand or the international relations’.* In my investigations covered in these chapters, this clause has often been used to prevent my access to official document which I infer must exist. In particular it has been used when my request went to the Security Intelligence Service. I am in no position to form a view on the need for such immunities, but I offer two comments.

* Any agency whose operations are *sui generis* highly secret, is always going to be problematic for a nation committed to the ‘rule of law’, and therefore has to be subject to most extraordinarily robust monitoring[[32]](#footnote-32).
* ***If that secrecy is used to hide outrageous and horrific abuse and torture of some of our most vulnerable and defenceless citizens – disadvantaged by their ethnic background, social status, and sometimes disability, and therefore perhaps regarded as ‘dispensables’ – and the secrecy is maintained in the name of overseas military or intelligence alliances, then, I say, the nature of those alliances needs to be subject to most rigorous questioning.***

Beyond this, I note that the First Amendment to the US constitution makes cover-up of state documents difficult to maintain over the long term. New Zealand, has no written constitution, and the status of our Bill of Rights in relation to other legislation is not yet clear. We cannot get clarity on decisions, such as those just referred to, from the Church Commission.

***Immunity of Judges?*:** What about Judges? Are they immune from reach of the law? It is an interesting question, the answer to which differs between jurisdictions. Judges’ decisions should be based on the law, the evidence, procedure arising from precedents and conventions, and interpretation of the law. However, there are so many decisions, large and small – including what evidence is to be heard, what witnesses can and cannot be called etc – that it is hard to avoid concluding that decisions are sometimes subject to bias of individual judges. Impartiality is supposed to be ‘objective’, but it cannot be so. For instance it is impossible to be sure that *ex parte* communication never occurs.

In New Zealand, judges are, in principle, subject to the rule of law, and occasionally we see this in practice. However, based on recent experience, I suspect it is seldom the reality.The difference between principle and practice arises in many ways. A New Zealand document on Judicial Conduct[[33]](#footnote-33) refers to the principle of constitutional independence of judge from the executive branch of government, an excellent principle, but one which means different things in different jurisdictions. The parallel principle that judges should be independent of each other (and of other biassing influences) is more problematic. It is hard for a keen lay observer to avoid an impression that judges function as parts of an elite system, rather than independently. It is impossible to monitor this.

The document on Judicial Conduct states that ‘*Judgments must stand without further clarification or explanation. Where a judgment is subject to inaccurate comment, any appropriate response must come from the Chief Justice or Head of Bench’*. Of course we have higher courts where a decision can be revisited. It takes forever, costs the earth, and may be extremely stressful for litigants. Given the power imbalance between judge and plaintiff, there is no certainty of suitable resolution[[34]](#footnote-34). Unless you are very wealthy, it’s a mug’s game.

Judicial independence means that judges should avoid many normal freedoms of citizenship, including the right to join political parties; yet we read: '*The days are past when appointment to the judiciary compelled social and civic isolation. Effective judges should not be isolated from the communities they serve’*. I feel this conflicts with other parts of the document. In practice I suspect it means that judges’ social contacts are with their own kind. I conclude that judges in our system are not citizens like everybody else, equally subject to the rule of law: They are a pseudo-official elite, highly privileged financially, and protected from many aspects of the rule of law. Their decisions, just like HDC reports, are effectively unaccountable, perhaps idiosyncratic and highly personal, sometimes appearing to be biased, with loss of independence. Alternatively, they are independent to such a degree, that in many respects judges are no longer citizens, but have a higher status, less accountable, no longer free to engage openly in political debates of citizenry, yet exerting considerable power at personal or institutional levels. Little wonder that a common complaint, not by plaintiffs, but by lawyers, is that they feel bullied by judges[[35]](#footnote-35).

Britain’s judicial system is undoubtedly more complex, and at it best more nuanced and sophisticated than that of New Zealand. Overall it may be no better, as depicted in a recent monograph by an anonymous author, appropriately laced with dark satirical humour[[36]](#footnote-36). He knows well what he is writing about. A single case captures the systemic flaws. This is the Hillsborough stadium disaster of 1989, in which about 100 people died. After a long-delayed repeat of an inquest, there is still no real accountability.

I make no comment on the systems in place in the USA, because these vary so much across states of the union.

***Courtroom Strategies*:**

Preceding subsections dealt with strategies to enhance security, and achieve damage control. The objective of both cases is to prevent unseemly issues reaching the courtroom and public exposure. In the end those issue *do* sometimes reach public hearings in a courtroom. At this point other strategies are used to protect shortcomings of public servants and the policies they implement being exposed.

***‘Open Communication’ in Judicial Proceedings*:** This isa vital principle in common law tradition, both between parties in a trial, and with the public (apart from special exclusions). There are many ways to avoid such openness.

***‘Complexification’: Proliferation of Paperwork, Released with Minimal Time to Digest the Detail*:** This is a tried and true strategy, part of a wider strategy of making things too complex for the opposition to follow. Usually, it gives an immense advantage to agencies with large teams of lawyers, who, I infer, can work intensely over weekends if necessary, to get the gist of new documentation. In due course, I must admit, I have learnt how to use this strategy myself, or more generally, have learned the importance of timing in release of documents.

***‘Simplification’: Suppression/Attenuation Of Evidence*:** I am quite good at dealing with complex evidence, since for many decades this was the basis of my theoretical brain research. Complex evidence does not phase me, but there is one caveat: Analysis of complex evidence cannot be rushed, or else serious mistakes are made. Of course these shortcomings are hardly news. The gist of evidence in many cases has a limitless penumbra of contextual evidence of potential relevance. There is a sense in which ‘the whole truth’ can never be told. A decision must be made on what is relevant; and it is the judge who decides, with possible biases, prejudices, an eye on the clock and the cost to state coffers. Nonetheless, the selection should be defensible on grounds more solid than ‘*you have to draw a line somewhere’*.

***Rhetoric Parading as Reason*:** Separation of reasoning from rhetoric is seldom properly understood in law courts. Many strategies may then be used, their proponents often blind to their shortcomings.

* Language may be used ambiguously, sometimes with deliberate deception.
* In word usage, there may be sly switch between words used in a vernacular and a technical sense.
* Kindred concepts which should always go together may be artificially separated
* Detailed examples of a concept may be subsumed under generalities, to avoid confronting detail.
* Richard Helms, under questioning in a congressional committee, had a unique style, interpreting question in the narrowest possible contextless sense. He could answer ‘truthfully’, but gave away nothing that was not already known.
* An argument may be advanced, which is refuted, to be followed by another argument pointing to the same conclusion, but whose premises contradict those of the first. (In other words ‘if this line doesn’t work, use another, even if it contradicts the first’) This is ‘reversed reasoning’ - rhetoric in the guise of reason.

All this is part of the deceptive use of glib, superficial analysis of complex matters, conducted at such a pace in the courtroom, that few can keep track of it, especially the novice, however quick witted he/she may be.

***Procedural Sophistry*:** This phrase was already mentioned at the end of Chapter 2, implying that a presiding judge may focus on procedural matters (which may be foreign territory to plaintiffs), rather than following evidence wherever it leads, an area where plaintiffs may be excellently prepared. Decisions on what evidence is relevant is a major area for procedural manipulation. A significant document in New Zealand, is the Evidence Code of 1999. we read:

*‘“Relevant” evidence is defined as evidence that according to logic and common sense has a tendency to prove or disprove anything that needs to be decided in order to determine a proceeding, including, for example, the truthfulness of a witness*.

In the context of an inquiry into a suicide, ‘relevance’ is to be determined in relation to a plausible narrative of what might lead a person to take their life. While not universally agreed, that narrative should be compelling enough to defend in public. It follows that, if justice is to be genuinely open, the rationale for decisions by a judge (or coroner) should be explained in court, and be subject to challenge. In my experience in the inquest, it was not: Decisions were taken by the coroner, with little explanation and no chance of recourse.

‘Rules of evidence’ mean that what is presented is a pale shadow of the unfettered scholarly research such as a scientist or academic historian might undertake.

***Power Politics: Might Makes Right*:** The phrase ‘rule of law’ suggests that legal and judicial processes follow strict discipline, bound by rationality rather than judicial power. However, if all pretences of discipline and rationality fail, the ‘gloves are taken off’. A basic reality emerges: Relations between state officials and citizenry are based simply on power of the former over the later. Reason, and the validity of scientific expertise counts for nothing, compared with judicial authority, I found.

In one sense, these matters are history; but in the Royal Commission on Abuse in Care, events of fifty years ago they are still alive. Long delay before wheels of justice start to move are known for other cases of state wrongdoing. I think of the acknowledgement by the British government that their forces in Kenya in the 1950s made widespread use of torture; and, with this as a precedent, similar acknowledgment of torture in Cyprus in the same period. In both cases, reparation payments were made to survivors – but sixty years after the events.

***Last Resorts: Lying, Pleading ‘Victim Status’.*** One of the last recourses by which state agencies defend themselves if allegations become most dangerous is lying. . . and when even this is exposed, there may be pathetic bleats about amnesia or confusion. They may be genuine: A multiplying program of cover-up and deceit, sustained over decades, with all players inclined to believe their own propaganda, can be become so complicated that no-one remembers the detail, and they *are* utterly confused – especially if, as at the time of the Watergate crisis in the USA, most state agencies were energetically spying on each other, rather than trying to follow the rule of law.

***Evidence of Active Coordination Between Agencies and Countries*:**

Did the CIA - and other US agencies - coordinate their atrocities across countries?Did they collaborate with similar agencies in other countries? . .or with their polices forces? . . or other secretive professions, including psychiatry? Such questions inevitably arise from evidence surveyed so far. The answer to these questions is certainly ‘*Yes’* The specific question here is more difficult. Were atrocities documented at LACAU, Cherry Farm and elsewhere in New Zealand instigated, coordinated - and no doubt financed - by the CIA? The alternative is that similarities seen between agencies and abuses in different countries may be no more than coincidences, made likely because of the ‘spirit of the times’, dominated by diffuse spread of what was ‘accepted practice’. In clinical psychology and psychiatry this equates to a Zeitgeist within which cognitive models of mental processing had not yet replaced the incomplete and unrealistic ones based solely on Pavlovian and other conditioning models. *How, if at all, can we recognise direct influence, and exclude mere coincidence?* There are various criteria, some of which might point specifically to interagency and international coordination.

Documented evidence of administrative links between respective personnel or their agencies would amount to a ‘smoking gun’, pointing to interagency coordination. Such evidence is necessarily rare, and is at present lacking. However, in the ‘Family Jewels’ file from the CIA, there is solid evidence that the CIA’s clandestine activities overseas *were* coordinated. For ‘friendly countries’ – supposedly the ‘free world’ - the fact of such coordination had to be concealed with utmost rigour, but this was not entirely successful. The critical test of my central hypothesis may be found in a letter from the CIA to the head of SIS in New Zealand, dated on or few days before 6 June 1972. At the time of writing, I have sent several OIA request to NZ SIS. On their refusal I sought a ruling from the Ombudsman, who supported the decision of SIS. In March 2023 I sent an FOIA request to the CIA, asking for a copy of this letter (supposing it had not been destroyed). My request has been acknowledged. As of 20 June 2023, I await a further message with baited breath.

The most obvious if not the most specific hint of interagency coordination is when personnel in one scene turn out to be colleagues of those in another, or when a practitioner in one scenario was trained in - or influenced by - a senior colleague in another. This is most interesting when links are international. In evidence previously surveyed, there are many examples: Links between Sargant and each of Cameron, Bailey and Martinus, and probably between Sargant and James. Within Canada, links between Cameron and George Scott, and in New Zealand, between James and both Martinus and Leeks. For the attention of the Royal Commission on Abuse in Care, the most important link of this kind to document is that from the Central Intelligence Agency under Richard Helms to Lake Alice Child & Adolescent unit, under Selwyn Leeks, and the Cherry Farm narcosis units under George Martinus. These links were ones whose existence had to be concealed with utmost stringency. Evidence for such links, documented in the next chapter, is becoming clearer, but is not yet decisive.

Coordination between agencies, is suggested if details of methods are common between countries or agencies, especially if they are distinctive, and not part of accepted practice. Here are instances giving strong hints:

* The intensified ECT regimes used by Sargant after 1964 (and apparently by Bailey at Chelmsford), similar to practices under Cameron at the Allan Memorial Institute.
* The use by Leeks of an ECT machine with shock strength calibrated in amperes rather than volts, with similar design appearing from PM Blachly in Oregon in the same period.
* The astonishing fact of abduction of at least one young person into LACAU as described in Chapter 1, a horrific crime at any time. When perpetrated by state authorities it is especially troubling, and quite distinctive. Similar crimes in USA are documented[[37]](#footnote-37), as part of MKULTRA or Project Artichoke. How often it occurred is hard to say.
* The ‘tape-loop’ technology used by Cameron (devised by from Leonard Rubenstein) may have been passed on to Sargant at Royal Waterloo. Dr James certainly used something similar at the Glenside hospital in Bristol, and in New Zealand after he emigrated

Along the same lines, distinctive terms found in written reports of different agencies, is a good clue to direct links. Examples in evidence surveyed is reference to change of ‘attitude’, by Hebb, CIA officials, and also by Kennedy; use of the term ‘modified narcosis’ by both Sargant and Martinus; and of ‘depatterning’ in the writings of Cameron and Hebb.

Alignment in time between agencies or countries at the start or finish of a program is a strong hint of coordination[[38]](#footnote-38).

* In 1964, the termination of Cameron’s activity at AMI was followed soon by start of a new regime by Sargant at Royal Waterloo (and possibly by Bailey, far away in Chelmsford).
* At the end of June 1972 MKSEARCH ended, coinciding with the visit of Helms and party to New Zealand. Six months later, Helms was fired by President Nixon. His replacement, purged many CIA staff. Four months later, Sargant’s regime at Royal Waterloo ended, and DST regimes at Cherry Farm (and probably in remote parts of British Isles) began.
* In early August 1977, the Washington Post published an exposé of MKULTRA. Within a few months, Martinus’s program at Cherry Farm ended.

If personnel suddenly relocate to another jurisdiction - or personnel are suddenly changed - at a time when forensic investigations or litigation is imminent, there is a suspicion of international or interagency coordination. Examples include;

* Relocation of Selwyn Leeks to Victoria at a time when major litigation was contemplated in New Zealand.
* The second relocation of Dr James in 1990, a few months after DST reached public knowledge.
* The surprising change in mid-2021 of Terms of Reference of the supposedly-independent Royal Commission, in the aftermath of evidence heard or about to be heard in the commission’s hearings, as well as other concurrent events in New Zealand.

Evidence that shared methods are kept secret, or that records go missing – are destroyed, or removed to a less accessible archive - is compatible with coordination of wrong-doing between agencies, but is not specific. It becomes more specific if there is evidence of records not being made, or, once made, going missing at times when investigations require that they be produced or compel increased secrecy and cover-up. This comment certainly applies to Richard Helms order to Gottlieb early in 1973 to destroy documents about MKULTRA (etc).

***Confirmation* bias?:** In all these analyses, inferences are drawn largely by association, not by direct proof. There is always a danger of ‘confirmation bias’, favouring one’s preferred conclusion, with neglect of links pointing in the opposite direction. Therefore, in Appendix IV, I mention two cases, where, despite some similarities between agencies, closer scrutiny allowed me to refute any suggestion of coordination. Thus the approach I have adopted *has* allowed me to refute initial suspicions of coordination in some instance. This may indicate to the reader the rigour of my approach, does not amount to proof of my case.

***Did Evidence from New Zealand Indicate Overseas Influence****?* This is the crucial question. I start with a method used in New Zealand, for which I have found *no parallel*: Selwyn Leeks unorthodox use of paraldehyde at LACAU. In addition there are several methods used overseas for which I have detected *no equivalent* in New Zealand. These include:

* Research on methods of enhanced interrogation
* Mind Control: I find nothing strictly relevant to this at LACAU, Cherry Farm, or from Basil James; nor about deliberate production of amnesia, nor on use of scopolamine.
* Personality Assessment
* Hypnosis or ESP

On other topics, there were definite - or highly probable - commonalities between countries:

* DST for whatever reason (Cherry Farm; Royal Waterloo; AMI and other places). At Cherry Farm (and probably in remote locations in the British Isles), it was used long after the method had been condemned by professional bodies.
* Objectives and some methods proposed for the Centre for Study and Reduction of Violence in California, are similar to those used in LACAU under Leeks, soon after plans for the California Center were abandoned.
* Electrical torture with calibrated intensity\**,* (LACAU: Kingston Prison for Women; Intended at California Center for Study & Reduction of Violence).
* Solitary confinement\*; Routine humiliation\*; Deliberate induction of extreme anxiety and fear\*(LACAU; Kennedy lecture; probably Cyprus and elsewhere; supermax penitentiaries in the USA).
* Sexual abuse: (LACAU: Jolyon West/Operation Midnight climax in California).
* Cruel use of drugs, sedating drugs in excessive doses;(LACAU; Allan Memorial Institute, MK SEARCH: study of incapacitating agents)
* Developing states of dependency to drugs: (a stated objective of Project Bluebird; plausibly an objective at Cherry Farm)
* Research on Safer means of Rendition: (a plausible objective at Cherry farm; probably a research objective of CIA)
* Degree of Sensory Deprivation\*.(Basil James’ darkened room at Glenside hospital, Bristol, and, I assume, in New Zealand; also used by Kennedy, Cameron and Sargant)
* Objective of ‘Rebuilding personhood’\*, or reorientation of sexual preference: (Basil James’s method; objective of Kennedy, Sargant and Cameron, and of Lovaas at UCLA)
* Use of most vulnerable, defenceless persons - often children, who may have lost contact with parents, racial minorities, those with disabilities. Their complaints on being involuntary subjects for supposed ‘research’ would carry no weight[[39]](#footnote-39). In any of the countries involved (including New Zealand) such malpractice was the exception, not the rule, but in cases when it ***did*** occur it was still consistent across countries. This suggests international coordination of the trend. It could have been mediated through various channels not necessarily via intelligence agencies, although in many countries, police, intelligence agencies, military, and sometimes psychiatry, worked in collaboration.
* To end this list I quote a brief dialogue reported in a hearing of the Royal Commission by victim-witness, Kevin Banks. After discharge from Lake Alice, Kevin located Selwyn Leeks in Melbourne, and arranged to meet him. He asked Leeks[[40]](#footnote-40):

Kevin: *’Why did you torture us?*’

Leeks: ‘*I had an open hand to do what I could do’*.

Kevin: ‘*Why did you make me give ECT to other boys?*’

Leeks: ‘*In some parts of the states it is quite legal’*.

Leeks did not deny the allegation. His reply combined a defensive and a dismissive attitude. I assume he referred not to military or intelligence authorities, but to police practices in USA, with ‘third degree interrogation’ in mind; but it might have been US corrections authorities. It matters little which of the latter two it was. My point is the similarity between:

* what Leeks did at Lake Alice, focusing on disturbed children and adolescents
* what Leeks claimed the police or prison authorities did in USA
* what George Scott did a Kingston Prison for women
* what occurred at some US penitentiaries.

These similarities points strongly towards influence, albeit indirect, from the AMI and/or CIA to what occurred at LACAU. It matters little whether the immediate influence was from the police or corrections authorities in the USA rather than the CIA, since there is much evidence that they often all worked in collaboration. My opinion is that circumstantial evidence for transnational guidance of what went on in New Zealand is now very strong, yet not overwhelming for sceptics. The decisive evidence – especially the message from Helms to Gilbert to explain the purposes of his visit - may never be found. It (and even its copy in New Zealand) may have been shredded as Helms left office; and in any case, it is likely to have used most unorthodox channels, given its extreme sensitivity.

A further point should be made about the commonalities of methods used in New Zealand. The later part of Orwell’s dark masterpiece *Nineteen Eighty Four* contains a lengthy description of torture-brain washing sessions, including technical detail. In the preceding list, I have flagged with asterisks some commonalities between such detail and what occurred in New Zealand. Much of it also corresponds to methods described in Alexander Kennedy’s lecture. This is striking. Orwell’s work is often held up as aimed against the totalitarian regimes against which Britain fought during the second world war, and after that, during the emerging Cold War. This is incorrect reading of his work. During the war, Orwell worked in the British Ministry of Information, located in the Senate House, near the British museum. He knew what was going on in interrogation centres in London. This is a plausible explanation of the commonalities. It is hard to escape the inference that similar influences determined what went on in New Zealand.

Beyond details of method, there are striking commonalities of administration linking overseas practice with what went on in New Zealand. These include:

*Immunity from prosecution.*

*Evasion of culpability by* *poor record keeping*, *lack of written guidelines*, *failure to report to higher levels using orthodox channels.*

*Evasion of legal sanction by outsourcing and moving personnel to another jurisdiction.*

*Protection* *by higher levels of the judiciary,* *by other state agencies and* *by professional bodies*

*Endless delays of justice*

*Destruction of – or ‘can’t find’- documents likely to contain crucial evidence.*

*Other members of Five Eyes intelligence network were involved in similar tactics.*

I am struck b*y the suave disregard of principles of medical ethics*, by some medical people, including Basil James, and by staff at LACAU and Cherry Farm, undoubtedly shared with intelligence agencies in the northern hemisphere. I note also the curious facts that, while most psychiatrists involved in these are not to be found there. Within the Lake Alice complex, LACAU was also a further anomaly, giving it a degree of immunity from the law.

Lastly, in this subsection, I mention my experiences in trying to get my findings published in local newspapers. Soon after Samuel Fischer’s death, I was contacted by a fine journalist working for the main newspaper in Wellington. This led me to introduce the journalist to Mrs Copland, who won her trust, and published a great deal of her story, emphasizing the personal trauma she had had to bear. In due course this had its impact, in getting the Human Rights tribunal involved. However, regarding the deeper aspect of this story, on which I had focused – the locus of ultimate responsibility – once this journalist realized what my targets were – starting with members of the New Zealand judiciary, there was no further cooperation. My experience with several other fine journalists – working for the main newspaper in Auckland, and for Radio New Zealand – has been much the same. I conclude that an external influence on mainstream media prevent them publishing the sort of thing on which I can bear witness.

The is reminiscent of the semi-official process in Britain – known as D-notices – by which government officials, while refraining from explicit censorship, discourage newspapers from publishing certain stories or recommend them not to publish. Given the multi-faceted power of government, those media almost always comply. With such practices in mind, I submitted an OIA request about such matters to RNZ, framed in generic rather than specific terms. RNZ could not respond themselves and did not know which department the request should be referred to. In due course it was referred to the Coronial Service, and from there was passed on to the Department of Prime Minister & Cabinet, who referred it to the Department of Justice. I received an acknowledgement from that department with a statement that I would receive an answer in two weeks; but I never heard a response from in either generic or specific terms.

***Synopsis*: *Refined* *Architecture for a House of Cards*:**

I entitled this complex chapter ‘*How “Intelligence” & Bureaucracy Fall Apart*”. As I reach its end I summarise it with a metaphorical and sardonic subtitle ‘*Refined Architecture for a House of Cards’*: What are the basic principles for such ‘sophisticated’ architecture?

Apart from awareness of the ultimate power relations out of which a nation state grows, I suggest it starts with flawed legislation. In some jurisdictions this might be constitutional law; but New Zealand (like Britain) has no written constitution. I do not have the expert knowledge to know how the nation state of New Zealand, having signed its unprecedented Treaty of Waitangi in 1840, guaranteeing rights to the indigenous people - the Maori - went on to abuse the treaty for over century. Was the abuse defined in statute law, or by generations of judges and lawyers turning a blind eye to whatever statutes were in existence? I do not know.

My own political consciousness in this country goes back to 1977. As I started to have serious misgivings about how our mental health services operated, one of my first documents, written while Samuel Fischer was alive - and wanted to live - summarised the style I had detected in a District Health Board as a ‘*Culture Characterized by Lawlessness and Impunity’*. Nothing that has happened in the last ten years to disabuse me of that belief. My experience during the inquest into Sam’s death extends the comment to the presiding coroner.

Separate from these events, in July 2018, in the context of an inquiry into our dysfunctional mental health service set up by the incoming government, I wrote a 56-page document entitled *‘Reform Of Mental Health Care In Aotearoa-New Zealand: Discussion Document. .* Much of the first half of this essay attempted to analyse the roots of the dysfunction, in terms of the erosion of a public service ethos, as the impact of two pieces of legislation from the late 1980s unfolded. These have already been mentioned – the State Sector Act 1988, and the Public Finance Act 1989. Here is what I wrote about the culture of bullying in this country:

*Bullying may start to break out, at first vertical bullying, then horizontal. In due course, and over the years, the ‘command and control’ style in the relationship between minister and CEO, spreads outwards and downwards to every part of the CEOs fiefdom. In the end it often led to a ‘blaming and bullying culture’. At its worst (especially in mental health services), it has led to bullying by staff of patients and their families, leading to unnecessary deaths. I have seen this: an apparent suicide by a staff member – never documented as such; and the well-documented suicide of a patient in an acute mental health ward. I do know about this! However, most of the blame should not be directed at front-line staff. Their behaviour grows out of the administrative framework in which they have to practice. It may not grow immediately; but over a generation, new styles become embedded in workforce culture, and are progressively entrenched. Staff may be little aware, let alone understand the gradual erosion of standards. Certainly they are in no place to challenge what comes to be taken as the norm.*

Even five years ago, I was aware of the harmful impact of an ‘engineering model’ of human nature. I ended my analysis with these paragraphs:

*The engineering devices, to which a twentieth century model of human nature was likened, were predictable, and would not have been successful had they not been predictable; but this was achieved by avoiding the complexity typical of biological and social systems. In biological (and therefore social) systems, there is no reason to suggest that basic principles of causation are in any way different from those in the physical world; but the complexity of these systems means that they are largely unpredictable. Just as social planners of the eighteenth century misapplied the rigorous scientific reasoning of Newton, likewise those of the last generation have misunderstood and misapplied scientific advance from the twentieth century. Nonetheless, to preserve their positions of power, there has been a degree of ‘make-believe’ so that what in reality is a subtle exercise in compulsion, is given a supposedly rational, philosophical or ‘scientific’ justification. Why do I dwell on this? If we want to reform our failing, dysfunctional mental health system, reconstruction needs to be built on firm foundations. That is, it should be based on a more realistic, and practically-useful model of human nature; and - I insist - one based on the best of what modern science (including brain science) has to offer. In the next section* [see the rest of my essay[[41]](#footnote-41)] *an important subsection gives details of exactly this:- my conception, grounded in theory of modern brain function, of how our brain constructs for us, each in our own way, our sense of being a person. To bring into play such a pragmatically-sound model of human nature (in all its diversity), will help not only our understanding of ‘mental disorders’; it will also be a good guide to setting up the complex social systems by which health and mental health care can be delivered as a public service. If this is to come about, revision or repeal of those two Acts of parliament, based on more viable notions of human nature, may be needed. Of course, those two Acts have had their impact not only on mental health care, but quite widely across the whole of the Public Service, especially the ‘human services’. The conclusions I draw from consideration of failure in our mental health system could probably be reached by considering dysfunction in many other areas of public service. Therefore, to get to the roots of the current crisis in mental health care, such that an enduring remedy can be found, may have an impact far beyond the immediate focus of the Inquiry: It has the potential to bring healing to a deeply-fractured, over-individualistic and troubled society. The context of the current Inquiry into mental health and addiction services is unlikely to be enough to set in motion this legislative reform. However, others in high places have been saying the same; so, ‘with a little help from our friends’, change may occur*.

Most of this chapter has dealt with processes of connivance, their impact on individuals, on the behaviour of organizations, the regulations and laws under which they are supposed to operate, and the ways by which the regulation and laws are evaded. Given the vast multiplicity of methods deployed, there is little wonder that, at the end of the chapter, the image I have in mind is a house of cards; ***yet the house is still standing***. Despite the immense and obvious weight of contradictions in its architecture, it has not yet fallen apart. What I portray in this chapter ***is*** a house of cards. Few of its beams, supports and joists would bear much weight if put under pressure in the right way at the right time – but yet that house of cards is still standing.

How has this been possible? I hope the reader will forgive my sardonic humour, when I say that the collapse of this towering house of cards is prevented by the force of gravity – the gravity of the situation if *were* to fall to the ground. Translating the metaphor, there may be no *explicit* awareness of the danger if the systemic flaws across our public service were to be challenged, but the danger is built into the culture at many levels, yet seldom made explicit. It is the gravity of such exposure which keeps secrets hidden, and the tottering house still stands.

The unifying theme of this entire set of chapters, and particularly this chapter, is the concept of connivance - turning a blind eye to what is obvious to the innocent observer. One of the finest literary commentators on this - George Orwell - has already been mentioned. His term for the same concept was ‘double think’. Here is passage from ‘*Nineteen eighty four*’[[42]](#footnote-42)

*‘The Party intellectual knows in which direction his memories must be altered; he therefore knows that he is playing tricks with reality; but by the exercise of doublethink he also satisfies himself that reality has not been violated. The process has to be conscious, or it would not be carried out with sufficient precision, but it also has to be unconscious, or it would bring with it a feeling of falsity and hence of guilt.’*

. . . .or more succinctly, on the same page:

‘*. . .with the lie always one leap ahead of the truth[[43]](#footnote-43).’*

To put these processes forward as a quasi-professional discipline, perhaps requiring practise and expert tuition, is Orwell’s brilliant literary device. The reality is that much of it is instinctive and scarcely conscious, upon which there is sometimes an overlay of deliberation. It can never be a quasi-professional ‘discipline’: Sadly, it is human nature; or, as Alexander Pope put it in his poetic ‘Essay on man’:

*Sole judge of truth, in endless error hurled*

*The glory, jest, and riddle of the world.*

This house of cards is inherently unstable, which means that further effort – and the attention of many expensive corporate lawyers - must be diverted to preserve the charade of a robust invulnerable structure, rather than addressing the proper functions of the agencies involved.

I finish this chapter as my other chapters with lines from *Macbeth.* After the murder of King Duncan, Macbeth realises that the one person who knows what happened, and has the courage and caution to find justice, is his former comrade in arms, Banquo. Macbeth’s words are:

***To be thus is nothing; But to be safely thus. Our fears in Banquo Stick deep; and in his royalty of nature reigns that which would be fear'd: 'tis much he dares; And, to that dauntless temper of his mind, He hath a wisdom that doth guide his valour to act in safety.***

Some while later, Macbeth acts to quell these fears: Banquo too, like Duncan, is despatched, albeit to return as a ghost at Macbeth’s banquet. We then have a scene where two embittered survivors, Malcolm and Macduff, contemplate the wreckage of the state of Scotland[[44]](#footnote-44).

***Each new morn, new widows howl, new orphans cry, new sorrows strike heaven in the face. . .Let us seek out some desolate shade, and there weep our sad bosoms empty.***

To which Macduff replies:

***Let us rather hold fast the mortal sword, and, like good men, bestride our downfall’n birthdom.***

1. The primary function of our cerebral cortex is as an ‘organ of association’ - also known as inductive inference. Deductive inference, for which non-contradiction is an important principle, is important, but it is an ‘add-on’ to the primary function. In an associative machine it is in principle possible to store simultaneously records of both positive and negative associations between the same variables, acquired in different conditions. From the point of view of logic, there is no contradiction. [↑](#footnote-ref-1)
2. In a recent conversation with a skilled veterinarian, I was told why he liked his job: Communication with animals is more straightforward than with humans, because they have no instincts for deception and cover-up. [↑](#footnote-ref-2)
3. Other species, especially predatory animals, can cover their tracks, and use surprise attacks, so revealing their kinship with us. [↑](#footnote-ref-3)
4. Following Freud, neurosis is a set of symptoms arising from internal conflicts at an emotional level. Connivance is in some ways similar, the product of internal conflicts between different aspects of what we take to be ‘true’, or between principles which we claim to be true as guides to our behaviour, and the reality of our behaviour. [↑](#footnote-ref-4)
5. Christopher Moran: Turning against the CIA: Whistle-blowers during the time of troubles. *Journal of the Historical Association.* 100, 251-274. [*https://onlinelibrary.wiley.com/doi/full/10.1111/1468-229X.12099*](https://onlinelibrary.wiley.com/doi/full/10.1111/1468-229X.12099) [↑](#footnote-ref-5)
6. <https://law.utah.edu/effect-of-torture-on-the-torturer/> Melinda Lee (2017) University of Utah (Global Justice blog). [↑](#footnote-ref-6)
7. I give just two examples. King Ludwig of Bavaria (financial backer of Richard Wagner, and responsible for building the extraordinary Neuschwanstein Castle), was declared insane, not because of mental illness, but for his profligate spending from state coffers; and the wife of industrial magnate Friedrich Alfred Krupp, who was ‘put away’ for a while in an institution, not because of mental illness, but for exposing her husband’s gay sexual adventures in Capri. [↑](#footnote-ref-7)
8. Biological warfare goes back to ancient times. During the Crusades, when bubonic plague was rife, military strategists tried to promote spread of infection amongst enemy forces. In modern times, the Japanese military used bacteriological weapons, and after the war, US forces certainly prepared for use of - and almost certainly used - bacteriological weapons in Korea (although never admitting this). More recently, US forces in Pakistan used a fake vaccination program to obtain evidence of where Osama Bin Laden was located, prior to his assassination. [↑](#footnote-ref-8)
9. Sometimes, what was under discussion made this difficult. Operation Bluebird fell in the ‘top-secret’ category; yet its agenda was to explore all aspects of special interrogation by ‘exchange of information and coordination of related programs’. This meant coordination with agency leaders in Army, Navy and Air Force, as approved by Director of CIA. The same applied to the secret meeting in Montreal in 1951, when sensory deprivation experiments were discussed; yet reports from Donald Hebb were sent not only to CIA and the Canadian Defense Research Board, but also to the U.S. Navy (41 copies) and the U.S. Army (42 copies). [↑](#footnote-ref-9)
10. https://www.nytimes.com/1975/05/11/archives/cia-covert-activities-abroad-shielded-by-major-us-companies.html [↑](#footnote-ref-10)
11. It fell apart during the troubles in Northern Ireland, where British jurisdiction was should apply, but did not. [↑](#footnote-ref-11)
12. In principle, investigative journalists should be able to work internationally. In practice, they are constrained by finance, which limit the extent to which they can go overseas in their investigations. [↑](#footnote-ref-12)
13. It may be a modern reinvention of an older style in the British Empire - relocation of members of the aristocracy because they have somehow ‘blotted their copybook’, and need to be sent far away, to avoid shame to their noble lineage. These were the ‘remittance men’. Hillaire Belloc, never shy of lampooning the aristocracy, has a lively doggerel about Lord Lundy, where this is his exact theme. [↑](#footnote-ref-13)
14. To clarify, in this subsection, the word ‘accountable’ does not mean financially accountable. It means much the same as the literal meaning of ‘responsible’ – ‘able to respond to questions and complaints’ – a meaning which seems to have been forgotten. [↑](#footnote-ref-14)
15. Monarchies are different: A monarch is more than a citizen [↑](#footnote-ref-15)
16. # Meaghan Wilkinson (2003) Corporate criminal liability-the move towards recognising genuine corporate fault. <http://www.nzlii.org/nz/journals/CanterLawRw/2003/5.html>

    [↑](#footnote-ref-16)
17. Madaleine Hay (201) Systemic Negligence and Direct Crown Liability: Conceptualising Issues of Justiciability, Proximity and Breach. (http://www.nzlii.org/nz/journals/AukULawRw/2019/4.pdf) [↑](#footnote-ref-17)
18. <https://www.publicservice.govt.nz/guidance/guidance-for-statutory-crown-entities/liability-and-protection-from-legal-claims-or-proceedings/> [↑](#footnote-ref-18)
19. REFORM OF MENTAL HEALTH CARE IN AOTEAROA-NEW ZEALAND: DISCUSSION DOCUMENT. http://robertmiller-octspan.co.nz/octspan/wp-content/uploads/2018/06/REFORM-OF-MENTAL-HEALTH-CARE-IN-AOTEAROA-draft-35.pdf [↑](#footnote-ref-19)
20. For instance: Implicit collusion in determining ToR for investigations into the death of Samuel Fischer, and in the subsequent inquest; Coroner JP Ryan, the police and the Coronial Service, regarding the killing of Shargin Stevens; The Mitchell investigation into LACAU in 1977; Cold war intelligence research. [↑](#footnote-ref-20)
21. Christopher Moran: Turning against the CIA: Whistle-blowers during the time of troubles. *Journal of the Historical Association.* 100, 251-274. [*https://onlinelibrary.wiley.com/doi/full/10.1111/1468-229X.12099*](https://onlinelibrary.wiley.com/doi/full/10.1111/1468-229X.12099) [↑](#footnote-ref-21)
22. https://www.theguardian.com/uk/2004/feb/26/iraq.freedomofinformation1 [↑](#footnote-ref-22)
23. https://www.theguardian.com/uk-news/2021/mar/09/mi5-policy-agents-take-part-crimes-lawful-appeal-court-judges [↑](#footnote-ref-23)
24. https://www.theguardian.com/uk-news/2015/may/15/intelligence-officers-have-immunity-from-hacking-laws-tribunal-told#:~:text=GCHQ%20staff%2C%20intelligence%20officers%20and,a%20tribunal%20has%20been%20told. [↑](#footnote-ref-24)
25. https://declassifieduk.org/mi6-has-a-long-history-of-being-a-law-unto-itself/#:~:text=Immune%20from%20prosecution&text=A%20so%2Dcalled%20%E2%80%9CJames%20Bond,first%20consult%20the%20foreign%20secretary. [↑](#footnote-ref-25)
26. https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm [↑](#footnote-ref-26)
27. https://www.nytimes.com/1977/11/15/archives/helms-and-the-name-of-duty.html [↑](#footnote-ref-27)
28. ## Kaye J, Albarelli HP, Jr. (2010) Cries from the Past: Torture's Ugly Echoes. *Truthout,* 23.05.2010. http://www.truth-out.org/archive/component/k2/item/89725:cries-from-the-past-tortures-ugly-echoes

    [↑](#footnote-ref-28)
29. <https://lr.law.qut.edu.au/article/download/368/357/368-1-720-1-10-20120927.pdf> [↑](#footnote-ref-29)
30. A ‘public interest’ defence is possible in Australian and (with some conditions) in Canadian law, but not in current UK or US law. Edward Snowden, currently in exile in Russia, is willing to return to USA and face trial, but only if he is permitted to use the ‘public interest’ defence, for his actions in releasing secret material. [↑](#footnote-ref-30)
31. <https://www.dpmc.govt.nz/our-programmes/national-security-and-intelligence-oversight/intelligence-and-security-act-2017/cover-and-immunities/immunities-from-legal-liabilities> see also:

    <https://www.newstalkzb.co.nz/opinion/felix-marwick-should-the-gcsb-and-sis-be-immune-from-prosecution/> [↑](#footnote-ref-31)
32. In New Zealand, a recent news report n(31 May 2023), indicates that oversight of our spy agencies is to be overhauled, with monitoring of intelligence services under the authority of parliament, rather than the less satisfactory current role assigned to the Department of Prime Minister and Cabinet. https://www.rnz.co.nz/news/national/491057/intelligence-overhaul-recommendations-could-mean-significant-reform-of-spy-agencies-expert-says [↑](#footnote-ref-32)
33. https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/judicialconduct/20191112gjc.pdf [↑](#footnote-ref-33)
34. In the period before that inquest into Samuel Fischer’s death, there was an attempt to bring High Court Action against the DHB, but we were diverted from thus course at a mediation session. The mediator used all these arguments to divert us away from high court action. That he did so does not say much for the effectiveness of our system of justice. [↑](#footnote-ref-34)
35. <https://www.rnz.co.nz/news/is-this-justice/452026/judges-bullying-and-a-broken-complaints-system> [↑](#footnote-ref-35)
36. The Secret Barrister: Stories of the law and how it is Broken (2016) *Picador.* [↑](#footnote-ref-36)
37. https://sgreffenius1.wordpress.com/2017/05/07/project-artichoke-abducted-at-eight/ [↑](#footnote-ref-37)
38. To an Aristotelian logician ‘post hoc’ does not mean ‘propter hoc’; but investigations of this type are not matters of strict logic. The detailed timeline does help to build a case, and suggest further lines of enquiry. [↑](#footnote-ref-38)
39. <https://dspace.mit.edu/bitstream/handle/1721.1/49530/STS-011Fall-2004/NR/rdonlyres/Science--Technology--and-Society/STS-011Fall-2004/D9E998A1-8FC1-48F8-A573-97CBC13BD0FE/0/2paper_2_democra.pdf> [↑](#footnote-ref-39)
40. <file:///Users/apple/Downloads/Witness-statement-of-Kevin-Banks-for-Lake-Alice-Child-and-Adolescent-Unit-hearing-v2.pdf>; paragraph 71 [↑](#footnote-ref-40)
41. http://robertmiller-octspan.co.nz/octspan/?page\_id=597 [↑](#footnote-ref-41)
42. Penguin books edition (1954), p. 184 [↑](#footnote-ref-42)
43. This amazing line is, on the surface, utterly paradoxical, yet touches a profound human insight. I have no idea what Orwell’s own understanding was. The line may have been the author’s sleight of hand, used with literary license. From a neuroscience perspective, I understand it as follows: ‘The lie’ is not active and deliberate lying, but passive avoidance of ‘the truth’. This is achieved merely by a mental act of association with other things that pose danger, rather than by strict rationality (and comparison with all other relevant evidence to determine ‘truth). Acts of association are always faster than those of reasoning, needed to declare something ‘true’. [↑](#footnote-ref-43)
44. For my purposes I have slightly re-arranged Shakespeare’s dialogue. [↑](#footnote-ref-44)