## **REPORT**

to

# the Council of The University of Canterbury

of the Working Party established to enquire into:

the circumstances under which the degree of Master of Arts (with First Class Honours) was awarded by the University in 1993 to Joel Stuart Andrew Hayward, on the basis of a thesis entitled 'The Fate of Jews in German Hands: An Historical Enquiry into the Development and Significance of Holocaust Revisionism'.

# 1. INTRODUCTION

- 1.1 This enquiry was triggered by a letter dated 4 April 2000 to the Chancellor of the University of Canterbury, the Rev. Dr Dame Phyllis Guthardt, from Mr David Zwartz, the President of the New Zealand Jewish Council (NZJC). (Appendix A) The letter expressed grave concern that the University had in 1993 awarded a Master of Arts degree with First Class Honours to Joel Stuart Andrew Hayward (Dr Hayward) on the basis of a thesis written by him entitled, 'The Fate of Jews in German Hands: An Historical Enquiry into the Development and Significance of Holocaust Revisionism'.
- 1.2 The NZJC claimed, *inter alia*, that the thesis (a) promoted anti-Semitism, (b) incorporated Holocaust denial, (c) denied the existence of gas chambers used in the Holocaust and (d) caused great distress to the New Zealand Jewish community, particularly Holocaust survivors. NZJC perceived that the University supported Holocaust denial through the granting of a degree based on a thesis which impugned the memory of those killed in the Holocaust and belittled the trauma of Holocaust survivors.

- 1.3 The thesis itself and criticisms of it will be discussed later in this Report. The thrust of the NZJC's letter was to ask the University to revoke the award of the degree on the bases that: (a) it should never have accepted the thesis, the conclusions of which were perverse, and (b) those involved in assessing and grading the thesis were in dereliction of their duty to apply a high quality of academic standards to their task, including the checking of sources and reference materials. NZJC asked that the award of an MA degree be substituted by the award of a BA (Hons) degree.
- 1.4 After formal presentation of the thesis and the award of the degree, access to the thesis was embargoed in circumstances later to be discussed. After the embargo had been lifted, on 26 January 2000, Dr Hayward wrote an Addendum to the thesis in which he disclaimed some of the conclusions reached in the thesis. He hoped that the Addendum would prevent the thesis causing distress to the Jewish Community and being misused by persons and groups with malevolent intent. (Appendix B)
- 1.5 After the NZJC's letter to the Chancellor, articles critical of the thesis appeared in the *New Zealand Jewish Chronicle (The Chronicle)*. This journal published a letter of retraction from Dr Hayward dated 17 February 2000, apologising for 'mistakes I have made as an inexperienced student': (Appendix C) Considerable media interest followed, including a television interview on The Holmes Show featuring Mr Zwartz and Professor Daryl Le Grew, Vice-Chancellor of the University. Public concern was also expressed through letters to the editor in a range of publications.
- 1.6 The University took seriously the issues raised by NZJC. On 4 May 2000, the Council of the University formally set up a Working Party pursuant to Section 193(2)(i) of the Education Act 1989 (The Act). The Working Party's terms of reference were defined thus.

- 1. To investigate widely and to report upon the circumstances in which the degree of Master of Arts (with First Class Honours) came to be awarded by the University of Canterbury in 1993 to Joel Stuart Andrew Hayward on the basis of a thesis completed by him entitled 'The Fate of Jews in German Hands: An Historical Enquiry into the Development and Significance of Holocaust Revisionism'.
- 2. In particular, and without restricting the generality of the Working Party's brief, to enquire into:
  - (a) How this topic/research proposal was approved and whether the topic/research proposal changed during the course of the candidate's work on his thesis.
  - (b) The supervision of the thesis within the University of Canterbury and its examination both internally and externally.
  - (c) Why the thesis was embargoed in the University of Canterbury Library.
- 3. To consider the request of the New Zealand Jewish Council that the University revoke the grant of the degree of Master of Arts with First Class Honours to Dr Hayward and substitute it with an award of the degree of Bachelor of Arts (Honours) (with First Class Honours).

In particular the Working Party is to consider whether, under the relevant legislation and University statutes, the above request is legally possible.

- 4. To investigate and report upon any other relevant matter of significance which may arise in the course of the Working Party's deliberations.
- 5. The Working Party is to determine its own procedures and to seek legal advice, as deemed appropriate.
- 6. The Working Party is to report to the Council of the University of Canterbury upon completion of its investigation on the matters set out above.

# 1.7 The Working Party so appointed comprised:

- The Honourable Sir Ian Barker, QC, Chancellor of the University of Auckland from 1991 to 1999; and Former Senior Puisne Judge of the High Court of New Zealand. (Chairman).
- Emeritus Professor Ann Trotter, formerly Professor of History and Assistant Vice-Chancellor at the University of Otago.
- Professor Stuart Macintyre, Professor of History and Dean of the Faculty of Arts at the University of Melbourne.
- 1.8 The Working Party met together in Christchurch in July, October and November 2000. The Chairman and/or Professor Trotter visited on other occasions. It received statements from and interviewed the persons listed in Appendix D. The Working Party received legal advice from Mr A. D. McBeath of Macfarlane, Dougall, Stringer, Solicitors, Christchurch, who instructed as senior counsel, Mr L. L. Stevens, QC in Auckland, who is experienced in advising on University matters.

- 1.9 Emeritus Professor J H Jensen, now retired from the chair of History at the University of Waikato, was interviewed by the Chairman in Raglan in May 2000 before he left for a year's teaching in the United States. He provided written material to the Working Party and spoke to it by video link on 11 October 2000 and made further comments by e-mail. Emeritus Professor David McIntyre and Dr Marie Peters (both in the History Department of the University at relevant times) spoke to the Chairman and Professor Trotter on 23 May 2000. Professor David McIntyre spoke to Professor Stuart Macintyre on 12 October 2000. Professor David McIntyre was not well enough to attend a meeting with the full Working Party.
- 1.10 The Working Party's report has taken some time to complete. The issues are numerous, complex and sensitive. The members of the Working Party all from different cities had other commitments. Detailed comment from affected parties on documents and submissions produced by NZJC had to be obtained as per the Schedule which is Appendix E. The Working Party makes no apology for the time taken to complete the enquiry. An enquiry of this seriousness, with so many issues impinging upon both academic freedom and the proper administration of Universities, cannot be rushed.

## 2 NARRATIVE

- 2.1 What follows in this section is a narrative of the principal events of relevance to the enquiry. The more important issues will be the subject of separate discussions.
- 2.2 Joel Stuart Andrew Hayward was born on 27 May 1964. In 1988, he enrolled at the University of Canterbury for a BA degree, which he completed in three years. He was capped Bachelor of Arts on 8 May 1991. His BA papers were largely taken in the Departments of History and Classics as can be seen from his academic record. (Appendix F)

- 2.3 At the end of 1990, Dr Hayward had decided to proceed to an MA degree and was considering possible thesis topics. The requirements for this degree were for a two-year course with the candidate taking four papers in the first year and writing a thesis in the second. Initially, Dr Hayward had considered a thesis topic in Ancient History, having completed several BA papers in the Classics Department. A member of the academic staff of the Classics Department considered that Dr Hayward would need another year of study with Greek and Latin before he could commence post-graduate studies in Classics.
- 2.4 At this time, Dr Hayward was actively involved in Jewish and mainstream Zionist activities. He identified with what he claimed as a Jewish background through his maternal grandmother, although he had never formally become a Before the Working Party, NZJC cast doubt on member of the Jewish faith. his claim to a Jewish background. The Working Party does not find it necessary to adjudicate on Dr Hayward's claim to Jewish ancestry. Before he commenced his University studies at age 23, Dr Hayward claimed to have read widely about Judaism, Jewish history and Zionism and to have studied Hebrew. He joined the local branch of the New Zealand Friends of Israel Association. He contributed articles for *The Chronicle* and won a University short-story competition on a Jewish historical topic. He travelled to Israel several times. In 1989 he had formed, along with several friends, an incorporated society called 'Opposition to Anti-Semitism Inc.' (OAS). This group he headed until early 1991 when he retired after what he described as a personality clash, although a biographical note to an article he wrote for an Australian Jewish publication in January 1992, ascribed his departure from OAS as being due to pressure of work.
- 2.5 During his time with OAS, Dr Hayward, having published a number of articles on anti-Semitism, claimed to have pondered on the historiography of 'revisionists' of the Holocaust. They seemed to him to maintain complex arguments which were contrary to received opinion. He considered that Holocaust Revisionism would provide him with a suitable thesis topic. He discussed the idea with Dr Vincent Orange, a Reader in the History

Department who expressed interest in supervising the topic, although Dr Orange was not himself an expert on the Holocaust nor was he familiar with the literature on Holocaust Revisionism. When studying as an undergraduate, Dr Hayward had found Dr Orange a helpful, enthusiastic and stimulating teacher. According to Dr Hayward, Dr Orange advised him that his best approach was to examine the historiography of Holocaust Revisionism rather than focus directly on the events of the 1930s and 1940s themselves. Dr Orange agreed to be the supervisor of a thesis along these lines. The Working Party notes that Dr Orange considered Dr Hayward's alleged Jewish background a factor which he took into account when considering the thesis proposal. Although Dr Hayward's academic record for his BA papers was respectable but not outstanding, Dr Orange considered him a student of great promise, of greater maturity and industry than most, one well able to tackle this difficult topic by reason of these qualities, his knowledge of German and his supposed Jewish background.

2.6 Dr Hayward drafted a thesis proposal in late 1990/early 1991. This document was counter-signed by Dr Orange. It was submitted for approval to the Acting Head of the History Department, Dr Marie Peters (the Head of Department, Professor David McIntyre, being overseas on leave at the time). Although it is clear that Dr Hayward had submitted to the Department a detailed thesis proposal, this document is no longer in existence; nor is there now any official record of the progress of the supervision of Dr Hayward's thesis or of the internal examiner's and external examiner's reports. The Working Party has only been able to source the reports of Dr Orange (as internal examiner) and of Professor Jensen (as external examiner) from Dr Orange's personal records and not from any official University records. The Working Party comments on the lack of relevant records later. At that time, the Department had appointed as Dean of Graduate Studies (DoGS), Dr Len Richardson, whose role was to effectuate the enrolment of Dr Hayward for an MA. Richardson played no part in the selection of the thesis topic or of the supervisor.

- 2.7 In the initial stages, the thesis topic was not firm. The title went through several changes as outlined in para. 2.11 with the apparent initial title being extremely broad. The title and proposed scope should have been stated in the thesis proposal. The Working Party was informed by Dr Orange that lack of precision was not an unusual attribute of an MA history thesis topic, especially in its early stages. According to him, a final title is frequently settled upon only when the thesis is ready for presentation. Dr Hayward enrolled in 1991 for an MA degree consisting of four papers and a thesis to be taken over 2 years. Under the Regulations applicable to History MAs, the papers were required to have been taken in the student's first year.
- 2.8 Dr Peters, as acting Head of Department (HoD), told the Working Party that her best recollection is that she tried hard to dissuade Dr Hayward from writing an MA thesis on a topic involving the Holocaust. From her recollection of his written thesis proposal and of her discussions with Dr Hayward, he aimed to look at the historiography of Holocaust Revisionism with some assessment of the validity of the case advanced but the thesis would not and could not be a comprehensive alternative account of the Holocaust. Because the literature on the Holocaust was burgeoning, Dr Peters did not think an MA student could keep up with it all. Nor did she think that a student at Dr Hayward's stage in his career would have the necessary skills to assess, for example, the purported scientific evidence that some revisionists were then producing to prove that there were no gas chambers at Auschwitz.
- 2.9 Dr Peters' recollections were not based on any doubts that the subject of Holocaust Revisionism was a proper one for historical study. In her view, academic freedom requires that all areas of the past be open to honest investigation. However, other than to express her concern, she did not, as Acting HoD, refuse to approve the thesis topic. She did not consider that Dr Hayward was setting out with an ideological agenda. Moreover, it was unprecedented for a HoD in History to overrule the choice of a thesis topic approved by a supervisor who was a member of the Department. Her

recollection is that she discussed her misgivings with Dr Hayward and Dr Orange, and possibly Dr Richardson, but encountered no objections from any of them. Dr Hayward has no recollection of being discouraged by Dr Peters. Nor does Dr Orange recall any concerns being expressed by her. However, having heard the persons concerned, the Working Party prefers Dr Peters' version on this aspect. In any event, the Working Party could find no evidence of formal approval by the Department of either the thesis proposal or the appointment of Dr Orange as supervisor.

- 2.10 Dr Peters told the Working Party that the initiative for a Masters thesis topic normally lay with the student who would approach a possible supervisor. The Department encouraged work over a wide variety of topics, constrained only by the availability of suitable sources and adequate supervision. The student was required to present a written proposal in about 500 words of the proposed subject together with a preliminary working bibliography of primary and secondary sources. This proposal was then signed by both the student and supervisor as an indication that the topic was recognised as viable. The proposal was then filed (usually by DoGS) in the Department's office in a folder on which should have been placed regular statements from the supervisor indicating whether the student's progress had been satisfactory or otherwise. Dr Orange has no recollection of preparing statements in this case.
- 2.11 The final thesis title, 'The Fate of Jews in German Hands', was not mentioned at the time to Dr Peters: according to her, the title was something like the final form of the sub-title (i.e. 'An Historical Enquiry into the Development and Significance of Holocaust Revisionism') Dr Richardson confirmed the enrolment procedures as outlined by Dr Peters. His particular recollection does not extend beyond March 1991 when he went on leave. The *New Zealand Journal of History (NZJH)* publishes annually the titles of theses under preparation in all New Zealand universities. In October 1991, the title there shown for Dr Hayward's thesis was 'The Jews in World War II'. In October 1992, it was 'Holocaust Revisionism'; in October 1993, after the thesis had been accepted for the award of the degree, it was 'The Fate of the

Jews in German Hands'. In May 1992, in an affidavit in the Court proceedings referred to in paragraph 2.27, Dr Hayward stated the tentative title as: 'The International Growth and Impact of Holocaust Revisionism'. In a biographical note in an Australian publication, Without Prejudice, published in January 1992, it was referred to as 'The World-wide Growth and Impact of Holocaust Revisionism'. Although nobody can now remember, it seems likely to the Working Party that some member of the History Department staff would have supplied to NZJH the thesis topics currently on record. Thus it seems likely that an excessively broad topic, 'The Jews in World War II' was the topic on which thesis approval was based. Ignoring its extreme sensitivity, the extraordinarily broad scope of such a topic was wholly inappropriate for a thesis forming half a degree requirement, particularly given the fairly narrow prescription outlined in the Regulations for an MA thesis.

2.12 On 3 March 1991, Dr Hayward applied to the University to write the thesis in 1991 and to complete the papers in 1992. In his application to the Registrar, he noted that he had submitted a thesis proposal to the History Department where it had been approved by the Head of Department and DoGS. (His application and accompanying documents are Appendix G). Dr Hayward noted in his letter of application that 'my proposed thesis will focus in part on the activities of the Institute for Historical Review (Costa Mesa, California), who recently held their 10<sup>th</sup> International Revisionist Conference. It would be good to complete work on the  $10^{th}$  conference from which many new developments arose before the 11th conference commenced in November 1992'. The Institute for Historical Review (IHR) will be mentioned later. Other reasons stated for seeking the switch were: (a) Dr Orange could not be present for much of 1992 and would not be able to supervise the thesis in that year; (Dr Orange was on sabbatical leave for the first eight months of 1992); (b) Working on the thesis would not interfere with Mrs Hayward's part-time employment to the same extent as would Dr Hayward's attendance at University at fixed times. The couple had three young children, including a baby with health problems. The Working Party was unable to find any provision in the relevant Regulations which would have permitted a thesis to have been taken before the papers.

2.13 On 8 March 1991, Dr Peters commented on Dr Hayward's application to work on his thesis before taking his papers in the following terms: 'this is not an application to complete the thesis before the courses, it is to begin the thesis before the courses are completed". The student has been clearly told (and will be informed in writing by the Department that if this request is approved) that the thesis may not be submitted before the coursework is complete. We envisage that the final draft will not be written until after November 1992.

'We support the application in these terms because (unusually) the student has presented a very carefully worked out thesis proposal and factually because we cannot offer supervision between December 1991 and September 1992 when Dr Orange will be on leave. We would not normally consider such an arrangement, but in this case, it would seem to be a grave hardship for the student. It would make it impossible for him to do the thesis he has so carefully planned without delaying the completion of his degree. The other grounds mentioned in the application seemed subsidiary to this.' (Emphasis added).

2.14 The then Dean of Arts, Mr John Jennings, on 11 March 1991, noted the file thus: 'Resolution should read "be permitted to enrol in Hist 690 in 1991, MA History courses in 1992, and complete the thesis in late 1992".' Provided this can be done in line with the HoD suggestion, recommend approval.' The application was then approved without comment by the then Vice-Chair of the Academic Administration Committee (AAC), Professor Lee, on 12 March 1991. There is no record of written advice to Dr Hayward of the kind proposed by Dr Peters in her memo quoted in Para 2.13. Dr Hayward was advised by the Registry on 13 March 1991 that his application had been successful. The documents referred to are the only records held by the University Registry or the History Department concerning the thesis, other than Dr Hayward's academic record, some scholarship records and a formal

letter from the Department to the Registry dated 31 March 1993 advising that the degree should be awarded. The Working Party is therefore unable to peruse the 'carefully worked out thesis proposal' referred to in Dr Peters' memorandum. It appears likely that the broad thesis title referred to in the October 1991 edition of *NZJH* was the initial title. Dr Peters, Professor David McIntyre and even Dr Hayward himself considered, in hindsight, that it would have been better for Dr Hayward to have taken the papers before the thesis, particularly Dr Connolly's paper on History as a Discipline. The Working Party agrees.

- 2.15 Work on the thesis was commenced by Dr Hayward in early 1991 under the supervision of Dr Orange. He recalls seeing Dr Hayward regularly during 1991. Dr Orange said that, normally, in the early stages of a supervision, he would consider draft passages in a candidate's thesis and verify all references and make suggestions as to style and content. Dr Orange said that his practice was to persuade his students to write for the external examiner who would be casting a critical eye over the thesis. He would tell them that he was 'on their side' an unsatisfactory approach for one who has, at the conclusion of the thesis, to assume the role of its examiner. Comment on the thesis itself and on its supervision will be offered in detail later. Dr Hayward claimed that Dr Orange always encouraged him along the lines, 'If it is important, put it in'. Dr Orange kept no supervision diary.
- 2.16 Dr Orange has been employed in the History Department at the University from July 1962. His present position is Reader (Associate Professor). He specialises in Europe in the first half of the 20<sup>th</sup> century. He teaches undergraduate papers on The Great War 1914-18 and Europe 1900-1945. Since 1995, he has taught a paper described as 'The Life and Times of Winston Churchill, 1874-1945'. He has supervised theses on subjects on the 20<sup>th</sup> Century and sometimes on Medieval European history. In 1993 & 1994 he supervised three essays, equivalent to one paper at the MA level in this latter field: between 1985 and 1997, he supervised 8 MA theses. All but one

of his Masters students, obtained First Class Honours. Three students (including Dr Hayward) were awarded PhDs for work undertaken under Dr Orange's direction in the 1990s. In earlier years, some 12 students had completed under his tutelage, essays on Portuguese History, equivalent to one paper at the MA level. He trained as a medievalist, and later did work in European colonial history. He subsequently moved into the study of modern European history and modern military history. He maintained with vigour that he is neither anti-Semitic nor a Holocaust denier. Having seen and heard Dr Orange at length, the Working Party does not find him either anti-Semitic or a Holocaust denier. The Working Party was impressed with Dr Orange's commitment to his University teaching. He is clearly dismayed at the furore that has occurred.

2.17 Dr Orange has published biographies on notable Air Force officers in the World War II. He has acted as external examiner for theses written at other New Zealand and Australian universities and for courses taught in Military History at the University of Waikato until 1995. He has held a number of positions in the wider university community and was elected as a member of Royal Aeronautical Society in 1989 in recognition of his interest in aviation. His list of publications indicates a fairly wide-ranging output on a variety of topics, with particular emphasis on the Second World War. However, he makes no claim to any particular expertise on the Holocaust or to any familiarity with the literature on Holocaust Revisionism. Dr Orange impressed the Committee as a caring man with a strong pastoral care for students and a lively interest in a wide range of historical topics. The Working Party's impression was that he assisted graduate students as conscientiously as he could within the confines of his expertise. He now realises that the Hayward thesis was far too long and that it did not equate with the prescription in the then University Calendar that an MA thesis, which was to be the basis of half a candidate's overall result, 'shall be judged primarily not on the contribution a thesis makes to knowledge but on the evidence it affords of the candidate's understanding of the principles of historical research and ability to apply them': However, he maintained with vigour before the Working

Party that Dr Hayward was a talented scholar and that the thesis was being unfairly attacked. He basically adhered to the views in his Examiner's Report, to be later discussed.

- 2.18 Dr Orange was not troubled by Dr Hayward's choice of topic – even in its broadly-expressed form. He did not appear then, or when he met with the Working Party, to have been sensitive to the possible repercussions from any thesis which even hinted at Holocaust denial. The Working Party considers Dr Orange naïve if he did not see any difficulty with the subject or with Dr Hayward's treatment of it, particularly in the latter stages of the thesis. He was, on his own admission, not a specialist Holocaust historian and was without detailed knowledge of the Revisionist debate. He encouraged Dr Hayward to make enquiries through all manner of sources. The bibliography included within the thesis indicates that Dr Hayward approached many overseas sources. Two of these, Mr David Irving in London and the Rev. Countess in the United States, supplied material to him in exchange for a copy of the thesis when finished. According to Dr Orange, Dr Hayward did not tell Dr Orange that he had entered into these arrangements. Dr Hayward said that The Working Party prefers Dr Orange's recollection. The Working Party thinks it highly unlikely that Dr Orange would have approved of such an arrangement. He impressed as one who would regard the placing of a student under an obligation in this way to have been quite inappropriate.
- 2.19 Dr Orange considered Dr Hayward a promising young postgraduate student with a bright academic future in the discipline of history. At a time when academic appointments in History were difficult to obtain, Dr Orange foresaw the topic of the Holocaust as one of huge interest, which could provide a 'break-through' for Dr Hayward into a major field of research. Dr Orange believed that Dr Hayward's Jewish background (as he believed him to have) and his ability with the German language would help him achieve this early break-through. Dr Orange clearly found it difficult to restrain what he saw as Dr Hayward's enthusiasm for research and his determination to proceed with the thesis at his pace. He considered Dr Hayward exceptionally diligent, with

a capacity to gather material from obscure sources and to show 'mature judgment' in using these sources. He found Dr Hayward's company 'unfailingly stimulating'. He came to regard him virtually as a colleague. He therefore 'indulged' Dr Hayward's passion a little 'deeper'. Dr Orange found Dr Hayward's judgments carefully balanced, even on extremely sensitive subjects and judged that Dr Hayward had 'bent over backwards' in his determination to be fair. He never considered that Dr Hayward, he or the University would or should be branded as 'Holocaust deniers'. He felt that the 'richly detailed content' of the thesis offered an opportunity for Dr Hayward to 'carve out' at least one article for submission to a learned journal.

- 2.20 In late 1990 or early 1991, Dr Hayward wrote an article for an Australian Jewish publication, *Without Prejudice*. It was published in December 1991 and was entitled 'Holocaust Revisionism in New Zealand: The Thinking Man's Anti-Semitism?'. In the article, he noted a campaign in New Zealand to deny the verity of the Holocaust and that no one had taken to Court the distributors of Holocaust Revisionism material. He recommended that the Jewish community in New Zealand should try to keep the Holocaust in the collective memory of other New Zealanders. He noted that Holocaust Revisionism was considered by most scholars to be a form of anti-Semitism. Generally, the article was critical of Holocaust Revisionists and did not pursue the themes later found in the thesis. The article is Appendix H.
- 2.21 A biographical note about the author at the foot of Appendix H states that Joel Hayward was a 'tutor and post-graduate history student at the University of Canterbury currently working on a thesis entitled 'The World-Wide Growth and Impact of Holocaust Revisionism'. He is said in the note to have formed a national society, which he headed, 'until his workload forced him to stand down in July 1991 (called Opposition to Anti-Semitism Inc.), which has been effective in educating Jewish New Zealanders about local forms and manifestations of Anti-Semitism'.

- 2.22 Dr Orange's supervision of the thesis continued until he left on sabbatical leave on 1 December 1991. His recollection at the Working Party's July discussions is that 'by the time I went on leave, we had spent most of the time over the sheer hard labour of assembling masses of material. He had written in acceptable prose little at that stage'. In the October meeting with the Working Party, Dr Orange was more inclined to say that the bulk of the thesis had been written before he went away. Dr Hayward inclines to this latter version. Dr Orange returned to duty on 1 September 1992. During his time overseas, Dr Orange had no memory of any contact with Dr Hayward, although Dr Hayward claimed Dr Orange had obtained some material for him in Washington.
- 2.23 Dr Orange claimed that, in his absence, such supervision of the thesis as was required was left in the hands of Professor David McIntyre, the then Head of Department. Dr Orange did not consider much supervision necessary during his absence because Dr Hayward would be heavily committed with his papers until he returned. The extent of Professor David McIntyre's supervision of Dr Hayward during Dr Orange's absence is not clear to the Working Party. Professor David McIntyre's only recollection is of his involvement in the 1992 OAS incident, which will be discussed shortly. He does not recall any formal request from Dr Orange to take over the supervision of Dr Hayward. There was no Departmental record of any assignment of Dr Hayward to another supervisor during Dr Orange's absence. Nor does the re-assignment of this student seem to have been regarded as coming within the purview of DoGS. Professor McIntyre approved the invitation to Professor Jensen to act as external examiner. He later read Professor Jensen's report, and was pleased to see that Professor Jensen's conclusions coincided with his earlier impressions, formed when he read a draft of the incomplete thesis at the time of the alleged OAS incident in May 1992. However, Professor David McIntyre stated that the final part of the thesis - the Conclusion - which is clearly its most controversial part, was not in the draft that he read in May 1992. He did recall suggesting to Dr Hayward that he was being over-impressed by David Irving. Professor McIntyre said that Dr Hayward was largely concentrating on

his papers during 1992. Indeed, Dr Hayward told the Working Party he had been particularly impressed with Dr Connolly's paper, 'History as a Discipline', which discussed historical method.

- 2.24 On 26 January 1992, three of Doctor Hayward's erstwhile colleagues in the OAS had afternoon tea with Dr Hayward at the residence of one of them. There is a conflict as to whether he invited himself or whether they invited him. The Working Party is not required to decide this point. In the course of the afternoon, they discussed a whole range of things including his thesis. He claimed that, during the process he became 'sarcastic, frustrated, annoyed, amused and puzzled' but never suspected anything was amiss. In fact, his 'friends' had hidden tape recorders and a camera. They recorded the afternoon's conversation, which extended over some three hours. He claimed that they created a 13 minutes selective version of his comments as a video, which was then circulated amongst Jewish agencies and individuals, both inside and outside New Zealand. Dr Hayward acknowledged he had said some 'dumb and silly things' in the course of the afternoon that 'inexperienced students sometimes do', but which did not represent his current views.
- 2.25 Dr Hayward subsequently took legal advice concerning what seems to the Working Party to have been an underhand and unjustifiable intrusion into his privacy. The Working Party has been advised by Senior Counsel that the tapes and video record should not be viewed by the Working Party for a range of legal reasons. The OAS wrote to the Registrar of the University on 5 May 1992 with claims that Dr Hayward, in the course of this secretly recorded conversation, had said that Hitler did not plan or know about the genocide of the Jewish people and that the Nazi 'final solution' was only 'forced expulsion'. The letter noted that Dr Hayward had said that he had spent 64 pages of his thesis examining the Leuchter report (of which more later) and that Dr Orange had stated that there were no gas chambers. The letter opined that an MA should not be awarded on the basis of the thesis. The authors of the letter also sent a video tape. (This letter and following documents comprise Appendix I).

- 2.26 The Working Party pays no regard to what may or may not have been said by Dr Hayward on the occasion of the surreptitious recording of his conversation. However, the incident has one important side-effect. The letter from the OAS to the University should have rung some bells of alarm in the History Department, particularly about the wisdom of allowing Dr Hayward's thesis to proceed without close and rigorous scrutiny. It should have raised serious questions about the supervision of a thesis on a sensitive subject by an academic not expert in the field. The Department should have compared what had been written to date with what had been summarised in the thesis proposal. The Registrar referred the OAS letter to Professor McIntyre who instructed the Registrar thus: 'I think it important that the University replies blandly but firmly to these people that the interference they have attempted is intolerable. Indeed the inclusion about the conversation with Vincent Orange in the letter to you is probably illegal since it was taken from a tape, which was illegally filmed and is the subject of an injunction.' On 26 May 1992, the Registrar wrote to the President of OAS saying, 'the Head of Department informs me that the thesis was in draft form only and is incomplete. As such, it is at present a matter of discussion between Mr Joel Hayward and his supervisor. Its final assessment will be the task of its examiners. At neither stage, would outside comment be appropriate or helpful.'
- 2.27 Dr Hayward initiated legal proceedings against OAS arising out of this incident. These took the form of an application for pre-trial discovery of recordings (tapes & video) made by OAS of Dr Hayward. The Working Party caused a search to be made of the records of the High Court. It perused copies of the documents there filed. Contrary to Professor David McIntyre's understanding, as shown in his letter to the Registrar, there was no injunction sought or granted. The proceedings were settled out of Court on 22 June 1992. There is no record of any terms of settlement on the Court file. The OAS claimed in a further letter to the Registrar on 9 September 1992, that Dr Hayward had retracted the alleged clarification of his views and that there were no grounds for lessening concern. The OAS claimed that Dr Hayward

had not complied with the settlement of the Court proceedings. Alleged failure to implement a Court settlement had nothing to do with the University. If the terms of a settlement of Court proceedings had not been met, then that omission should have been a matter for the Court to consider, not the University. Nevertheless, the 9 September 1992 letter (Appendix J) should have indicated to the University, that the Hayward thesis was likely to be rigorously and critically considered outside the University. Dr Orange (who was overseas at the time of the first OAS letter) may not have known of the initial OAS approach. Nor is it clear that the 9 September 1992 letter was ever brought to the attention of anybody in the History Department. The Registrar of the University (to whom the majority of University mail is addressed) has no recollection of ever seeing this letter himself. It may have been sent by a Registry staff member to the History Department but there is no record of that.

- 2.28 Dr Hayward claimed that after the surreptitious interview, he had been harassed in various ways on a number of occasions. It is not part of the Working Party's brief to examine these allegations except to note that some harassment of Dr Hayward seems to have been known to some members of the History Department but not to others. The fact that Dr Hayward had been harassed should have emphasised that, despite the need to uphold academic freedom, this particular thesis needed to be irreproachable in its scholarship. Despite the alleged harassment and the OAS actions, Dr Hayward continued to work on his thesis, although he was under some stress.
- 2.29 The thesis was put into final form sometime between Dr Orange's return in September 1992 and the alleged date of its formal submission to the University, i.e. 5 March 1993. Dr Hayward claimed that he did little work on the thesis until after he had finished his papers in November 1992 and until after a subsequent holiday. He claimed, and Dr Orange did not disagree, that he had had little discussion with Dr Orange until the thesis was in its final form in early 1993. At some stage during the concluding stages of the candidature, Dr Orange suggested to Dr Hayward that his thesis should have a

clear and forceful conclusion. Dr Hayward thought in retrospect that he had written the Introduction and the Conclusion in early 1993. Dr Hayward and Dr Orange agreed that Dr Hayward gave a final draft of the thesis to Dr Orange at his then home in Harewood Road in January 1993. Dr Orange later returned the draft to Dr Hayward without comment as to its content. Dr Hayward later formally presented the finished thesis to Dr Orange and not to the Registry, as the Regulations required.

2.30 The Working Party interviewed Mr Michael Sykes, who has been with the Academic Registry for many years. He recounted how, in the early 1990s and before, some Departments were in the habit of accepting theses from students for examination, in contravention of the Regulations which required the student to lodge the thesis at the Registry. Some Departments did not advise the Registry of the names of the examiners, as required by the Regulations. In such circumstances Mr Sykes would have to ask the Department to supply a date on which a thesis had been lodged so that this information could be recorded on the student's academic record. One practical reason for fixing a date was that, under the Regulations, if a thesis were not filed by 1 March, the student became liable for a further year's tuition fees. A few days of latitude were allowed. Because Dr Hayward says he handed in his thesis in January to Dr Orange, the Working Party treats with some scepticism the 5 March date shown on his academic record. University Scholarship records note that on 16 February 1993, Dr Hayward was given an extension to 31 March by the Academic Administration Committee of the Academic Board (AAC) to complete the requirements for his Masters degree. He had applied for a doctoral scholarship. This extension was noted as having been granted on medical grounds. The relevant Regulation for an MA History thesis stated that it should normally be presented to the Registrar not later than 30 November in the year of enrolment. The only communication the Registry received over the thesis was a formal letter from the Department, dated 31 March 1993, advising the result of the examination and that the degree could be conferred. 31 March was the cut-off date for providing information if a student wished to graduate at the May graduation ceremony. It was also the cut-off date for this information in respect of the doctoral scholarship application. The informal and lax procedures demonstrated above have now been replaced by much greater adherence to University-wide standards and Regulations. Part of the difficulties here recounted resulted from the decision to allow Dr Hayward to write his thesis in his first year, instead of taking papers.

- 2.31 Also of interest is the application for a doctoral scholarship made by Dr Hayward. On 16 November 1992, Professor David McIntyre as Head of Department, supported the application for a doctoral scholarship to enable Dr Hayward to undertake a PhD with a biography of David Irving as his suggested thesis subject. The approval noted that Dr Hayward: (a) is expected to gain First Class Honours; (b) was one of the best, if not the best in the 1992 Honours year; (c) has outstanding research experience, having nearly completed an MA thesis 'of PhD proportions'. There were other laudatory comments on his research and industry.
- 2.32 Despite the warning to the History Department and the University implicit in the OAS May 1992 letter, there seems to the Working Party to have been no attempt made within the Department by those who knew what Dr Hayward was doing to modify and/or re-assess critically the thesis or its subject or treatment. On its final lodgment, according to Registry records, the thesis was named 'The Fate of Jews in German Hands' as well as bearing the secondary name indicating a study of Holocaust Revisionism. Shortly before its final submission, Dr Orange advised Dr Hayward that a thesis needed a catchy or dramatic title; Dr Hayward agreed and the principal title was given. The title is broad in the extreme. It does not even restrict the time period. Despite having worked so intimately with Dr Hayward during the writing of the thesis, considering him a friend and treating him as a colleague, Dr Orange, in accordance with the then established procedures in the Department (and indeed most of the University), assumed the role of examiner of the MA thesis.

- 2.33 The University's General Course and Examination Regulations (Section H3), in force in April 1992 indicated that all theses should be examined by such persons as are appointed by the Council of the University on the recommendation of the Head of Department 'in consultation with the supervisor or supervisors'. This duty of the Council was delegated to the Academic Board in 1991, which in turn delegated the appointment of examiners to the AAC. The Working Party finds no record of approval by the AAC of the appointment of Dr Orange as internal examiner, or of Professor Jensen as external examiner. The Working Party understands that such formal approval, despite the provisions in the Regulations, was rarely sought by Departments in the Arts Faculty in 1991-3.
- 2.34 Under Section J of the same Regulations, the appointment of an external examiner was at the discretion of the Head of Department following consultation with 'the appropriate examiners'. Again, such appointment was formally to be made by the Council on the recommendation of the Head of In practice, the appointment should have been made by the Department. AAC, under delegation. The apparatus mandated by the Regulations was not activated in this case. In accordance with established practice, the supervisor of the thesis, Dr Orange, became the internal examiner, although one reading of the Regulations might suggest that the examiner and supervisor should have been separate people. Appendix K shows all the relevant University Regulations in force in 1991-3: i.e. a) The General Course and Examination Regulations (K1) (b) The Academic Awards Regulations (K2) and (c) The degree of Master of Arts – specific requirements for History (K3). There may have been minor changes over the three years to some parts of these Regulations, but the parts which are relevant to this enquiry did not change over the years in question.
- 2.35 Dr Orange arranged for Professor John Jensen, Professor of History at the University of Waikato, to be the external examiner. This appointment was made with approval of Professor David McIntyre but does not seem to have attracted any other administrative approval from Faculty or University level.

Canterbury's History Department's normal exchange of examiners was with the University of Otago. Each Department usually examined the other's postgraduate students. The choice of Professor Jensen was deemed appropriate by Dr Orange and Professor David McIntyre because of Professor Jensen's recognised knowledge of and specialty in the Second World War and the history of Eastern Europe. Contact with Professor Jensen was by way of informal telephone call from Dr Orange. There was no formal certificate, as required by Regulation H3 of the General Course and Examination Regulations, from Dr Orange to Professor Jensen certifying that the work had been purely that of the student using his own resources 'under the direct supervision of the supervisor' and 'stating what part the supervisor played in the conduct of the research over the preparation of the work'. Dr Orange's examiner's report does indicate the extent of his role as supervisor. The NZJC in its submissions suggested the names of other academics in both New Zealand and Australia who would have been more suitable as external examiner on the grounds of greater knowledge of the Holocaust history. The Working Party is not in a position to assess this contention. It is not clear when the thesis was sent by Dr Orange to Professor Jensen. It seems likely that Dr Orange's report was made available to Professor Jensen before Professor Jensen made his initial assessment, which he faxed to Dr Orange on or before 31 March 1993.

2.36 Dr Orange's assessment of the thesis dated 23 March 1993 was highly favourable and it appears as Appendix L. Of particular concern to the Working Party is Dr Orange's statement: 'Hayward's thesis is that the Nazis did not attempt the systematic extermination of Jews during the Second World War. In particular, he finds the evidence that gas chambers were built and used for this purpose unconvincing.' Such a statement articulates, probably unwittingly, one of the key elements of Holocaust denial and also demonstrates the potentially explosive nature of the thesis topic. Professor Jensen's comment was similarly favourable (Appendix M), although he did criticise the length of the thesis and questioned some of its conclusions. Both Dr Orange and Professor Jensen agreed on an A+ grade and First Class

Honours. Dr Orange noted in his report that his own contribution to the thesis had been confined to stylistic modifications and that he had had no input into the subject matter.

- 2.37 There was a meeting in the Department, apparently some time between 23 March 1993, the date when Dr Orange wrote his examiner's report, and 31 March 1993, the date when Dr Peters (who at that date held the role of DoGS) advised the Registry of the result of Dr Hayward's examination. Recollections of that meeting are hazy and no record exists. Dr Orange thinks that it was attended by Professor McIntyre, Dr Peters, himself and those who had taught papers taken by Dr Hayward. He thought the meeting would have had before it his examiner's report and a verbal indication from Dr Orange of Professor Jensen's view. Professor Jensen's full written report (Appendix M) was not completed until 15 April 1993. It refers to a faxed communication of his preliminary judgment. Professor Jensen confirmed to the Working Party that he sent the result by fax before 31 March because Dr Orange was keen for a prompt response in order for Dr Hayward to graduate in May. Professor Jensen had other duties at the time which occasioned the delay in completing his full report until 15 April 1993.
- 2.38 In the Working Party's view, it was inappropriate for any Departmental examiners' meeting to have determined the grading of the Hayward thesis without Professor Jensen's full report. The Working Party realises the importance of the graduation cut-off date. But in a situation where a supervisor with a close affinity with the student was also the examiner, the external examiner's report was a vital document to enable the members of the Department effectively and objectively to grade the thesis. Another troubling point arises from Dr Orange stating that he would have been present at this meeting only whilst any candidate whom he had supervised was being The Working Party believes that all MA candidates should be considered by all members of the Department at the one meeting in order to achieve a fair comparability process. The Working Party is concerned that quantity might have been seen to have been rewarded: that the student who

wrote at excessive length, as the Working Party believes the Hayward thesis to have demonstrated, could have an advantage over a student who took seriously (and whose supervisor took seriously) the Regulations about the scope of an MA thesis, and who endeavoured to be succinct and economical in approach. It should be noted that the History Department had conducted an evaluation of Masters students in December 1992 for comparative purposes after the results of the examinations were known, but before Dr Hayward's thesis had been completed. Of course, other students would, unlike Dr Hayward, have completed their papers first before attempting their thesis.

- 2.39 The Working Party finds that members of the History Department had little or no idea of what was in Dr Hayward's thesis, apart from Dr Orange, and, to the extent discussed, Professor McIntyre, Dr Peters and Dr Richardson. The Working Party was supplied by a staff member with a record of a Departmental meeting on 7 April 1993 at which it was resolved that Dr Hayward had been chosen to wear the 'Phil May' gown at graduation. Phil May had been a member of the Department. After his death, his academic dress was donated to the Department. It was worn at graduation by the best student in any graduating year. Dr Hayward received a subvention of \$150 from the History Department towards the cost of binding the thesis.
- 2.40 Dr Hayward told the Working Party that he had been alerted by a friend that the copy of the thesis required to be deposited in the University Library was going to be stolen. With the permission of Dr Orange, as his supervisor, he signed a standard form then routinely issued by the Library which embargoed the thesis for a period of three years. The form had provision for an embargo of up to five years, but Dr Orange considered three years enough. Dr Orange's explanation for countersigning the embargo request was that Dr Hayward might wish to write a book on the strength of his thesis and that the embargo would assist him to find a publisher without anybody pirating ideas out of the thesis. The Working Party will return later to the subject of embargoes. We note in passing that the Regulations required two bound copies of the thesis to be presented by a candidate, one for depositing in the

Library. The Working Party is unclear about the destination of the other copy. Possibly it was intended to be retained in the Department concerned. However, the History Department had no practice of retaining the theses of its students. Normally a copy was given to the supervisor. Dr Orange cannot remember receiving a copy and does not have one now. Dr Hayward gave copies of the thesis to David Irving and the Rev. Countess in return for what he had seen as an obligation to do so because of materials supplied to him. He thinks that he sent one also to a Professor Gerald Fleming in England, who had also supplied him with material during the writing of the thesis. The status of David Irving in the Holocaust debate is clearly established by recent litigation in England. The Rev. Countess is said to be associated with the IHR and to have publicly referred to the Hayward thesis in terms of approval at a conference in Adelaide in 1998.

- 2.41 Dr Hayward had proposed to enrol for a PhD with a biography of David Irving as a thesis topic, and so stated on a doctoral scholarship application on 9 January 1993. He was later dissuaded from advancing that topic by Dr Peters and Professor McIntyre. Dr Orange then suggested another topic. Dr Hayward seems at that point to have then abandoned the idea of making the Holocaust his specialty. He claimed that he has not researched or written anything about the Holocaust since submitting his MA thesis in January 1993. However, NZJC drew the Working Party's attention to an article, downloaded from the internet, written by Dr Hayward in the March 1999 issue of a publication from 'The Foundation for Free Historical Research'. The article is not on a Holocaust topic. NZJC says that the article is to be found in a publication to which Holocaust deniers frequently contribute. NZJC also produced an internet page of David Irving which refers to Dr Hayward as 'New Zealand's leading Holocaust historian'.
- 2.42 Dr Hayward's PhD thesis under Dr Orange's supervision was on German airforce operations during Hitler's invasion of the Soviet Union. He was awarded the PhD degree in 1996. The PhD thesis was revised and published as a book, *Stopped at Stalingrad: The Luftwaffe and Hitler's Defeat in the*

East, 1942 to 1943. The publisher was the University Press of Kansas, USA. According to some reviews shown to the Working Party, the book seems to have enjoyed some acclaim in Britain and the United States. Certainly there is no suggestion of Holocaust denial in this book. On the strength of his grades in his MA, Dr Hayward as a PhD student, obtained financial assistance from the University and from German and United States sources which enabled him to travel overseas in the course of his PhD research. Dr Hayward could have proceeded to study for a PhD if he held a BA (Hons) degree which is a regular BA degree plus 4 MA papers. Revocation of the MA as sought by the NZJC would not put at risk his PhD if he were to hold a BA (Hons).

- 2.43 Dr Hayward was appointed to a position in June 1996 in the History Department at Massey University (Palmerston North Campus) where he now works as a Senior Lecturer in Defence and Strategic Studies. As a military historian and analyst, he has an interest in theoretical and conceptual aspects of modern warfare including airpower and joint doctrines and the theoretical foundations of both German Blitzkrieg and contemporary manoeuvre warfare. He lectures at the New Zealand Army Officer Cadets' School and at the Royal New Zealand Air Force Command and Staff College. At the former, he teaches general military history from Alexander the Great to the recent Balkan War; at the latter, he supervises advanced military research and teaches airpower history and doctrine. He has also taught Strategic Thought to senior officers in the Royal New Zealand Navy. He has written academic articles on air and tactical operations in various military history and general military publications. He says that he no longer teaches German history and is changing his field of historical research to the Napoleonic period and to a study of the Royal Marines in the naval campaigns of that period.
- 2.44 The thesis was embargoed in the Librarian's office until the initial 3 years embargo expired on 28 April 1996. At the suggestion of Professor McIntyre, the then University Librarian, Mr Richard Hlavac, had kept the thesis in his office to prevent possible theft. Mr Hlavac wrote to Dr Hayward on 17 November 1996 notifying him that he had received a request from someone in

Australia for a copy of the thesis. It was normal practice for the Library to obtain permission from an author before allowing a copy to be made. On 21 October 1996, Dr Hayward replied that he was happy to make the thesis available to other researchers; 'however, because it deals with an extremely contentious topic, it caused me a great deal of trouble during and shortly after its writing (verbal abuse, threats etc) I would prefer it if requestors wrote to me for permission before the University made it available'. The Librarian replied the next day advising that he had decided to restrict access to the thesis so that it could only be consulted with Dr Hayward's permission until January 1999, after which date, access limitations would be withdrawn. Dr Hayward informed Mr Hlavac that he considered this a fair decision, given that genuine requestors could still study the thesis with his permission.

In August 1998, Dr Hayward granted a request from a Dr Frederick Toben of 2.45 the Adelaide Institute in Australia for a copy of the thesis. He claimed that he had not heard before of Dr Toben or his Institute and presumed him to be a genuine scholar. He initially agreed to take part in a conference organised by Dr Toben but later withdrew his participation on alleged health grounds. He later found out that Dr Toben was considered by some to be a Holocaust Revisionist and anti-Semitic. He e-mailed Dr Toben on 17 October 1998 advising him that he did not give permission to make his thesis available, in part or whole, to Anthony Long or to anyone else. He did not grant permission to publish extracts at any length without his permission. He claimed that Dr Toben had presented the thesis to a Human Rights and Equal Opportunity Commission in Sydney to defend himself against charges made against him by an Australian Jewish agency. Dr Hayward wrote to the agency saying that Dr Toben had no right to present his thesis to the Commission. He also wrote on 4 December 1998 to the February 1999 issue of the Chronicle outlining his dislike for Dr Toben's alleged anti-Semitism and explaining the action he had taken. (Appendix N). The letter also affirmed Dr Hayward's emphatic belief that the Holocaust did occur, 'based on extensive research and a thorough reading of published sources...' The reference to Anthony Long is significant since a person of that name prepared for NZJC a report on the use which allegedly has been made of the Hayward thesis by alleged Holocaust deniers and/or Revisionists (see Para 3.4).

- 2.46 After the embargo was lifted in 1999, the thesis appears to have been copied by some person whose identity is unknown to the Working Party. A copy found its way to NZJC. The past and present Librarians told us that it was not Library policy to allow theses to be copied in the Library, although they admitted that it would have been possible for somebody to have copied the thesis even despite its length; there are numerous copying machines in the Library.
- On 2 October 1999, Dr Hayward received what he describes as the first of 2.47 many e-mails from Professor Dov Bing, Professor of Political Studies at the University of Waikato. Professor Bing, who is associated with NZJC, claimed that the contents of the thesis had shocked him and he could not understand that the same person had written the thesis and the book on the Luftwaffe. He claimed that the thesis was now a public document and that copies were 'all over the place'. He claimed that its comments about the gas chambers are so shocking and outrageous, 'it seems only a matter of time before you face public accountability for this'. Dr Hayward claimed that he had received several nasty e-mails from anonymous persons and was concerned at what action might be taken by Professor Bing and NZJC. He accordingly wrote to the Vice-Chancellor of the University (Appendix O) on 8 December 1999, regretting the hurt that he had caused to Jewish persons. He asked for the thesis to be withdrawn from the shelves of the Library. He stated that he did not feel he had been dishonest and that he no longer understood the evidence as he had back in 1991 or 1992. He was convinced from his further reading, discussions with survivors and visits to Nazi camps, that the gas chambers in occupied Poland actually existed. He wrote the Addendum to the thesis, which was then placed in the University Library shelves. The University did not consider that the thesis should be withdrawn from the Library but accepted the Addendum, which is Appendix B. A letter to Dr Hayward from Professor

Wake, the Dean of Postgraduate Studies, conveying this view is Appendix P. The correct date of this letter was not May 2000 but January 2000.

- 2.48 On 17 February 2000, Dr Hayward wrote the letter to the NZJC (Appendix C) for publication in *The Chronicle* reiterating the attitude expressed in the Addendum (Appendix B) but in somewhat stronger language. He claims that he had stated his position in the more emphatic terms of Appendix C in an attempt to spare the University and Dr Orange unfair public abuse. In this letter, he described his mistakes and added that he had 'stuffed up'. Whilst he did not now agree with all his earlier interpretations, he claimed that he 'did his best' in 1991 and 1992. He tried with the money and resources then available to him, within the rigid and compressed time constraints of an academic year, formally to express a thesis that was sensible, accurate, internally consistent and defensible. He regretted that his thesis, which was never intended for public release, caused some members of the Jewish community to feel distress. He hoped that the letter would reassure them that he had taken steps to address their concerns. He was upset by his treatment in an earlier issue of The Chronicle. He claimed to have suffered health problems as a result of the stress placed upon him. The Working Party comments that it was naive of Dr Hayward to say that the thesis was not intended for public release, given that it must have been well-known to all post-graduate students that copies of theses were normally available for inspection in the University Library; furthermore, while the thesis was in progress, Dr Orange had suggested the possibility of publication of a book or article based on the thesis.
- 2.49 On 22 March 2000, Professor Graeme Wake, Dean of Post-Graduate Studies at the University, made a statement for publication in *The Chronicle* detailing the encouragement given by the University to Dr Hayward to write the Addendum. (Appendix Q) Professor Wake concluded his letter with the words; 'The University does not endorse any of the findings in theses that are passed for degrees. Its examining procedures are designed to grade the

- quality of the analysis and writing, the maturity of judgment and the ability to absorb transcript and produce material'.
- 2.50 In addition to the setting up of the Working Party the Chancellor wrote to *The Chronicle* in its May 2000 issue (Appendix R) and a communication was sent to all members of the University staff from the Vice Chancellor, Professor le Grew on 20 April 2000. (Appendix S)
- 2.51 The Council of the University subsequently decided to set up this Working Party with the Terms of Reference quoted earlier.

## 3. REVOCATION OF DEGREE? LEGAL CONSIDERATIONS

- 3.1 The Working Party has obtained detailed opinions from Mr L. L. Stevens Q.C. on the following questions: (a) the legal power of the University to revoke a degree once conferred; and (b) if the University has that power, what test should be applied in deciding whether or not to revoke the degree. Mr Stevens' principal opinion dated 15 September 2000, and its Appendices are notable for their breadth of legal scholarship and the selection of cases from other common law jurisdictions on a rarely-encountered situation. Because it is conceivable that this report may be of general interest to all Universities in New Zealand, the Working Party exhibits Mr Stevens' opinions of 15 September 2000 and 10 October 2000 as Appendix T.
- 3.2 In accordance with the opinions, the Working Party proceeds on the basis that the University has the power to revoke a degree on the grounds of proven dishonesty. This power exists under Regulation 9 of the Academic Awards Regulations and at Common Law. Either way, the test is similar. The Working Party must therefore consider whether there is misleading treatment of historical evidence by Dr Hayward in the preparation and presentation of his thesis such, in the circumstances, as would amount to dishonesty. The

Working Party notes that Professor Evans' Report was not given with the benefit of a legal opinion, nor can the Working Party be swayed by his or anyone else's view of what is, or is not, dishonest treatment of historical evidence. The Working Party must make up its own mind on the evidence on whether Dr Hayward's treatment of the historical evidence amounted to 'dishonesty' in the terms of counsel's principal opinion. Counsel's second opinion indicates: (a) a high standard of proof of dishonesty is required, consistent with the gravity of the allegations, (b) the Working Party must examine Dr Hayward's subjective state of mind at the relevant time, asking whether it was reasonably possible that Dr Hayward thought he was acting honestly, however mistaken or negligent he might have been. Such assessment must be made within the confines of the criteria for an MA thesis in History, which is to be judged primarily not on the contribution it makes to knowledge, but on the evidence it affords of the candidate's understanding of the principles of historical research and ability to apply them. It must also be made against the knowledge that (a) Dr Hayward was encouraged in his thesis by his supervisor; (b) he was not dissuaded from pursuing it by any member of the History Department, other than Dr Peters at the initial stage, and (c) the system permitted him to have as a supervisor one who was not conversant with the precise field of study.

3.3 Professor Evans noted that in his opinion most Universities demand that an MA thesis contains original research and deals with its chosen topic fully and with proper scholarly rigour. 'It has to advance the state of knowledge either by presenting new findings or revising old ones'. The Working Party has also to consider as background the fact that this thesis was supervised and that the supervisor had in his examiner's report characterised the thesis as 'the most convincing piece of work that has been submitted to me at this level'. The various statutory goals of academic freedom and the right to publish unpopular opinions referred to both in the body of this report and in counsel's opinion must also be included in the equation. Differences of academic opinion alone cannot amount to dishonesty. The Working Party has also to

keep consistently in mind the fairly modest academic goals of the MA History thesis prescription.

- 3.4 Accordingly, the Working Party now considers the thesis itself, the criticisms made of it by Professor Evans and NZJC, and the replies from Dr Hayward, Dr Orange and Professor Jensen to Professor Evan's criticisms. The Working Party does not and cannot take account of the use to which the thesis may have been put by Holocaust Deniers or Revisionists or others after it had been Consequently the Working Party did not find helpful a Report tendered by NZJC at the October hearing prepared by one Anthony Long of Adelaide, a PhD student at Adelaide University. It may very well be that the uses to which the thesis has been put are unfortunate and have caused distress to the Jewish community as well as to Dr Hayward and Dr Orange. However, the Working Party is charged with the task of 'investigating widely' and 'reporting upon the circumstances in which the degree of Master of Arts with First Class Honours came to be awarded' by the University in 1993 to Dr Hayward on the basis of the thesis. Accordingly the enquiry into the thesis must end in March 1993. As well, the Working Party's enquiry must extend into the ongoing custody of the thesis and the reform of University procedures. Consideration can only be given to the views expressed in the thesis in the light of accepted historical knowledge reasonably available to Dr Hayward at that date.
- 3.5 It must be emphasised that only the University, through its Council, can revoke a degree. It has been suggested to the Working Party by its legal advisers that, should the Working Party recommend to the Council that the degree be revoked, then on the authority of *Jeffs v. New Zealand Dairy Board, [1967] NZLR*, Dr Hayward would be entitled to have the Council or a properly delegated committee thereof consider the question of revocation afresh. In that event, this Working Party's efforts would have been merely an evidence-gathering exercise. On the authority of the *Jeffs* case, the Council would be entitled to use the material obtained by the Working Party as evidence before forming its own view as to the outcome. That factor provides another reason

for the Working Party having kept a record of the submissions made to it and of its discussion with interested parties. If the Working Party were to recommend revocation of the degree, the fact that such recommendation might not be final has not influenced the Working Party. The Working Party stresses that all those who spoke to it did so privately and confidentially. Submissions by one party were not given to others unless natural justice required that course. Appropriate undertakings were obtained as outlined earlier.

- 3.6 Although the Working Party informed all who appeared before it that its process was confidential, all knew that a record was being kept and that the Working Party would be making a report to the Council based on the information gathered by the Working Party. A decision by the Chief Ombudsman on 10 December 1990 in connection with a similar enquiry into a matter of academic concern at the University of Auckland established that persons other than a particular interviewee cannot obtain access to what was said by others to a Working Party constituted like the present one. It will be for the Council of the University to decide how much of the Working Party's report will become public.
- 3.7 Dr Hayward summarised his position thus. He sincerely regretted the hurt that his thesis may have engendered. He has tried to persuade the Jewish community that his regret is genuine and his public apology sincere. He has not defended his conclusions and has acknowledged that the thesis contains flaws and errors. He strongly denies that he falsified evidence or plagiarised or misrepresented material. The flaws and errors stemmed not from dishonesty but from his then inadequate level of skill to conduct such an ambitious research project. At all times he satisfied the requirements of the University, and tried to follow his supervisor's guidance. He has never been a Holocaust denier or anti-Semitic. He regrets certain errors of judgment. His publishing record since 1993 is extensive but has not included anything challenging received wisdom on the Holocaust. He has changed his research focus and teaching commitments away from the Third Reich. He wishes to pursue his career as an academic without further attack.

#### 4. CONSIDERATION OF THE THESIS & ITS CRITICS

#### General

4.1 The NZJC has argued that the degree should be revoked because the thesis, on which the award of the degree of MA with First Class Honours depended, was dishonest. The NZJC alleged that the author had been 'consistently misleading in his handling of the available evidence'. It submitted a lengthy report from Professor Evans that claimed of the thesis: 'this is a thoroughly tendentious, biased and dishonest piece of work'. In addition to the thesis itself, the Working Party was able to consider the examiners' reports, the report of Professor Evans on the thesis, the comments on the examiners' reports by Professor Evans, and the detailed responses and material offered by Dr Hayward and the two examiners. The Working Party received comments on the thesis, and the implications of the enquiry for the principles of academic freedom, from the academic staff of the University. Insofar as these comments related to the thesis itself, they were all subsumed in the points made by Professor Evans. The Working Party has constantly kept in mind its legal advice that a high standard of proof is required to establish allegations of dishonesty, and that subjective intent needs to be established.

## The Report of Professor Evans

4.2 The Working Party's consideration of the thesis required that it give considerable attention to the report of Professor Evans, which was commissioned by the NZJC and tendered as part of its submission to the inquiry. Professor Evans was a principal witness in the court case brought by David Irving against Penguin Books and Deborah Lipstadt, where his extensive testimony was of considerable significance. After his report and his subsequent commentary on the examination reports were provided to Dr

Hayward, Dr Orange and Professor Jensen, all three responded with criticism both of his expertise and the substance of his commentary. All three have argued that Professor Evans is not an expert on the Holocaust. Professor Evans holds a chair in modern German history at Cambridge; his publications include major works on aspects of nineteenth and twentieth-century German history. One of them, *In Hitler's Shadow* (1989), considered the way in which German historians since 1945 have attempted to deal with the Nazi past, and the Holocaust is central to that subject. While Professor Evans has not published specialist work dealing exclusively with the policy of the Hitler regime towards the Jews or with the Jewish experience of the Holocaust, the subject is central to his field and he has an extensive knowledge both of its literature and the major sources.

- 4.3 The Judge in the Irving case recognised that Professor Evans was the 'principal protagonist' in the defence case that Irving had falsified history to deny the Holocaust. The Judge commented on the 'full-blooded' nature of his 'assault' on Irving and elsewhere referred to his 'harsh criticisms'. The Working Party believes that the same characterisation applies to Professor Evans' treatment of the Hayward thesis. At times in his report tendered to the Working Party, Professor Evans appeared to diminish the objectivity required of an expert witness who, in a litigation context, has an over-riding duty to the Court and not to the party instructing him or her. See *Stevens v. Gullis, [2000]* 1 All ER 527.
- 4.4 The Working Party has already noted that Professor Evans' understanding of the nature of the MA thesis at the University of Canterbury is incomplete, and his expectations of its contribution to knowledge of the subject is excessive. In considering his report, the Working Party observed some minor inaccuracies and it found some of his allegations to be not warranted.
- 4.5 The Working Party received a submission from Professor G. F. Orchard, counsel for Dr Orange, concerning Professor Evans' report. This submission

was principally concerned with the standpoint of Professor Evans; it suggested that he acted not as an objective expert but as a partisan advocate. Professor Orchard cited examples in the Evans report of exaggeration, omission, minimisation and misrepresentation. In its detailed consideration of the thesis set out below, the Working Party has considered Professor Orchard's arguments on particular passages.

treatment is not restricted to Dr Hayward alone. The supervisor and external examiner have both drawn attention to its polemical character, and have in turn subjected Professor Evans to similar criticism. The Working Party believes that such a response, though understandable, is unproductive. It has itself made every effort to discount Professor Evans' tendency to intemperate expression. Professor Evans' report has a strong scholarly foundation and it raises serious allegations. Dr Hayward, his supervisor and examiner have replied to some of these allegations, and rebutted some of them. Many have not been challenged. Many of them, as set out below, are found to be valid. It is fair to add that it must be very rare for an MA thesis to be subjected to such analysis and sustained criticism.

## The Scope of the Thesis

4.7 The thesis, which comprises in all 360 pages, purports to describe and explain the development and significance of Holocaust Revisionism from 1948 to 1993. It provides a very extensive account of the work of Holocaust Revisionists, including Arthur R. Butz, the leading members of the IHR, Fred A. Leuchter and David Irving. It deals with a very large body of primary source material, far larger than the usual Masters thesis and much of it located and assembled by the author. Dr Hayward explicates this material, traces the emergence and institutionalisation of the Holocaust Revisionists and identifies the main issues that emerge from their writings. Whatever judgments might

be made about his interpretation of the material, Dr Hayward demonstrates an impressive control over it as he establishes a lineage for Holocaust Revisionism and identifies its main forms and emphases. The grasp of context is impressive. The writing is clear and intelligent. In these respects, the thesis displays some of the qualities expected at a postgraduate level of an historiographical inquiry into a school of interpretation.

- 4.8 Yet the thesis goes beyond the ambit of such an exercise. As Dr Hayward puts it in his Abstract, his purpose lies in 'identifying the Revisionists, describing what they say, assessing the sources and methods they employ, and arriving at an impartial and dispassionate judgment on their work'. These two last aims, assessment and judgment, take the thesis beyond the solid ground of historiographical investigation and into areas of inquiry beyond his competence or experience.
- 4.9 It is for this reason that the Working Party paid particular attention to the title of the thesis. It was a reasonable undertaking to conduct an historical inquiry into the development and significance of Holocaust Revisionism. It was a rash and impractical undertaking to attempt to adjudicate the issues in dispute between the Holocaust Revisionists and their critics, much less to determine 'The Fate of Jews in German Hands'. Furthermore, the Conclusion takes the argument well beyond the qualified formulations reached in the body of the thesis and enunciates claims that lack warrant.
- 4.10 An exercise in descriptive historiography was a feasible project for a postgraduate student working in limited compass, without any prior grounding in historical research and without access to the principal archives. The attempt to go further, and to establish conclusions about the numbers of Jews killed by the Nazi regime and the manner of their death required an expertise well beyond Dr Hayward's capacity and the materials at his disposal.

## Methodology

- 4.11 The thesis is flawed by a methodological failure. It provides no grounds on which the claims of the Revisionists can be evaluated. In the absence of a properly established methodology, Dr Hayward's procedure was to set out the arguments of the Revisionists against the counter-arguments of those who have engaged with them, to search for consistencies or inconsistencies within these arguments and counter-arguments, to evaluate the evidence cited by their antagonists, and then to put forward his own judgment of the issues in dispute. In doing so, Dr Hayward failed to consider the basis on which these disagreements had arisen and to provide a conceptual basis for their resolution. If the thesis was to embark on such evaluation, then it required an explicit discussion of these interpretative issues. The failure here is one that proper supervision should have checked, identified and corrected.
- 4.12 Dr Hayward's evaluation of these issues is criticised at length by Professor Evans for its selective use of evidence, failure to disclose contrary evidence, failure to pay sufficient attention to relevant secondary literature and being consistently misleading in the handling of relevant evidence. We return to these issues, but should note that, in any case, Dr Hayward lacked the necessary expertise to evaluate some of the more technical evidence, such as scientific evidence about gas chambers or the quantities and effects of carbon monoxide produced by a diesel engine.
- 4.13 A further methodological flaw compounded these failures. Dr Hayward's presentation of the subject as a debate between two parties, the Holocaust Revisionists and their critics, presupposed the nature of the controversy. It assumed that he was comparing two rival schools of historical interpretation that differed in their judgments. In doing so he accepted from the outset the claim of the IHR to reputable disciplinary status, and the proposition that its *Journal of Historical Review* is a *bona fide* journal of historical scholarship. Those propositions are themselves central issues of dispute, and neither the IHR nor its *Journal* has standing within the scholarly profession. The failure

to consider the implications of this pseudo-disciplinary façade is a serious defect.

- 4.14 The very terms of his inquiry required greater analysis. The proponents of Holocaust Revisionism use that title; their opponents call it Holocaust denial. The Holocaust Revisionists claim affiliation with historical revisionism more generally, and Dr Hayward traces such a lineage in the early part of the thesis. But there is an important difference between revisionists who seek to reappraise an accepted historical orthodoxy and the leading figures in the IHR. Historical Revisionists are sceptics and iconoclasts; Holocaust Revisionists are committed in advance to a conclusion and predetermined to advance historical claims that serve their purposes. A thesis on Holocaust Revisionism that fails to consider the contested nature of that designation is deficient.
- 4.15 Dr Hayward was aware of the controversial and highly sensitive nature of the Holocaust debate. His response was to insist on the need for an even-handed and dispassionate appraisal. Repeatedly throughout the thesis he discounts evidence of prejudice and anti-Semitism on the part of Holocaust Revisionists as irrelevant to evaluation of the truth of their claims. Yet his thesis repeatedly resorts to commentary on the character of the protagonists; a critic of Leuchter is described as 'surprisingly hostile' (p. 225), whereas Leuchter is said to be 'calm and dispassionate' (p. 251); some historians display 'cowardly and unprofessional behaviour' (p. 304) and one opponent of Irving is stated to be 'unfortunately displaying his Jewish elitism' (p. 319). At numerous points in the thesis, Dr Hayward draws attention to the persecution of Holocaust Revisionists and yet he repeatedly puts aside allegations against them on the grounds that it is their arguments rather than their character that are under investigation. His personal and emotive judgments belie the declared procedure.
- 4.16 Not only is Dr Hayward's call for a scholarly and dispassionate consideration of the claims of the Holocaust Revisionists contradicted by his recurrent recourse to commentary on the behaviour, beliefs, attitudes and characters of

those involved in the Holocaust debate; there is an inherent imbalance in his concentration on the travails of the Revisionists, who are his subject. Both examiners suggested that Dr Hayward 'bent over backwards' to be fair to the Revisionists and what they see as leaning to fairness, others perceive as an inclination amounting to bias. It is the arguments of the Revisionists that constitute the exegesis, and while Dr Hayward frequently rejects or criticises their positions, or otherwise qualifies his judgments on their claims, the result is a discussion of the Holocaust cast in their terms. An appropriate methodology, settled after discussion with the supervisor, would have required a consideration of the scholarly interpretation of the Holocaust against which the contentions of the Revisionists could be more rigorously compared.

### **Length of Thesis**

4.17 The length of the thesis presents a further difficulty. The Masters thesis is a circumscribed exercise and its evaluation is necessarily affected by the available compass within which it operates. Since candidates for the Masters degree are in competition for doctoral scholarships and other awards, the assessment of Masters theses is comparative. A thesis that is more than three times as long as the norm will be necessarily at an advantage in displaying the amplitude of its research and other qualities that contribute to the final mark and grade.

#### Criticism of NZJC & Professor Evans

4.19 The Working Party was presented with lengthy commentary on the thesis in the submissions of the NZJC, as well as the report by Professor Evans. Professor Evans deals with two issues: does Dr Hayward's thesis reach generally accepted academic standards for dissertations at this level, and does the thesis disclose Holocaust denial? In themselves neither of these questions

establish grounds for revocation of the degree, though if the answer to them establishes systematic dishonesty they might.

- 4.18 In his consideration of the first question, Professor Evans notes that an MA thesis is shorter and more narrowly defined than a doctoral dissertation. He goes on to say that 'On the other hand, universities do demand that an MA thesis contains original research and deals with its chosen topic fully and with proper scholarly rigour. It has to advance the state of knowledge...' This expectation captures only part of the standard that is applied by the University of Canterbury. Here the MA thesis constitutes one year's work and half of a programme that weights the thesis equally with papers in advanced The MA Regulations relating to History as found in the coursework. University Calendar for 1993 (p. 308) (Appendix K3) state that the thesis is to embody 'the results of an investigation into an historical topic approved by the Head of Department and shall be judged primarily not on the contribution the thesis makes to knowledge but on the evidence it affords of the candidate's understanding of the principles of historical research and ability to apply them'. (See Appendix K3 for full text).
- 4.20 The above description suggests a limited first exercise in historical research (which makes the length of Dr Hayward's thesis all the more anomalous). In this sense, the thesis can be regarded as an exercise in the education and training of history students. This aspect of the Canterbury MA is reinforced by the practice whereby the supervisor also acted as one of two examiners of the thesis, as well as its integration into a final MA result by a meeting of the academic staff of the History Department. On the other hand, the thesis is lodged in the University Library and thereby becomes available to other scholars who incorporate it into the relevant scholarly literature. In this sense it serves as a research exercise with the standing of an original contribution to historical knowledge. The combination of qualities allows for conflicting views of the standing of Dr Hayward's MA thesis, which have exercised those who have demanded its revocation and those who have defended it. Be that as it may, the Working Party notes that Professor Evans' emphasis on one

aspect of the standards expected of the Canterbury MA might have affected his evaluation of it and inflamed his comments on its supervision and examination reports. The Working Party now turns to a more detailed consideration of the allegations made by Professor Evans.

# ANALYSIS OF THESIS IN LIGHT OF CRITICISMS & REPLIES TO CRITICISMS

#### **Introduction to the Thesis**

4.21 Professor Evans objects to Dr Hayward's claim that 'those who hold orthodox opinion on the Holocaust' have 'tended to accept automatically almost all Holocaust survivor testimonies as being reasonably accurate and reliable historical records'. (p.5) Professor Evans argues that orthodox historians cross-check eye-witness testimony against other kinds of evidence. He cites the case of Henryk Tauber, Auschwitz camp officer, whose evidence Dr Hayward considers to have major flaws (p.7) Here, it is the convergence of Tauber's evidence with that of survivors which has led orthodox historians to accept Tauber's memoir as broadly accurate. Revisionists, according to Dr Hayward, treat memory-based testimony with 'excessive and unreasonable scepticism' (p.6), but he argues that their work is 'almost always even-handed in their treatment of memory-based accounts' (p.7). The Working Party agrees that orthodox historians cross-check oral testimony with other evidence. In his reply to Professor Evans, Dr Hayward states that he has not presented Revisionists (as Professor Evans suggests) as 'disinterested scholars', nor has he accused mainstream Holocaust scholars of deliberately fabricating the record. Nevertheless, the effect of Dr Hayward's discussion on the uses of oral history is to suggest a view biased towards Holocaust Revisionism.

- 4.22 Professor Evans concedes that Dr Hayward criticises Holocaust Revisionists for condemning the Allies for bombing German cities while failing to criticise the Nazis for causing suffering to the Jews (p.8). In his response to Professor Evans, Dr Hayward notes that he also condemns as 'anti-Jewish' those who express the belief that Jews are more likely to exaggerate their suffering than non-Jews. (p.6) But Dr Hayward claims in the thesis, without substantiation, that 'the majority of Revisionists do not promote anti-Semitism and neo-Nazism' p.12), and that anti-Semites and neo-Nazis who appear at Revisionist conferences are, 'not really Revisionists' (p.13) and should not be confused with the Revisionist historians, whom he characterises as serious scholars who 'strive to illuminate events of the past by thoughtful, even-handed and systematic piecing together of evidence'. (p.14) Professor Evans rejects these claims and notes that the political affiliation of Holocaust Revisionist writers was described in publications available to Dr Hayward. In the view of the Working Party, any assertion that Holocaust Revisionists are 'serious scholars' needs to be supported by evidence.
- 4.23 Professor Evans next disputes Dr Hayward's claim that around 'ninety-five per cent of all historians specialising in the Holocaust... are Jewish and actively support political Zionism'. (p.9) Dr Hayward provides examples of historians of the Holocaust who are Jewish, but his sweeping generalisation would be difficult to substantiate and the Working Party believes it is an inappropriate claim. Discussing what he regards as the 'false equivalence between Holocaust deniers and genuine scholars', to which reference has already been made in this report, Professor Evans points out that Dr Hayward asserts that 'the vast majority on both sides - including many historians - appear to believe the past is important only as a source of ammunition to fire at their present-day religious, racial or political opponents. As their dissemination of information is designed to assist their own causes and damage the causes of their opponents, these people could rightly be called propagandists.'. (p.11) But Dr Hayward then rejects the claim that 'all Revisionists are right-wing, racist extremists who are unworthy of consideration'. (p.11) His consideration of the opposition to the Revisionists appears to suggest a Jewish political crusade

to suppress Revisionist views. The balance of Dr Hayward's discussion appeared to Professor Evans to be tilted in favour of Revisionists. Furthermore, Professor Evans found the description of international research and publication in the study of the Holocaust as no more than politically-motivated propaganda insulting to orthodox historians. The Working Party agrees with Professor Evans. It considers the identification of opposition to Holocaust Revisionism with Jews to be inappropriate and the implication of partisan motivation to be pejorative.

#### Chapter 1

- 4.24 This chapter provides a history of the development of Holocaust Revisionism, which Dr Hayward suggests had its origins in the post-war writings of Paul Rassinier. Professor Evans objects to Dr Hayward's claims that the Holocaust has become dogma in many Western countries. In this passage of the thesis Dr Hayward describes the Holocaust as a 'sacrosanct subject' for many Jews (p.24), with 'immense theological importance' for some (p.24), as 'official Israeli dogma', surrounded by legal sanctions (p.26), as 'elevated to the status of great national importance' in the United States (p.27) and 'official dogma' in Germany, Austria, Britain and Canada. He characterises Revisionism as 'the battering ram of "free enquiry" against 'Holocaust orthodoxy' (p.28), 'challenging accepted opinions' (p.24). 'Accepted opinions' are defined as the view that 'approximately six million Jews were purposely murdered, several million of them in gas chambers constructed for the task, by the Nazis and their collaborators as a central act of state'. (p.28) Professor Evans finds inappropriate the application of the term 'dogma' to an established record of what happened in the past supported by a great deal of historical inquiry and research. The Working Party also finds this language inappropriate.
- 4.25 Professor Evans regards Dr Hayward's account of Paul Rassinier and his work as superficial and selective. Dr Hayward rejects the charge that Rassinier is anti-Semitic and describes his work as generally 'well-founded and

thoughtfully written'. (p.32) His source is an English-language compendium of Rassinier's work that contains classically anti-Semitic sentiments, some of which are quoted by Professor Evans. This suggests either a lack of judgment or selectivity on Dr Hayward's part.

- 4.26 Professor Evans also finds Dr Hayward selective in his use of evidence when he impugns the veracity of the testimony of Kurt Gerstwein, a former member of the SS. Serious scholars who have accepted this testimony as credible are described by Dr Hayward as 'open to the charge that they have failed in their professional duties'. (p.39) But Dr Hayward's Revisionist source was unreliable and Professor Evans points out that, on the basis of books listed in his bibliography, he should have known this.
- 4.27 Professor Evans accuses Dr Hayward of a double standard of evaluation. He notes that Dr Hayward is highly critical of the way 'more and more Revisionists were routinely slandered as Nazis and, even worse, anti-Semites' by their opponents'. (p.78). He condemns these opponents in terms such as 'angry, at times almost hysterical', 'a disgrace', 'undiluted vitriol', 'possibly hypocritical', (pp.71-2, 81-2). He dismisses the anti-Semitic statements of a number of Revisionist propagandists and does not investigate the political links and activities of Holocaust deniers in any depth. Rather, he dismisses such political links as largely irrelevant to the validity or otherwise of their arguments.
- 4.28 Dr Hayward has argued in reply that he is not uncritical of some of the Revisionist writers referred to in this section. He criticises the anti-Jewish conspiracy theories advanced by Josef Ginsburg as 'unsubstantiated assertions, seriously detracting from [his] books' overall impact and ability to persuade'. (p.42) He criticises as 'weak racist arguments' Louis Marschalko's claim of Jewish conspiracy to enslave the world (p.44) and as 'nonsense' his conspiracy theories and misuse of evidence. (p.46) The Working Party notes, however, that Dr Hayward also writes: 'despite this nonsense, some of Marshalko's arguments are entirely tenable'. (p.46) Marshalko's arguments include the

claim that the concentration camps were not amongst the evil intentions of the Nazis (p.46) and were not proof of genocidal intent. (p.47). In the same section, Austin App's claims that 'Jewish frauds have occurred on a "horrendous scale" are described as 'preposterous and totally unsupportable', (p.54) and his claims of a Jewish conspiracy are said to be 'totally unsustainable'. (p.55) Dr Hayward considers App's work 'emotive and journalistic' in style and states that it 'certainly could not be considered dispassionate scholarship'. (p.54) He nevertheless suggests that App's biases should not lead to discounting of the writer's more rational theses without scholarly criticism of them. (p.57) Qualified criticisms such as these, in contrast to the highly critical language cited above applied to critics of Holocaust Revisionism, lay Dr Hayward open to the accusation of bias. The Working Party considers that this part of the thesis should have given greater weight to the clearly anti-Semitic purpose of such Holocaust Revisionists.

# Chapter 2 'The Hoax' according to Arthur R. Butz

4.29 The Hoax of the Twentienth Century by Arthur Butz is a Holocaust Revisionist work with an academic form. Its arguments and use of evidence are heavily criticised by Professor Evans. Some other historians who have criticised it are cited by Dr Hayward. (pp.85-88) Professor Evans writes that 'Like Hayward after him, Butz pointed out numerous errors of fact in the work of other Holocaust deniers in order to establish his own credentials as a serious scholar.' Dr Hayward sees this gratuitous comment as unfair. The Working Party agrees. Dr Hayward proceeds to analyse Butz's work. He explains that Butz claims that his book is 'an honest, impartial and detailed examination of the evidence for and against received opinion on the Holocaust'. (p.88) Dr Hayward finds that Butz's writing style is 'generally dispassionate' (p.88) and, having checked Butz's references, finds them free of 'significant errors in quotation or citation' and without 'deliberate falsification'. (p.89)

- 4.30 Butz contends that much of the evidence put forward at Nuremberg and other post-war trials was obtained by torture. Dr Hayward acknowledges that Butz's argument that much of this brutality was carried out by Jews is 'decidedly unpersuasive' (p.94) and that Butz's case for general brutality is based on only one set of prisoners (p.96). Nevertheless, he finds Butz's criticisms of the post-war trials can be supported 'to a certain degree'. (p.95) Professor Evans does not find generalisation from a single instance of torture legitimate and considers Dr Hayward's limited endorsement of the case for the general torture of prisoners unjustified. Dr Hayward's extenuation of Butz's unsatisfactory argument is a failure of judgment that proper supervision should have checked.
- 4.31 Professor Evans contends that Dr Hayward has discounted the evidence of the autobiography and second confession of Auschwitz commandant Hoess, which Dr Hayward describes as 'at least partially concocted'. (p.97) Professor Evans further contends that Dr Hayward has not checked the claims of the deniers against this evidence. As Dr Hayward acknowledges, this material is 'widely cited in support of accepted opinion on mass gassings at Auschwitz' (p.97) and the Working Party considers that a strong case needs to be made if the orthodox view of the Hoess evidence is to be discounted. Professor Evans criticises Dr Hayward for citing the date June 1941 in the statement of Hoess (p.98); he argues that the German phrase used by Hoess is correctly translated as 'some time in the summer of 1941'. Dr Hayward uses the June dating to support an argument that undermines the credibility of Hoess. The mistranslation suggests carelessness at the very least.
- 4.32 Professor Evans finds unacceptable Dr Hayward's treatment of Butz's arguments in relation to the deaths and running of the concentration camps. Dr Hayward accepts Butz's claim that deaths in Auschwitz and other camps were mainly from typhus (pp.99-109) and cites in support (p.101, n.56) writing by Frederich Berg, a regular contributor to the *Journal of Historical Review* and a Holocaust denier. Professor Evans considers Berg an unreliable source whose affiliations should have been noted. The Working Party agrees.

Dr Hayward also accepts Butz's contention that 'contrary to accepted opinion', the SS spent enormous amounts of time, energy and money saving and maintaining the lives of concentration and labour camp internees (p.108). Dr Hayward acknowledges that this campaign was partly to reduce mortality among workers and criticises Butz for not mentioning this (pp.105, 109), but accepts the general thrust of Butz's argument.

- 4.33 Professor Evans is critical of Dr Hayward's treatment of the eye-witness accounts of gassings at Auschwitz by Wetzler and Vrba, who escaped in 1944. Dr Hayward criticises Butz for providing no evidence for describing these accounts as spurious. (p.113) Dr Hayward then argues that this testimony is nevertheless 'decidedly inaccurate and unreliable' (p.113) and provides his own arguments to support this view. Professor Evans claims that in doing this he has accepted the Holocaust deniers' accounts without checking that, while there may be some inaccuracies, many of the details of the testimony have been corroborated.
- 4.34 Professor Evans next accuses Dr Hayward of double standards in his interpretation of phrases used in the sources. Most historians of the Holocaust consider that the Korherr report compiled in 1943 used coded language, so that the phrase 'special treatment' denoted killing. Butz was prepared to accept the phrase 'special treatment' literally. Dr Hayward cites a letter written by 1977 in which he denied that 'special (Sonderbehandlung) meant killing. (p.120) This reliance on testimony thirty years after the event appears to be inconsistent with the scepticism with which memory-based evidence of Holocaust survivors has been treated elsewhere (eg pp.7-8). In a lengthy discussion of various coded terms, Dr Hayward acknowledges that 'special action' has long been considered a euphemism for killing. (p.120) However, he agrees with Butz that a particular phrase can have a variety of meanings and suggests that in this case 'special actions' could mean special military or police operations, interrogations, arrests, deportations, medical examinations or 'selections' of internees for work or hospitalisation. (p.123) Dr Hayward also follows Butz in his contention that

'final solution' meant deportation, not murder. (pp.123-6) Professor Evans objects that Dr Hayward does not discuss the evidence produced by reputable historians of the Holocaust, which suggests that these terms were indeed euphemisms for killing. The Working Party agrees with this objection and sees it as a significant extenuation of the Holocaust.

- 4.35 Professor Evans' definition of Holocaust denial includes denial of systematic extermination of the Jews. Dr Hayward maintains that his thesis contains no denial that this extermination was systematic. In his response to Professor Evans he notes that he mentioned 'scores of mass killings' perpetrated by the Einsatzgruppen and and calculated that they murdered 'hundreds of thousands of Jewish men, women and children'. (p.140-41) He now claims that, as the thesis speaks of routine mass murders, it does not deny systematic extermination. This claim depends on a particular understanding of 'systematic'. Orthodox historians would probably accept the Oxford Dictionary definition of systematic as 'methodical, according to plan'. Dr Hayward makes the following judgment on the subject of the 'final solution': 'Thus it appears that Butz was correct... The "final solution", terrible as it was for those Jews uprooted from their homes and deported to the east, was not a programme of extermination'. (p.133) He adds that he reached this conclusion 'after a careful consideration of the evidence and after much reflection'. (p.133) Indeed, he insists that while Jews were murdered en masse, this did not constitute 'a systematic extermination programme or policy'. (p.133)
- 4.36 Butz claimed that the Wannsee conference held in January 1942 only planned the evacuation of Jews to the east. (p.127) Dr Hayward supports this interpretation. He considers that SS officer Heydrich's statements at the conference and a subsequent entry in Goebbels' diary suggest the programme 'was not one of extermination, but of forced expulsion to the east'. (p.130) Adolf Eichmann, who wrote the minutes of this meeting, testified at his trial in 1961 that the talk at the meeting had been of extermination and killing and the minutes had camouflaged this language. Dr Hayward considers this evidence.

While he acknowledges it should not be 'dismissed out of hand', he does not find it convincing on the grounds that it was 'based on an entirely retrospective view of the war, and appears to be contradicted by a large body of contemporary sources'. (p.129) Professor Evans does not consider Eichmann's evidence can be dismissed. The Working Party considers that Eichmann's evidence should carry weight, and notes that Dr Hayward's scepticism of this retrospective view was not applied by Dr Hayward to the Korherr letter written in 1977 (see 4.33 above). The Working Party finds Dr Hayward inconsistent in this regard.

- 4.37 Professor Evans notes that a quotation from Hitler's *Table Talk* on page 129 is not from the German source cited. (p. 129, n.141) Dr Hayward also misdates a conversation which took place on 25 January 1942 and again uses the 1953 English translation rather than the source quoted or the German original available since 1980. These may be careless mistakes. Dr Hayward, in response to Professor Evans, has stated that he was confused between English and German editions. The Working Party agrees with Professor Orchard's submission that it was not unreasonable for an MA student to rely on the English translation by the well-known historian, Trevor-Roper; but he fails to acknowledge Professor Evans' observation that Dr Hayward had in fact cited a German source.
- 4.38 Dr Hayward cites, in support of the contention that deportation rather than murder was the Nazi policy, an entry in Goebbels' diary of 7 March 1942 (pp.130-1) and a report of Hitler's comment on 24 July 1942 (p.131, n. 146), which refer to the need to deport Jews to Madagascar. Dr Hayward also cites the historian Christopher Browning to show that the so-called Madagascar plan was abandoned in February 1942. (pp.124-5) Professor Evans argues that since the plan, as Dr Hayward has shown, was abandoned in February 1942, later references to deportation to Madagascar are further examples of coded language or of deliberate deception. Professor Evans criticises Dr Hayward for not appreciating this and for not mentioning that it was on Hitler's orders that the Madagascar plan was abandoned. The Working Party

sees this as a instance of Dr Hayward engaging in complex and technical argument without full appreciation of the subject, and again notes that proper supervision should have cautioned him against the inconsistency in his interpretation.

- 4.39 Professor Evans considers that the evidence of a policy for the exploitation of the labour of concentration camp internees from 1942 cited on (p.131) is not evidence that a policy of extermination did not exist. He points out that Dr Hayward himself cites Goebbels' admission on 22 March 1942 that 60 per cent of the Jews transported would have to be liquidated because they could not work. (p.133) This suggests something rather more than the anti-Jewish atrocities in Russia, which are noted by Dr Hayward. (p.133)
- 4.40 Professor Evans is unimpressed by Dr Hayward's criticism of Butz on the Einsatzgruppen. Dr Hayward concludes that, while 'Butz was correct about the nature of the "final solution" (i.e. that it was 'not a programme of extermination') (p.133), he was 'wrong in many ways about the activities of the Einsatzgruppen'. (p.133) Butz dismissed reports of the anti-Jewish atrocities they committed as 'a lie... manufactured by Moscow'. (p.135) Dr Hayward regards this as a 'preposterous' claim and considers the Einsatzgruppen reports are 'certainly genuine'. (p.135) Nevertheless, while acknowledging that the evidence of atrocities is 'plentiful, authentic and reliable' (p.140), Dr Hayward argues that Jews were killed in a context of war as a result of security operations and political purges rather than as a result of a deliberate policy of extermination. (pp137-141) He considers that the figures given in Einsatzgruppen reports are exaggerated, and suggests a total of 300,000 deaths with the possibility of perhaps three times this figure. (p.140) In his reply to Professor Evans' criticism, Dr Hayward is concerned to point out that his thesis does not deny that 'that the Nazis murdered more than a few hundred thousand Jews during the Second World War', as Professor Evans claimed was characteristic of Holocaust deniers. He cites the figure of 300,000-900,000 given here. While Dr Hayward's figure is higher than most Revisionists would accept, Professor Evans points out that Revisionists

typically do not deny killings but wish to reduce the numbers to a level lower than the number of Germans killed in Allied bombing raids and to deny these massacres were systematic or planned. It appears to Professor Evans that Dr Hayward has adopted the Revisionist position on the matter of the activities of the *Einstazgruppen*. The Working Party agrees that Dr Hayward has reduced the number of Jewish deaths reported by the *Einsatzgruppen*, yet it also notes that he rejects the far lower figures given by Butz as 'unreliable'. (p.140) The Working Party sees Dr Hayward as choosing a position between Butz and that of Holocaust scholars.

4.41 In response to criticism, Dr Hayward points out that in the conclusion to this chapter, he notes that Butz's conspiratorial view 'occasionally leads him to write about Jewish or Communist "hoaxes" and "lies", phrases that make him appear extreme and anti-Semitic'. (p.141) Dr Hayward acknowledges that 'these terms, and some of [Butz's] arguments in defence of their usage, also diminish his claim that he has produced a dispassionate analysis'. Certain sections of Butz's work, Dr Hayward adds, 'contain little more than speculation and unsustained allegations based on his own preconceptions'. Despite these 'flaws and weaknesses', however, Dr Hayward considers that Butz has put forward some 'well-researched and weighty arguments'. (p.141) This assessment seems to the Working Party of be characteristic of many of the judgments reached in the thesis. It makes significant criticism of the Holocaust Revisionists and at the same time provides credence for their claims. Here and elsewhere, a responsible supervisor would have advised the candidate to resolve the discrepancies in his treatment. As it stands, it appears to the Working Party that Dr Hayward has accepted, as outlined above, a number of Butz's most controversial contentions.

## **Chapter Three**

- 4.42 In this chapter Dr Hayward considers the work of the IHR, an organisation that has sought to establish the scholarly credibility of Historical Revisionism. The Institute for Historical Research (IHR) has attracted significant criticism, and Dr Hayward spends much of the chapter in commentary, often gratuitous, on the critics. Professor Evans criticises Dr Hayward for describing those who have described the IHR as anti-Semitic as 'belligerent'. (p. 143) In fact Dr Hayward applied this characterisation to a member of the Christchurch organisation, OAS, to which he used to belong. The Working Party does not accept Professor Evans' claim on this point.
- 4.43 Professor Evans objects to Dr Hayward's treatment (pp. 144-5) of the publishing programme of the Noontide Press, which is closely associated with the IHR, for his failure to determine whether its publications were anti-Semitic. He adds that Dr Hayward's declaration that he cannot say whether the notorious *Protocols of the Elders of Zion* is anti-Semitic 'beggars belief'. In fact Dr Hayward's statement was that 'It is not... within the scope of this work to argue whether these books are or are not anti-Semitic or racist'. (p.144) Given the frequency of Dr Hayward's ascription of Zionist and anti-Semitic beliefs to individuals and organisations throughout the thesis, this is certainly a procedural inconsistency, but it is not a denial of his capacity to do so. Professor Evans also observes that on p.195 of the thesis, Dr Hayward did brand one publication of the press anti-Semitic. This compounds the inconsistency. The Working Party finds that while Dr Hayward does not ignore anti-Semitism, he fails to consider how far it vitiates the work of the IHR.
- 4.44 Professor Evans claims that Dr Hayward associates opposition to the IHR with the Jewish Defense League. Dr Hayward does this (p.146) and characterises the League as 'unprincipled', intimidatory and violent. Professor Evans claims that Dr Hayward 'leans over backwards' to exonerate Willis Carto, the founder of the IHR, from the charge of anti-Semitism. The thesis suggested

that 'if one views Willis Carto through the distorting lens' of certain Jewish organisations, then he would appear as an unappealing anti-Semite, but 'if one attempts to view Carto through the politically neutral spectacles of unbiased inquiry', then 'it will become obvious that hatred towards the Jewish people or anyone else was not his motivation'. (p.147) This passage exemplifies the self-contradiction in Dr Hayward's emphasis on dispassionate neutrality, and is in the view of the Working Party a tendentious and unscholarly argument.

- 4.45 Professor Evans objects to the characterisation (pp.147-9) of the first head of the IHR, Lewis Brandon. He says that Dr Hayward seeks to describe him as a maverick and exonerate his earlier involvement (as William McCalden) in the British National Party. This is less than fair. Dr Hayward did suggest that McCalden 'probably deserved the often intense opposition he received' for his activity in 'far-right politics'. (p.148) Yet Professor Evans is correct in his observation that Dr Hayward then suggests that those who condemned the politics of the founders of the IHR were themselves politically motivated, and that Dr Hayward makes a gratuitous identification of the critics of the IHR with extreme Zionism. To this identification, Professor Evans rejoins that many of the critics of Holocaust denial are not Jewish and there was plentiful evidence of the anti-Semitic nature of the founders of the IHR. The emphasis on the Jewish provenance of one party, and the extenuation of the anti-Semitic character of the other party, is seen by the Working Party as prejudicial.
- 4.46 Professor Evans objects to the description on p.152 of a book by Francis Parker Yockey, *Imperium*, for failure to identify its anti-Semitic contents. This is arguably an error of omission, but given Dr Hayward's acknowledgment of the anti-Semitic character of other works, it is not a vital one.
- 4.47 More generally, Professor Evans objects to Dr Hayward's appraisal of the IHR. He observes that on p.154 Dr Hayward contends that the *Journal of Historical Review* has an academic format and that a majority of its editorial board consists of 'scholars with genuine higher qualifications from recognised

academic institutions'. Professor Evans objects that these qualifications are not in history. He observes that Dr Hayward acknowledges the anti-Semitic character of some articles published by the *Journal of Historical Review* and says that such anti-Semitic statements 'should not be found in an academic journal'. (p.192) But, says Professor Evans, the IHR's journal is not academic, but rather a device to make anti-Semitism respectable by giving it an academic appearance. The Working Party accepts this characterisation. Dr Hayward's acceptance of the *Journal's* claim to academic status is naïve, if not disingenuous. His criticisms of the anti-Semitic material in the *Journal* makes the anti-Semitism seem extraneous, when in fact it is characteristic.

- 4.48 Professor Evans criticises Dr Hayward for failing to identify the political allegiances of a speaker at an IHR conference, Otto Ernst Remer. Dr Hayward describes him as 'the former army officer entrusted by Hitler to quell the attempted *coup d'état*' after the attempt on his life on 20 July 1940, and says that his lecture to the IHR did not glorify that regime (p.164). Professor Evans provides substantial evidence of Remer's involvement in post-war neo-Nazi activity. Dr Hayward's failure to acknowledge these facts is regrettable. If he did not know of them, a supervisor familiar with the field of study should have done so.
- 4.49 Professor Evans takes particular exception to Dr Hayward's account of a legal action undertaken by a concentration camp survivor, Mel Mermelstein, against the IHR. He criticises Dr Hayward for an unsympathetic portrayal of Mermelstein, and the Working Party agrees with him. More seriously, he alleges that Dr Hayward misrepresents the out-of court settlement of the case. Dr Hayward writes on p.159 that the apology given to Mermelstein by the IHR 'was not an admission by the IHR that Mermelstein had proved that Jews or others were gassed at Auschwitz'. The source for this statement is a report in the *New York Times*, 25 July 1985, and Professor Evans notes that the next paragraph of the report stated: 'The Institute must also acknowledge a pretrial finding in the case that "the fact that Jews were gassed at Auschwicz is indisuptable". The submission of the NZJC attached a copy of the report in

the *New York Times* and accused Dr Hayward of misrepresentation. In his response, Dr Hayward notes that he reported this pre-trial finding on p.157. This evidence is not suppressed by Dr Hayward.

- 4.50 Professor Evans objects also to Dr Hayward's account of another action by Mermelstein against Ditlieb Felderer for not revealing that Felderer was a member of the editorial advisory committee of the IHR and had been sentenced to prison for disseminating hate material to leaders of Jewish communities in Europe. In this passage of the thesis, Dr Hayward describes Felderer as 'an ecccentric Swedish Holocasut Revisionist. (p.1640) Earlier, on pp.20-1, Dr Hayward had noted that Felderer committed ill-considered and insensitive actions. There is no suppression here of Felderer's unsavoury activities, though the failure to remind the reader of them is surprising, and the description of 'eccentric' seems inappropriate to the Working Party. However, it is not dishonest.
- 4.51 Professor Evans objects to Dr Hayward's reportage of and commentary on another action brought by Mermelstein against the IHR for libel. He claims that, on pp.161-2, Dr Hayward presents a hostile picture of Mermelstein and a one-sided treatment of the legal action based entirely on the newsletter of the IHR. He suggests that other sources on that legal action should have been used. The Working Party considers this an example of the problems that arise from investigating the Holocaust through a study of the Holocaust Revisionists and of the need to subject their claims to closer scrutiny.
- 4.52 Professor Evans criticises Dr Hayward for undue sympathy in his treatment of another leading member of the IHR, Mark Weber. Dr Hayward, after noting Weber's earlier extremist political career, condemns the critics of Revisionism for 'malicious and bigoted name-calling'. (p.165) But it is not true that Dr Hayward accepts Weber's claim to have approached the Holocaust with an open mind; rather he writes that Weber began reading Holocaust archives 'with what he claims was a completely open mind'. (p.167) Nor does Dr Hayward write, as Professor Evans claims, that the SS guards and officials did

not kill inmates of the Nazi camps. His statement is that a report appeared to confirm the claim of a Holocaust Revisionist that a favoured portion of the internees 'were responsible for the majority of deaths in Buchenwald (and probably other camps)'. (p.172) Professor Orchard also observes that Professor Evans here conflates Dr Hayward's judgment with that of another party. The Working Party believes that Professor Evans has not reported Dr Hayward accurately in these instances.

4.53 Professor Evans and the NZJC submitted that on pp.181-91 of the thesis Dr Hayward attaches undue value to an article in the *Journal of Historical Review* by F.B. Berg, which cast doubt on the killing of Jews by the exhaust from diesel motors. Professor Evans cited one work, and the NZJC added another; they argue Dr Hayward should have used these works in order to appreciate that Jews were killed in gas vans. Dr Hayward has since rejoined that these works dealt with gas vans but not with the use of diesel exhaust. The Working Party is struck by the complex chemical calculations and physiological evidence cited in Berg's article and taken over by Dr Hayward, and is concerned that a Masters candidate in History should attempt to evaluate such scientific issues. It accepts, however, that the two works suggested by Professor Evans and the NZJC would not have resolved the point at issue.

## **Chapter Four**

4.54 This chapter is taken up by consideration of the claims advanced by Fred A. Leuchter concerning the use by the Nazis of gas chambers at Birkenau and other camps. The Working Party has already observed that this chapter of the thesis took Dr Hayward into the evaluation of scientific issues beyond his competence. Professor Evans contends that there was published research available at the time the thesis was written that should have demonstrated to any fair-minded historian that the claims made by Leuchter were invalid. He cites a work edited by Shelley Shapiro and published in 1990, and observes that Dr Hayward is unduly critical of it. The Working Party notes that Dr

Hayward's treatment of the work is both specific (which takes him into technical discussion where he has no expertise) and general. Thus he writes that the argument of a contributor to the Shapiro volume is specious, flawed and erroneous (p.229), and that the whole work is 'particularly subjective' and 'in many places the language used is surprisingly hostile'. (p.225) The hostility of Leuchter's critics in this volume is unsurprising, and Dr Hayward's recurrent commentary on their motivations, and those of other critics of Leuchter, is gratuitous and tendentious.

- 4.55 Professor Evans criticises the passage of the thesis that deals with the use of a gas chamber at Dachau for failure to consider two relevant publications. Dr Hayward lists one of these publications in his bibliography but does not draw on it in this part of the thesis; he does not cite the other publication. Professor Evans makes similar criticism of Dr Hayward's consideration of the Mauthausen camp and other places, and again cites work that should have been used. He contends that Dr Hayward gives an unfairly favourable assessment of the value of Leuchter's claims. The Working Party agrees that this chapter accords inappropriate credulity to the work of Leuchter. It is not true, however, as Professor Evans claims, that on p.260 of the thesis Dr Hayward predicts that further research will tend to validate Leuchter's findings. Rather, Dr Hayward concludes that the reports of some other researchers 'indicate that the findings of ... a team of specialists... would tend to validate Leuchter's own findings'. Though the prediction is unwarranted, it is a qualified rather than an absolute one.
- 4.56 Professor Orchard submitted that Professor Evans' report omits caveats made by Dr Hayward in his discussion of the Leuchter report: Dr Hayward called in this chapter for further scientific investigation of Leuchter's claims and on p.221 he disclaimed the expertise needed to assess these claims. The Working Party is not persuaded by these arguments. Dr Hayward's disclaimer undermines the importance he attaches to Leuchter's claims, which have now been discredited.

### **Chapter Five**

- 4.57 Professor Evans argues that Dr Hayward gives an unfairly favourable account of the work and career of David Irving, who is the subject of this chapter. He notes that while Dr Hayward wrote on p.261 that Irving went to Germany 'after reading physics at London University', he fails to observe that Irving did not complete a degree. He says that Dr Hayward accepted inflated estimates of deaths at Dresden caused by an Allied bombing raid. The Working Party accepts that Dr Hayward presents Irving in a favourable light but does not accept that he works outside the boundaries of acceptable procedure in these instances. Professor Evans says that Dr Hayward employs a double standard when he commends Irving for drawing on extensive personal testimony, even though he had earlier cast doubts on the critics of Holocaust Revisionism for their excessive reliance on such testimony. The Working Party agrees.
- 4.58 Professor Evans criticises Dr Hayward's treatment of Irving's claim to have found documentary evidence that Hitler intervened on behalf of Jews. He observes that Irving's claim has been refuted by the German historian Martin Broszat, and that Broszat demonstrated Irving had misrepresented the evidence. Professor Evans alleges that Dr Hayward provides an inadequate account of Broszat's work in extenuation of Irving. The Working Party agrees that Dr Hayward's criticisms of Broszat are not well-founded; in particular his statement on p.273 of the thesis that Broszat ignored much of the documentary evidence cited by Irving is incorrect. Professor Evans notes also that Dr Hayward criticises Broszat for failing to consider evidence contained in a book that appeared after Broszat's own publication; the Working Party agrees with Professor Evans that Dr Hayward's criticism is invalid.
- 4.59 Professor Evans draws attention to a memo quoted by Irving, and by Dr Hayward on p.265. (Dr Hayward notes that Irving quoted the memo in English translation only, and himself provides the German text, with a reference to the German archive in which it is located. Dr Hayward does not

explain how he obtained this information. When a historian cites archival material that he or she has not personally handled, it is proper scholarly practice to indicate that fact by reference to how the information was obtained. Without that indication, an archival reference of this kind is misleading.) Professor Evans criticises the interpretation of that memo by Irving, and extends his criticism to Dr Hayward for accepting Irving's interpretation. The Working Party is not called upon to assess the validity of Irving on this point, but is unable to accept that Dr Hayward is culpable for following him on it.

- 4.60 Professor Evans makes further commentary on Broszat's criticisms of Irving and argues that Dr Hayward's attempt to adjudicate on the controversy is tendentious, principally because of his omission of arguments of Broszat or misinterpretation of the issues in dispute. As he says, these are matters of interpretation rather than misrepresentation. He does suggest, however, that Dr Hayward did not conduct a full and scholarly investigation, and lacks warrant for his statement on p. 320 that 'There is no evidence to support claims that Irving would deliberately mistranslate passages in such a way as to support or defend any preconceived notions about the past.' The Working Party notes that Dr Hayward's statement is here again a qualified one: he states 'there is no evidence to support the claim'. Yet on p.265 Dr Hayward does indeed accept that Irving had misrepresented evidence. The Working Party also notes that Dr Hayward does not deal exhaustively with all the evidence and could not justifiably conclude there was no evidence that Irving had done this
- 4.61 Professor Evans identifies further passages in this chapter where he argues that Dr Hayward places too much confidence in the arguments of Irving, and that relevant information contained in published research available to him at the time should have caused greater scepticism. The Working Party sees these as criticisms of omission or misunderstanding or inaccuracy, which would not in themselves vitiate a Masters thesis. They have particular sensitivity in the case of this thesis because they support a favourable assessment of a highly controversial figure. The Working Party notes that again in this chapter there

is deprecation of the critics of Irving and that, as before, this contradicts Dr Hayward's insistence that the Holocaust debate should eschew *ad hominem* commentary.

#### **Thesis Conclusion**

- 4.61 The Working Party is particularly concerned with the form and tone of the final section of the thesis the Conclusion. Here the shift from historiographical description of the Holocaust Revisionists to determination of the validity of their claims is particularly marked. The body of the thesis consists of lengthy analysis of particular arguments made by the Holocaust Revisionists, in which most of the commentary is premised on the balance of probabilities according to Dr Hayward's reading of the literature. That reading is partial and flawed, so that in each chapter he sets aside some of the claims of the Holocaust Revisionists and suggests that others remain unrefuted.
- 4.63 Yet in the Conclusion, Dr Hayward sets aside the possibility that these residual claims might be refuted and advances a series of twelve propositions. These concern the wartime use of atrocity propaganda, the unfounded nature of such propaganda used by the Allies against the Nazis, the untrue character of statements made in the post-war trials of Nazis, the flawed nature of evidence for gassing, and the scientific evidence that gassing did not occur. By this procedure, Dr Hayward reaches the finding that 'the weight of the evidence supports the view that the Nazis did not systematically exterminate Jews in gas chambers or have an extermination policy as such'. (p.335) This is a perverse and unjustified conclusion. It shifts from his own assessment of the claims presented by the Holocaust Revisionists to a verdict on the totality of the evidence on the Holocaust amassed by historians, when the thesis has not considered that body of material.
- 4.64 Professor Orchard has contested the claims of Professor Evans on this part of the thesis. He argues that the findings in the Conclusion need to be read in the

light of earlier qualifying passages in the thesis that call for further investigation. The Working Party is not persuaded by this argument; it is concerned that the earlier qualifications are omitted from the Conclusion.

### **View of Working Party on Thesis**

- 4.65 It is not easy to reach a summary conclusion on the quality of a thesis that shows such industry, breadth of research, lucidity, faulty method and poor judgment. Some universities ask examiners of theses to provide evaluations of the component skills of the exercise. This thesis scores highly on the significance of the topic, the capacity for independent research and the very impressive presentation. It is seriously deficient in the handling of evidence and quality of argument. It is also marred by the methodological failures discussed earlier. The Working Party is not persuaded by the Examiners' reports that it deserved a high honours mark. An appropriate examiners' verdict, in its opinion, would have been to revise and resubmit the thesis. The Working Party notes that in the General Provisions for MA theses, in Note 4 to Clause 4 of the Regulations, the examiners had the opportunity to make such a recommendation. With the approval of the Academic Board, a candidate may revise a thesis and re-submit it by a specified date.
- 4.66 A recommendation to revise and re-submit would have been based on examiners' reports that would have drawn attention to the inconsistencies in the treatment of evidence in the body of the thesis as well as to the unwarranted findings contained in the Conclusion. The examiners would have pointed out the flaws in methodology and their vitiation of Dr Hayward's claims to assess the validity of the arguments put forward by Holocaust Revisionists. The recommendation of the examiners would have made clear that an investigation into the historical status of the Holocaust should not have been conducted on the basis of comparison of the claims of Holocaust Revisionists with the claims of their critics, but would require a mastery of the larger body of Holocaust scholarship as well as of the sources on which it was

based. Such a task was well beyond the capacity of a postgraduate working at a distance from the principal archives. The recommendation would have warned of the inconsistency of calling for a dispassionate consideration of the debate, and accordingly setting aside substantial evidence of anti-Semitic activity, while making gratuitous commentary on the sympathies of those involved in the Holocaust debate. It would have warned the candidate of the tendentious character of much of his discussion. It would have requested the candidate to confine his thesis to an account of the historiographical phenomenon of Holocaust Revisionism, in a substantially reduced compass.

#### 5. CONSIDERATION OF SUPERVISION/EXAMINATION OF THESIS

- 5.1 The serious flaws in the thesis raise correspondingly serious questions about the quality of its supervision. As noted above, Dr Orange is not a specialist Holocaust historian, yet he was directing the research of a Masters candidate working on the subject. The Holocaust is a subject of major significance and sensitivity. Even in 1990 the topic had attracted a very large body of scholarly literature, and Holocaust Revisionism or Denial had given rise to heated controversy. This controversy was not simply a debate between competing schools of historical interpretation. Those who sought to discredit the Holocaust were not professional historians and they were not directing their arguments to members of the historical profession. Rather, they were polemicists with an antipathy to the status of the Holocaust as a unique and defining phenomenon of the modern era. Many of them were anti-Semites with links to racist and extremist politics.
- 5.2 A thesis on Holocaust Revisionism required a knowledgeable supervisor with an awareness of these circumstances. The very designation, Holocaust Revisionism, indicates the aspiration of its adherents to gain academic respectability. The historical profession had rejected the *bona fides* of the Holocaust Revisionists. It recognised that they were not revisionist scholars

who operated according to the procedures of the discipline, respected rules of evidence and its interpretation, and were open to alternative schools of thought. It appreciated that they sought academic legitimacy for their denial of the Holocaust, and that the IHR and its journal were bogus creations for that purpose. A knowledgeable supervisor who was an expert in the field of Holocaust studies would have been vigilant to ensure that the candidate appreciated the significance of these facts. Dr Orange failed to do so.

- 5.3 Dr Orange was an attentive and conscientious supervisor who met regularly with Dr Hayward and went carefully over his early drafts. He was concerned that Dr Hayward should report his sources accurately. The deficiencies of supervision lie not in encouragement, support and technical guidance but in knowledge of the subject. A supervisor with expertise in Holocaust studies would have challenged the numerous inconsistencies and the imbalance of the argument. A supervisor with greater sensitivity to the topic would have observed that the repeated insistence on dispassionate appraisal accompanied by special pleading and emotive characterisations provided no proper basis for evaluating Holocaust Revisionism. A supervisor on a topic in this field should have been concerned that the candidate maintained a proper independence. In the early stages of his candidacy Dr Hayward made contact with a large number of informants. These included both Holocaust Revisionists and their critics, from whom Dr Hayward requested information and material. Those who assisted him were, at the same time, the subjects of his thesis and this duality raised ethical issues that should have been discussed with his supervisor.
- In many Universities, research involving human subjects and the gathering of testimony or other information from them now usually requires approval of an Ethics Committee and adherence to procedures designed to protect all parties. There was no Ethics Committee when Dr Hayward was conducting his Masters research, nor were there explicit procedures. In their absence, the greater responsibility lay on the supervisor.

- 5.5 The acquisition of material from other scholars in the field is a common procedure but in this case Dr Hayward entered into an undertaking to provide at least two, and probably three, correspondents with a copy of his thesis. This created an obligation on his part that potentially could have compromised his research. Dr Orange had no knowledge of these undertakings and would not have sanctioned them. However, he was aware that Dr Hayward had entered into dialogue with one of those two parties, David Irving, and that David Irving had raised the possibility of Dr Hayward basing a subsequent doctoral thesis upon him. As part of this contact, David Irving had offered to provide hospitality for Dr Hayward in England. This relationship between a candidate and an important figure in his research project should have been of concern to his supervisor.
- 5.6 The supervisor should have exercised greater control over the subject of the thesis. As noted above, the thesis title changed frequently during the course of the candidature. The changes were more than nominal: in its more restricted form or secondary title, the thesis topic of Holocaust Revisionism was appropriate; in its broader form, a thesis entitled 'The Fate of Jews in German Hands' was inappropriate. While there was then no procedure for ensuring that all changes in thesis title were approved and recorded, the supervisor should have maintained control. Indeed it was he who suggested the title ultimately given to the thesis.
- 5.7 The supervisor should have exercised greater control over the length and scale of the thesis. The Working Party has already commented on the inequity of comparative assessment of Masters theses that differ in length so markedly. Dr Hayward claimed that his supervisor encouraged him to expand the scope of the thesis. In so doing, he moved from his initial historiographical treatment into a flawed and tendentious evaluation of claims by Holocaust Revisionists.
- 5.8 The supervision (or lack of it) in the period of Dr Orange's absence on sabbatical leave was unsatisfactory. Dr Orange departed on 1 December 1991

and returned on 1 September 1992. The Working Party does not have a clear account of the work done on the thesis during that period, and during the academic year of 1992 Dr Hayward was engaged on his papers. Professor McIntyre does not recall being asked to act as supervisor during Dr Orange's absence: he can recollect only one occasion during which he met with Dr Hayward. A candidate engaged on such a sensitive topic, as was borne home to the Department by the OAS during this period, required continuous supervision.

- 5.9 It is fairly clear to the Working Party that Dr Hayward wrote the Conclusion to the thesis late in the candidature in early 1993. Dr Orange read a final draft of the thesis in early 1993. Dr Hayward told the Working Party that it was his supervisor who urged him to write a Conclusion of a direct and forceful nature. Its formulation of twelve propositions and announcement that the weight of the evidence supports the view that the Nazis did not systematically exterminate Jews in gas chambers, or have an extermination policy as such, was inappropriate. The supervisor should have raised concerns about this Conclusion.
- 5.10 The supervisor should have maintained a full record of supervisions. Dr Orange did keep a file on Dr Hayward's candidature, which included copies of the examiners' reports, but he did not make entries for each of the supervisions. A supervision diary would have ensured there was a proper account of the formulation of the topic, the progress of drafts, the nature of the response to them and guidance of the project. It would have provided evidence of how he had discharged his responsibilities as a supervisor.

# **Comment on the Examiners' Reports**

5.11 The Working Party has already related the process of the examination, and commented on the fact that the final examination meeting in the Department was conducted without the detailed report from the external examiner. In its

consideration of the examiners' reports, the Working Party took into account a critical appraisal of those reports by Professor Evans and responses to that appraisal by both examiners.

- 5.12 Both examiners' reports are relatively brief. Dr Orange's report explains that the MA thesis is to be judged primarily not on its contribution to knowledge but on demonstration of the principles of historical research. He suggests that Dr Hayward's thesis does show such an understanding of the principles of historical research in an advanced form and 'in fact, makes a positive contribution to knowledge'. He takes that contribution to be a demonstration that claims made concerning the Holocaust need to be revised: 'Hayward's thesis is that the Nazis did not attempt the systematic extermination of Jews during the Second World War'. He praises the research skills of the candidate and his balance, and he emphasises that his own contribution was almost entirely restricted to advice on clarity and expression.
- 5.13 This report concerns the Working Party both for its bald statement of Dr Hayward's argument and its frank disavowal of guidance of the research. While it identifies some of the criteria appropriate to the examination, the gathering of evidence, the handling of evidence and the articulation of its interpretation, the report fails to engage at any point with that evidence and its interpretation. The report provides no appraisal of the historiographical context, nor does it provide any evidence of testing the thesis.
- 5.14 Professor Jensen's report is a little longer. Its second paragraph provides a summary of the contents of the thesis. Its third criticises the excessive length. The fourth paragraph commends the candidate on his judgment, while suggesting that, in bending over backwards to be fair to the Holocaust Revisionists, he 'sometimes blurs the edges of the argument'. The fifth paragraph compares Dr Hayward's subjects with other embattled iconoclasts, and the sixth suggests that Dr Hayward might incur similar criticism. That was a prescient observation. This report also is confined to general remarks, and fails to take up any part of the thesis in greater detail.

- 5.15 Neither report makes any recommendation for correction or amendment. Neither refers to any particular passage. There is no testing of the accuracy of the research. There is no reference to relevant secondary literature. The Working Party considers that in these respects both fall short of the expectations of an examiner's report on a research thesis.
- 5.16 In subsequent communication with the Working Party, Professor Jensen adhered to the views expressed in his assessor's report. He defended the Conclusion of the thesis as proceeding from the body of the thesis. It was not 'sprung on the reader out of the blue', he said. Dr Hayward dealt with one revisionist after another with appropriate evidence and argument, and that even if one did not accept all of his findings, the internal cohesion of the thesis remains. Professor Jensen regarded Dr Hayward as an unusually skilful MA student.
- 5.17 On the question of whether the thesis amounts to Holocaust denial, Professor Jensen would only say that the Nazi Holocaust has as its central reality the deaths of millions and millions of Eastern European Jews. To this central reality of the Holocaust, he sees an accretion of further propositions: that so many millions were gassed with Cyklon B, that Hitler had a particular role, and that Germans as a nation bear a particular burden of guilt and so on. Such extension of the definition of the Holocaust serves in his opinion to broaden the ambit of Holocaust denial, and thereby smother scholarly debate. Professor Jensen stressed to the Working Party the need for scholars to be free to pursue issues regardless of any challenge to accepted, conventional and comfortable views. He regarded Dr Hayward as a young student 'trying to make his mark' who was dealing with a large subject rather well. Although Professor Jensen did not accept all his findings, he thought that for an MA thesis, his work 'hung together pretty well': as examiner, he was concentrating on the candidate's skills as an historian.

#### 6. FINDING ON WITHDRAWING DEGREE

Weighing up all the criticisms of the thesis, and considering the quality of the supervision and the procedures operating in the Department, the Working Party is unable to find dishonest practice such as would need to be proved if Dr Hayward were to be stripped of his MA degree. While the Working Party finds the thesis seriously flawed in the manner described earlier, it cannot find the subjective element necessary to establish dishonesty. The Working Party in its assessment has had to view Dr Hayward's writing in the context of the supervision, including the failures described above, and the University systems prevailing at the time.

#### 7. EMBARGO OF THESES

- 7.1 The Working Party interviewed the immediate past and present Librarians of the University, Mr Richard Hlavac and Ms Gail Pattie respectively, as well as raising the issue of embargoes with some of the other persons interviewed.
- 7.2 A thesis is normally an unpublished work in which all rights reside in the author, although it is by long convention and for good reason available for public perusal at the University Library. Indeed, the requirements of the Regulations that two copies of all theses were to be deposited in the Library, must be seen as providing a vehicle for making public the fruits of research at the University. Since at least the 1930s, there have been a number of different forms given to students when they come to deposit theses. These forms have been variously titled: (a) 'Protection of Author of Thesis'; (b) 'Availability of Thesis', and (c) 'Use of the Thesis'.
- 7.3 Earlier versions of the form did not need to be signed by the author or anyone elsebut often appeared as a statement in the body of the thesis. From the

1930s to 1950s, the discrete statement was to the effect that the thesis had been supplied to the Library on the following conditions:

- 1. The thesis will only be used in the Library/Institution, which has requested it.
- 2. It is required for private research only.
- 3. Without written permission from the author, it cannot be used for any commercial purpose and no reproductions will be made from it.
- 4. The author of the thesis, his [sic] title, relevant faculty and University will all be cited in any work using the material in the thesis.
- 7.4 In the 1960s and the 1970s, the author signed a form which indicated whether:

  (a) he or she agreed or did not agree to the thesis being consulted in any Library or for research or study purposes, provided acknowledgment of use was made; (b) he or she consented or did not consent to the thesis being photocopied in part or in whole, or used for Library purposes only (not for publication) at the discretion of the Librarian. The form also provided for conditions to be attached. The embargo statement for the Hayward thesis appears as Appendix U. This was in the form in general use at that period.
- 7.5 The Librarian described the present practice: 'The Library requires that, if the thesis is to be embargoed for up to five years, consent should be sought from the supervisor. Where the author wishes to place some sort of restriction on the use of the thesis, the consent not only by the supervisor but also of the University Librarian is required.' The usual restriction is to require the author's permission before consultation. The forms are now brought to the Librarian by the author in person and the Librarian will question him or her about why the restriction is thought necessary. The University Library has endorsed a policy of the New Zealand Library Association that the fruits of

research should be made available to the public. However, there are still authors who wish to embargo for various reasons.

- 7.6 It is not difficult to see justification for an embargo where research with commercial potential is presented, which may subsequently lead to protected intellectual property. Another, less persuasive reason is that the author may wish to publish a book based on the thesis and would wish to protect the fruits of his or her research for use by others in advance of the publication of a book. The attitude of the New Zealand Library Association, endorsed by the University Librarians, strongly favours full access. Public disclosure is a salutary discipline on the expression of opinion. Enquiries made at the University of Auckland reveal that embargoes are allowed there only for good reason and that only a small percentage of authors of theses seek an embargo. This University has published rules governing embargoes. Annexed as Appendix V is its current policy statement on Student Publication Rights. The policy is currently under review. The Working Party recommends a statement of this kind for consideration by the University of Canterbury.
- 7.7 Currently, the records of the University of Canterbury Library show 8972 thesis titles of which only 66 have any restriction placed on them. Of these, 46 have a restriction which binds for a period of years: 25 require permission of the author before consultation can be allowed.
- 7.8 The Librarian estimates that 10% of theses are deposited with restrictions, which vary in duration and from discipline to discipline. The average duration of embargo is three years. The Librarian points out that many students receive funding assistance from commercial organisations to carry out research and that such sponsoring organisations sometimes insist on embargoes. For example, 9 theses for Masters of Engineering Management required embargoes for 2 to 10 years. Embargoed theses are normally stored in the closed stack area of the Library with a cardboard band around the outside indicating the restrictions on use.

- 7.9 There were in 1993, and still are, no University Regulations or Statutes about embargoes. The Thesis section of the Regulations requires one bound copy (Appendix K2) of a student's thesis to be deposited in the Library although the candidate must submit two copies. That Regulation must constitute notice to candidates that a thesis, once accepted, will be open to search by interested persons. Enquiries show there has never been any official regulation of the practice of embargoing, which has merely evolved over the years. In the Working Party's view, there should be a clear policy enunciated by the University on embargoing theses, enshrined in Regulations or Statutes. Whilst a case can be made for embargoes in areas of commercial or intellectual property sensitivity, the normal rule should be that once a thesis has been completed and has formed the basis for the grant of a degree by the University, it should be freely available to be consulted by all, scholars and members of the public alike. The Working Party recommends that appropriate action be taken by the University. The inevitability of public scrutiny serves as a safeguard against irresponsibility.
- 7.10 It is fair to say that the embargo in Dr Hayward's case was unusual but not exceptional at that time, despite his concerns brought on by his alleged harassment in 1992. He claimed to the Working Party to have been fearful that use adverse to him might be made of the thesis were it in the public domain. However, he did see fit to distribute it to at least three persons, two of whom could not be thought of as orthodox Holocaust historians. The Working Party is concerned at selective disclosure. If public disclosure is salutary, selective disclosure is disturbing. Dr Orange gave as his reason for agreeing to the three year embargo, his expectation that Dr Hayward might want to write a book based on the thesis. He could thus guard his intellectual property whilst a publisher was found. The Working Party does not regard that as a particularly good or realistic reason for a three-year embargo in the circumstances of this case. Professor David McIntyre had shown concern at this time because it was he who suggested to the Librarian that the thesis be retained in the Librarian's office. This concern seems to have arisen from the harassment said to have been encountered by Dr Hayward.

7.11 The History Department particularly, and indeed all Departments in this and other universities, should retain a copy of all theses written by its graduates to facilitate their use by students and others, and also as a permanent record of Department's academic achievement over the years.

## 8. MISCELLANEOUS COMMENTS ON UNIVERSITY PROCEDURES

#### **General Course & Examination**

- 8.1 In accordance with its wide mandate, the Working Party now comments on a variety of administrative and practical issues disclosed in the course of its deliberations.
- 8.2 The Regulations exhibited under Appendix K1 & K2. had been approved by the Professional Board (now the Academic Board) on 30 May 1979 and by the Council on 25 June 1979. The MA Course Regulations (Appendix K3) were approved by the Professional Board on 27 June 1979 and ratified by the Council on 30 June 1979. These Regulations were made under the authority of the University of Canterbury Act 1960. The Regulations were 'rolled over' when the statutory regime changed by reason of S.204(4) of the substituted Act.
- 8.3 It seems to the Working Party that the Regulations were applied, if applied at all, somewhat loosely, not just in the Hayward case but in general, by the Department of History at the relevant time. In particular, the following systemic deficiencies have come to the Working Party's attention. Some are fairly minor others are of greater concern:
  - (a) There is now no record of Dr Hayward's thesis proposal or of his progress as an MA student. The Working Party, having heard from the

Departmental Secretary, is satisfied that there was no sinister reason behind the destruction of Departmental records (including Dr Hayward's) some years ago as a matter of routine. In the Working Party's view there should always be a file on the progress of individual post-graduate students. In the case of Masters students, this file should include the thesis proposal, periodic reports by the supervisor and the examiner's and assessor's reports. Indeed, there is required to be a proper keeping of records of a student's progress under Section 226 of the Act. It is not, in the Working Party's view, sufficient compliance with this statutory requirement in the case of student for a higher degree if the only record kept of his/her progress is of the grade given. The University should enunciate a clear policy on archival material.

- (b) The appointment of Professor Jensen as external examiner, seems to have been the result of an informal arrangement with Dr Orange, made with the consent of Professor McIntyre. There was no supervision certificate given to Professor Jensen by Dr Orange as required by the Regulation.
- (c) The Department received the thesis for official submission, instead of requiring the student to lodge it at the Registry as required by the Regulations.
- (d) The appointment of Dr Orange as internal examiner and Professor Jensen as external examiner does not appear to have been approved by the AAC or to have been notified to the Registry.
- (e) The Department completed the examination without having the external examiner's full report.
- (f) The University lacked a proper record management system. The routine destruction of the History Department files on MA students should not have happened.

- 8.4 The Working Party was told by some members of the History Department that the University did not remind them of any of these Regulations, although the Working Party observes that they were there to be seen in the Calendar. This case raises other less procedural, but graver, questions. The first is whether the supervisor of a post-graduate student should be an examiner. The wording of Regulation H(3) (Supervisor) could be taken to envisage another person or person(s) being appointed by the Council as examiner on the recommendation of the Head of Department in consultation with the supervisor or supervisor(s). At the University of Canterbury and at some other New Zealand universities, the supervisor is also the examiner, at least at the Masters level. In the Working Party's view, it is very difficult for the supervisor to form a detached view of the student's work necessary for an examiner. In Dr Orange's case, he was meeting regularly with Dr Hayward, making suggestion for textual and stylistic changes to the thesis as it progressed. He found Dr Hayward stimulating and enjoyable company and regarded him as a virtual colleague even though he was a student. One could also conversely envisage a situation where some antipathy had developed between supervisor and student. Either state of affairs might make it difficult for the supervisor to bring to the task the necessary objectivity needed for examining the thesis. The very juxtaposition of the two over a period of at least a year produces an obvious conflict of interest.
- 8.5 The University of Otago Handbook shows that the University of Otago requires different persons to be the supervisor and the examiner, even of Masters students. We understand that there could be financial and logistical difficulties for a University in requiring separate persons in the roles of supervisor or examiner. There might not exist within the University another person qualified in examining in the subject-matter of the thesis. That state of affairs would mean looking towards another University to provide not just the one external examiner but two external examiners. The Working Party concludes that the overarching aim of any University must be to encourage scholastic excellence and to ensure that those whom it graduates with higher degrees compare well by international standards. The Working Party therefore

recommends that the practice of having the supervisor also the examiner of post-graduate theses should discontinue. It recommends the Otago model as worthy of close examination and adoption. Relevant extracts from the Otago Handbook are Appendix W.

8.6 The second issue arises from the suggestion in Professor Evans' report, and in Professor Jensen's external examiner's report, i.e. that there should be a limit on the number of words for an MA thesis, particularly one which counts only towards half a degree, the candidate taking a year's papers as well. The Working Party was invited to compare the Hayward thesis with others but did not find it necessary or practical to do so. Members of the Working Party are familiar with a range of New Zealand MA theses. It is impossible to compare a short, succinct thesis with a discursive and disproportionate one such as the Hayward thesis is considered to be by the Working Party. Dr Hayward and Dr Orange completely failed to observe the desiderata in the Regulations about an MA thesis. This comment is valid regardless of the provocative subject matter of the thesis. The reward of such a high grade as A+ for a thesis, which is, by any stretch of the imagination, far beyond a suitable length for an MA thesis, could easily disadvantage those students and their supervisors who try to keep their work within manageable limits and who take some account of the prescription in the Regulations.

#### 9. THE POSITION OF THE UNIVERSITY

## **Background**

9.1 The University of Canterbury was founded in 1873 as Canterbury College. The second oldest University in New Zealand, it started life as a constituent College of the University of New Zealand. Along with other such constituted colleges, it became an autonomous university in 1961. The University of Canterbury Act 1961 provided the legislative authority. It offers a wide range

of degrees in Humanities, Science, Commerce, Law, Music, Fine Arts, Engineering and Forestry. In the Year 2000, it had some 12,000 students, including part-time students.

- 9.2 The University would be deeply wounded if its award in 1993 of an MA degree with First Class Honours to Dr Hayward on the basis of his thesis gave rise to public perception that the University was racially intolerant and insensitive to the sufferings of the Jewish people in the Holocaust. Such a conclusion would not be logical and would ignore the University's record, achieved over its history – long by New Zealand standards – for tolerance and acceptance of diversity. The University has opened its doors to scholars and students from all racial or religious backgrounds, including refugees from Nazi Germany. Many Jewish scholars have taught and/or studied at the University. One such notable person was the late Dr Sir Karl Popper, the world-famous philosopher. He was a Lecturer in Philosophy at Canterbury College from 1939 to 1945, having arrived in New Zealand as a refugee from Nazi Germany. According to the official history of the University published in 1973, Popper's impact on the academic life of the institution was greater than that of any other person before or since. In his years at Canterbury, he wrote many papers and two major works. As a leader in modern logic and scientific methodology, he brought an unusual distinction to a then small academic institution in a New Zealand far more isolated then than it is today. His influence spread well beyond the confines of the Department where he was employed, and even beyond New Zealand.
- 9.3 The early tradition of research at Canterbury was epitomised by the University's most distinguished graduate, Lord Ernest Rutherford. When he won his Nobel Prize in 1908, he paid handsome compliments to his teachers at Canterbury College whose enthusiasm for Science gave him a stimulus to start investigations of his own. Ever since those pioneering days, the University has valued its research tradition highly and positions itself nationally and internationally as a 'research university'. A recent plan, 'the Canterbury Way

Forward 1999', articulates this desire and details plans whereby the University seeks to achieve its goals.

- 9.4 Good research can only prosper in a climate of academic freedom. Although some of the so-called statutory reforms to the University system made in 1989-90 continue to be questioned in some quarters (e.g. virtual abolition of the separate Acts constituting each University and the placing of all universities into the same constitutional strait-jacket as that for other dissimilar types of tertiary institutions), there were clearly beneficial aspects to these enactments – notably, the requirements for Universities to produce Charters and to exhibit greater accountability both fiscally and academically. The statutory enshrinement of the principles of academic freedom in Section 161, 162(4)(a) and 162(4)(b)(iii) of the Act is arguably the greatest achievement of the 1989 legislation. Of note is Section 161(2)(a), which emphasises the freedom of staff and students to question and test received wisdom, to put forward new ideas and to state controversial and unpopular opinions. The relevant legislative provisions are set out in Appendix X. As NZJC pointed out, S.161(3)(a) requires institutions, when expressing academic freedom and autonomy, to act in a manner consistent with the need for the maintenance of highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards. As an aside, the Working Party questions the abolition of the role of Visitor by the new statute. The Victorian case mentioned in counsel's opinion shows how questions similar to those the Working Party has faced could have been dealt with by the Visitor.
- 9.5 The original Charter of the University (required by the 1990 Act) was approved by the Minister of Education on 12 March 1992. This fairly short document reiterates the principles of Section 161, the University's commitment to quality and social responsibility, and the promotion of the wellbeing of its staff and students. The subsequent Charter approved by an official on behalf of the Minister on 17 January 2000, is more expansive. It notes that the University is New Zealand's second oldest university with strong links to the province of Canterbury, a strong research tradition and a

stable and committed staff. The University wishes to build on this foundation to become an international research university known for (a) the excellence of its research (b) its contributions to knowledge and (c) the high quality of its courses and graduates.

- Like other New Zealand Universities, the University of Canterbury is subject 9.6 to academic audit by the New Zealand Universities' Academic Audit Unit established in 1994. In the last audit report in January 1997, the Audit Panel was impressed with the University's focus on research, the number of publications by its staff and their quality as indicated by various high-level international comparisons. The next academic audit is imminent and the Working Party has seen in advance the submissions on research to the audit panel which are to be presented on behalf of the University. The Audit Panel noted in its 1994 report that a perceived emphasis on self-selected research and departmental independence was not conducive to consolidated and interdisciplinary research: the University should recognise that research is also a corporate as well as an individual exercise. While the traditions of individual discipline-based scholars will always be strongly valued and upheld, much has happened in recent years to facilitate inter-disciplinary research and the development of research clusters. The Working Party has the impression that the procedures in the History Department discussed in this Report were part of the ethos of departmental independence and individual autonomy which characterised many universities both in New Zealand and elsewhere up until 1990 or thereabouts. Greater accountability brings about many things, including the better-recording of the administration of a student's progress.
- 9.7 After the arrival of a new Vice-Chancellor to the University in mid-1998, the position of Pro-Vice Chancellor (Research) was created this person *inter alia*, chairs the Research Committee. There is also a Dean of Post-Graduate Studies; a role currently held by Professor Wake on a part-time basis with his chair in Mathematics. Part of this Dean's role is to improve procedures in registration of approved research proposals for PhDs and to oversee the examination process for all theses, including those for Masters degrees. All

Departments at the University are required to appoint a Graduate Studies Coordinator: some larger Departments may have a research or post-graduate committee. Whilst there are fairly elaborate rules about the approval and supervision of the PhD candidates, the administration of Masters theses is still entrusted to Departments, requiring them to observe good practice in line with University guidelines. Currently, the University's Academic Administration Committee (AAC) is conducting a comprehensive review of the process for Masters theses, including the selection of topics and their acceptance, the appointment of supervisors, examiners and assessors, and the monitoring of student progress to the examination process. In the Working Party's view, such a review is long overdue. In this context, the Working Party considers that the University of Otago's 'Handbook for Masters Degrees' (already referred to in a preceding section of this Report) provides an excellent model which could, with necessary local adaptations, be of use in this review. The Working Party is impressed by this Handbook's articulation of all relevant areas, i.e. the selection of topics, supervision and the appointment procedures for and the responsibilities of examiners and supervisors.

- 9.8 In his review for the next Academic Audit, the Dean of Graduate Studies acknowledged that there are a number of gaps in policies and procedures for the support of post-graduate students. These include the administration of proposals for Masters theses, the reporting of Masters students' progress, and the examining and the archiving of documents. He saw a need to develop Departmental and University guidelines.
- 9.9 Current guidelines for students, supervisors and Departments involved in Masters thesis work are currently as shown in Appendix Y. Current guidelines for the conduct of research are Appendix Z. Unfortunately, there were no such published guidelines in 1991-3, although Appendix Y is said to have embodied existing practices and to have been the fruit of University-wide discussion. Other reasons for preparing the guidelines were changes to research funding and the then imminent Academic Audit. The Working Party

considers both types of guidelines sensible and hopes that they will be adopted with rigour by the History Department and other Departments.

- 9.10 The academic staff of the University are naturally concerned about the implications for academic freedom involved in any withdrawal of a degree based on a thesis written on an unpopular topic. Various persons interviewed emphasised the statutory considerations to which reference has been made, including the duty of the University to be the 'critic and conscience of society' and allowing its staff to be able to espouse unpopular views. The strong feeling was that there should be no forbidden topics so long as the necessary expertise to conduct the research is available; nor should any questions be out-of-bounds to academic enquiry on political or ideological grounds: nor should there be any censorship. Academic freedom is constrained, of course, by the law of defamation and by statutes, such as the Human Rights Act, but is reinforced by section 14 of the New Zealand Bill of Rights Act 1990 dealing with Freedom of Speech. The Working Party is mindful of these legitimate concerns over the maintenance of academic freedom.
- 9.11 It has been suggested by NZJC that the University's reputation is damaged by its award of a degree based on the Hayward thesis. The Working Party does not accept that the University has aligned itself with views offensive to the NZJC. The University cannot possibly be said to endorse the findings reached by all thesis writers over the last 127 years. There could be found to be many theses where the conclusions expressed in the light of subsequent knowledge and research were erroneous. There would be others where controversial or partial opinions are expressed. Nevertheless, the credibility of the scholarship of a University is dependent on research being based on reputable processes, even if the conclusions from properly-obtained evidence may be debatable.

### **Recommendations as to University Procedures**

- 9.12 There should be an effective check and balance system, external to a Department, for all Masters thesis proposals. Whilst acknowledging the desire for departmental independence, the Working Party considers that there should be some external mechanism for approval of research projects, particularly for subjects of obvious sensitivity such as a thesis on Holocaust Revisionism. Protection of academic freedom is one thing, ensuring that it is exercised responsibly is its necessary complement. In the present case, there could and should have been more rigorous control over Dr Hayward's proposed subjectmatter by: (a) restricting the thesis firmly to a study of some aspect of Holocaust Revisionism (assuming the topic was a suitable one, given the basic aim of the Masters thesis), and that adequate supervision was available, (b) restricting the length of the thesis, (c) recording the student's progress in a systematic and comprehensive manner.
- 9.13 If a student is minded to undertake historical research on a topic of considerable sensitivity then (as should have happened in the present case), there should be some fairly rigorous guidelines to ensure that (a) the topic is clearly defined and not allowed to extend into inappropriate areas, (b) the thesis is of reasonable length, (c) the supervisor has knowledge of the area, (d) there are reports on progress, (e) the student is never allowed to be unsupervised.

## 9.14 The Working Party recommends that:

- (a) Firm guidelines be established for Masters theses to ensure that clearly defined topics are approved first within the Department and then by some wider Committee representative of the University of a whole.
- (b) Firm guidelines be set for the appointment of qualified and appropriate supervisors.

(c) In cases where the topic or methodology suggested makes it necessary, there be some reference to a Human Ethics Committee. The approval of such a Committee should be a condition precedent to the thesis proceeding.

The present case shows how a thesis topic and its development has consequences for the wider University. The reputation of the University and all members of the University can be tarnished when failure by one Department to conform to proper procedures allows a flawed thesis on a topic of public sensitivity to pass through the system.

- 9.15 The Working Party is concerned over the lack of record-keeping of a student's course of study for a Masters degree evidenced by this case. The statutory requirement of S.226 of the Act would equal, in the Working Party's view, a record of at least:
  - (a) the thesis proposal and/or its approval by the Department;
  - (b) the appointment of the supervisor and his/her competence to supervise the approved topic;
  - (c) the appointment of examiner and external assessor;
  - (d) the examiner's and assessor's reports and
  - (e) any departmental meetings that consider the awards of degrees.
- 9.16 There should normally be a word limit for Masters theses. Such a word limit should be exceeded only on application to some controlling authority on the basis of an argued case. The word limit might vary from one Department to another, but length should not be advantaged over quality and precision. It is hard to compare one thesis which is excessive in length with another where the student has tried to adhere to the spirit of the MA Regulations and present a taut and succinct thesis.
- 9.17 Consideration should be given urgently to changing the practice of the supervisor serving also as examiner. Departments should prepare lists of

examiners for the approval of the Dean of Post-Graduate Studies or the AAC. Although there may be arguments for having the supervisor act as examiner, the Working Party considers that any higher degree will have greater credibility if it is examined by a person other than the supervisor, who is subject to an inherent conflict of interest. The supervisor might well have formed a close intellectual attachment to, and personal friendship with, the student, as happened in the Hayward/Orange relationship. The Working Party appreciates there can be difficulties finding separate internal examiners for all MA theses. The supervisor should submit a report to which close attention would be given by the examiners. The Working Party believes that notwithstanding difficulties in implementation, the credibility of Masters degrees must be enhanced by having a separate supervisor and a separate internal examiner. The Working Party understands that this is now standard procedure at the University of Otago, as the Handbook indicates. To be fair, informal enquiry has shown that many New Zealand universities in 1992-3 operated the same system as Canterbury for examining MA theses.

- 9.18 A student should not be allowed to change the title or topic of his or her thesis without consideration by the AAC or the Dean of Post-Graduate Studies. If such had been the rule, inappropriate titles such as 'The Jews in World War II' or 'The Fate of the Jews in German Hands' might have been avoided. Seizing on a title just prior to presentation of the thesis indicates a lack of direction in the course of the preparation of the thesis.
- 9.19 The Departmental file recording the thesis topic, supervision and examination should be archived in the Central Registry and NOT destroyed by the Department in the name of efficiency or space-saving.
- 9.20 The Departmental Committee should not determine the grade of a thesis unless all those at the meeting have full written reports from supervisor, examiner and assessor. All theses in a particular year should be considered by all members of the Department who have supervised and/or examined MA students. The practice of the supervisor attending the meeting only when

his/her student's case is being considered does not aid the close grading and comparability of theses.

# 10. PARTICULAR RECOMMENDATIONS IN RESPONSE TO COMPLAINT OF NZJC:

- 10.1 The Working Party has found that the thesis of Dr Hayward was seriously flawed, in particular for the reasons set out in Section 4 of this Report. In summary, it was too long, too ambitious and it should have been confined to a discreet topic. Worst of all, it should not have essayed a judgment in such a controversial area without a proper foundation for that judgment. We are concerned that the Conclusion, which strikes the Working Party as particularly inapt, did not seem that way to Dr Orange and Professor Jensen and others who viewed the thesis purely as an historiographical exercise. The Working Party understands the outrage of the NZJC at the final form of the thesis. The Working Party considers that the appropriate result for this thesis would have been to require its re-drafting and re-submission, with those parts for which there was no solid foundation or disciplinary warrant being omitted.
- 10.2 It must be stressed that this finding is not inimical to academic freedom. Both academic freedom and the expression of unpopular views and opinions must be based on solid foundations, not on insubstantial ones such as the Leuchter Report, which by the time this thesis appeared had been discredited.
- 10.3 The Working Party cannot ignore that, even although it does not recommend the withdrawal of Dr Hayward's MA degree, this Report could affect him, Dr Orange and Professor Jensen adversely. The Working Party regrets that situation were it to occur, but cannot report to the University in terms other than it has, given its responsibilities under the Terms of Reference.

- 10.4 The Working Party has thought long and hard about what it should recommend to the University to show that on this one occasion it granted an MA degree with the highest accolade based on a work which, in the Working Party's view, did not deserve it. It is hyperbolic and illogical to say that, just because the University standards slipped on this one occasion, every other degree of the University is tarnished. Such a sweeping claim ignores the University's long tradition of scholarship and excellent research record over a wide variety of disciplines. Nor is it sensible nor rational to brand the University of Canterbury as approving Holocaust denial.
- 10.5 In addition to the other recommendations made in other Sections of this Report, the Working Party recommends further:
  - (a) A copy of this Report should be attached to the library copy of the thesis;
  - (b) The University should apologise to the NZJC for the hurt that may have been suffered by Jewish people as a result of the award of the MA degree for this thesis.
  - (c) The University should work constructively with the NZJC to see whether there is some positive way in which the University could increase Holocaust awareness. It could sponsor an annual lecture on the Holocaust by which the memory of the Holocaust and the lessons to be drawn from it are kept before the public eye. The University might also consider offering a paper in Jewish Studies or Jewish History. The Working Party is not able to say whether these suggestions are viable or practical in the University's present academic situation. The Working Party considers that the University should be able to work with NZJC to achieve a solution which serves as a tangible reminder that the University takes seriously the concerns of NZJC and recognises the hurt that must have been caused to many by the grant of the degree to the Hayward thesis. Mr Zwartz and Mrs Selak are both Canterbury

graduates who approached their difficult task in a spirit of helpfulness with concern at the damage they saw as having been done. There is nothing that can be done to stop persons with leanings towards Holocaust denial from continuing to refer to the Hayward thesis. One would only hope that in fairness they would also refer to the findings of this Working Party.

- 10.6 After the presentation of this Report to the Council of the University, the Working Party has to leave further decision to the Council. All submissions were made to the Working Party in confidence, but in the knowledge of the Working Party's obligations under its Terms of Reference. Certain submissions critical of Dr Hayward, Dr Orange and/or Professor Jensen, in accordance with the principles of natural justice, had to be referred to them for comment. NZJC agreed that Professor Evans' Report would not be used by it until the Council's decision on the Working Party's Report becomes known. When that occurs, the NZJC will be able to refer to the Evans Report. One would hope that in fairness NZJC will refer also to the comments made by the Working Party on the Evans Report.
- 10.7 Issues of confidentiality and privacy will arise and will have to be considered by the Council. In deciding whether to publish this Report, it will have to balance the comments and criticisms in this Report against the clear public interest in publishing this Report. It will have to reflect that those interviewed by the Working Party spoke to it in confidence but in the knowledge of the Working Party's responsibilities.
- 10.8 The Working Party has undertaken a difficult exercise, and believes it has fully and properly considered the matters at issue. The enquiry has raised important issues for the University of Canterbury and the greater New Zealand University community. Informal procedures might have sufficed in the past. Greater accountability and higher standards of supervision, recording of student progress and examining are necessary in a modern University.

10.9 The Working Party wishes to thank all those who made arrangements for its conducting its task: in particular, the Chancellor, Rev. Dr Dame Phyllis Guthardt, the Vice-Chancellor, Professor Daryl le Grew, the Deputy Vice-Chancellor, Professor John Burrows the Registrar and Director of University Services, Mr Alan Hayward, Ms Lucy Evans of the Registry Staff. Mr Don McBeath and Mr Lyn Stevens Q.C. provided sage legal advice. Ms Diana Herring and Ms Daphne Robinson provided very efficient secretarial services.