



Dear Friends,

"To say that this tragic farce has resembled a hysterical witch hunt is to demean witch hunts."

The Atlanta Journal and Constitution, May 27, 1997¹

Strong language! This quote was in response to the recent Frontline documentary, "Innocence Lost: The Plea" about the Little Rascals case in Edenton, NC.² The quote expresses public sentiment about the absurdity of the accusations, the unfairness of the prosecution and the unnecessary devastation of so many lives. Day care sex abuse hysteria has been stunningly brought to life by producer Ofra Bikel who has followed this case for over five years. The good news is that the Little Rascals case seems finally to be winding down. (See "Legal Corner")

The Wenatchee case, too, finally seems to have a serious crack. A Washington state appeals court ruled that Linda Joyce Miller, whose confession was a linchpin for a prosecution involving more than 40 adults, is entitled to a new trial because she was denied the right to have an expert witness explain to the jury why someone might confess to something he or she had not done. With 19 people convicted, there have been many citizen requests for an investigation into the Wenatchee situation, including to the U.S. Justice Department, but there has been no action to date. Washington state, however, has just instituted a new position of ombudsman to deal with more than 75 cases that are currently pending against its child welfare department and with the requests for a special investigation of Wenatchee.³

A California appeal decision in the Engstrom case is more good news. The September Newsletter will include a full summary of this case in which the Foundation filed an amicus curiae brief. But we could not resist including a footnote from the decision in this issue because it indicates how far we have moved in public understanding of the FMS issues.⁴

"While appellant has adopted the position that all of his recovered memories came to him while he was at home alone, Poulson's [the therapist] handwritten notes made contemporaneously with appellant's therapy, contradict this assertion.

Appellant's exact location when he recovered each of his memories is not determinative in any event, since he was admittedly using Poulson's techniques to assist him wherever he might have been. Evidence was introduced that although Poulson did not use active hypnosis, she did employ guided imagery, "[a] passive process that produced something akin to hypnosis," in that it offers "another way of inducing [a] hypnotic trance" and shares with active hypnosis "the ability to stimulate confabulation." Poulson's notes confirmed that the process she used was a suggestive one in which she validated appellant's visualizations as fact.

Good news, however, is tempered. One of the most constructive results of the past few years has been the publication of many outstanding books that have helped to shape public understanding of the FMS problem. *Confabulations* (Goldstein & Farmer), *Making Monsters* (Richard Ofshe), *Myth of Repressed Memory* (Elizabeth Loftus), *Suggestions of Abuse* (Michael Yapko), *Return of the Furies* (Wakefield & Underwager) and *Victims of Memory* (Mark Pendergrast), for example, were part of the first wave of books to specifically address FMS issues. We walked into a large bookstore chain this month, Books-a-Million, to check out the displays. To our dismay we did not see any of these books. We did find *The Courage to Heal* prominently displayed in the psychology section. Clearly, we need to continue our efforts to educate the public and professionals.

Summer is a time for many people to catch up on their reading of some of the excellent books that were published this year. *Spectral Evidence*, the gripping account of the Ramona trial by Moira Johnston is a book that no family that has experienced FMS will want to miss. While we have seen families torn to shreds in the sensationalized media, this book treats all parties with respect and dignity while capturing the awful human waste that FMS has wrought.

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For those families whose concerns were brought about by church-related counseling, *Second Thoughts* by Paul Simpson is a must. Elaine Showalter's *Hystories* has caused a great stir in both the United States and England. It places FMS within a social and historical context that will surely broaden public understanding. And *Smiling through Tears* by Freyd and Goldstein is the first book to look at the FMS situation through the eyes of cartoonists. Since cartoons make sense when people have an understanding of the issues, this book is a kind of measure of public awareness of FMS and the social trends in which it has been nurtured.

As these and other new books bring deeper insight to the FMS problem and an understanding of the course of moral panics, we temper our optimism with the fact that the American Psychiatric Press has just published *The Dilemma of Ritual Abuse: Cautions and Guides for Therapists*. There is work to be done.

In this issue, we have included a list of books published since 1992 that families and professionals have recommended. The list does not include all of the collections of scholarly articles that have appeared nor does it include the many books on 'trauma and recovery.' It doesn't include text books or plays that address FMS. It doesn't include some very important books that appeared before 1992. One of those important books was published in 1852⁵. As we have come to understand the FMS problem as a moral panic, the words of Charles Mackay more than a century ago take on special meaning.

"In reading the history of nations, we find that, like individuals, they have their whims and their peculiarities; their seasons of excitement and recklessness, when they care not what they do. We find that whole communities suddenly fix their minds upon one object, and go mad in its pursuit; that millions of people become simultaneously impressed with one delusion, and run after it, till their attention is caught by some new folly more captivating than the first....Men, it has been well said, think in herds; it will be seen that they go mad in herds, while they only recover their senses slowly, and one by one.

The active support of families and professionals for books that work for us is crucial. In a free country there will always be books that have inaccurate information. Being free means being free to be wrong. It is by supporting the books that are based on sound scientific information that we make change happen. That is something that each family can do and concerned professionals must do to make a difference.

Good Reading!

Pamela

1. *The Atlanta Journal and Constitution*, May 27, 1997 Channel Surfer: Frontline returns to day care scandal Phil Kloer.
2. Frontline documentary, "Innocence Lost: The Plea" (5/27/97)
3. Infamous Child Sex Case Faces Renewed Scrutiny, *New York Times*, 6/22/97, C. Goldberg.
4. Engstrom v Engstrom, Super. Ct. No. VC016157, Cal. App., 2nd Dist., No. B098146, unreported, (6/18/97) Court affirmed judgment of nonsuit and trial court's exclusion of plaintiff's repressed memory testimony under Kelly-Frye.
5. Mackay, Charles (1852) *Extraordinary Popular Delusions and the Madness of Crowds* (Introduction to Second Edition). Office of the National Illustrated Library. Republished by Harmony Books (1980).

special thanks

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Book List - June 1997

Baker, Robert (1992, 1996) *Hidden Memories: Voices and Visions from Within*. Prometheus Books.

Brenneis, C. Brooks (1997) *Recovered Memories of Trauma: Transferring the Present to the Past*. International Universities Press, Inc.

Campbell, Terence (1994) *Beware the Talking Cure: Psychotherapy May be Hazardous to Your Health*. Upton Books. (FMSF Advisory Board) (Reviewed November 1994)

Ceci, Stephen & Bruck, Maggie (1995) *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*. American Psychological Association.

Conway, Martin (Ed) (1997) *Recovered Memories and False Memories*. Oxford University Press.

Crews, Frederick (1995) *The Memory Wars: Freud's Legacy in Dispute*. New York Review of Books. (FMSF Advisory Board) (Reviewed November 1995)

Dawes, Robyn (1994) *House of Cards: Psychology and Psychiatry Built on Myth*. The Free Press, (FMSF Advisory Board) (Reviewed May 1994)

Dineen, Tana (1996) *Manufacturing Victims: What the Psychology Industry is doing to People*. Robert Davies Publishing. (Reviewed January 1997)

Freyd, Pamela & Goldstein, Eleanor (1997) *Smiling Through Tears*. Upton Press.

Guilliatt, Richard (1996) *Talk of the Devil*. Text Publishing (Melbourne). (Reviewed June 1997) (Clive Moore Case in Australia)

Goodyear-Smith, Felicity (1993) *First Do No Harm: The Sexual Abuse Industry*. Benton-Guy Publishing (New Zealand).

Gardner, Richard (1992) *True and False Accusations of Child Sex Abuse*. Creative Therapeutics.

Goldstein, Eleanor & Farmer, Kevin (1992) *Confabulations: Creating False Memories - Destroying Families*.

Goldstein, Eleanor & Farmer, Kevin (1993) *True Stories of False Memories*. Upton Books.

Gordon, Barry (1995) *Memory: Remembering and Forgetting in Everyday Life*. Mastermedia Limited.

Hacking, Ian (1995) *Rewriting the Soul: Multiple Personality and the Sciences of*

- Memory.** Princeton University Press. (Reviewed September 1995)
- Hagen, Margaret** (1997) *Whores of the Court.* Harper Collins. (Reviewed April 1997)
- Hedges, Lawrence** (1994) *Remembering, Repeating, and Working Through Childhood Trauma.* Jason Aronson, Inc. (Reviewed March 1996)
- Johnston, Moira** (1997) *Spectral Evidence: The Ramona Case.* Houghton Mifflin. (Reviewed June 1997) (Gary Ramona Case)
- Kaminer, Wendy** (1992) *I'm Dysfunctional, You're Dysfunctional: The Recovery Movement and Other Self-Help Fashions.* Addison Wesley.
- Kelly, Charles & Kelly, Eric** (1994) *Now I Remember: Recovered Memories of Sexual Abuse.* (K/R Publications)
- Kotre, John** (1995) *White Gloves: How We Create Ourselves Through Memory.* Free Press. (Reviewed September, 1995)
- Laframboise, Donna** (1996) *Princess at the Window: A New Gender Morality.* Penguin.
- Loftus, Elizabeth & Ketcham, Katherine** (1994) *The Myth of Repressed Memory.* St. Martin's Press. (FMSF Advisory Board) (Reviewed September 1994)
- MacLean, Harry N.** (1993) *Once Upon A Time: A True Story of Memory, Murder, and the Law.* Harper Collins. (George Franklin case)
- MacNamara, Eileen** (1994) *Breakdown: Sex, Suicide and the Harvard Psychiatrist.* Pocket Books. (Bean Beyog/Paul Lozano case)
- Merskey, Harold** (1995) *Analysis of Hysteria: Understanding Conversion and Dissociation.* Gaskell (UK). (FMSF Advisory Board)
- Nathan, Debbie & Snedeker, Michael** (1995) *Satan's Silence: Ritual Abuse and the Making of A Modern American Witch Hunt.* Basic Books. (Reviewed February 1996)
- Netzer, Carol** (1996) *Cutoffs: How Family Members Who Sever Relationships Can Reconnect.* New Horizon Press.
- Ofshe, Richard & Watters, Ethan** (1994) *Making Monsters: False Memory, Psychotherapy and Sexual Hysteria.* Charles Scribner's Sons. (FMSF Advisory Board) (Reviewed September 1994 and October 1996)
- Pendergrast, Mark** (1994, 1996) *Victims of Memory: Incest Accusations and Shattered Lives.* Upper Access Books. (Reviewed October 1994 and October 1996)
- Piper, Jr., August** (1997) *Hoax and Reality: The Bizarre World of Multiple Personality Disorder.* Jason Aronson, Inc. (FMSF Advisory Board) (Reviewed April 1997)
- Pope, Harrison** (1997) *Psychology Astray: Fallacies in Studies of 'Repressed Memory' and Childhood Trauma.* Upton Books. (FMSF Advisory Board) (Includes columns that have appeared in Science Corner of Newsletter)
- Roseman, Mark, Craig, William & Scott, Gini** (1997) *You the Jury: Allegations of Sexual Abuse.* Seven Locks Press.
- Sagan, Carl** (1995) *The Demon-Haunted World: Science as a Candle in the Dark.* Random House.
- Schacter, Daniel** (1996) *Searching for Memory: Brain, Mind and the Past.* Basic Books.
- Sharkey, Joe** (1994) *Bedlam: Greed, Profiteering, and Fraud in a Mental Health System Gone Crazy.* St. Martin's Press. (Reviewed October 1994)
- Shermer, Michael** (1997) *Why People Believe in Weird Things: Pseudoscience, Superstition, and Other Confusions of Our Time.* W.H. Freeman and Company.
- Shorter, Edward** (1997) *History of Psychiatry: From the Era of the Asylum to the Age of Prozac.* Wiley.
- Showalter, Elaine** (1997) *Hystories: Hysterical Epidemics and Modern Media.* Columbia University Press, 1997.
- Simpson, Paul** (1997) *Second Thoughts: Understanding the False Memory Crisis and How It Could Affect You.* Thomas. (Reviewed May 1997)
- Singer, Margaret & Lalich, Janja** (1995) *Cults in Our Midst.* Jossey-Bass. (FMSF Advisory Board)
- Singer, Margaret & Lalich, Janja** (1996) *Crazy Therapies.* Jossey-Bass. (FMSF Advisory Board) (Reviewed November 1996)
- Slovenko, Ralph** (1995) *Psychiatry and Criminal Culpability.* Wiley. (FMSF Advisory Board)
- Smith, Susan** (1995). *Survivor Psychology: The Dark Side of a Mental Health Mission.* Upton Books.
- Sommers, Christina H.** (1994) *Who Stole Feminism: How Women Have Betrayed Women.* Simon & Schuster.
- Spanos, Nicholas** (1996) *Multiple Personality and False Memory.* American Psychological Association. (Reviewed March 1997)
- Squire, Elizabeth D.** (1997) *Whose Death Is It, Anyway?* Berkley Prime Crime.
- Tong, Dean** (1996) *Ashes to Ashes...Families to Dust: False Accusations of Child Abuse: a Roadmap for Survivors.* FamRights Press. (child issues)
- Torrey, E. Fuller** (1992) *Freudian Fraud.* Harper Collins.
- Victor, Jeffrey** (1993) *Satanic Panic: The Creation of a Contemporary Legend.* Open Court Publishing. (FMSF Advisory Board)
- Wakefield, Hollida & Underwager, Ralph** (1994) *Return of the Furies: Analysis of Recovery Memory Therapy.* Open Court Publishing. (FMSF Advisory Board) (Reviewed January 1995)
- Wassil-Grimm, Claudette** (1995) *Diagnosis for Disaster.* Overlook Press.
- Webster, Richard** (1995) *Why Freud Was Wrong: Sin, Science and Psychoanalysis.* Basic Books.
- Wright, Larry** (1994) *Remembering Satan: Case of Recovered Memory and the Shattering of an American Family.* Knopf.
- Van Til, Reinder** (1997) *Lost Daughters: Recovered Memory Therapy and the People it Hurts.* Eerdmans Publishing.
- Yapko, Michael** (1994) *Suggestions of Abuse.* Simon & Schuster. (Reviewed June 1994)
- Young, Allen** (1996) *Harmony of Illusions: Invention Post-Traumatic Stress Disorder.* Princeton University Press. (Reviewed February 1997)

"Ironically, the memory wars and the Freud wars are both primarily battles of the books — scholarly and professional disputes over whether psychoanalysis is a reputable science, a fraudulent pseudoscience, or a humanistic art. While the battles rage, psychoanalysis as a profession has long been in economic decline..."

Elaine Showalter
The Guardian Newspaper
June 12, 1997

From a Retracting Therapist

"This is not simply about questioning the techniques you have been using. This paradigm shift involves your entire professional career, in fact, your entire world. Even if only a portion of your clients have had false memories, the implications are overwhelming. There's no way to know which are real and which are false. This means that thousands of recovered "memories" are suddenly open to question. With a quiet terror a thought keeps intruding, "You've perpetrated crimes against the very clients who trusted you!" With that trust, you created horrific fantasies that destroyed their lives and falsely accused families. If this were true, the crimes you have perpetrated rival the worst act that the satanists ever did.

Recognizing the truth of the False Memory Crisis involves a paradigm shift that is a radical departure from the world that the regressionists have created. It's not a matter of hard-core regressionists getting enough information in order to change. A person can make the choice to refuse change, no matter how much evidence is presented...Each one of us has the power to choose life or death, truth or deception...I had come to understand my own deception."

Paul Simpson

Second Thoughts, p 116-117

Form Letters

Did your confrontation letter read like a form letter? Maybe this is the reason.

"A confrontation by letter works exactly like one done in person. Both begin with the words: 'I am going to say some things to you I have never said before' and both should cover four major points:

1. This is what you did to me.
2. This is how I felt about it at the time.
3. This is how it affected my life.
4. This is what I want from you now."

Susan Forward with Craig Buck(1990)
Toxic Parents. NY: Bantam Books
Chapter 14 "Healing the Incest
Wound" page 239

From Finding Memories to Cutting Off: The Process

Do some therapists suggest abuse to clients and advise them on how to cut off from their families? Many therapists claim there is no evidence that anyone has done this, or if it is done, it is just by a few untrained people. Published writings indicate otherwise. The excerpts below for professionals from *Working with Adult Incest Survivors; The Healing Journey*. (NY: Brunner/ Mazel, 1993) by Kirschner, S., Ph.D., Kirschner, D., Ph.D. and Rappaport, R., Ph.D. exemplify techniques used in the incest recovery movement.

"If the therapist is unable to help the client unearth memories, but has a strong sense that incest actually did occur in the family of origin, he or she should discontinue the memory-retrieval work and continue working on the other issues in therapy. However, the therapist should make a statement such as, 'Yes, it probably did happen, and at some point you'll get to it,' which acknowledges the probable incest and programs the unconscious for future memory retrieval..." p. 114.

If the client is ready, the practitioner also can express and model rage at the perpetrator. In addition, the therapist can anchor in an image of the good parent by describing how he or she would have reacted if he or she were the other parent, for example, the therapist might say something like, 'I'm furious at your father for hurting you like that. You were just an innocent little kid. If I had been your mother, I would have thrown him out of the house until he got himself therapy. I never would have let him touch you again!' p. 116.

Chapter 9 The Family-of-Origin Work "In phase 3, the family has to acknowledge that indeed the incest and the denial did happen. The therapist must strongly support the client's recollections, and will often have to confront the family members directly by repeating or amplifying the survivor's statements. He or she may say, 'This actually did happen - it's written all over her. Her symptoms are unmistakable. Just acknowledge it. Then you'll work to make it up to her!'" p. 156

"Fear-of-Loss Strategy - If the family continues to be uncooperative in attending sessions and maintains its denial, the therapist can suggest using the fear-of-loss strategy. The strategy consists of different behaviors that delimit contact with the family, all of which are designed to prevent further damage to the survivor and her family and to stir up separation anxiety in family members...Or, in the extreme case, the survivor can refuse for herself, her spouse, and her children to have any contact at all with other family members..."

"When a survivor is married or is in a committed relationship, it is important for the therapist to enlist the partner's support during the fear-of-loss strategy. He should have been informed about how the family of origin is failing his partner, his children, and ultimately, him, in not facing and coming to terms with the damage that has been done. It is important for the therapist to explain that, at this crisis point, the spouse can be either a champion or someone who fails her, and that each stance has strong consequences for the relationship." p. 159

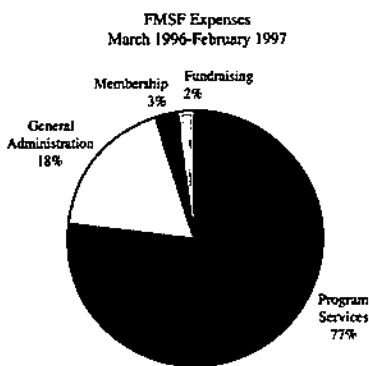
How do other professionals react to this advice? In the foreword to the Kirschner et. al. book, Christine A. Courtois, Ph.D., a member of the Working Group on Recovered Memories for the American Psychological Association, praises it. "A second major contribution of this incest treatment model is its emphasis on family-of-origin work. This includes direct family involvement in the therapy and confrontation by the survivor with the support of his/her partner and the coaching of the therapist." (page xi)

Where do the professional organizations stand on the kind of practice advocated by this book? You will have to ask them. Write to Herbert S. Sacks, M.D., President, American Psychiatric Association., 1400 K Street NW, Washington, DC 20005

FMSF Expenses

March 1996 - February 1997

The external audit of the Foundation has been completed for the fiscal year 1996-1997, which extends from March 1 to February 28. Approximately 76.5% of Foundation expenses were spent for program services: helping families, retractors and professionals locate the resources they need; providing educational material to students and selected groups; publishing the FMSF Newsletter; maintaining Speakers' Bureau; Family, Retractor and Legal research; contacting state volunteers; and library, video and article archives. The 18.4% for Administration includes such items as insurance, office staff salaries, phone lines and rent. The chart below shows the percentage of money spent in each category. Below the chart are the actual dollar amounts. A complete audited statement is available in the FMSF office in Philadelphia.



Program Services	\$592,338
Administration	\$142,359
Membership	\$ 21,544
Fund Raising	\$ 17,889
Total Budget	\$774,130

Believe the Children

On April 11-13, at a conference in Chicago co-sponsored by Believe the Children, Executive Director Beth Vargo informed the audience that Believe the Children is closing its doors.

The rallying cry of "believe the children" started at the time of the McMartin trial in 1983. Research then seemed to indicate that children would not tell about an uncomfortable or shameful experience unless an interviewer asked leading questions. Much has been learned about interviewing children since 1983.

In a recent *Los Angeles Times* article (4/11/97), Carol Tavris notes that in the past, people focused on whether children do or do not lie. She suggests that "It has become abundantly clear not only that children do lie, on occasion, but also that they can be influenced to make false allegations, just as adults can." Today researchers ask, "Under what conditions is a child more likely to be suggestible and claim that something happened that did not?" Tavris provides some answers:

- "When the child is very young.
- When the situation is emotionally intense.
- When interviewers encourage the blurring of fantasy and reality, for instance by asking the child to 'pretend' that an adult did something to them.
- When the child has a desire to please an interviewer.
- When an adult repeatedly asks the same question; many children (especially preschoolers) will change their answers, thinking the first one was wrong or unacceptable.
- When the child is pressured by threats, offered bribes or accused of lying if they don't give the 'right' answers.
- When the child is asked to play with anatomically detailed dolls. The assumption has been that doll play will reveal abuse that the child is ashamed to admit. However, when researchers compare how abused and nonabused children play with the dolls, they find no differences. Even nonabused children play with the dolls in a sexual manner."

"Facts do not cease to exist because they are ignored."
Aldous Huxley

A Tiff in England

Daily Mail, May 19, 1997 Steve Doughty

An argument about false memory syndrome has resulted in the resignation of Lady Parker from Refuge, a charity for battered women and children. Lady Parker is also on the Advisory Board of the British False Memory Society. She believes that false memory syndrome is a problem that needs solving just as battered women represent a problem that needs solving. Unfortunately, the chief executive of Refuge, Sandra Horley, believes otherwise. She and other members of the charity complained that Lady Parker's position in the BFMS contradicted her work with Refuge. Two colleagues of Lady Parker's also resigned from the Refuge's 11-member council of management.

Row Over Report of Royal College of Psychiatrists

London Times, June 11, 1997
Derwent May

The Royal College of Psychiatrists set up a large working party to look into the question of "repressed" and "recovered" memory. The working party delivered its report almost a year ago, but nothing has since been heard of it. While the College says that it is preparing a set of guidelines for psychiatrists based on the report, the chairman of the working party, Professor Sydney Brandon, is impatient and wonders if the report will be published.

According to the *Times* article, the report urges skepticism and extreme caution about accepting claims of "recovered memory." Because the college has many members who hold firmly to Freudian ideas, a battle has been going on from within over the wording of the proposed guidelines. Brandon told the *Times* reporter that he will publish the report himself if the College does not act quickly.

Battles Await New Child-Services Ombudsman

Seattle Post Intelligencer
June 16, 1997, Steven Goldsmith

There are more than 75 Washington state citizens who are currently pursuing lawsuits against the state's child welfare system. The suits allege a total of \$297 million in damages. An ombudsman, Vickie Wallen, has been appointed by the state because citizens have had no independent watchdog to look into their complaints. Even before she takes office, critics of the Wenatchee child abuse cases are asking for a major investigation into how officials dealt with families and children in state custody.

Michigan and Rhode Island are the only other states that have instituted a similar position.



Award to Loftus

Elizabeth Loftus, Ph.D. member of the FMSF Scientific Advisory Board, has been named a James McKeen Cattell Fellow for her contributions to applied research by the American Psychological Society. The citation noted that her "basic research has centered on memory, and she has made contributions to the study of psychological issues of the criminal-justice system. Her research explores such questions as whether expert and eyewitness testimony can be trusted."

"One day it all came home to him. Even if his lawsuit were to clear his name, his life had been stripped of its boundless potential. There's no way I could ever run for public office, even if I had the desire. There was no way I could get a major corporation, who in the past were hungry to have me take a look. Do you think any of them are going to make me president or put me in a high position? He could never do community work if it involved children, ever. His reputation was destroyed."

Johnston, 1997 (page 181)
Spectral Evidence

It Must Be Summer

That is the only explanation for the following news clips. They underscore the need for consumer protection in the mental health industry as well as the need for increased public education about hypnosis.

Crying Helps Victims of Abuse; Method Documented in New Book

According to a May 27, 1997 PR Newswire release, Thomas A. Stone, author of *Cure By Crying* claims that "We teach people how to remember the abuse and to cry. The crying is more important than remembering. Whenever you cry, you are actually draining energy from your blocked childhood traumas. Even when you cry at a movie, you are probably crying about something that happened when you were little."



Ex-teacher Says His Affair with Girl, 14, Dated to Past Lives

Seattle Times, Sunday May 11, 1997

A former teacher in Santa Fe claims that his relationship to a young female student dated to their lives in Tibet more than 1,000 years ago. In this past life, the girl saved his life by taking an arrow meant for him and he had to repay the debt of love. The judge did not buy his story and sentenced the teacher to prison.



Marketing; Hocus Focus

New York Times Magazine, Sunday June 1, 1997

A consumer researcher in Irvine, California is using recovered memory techniques to test new products. Hal Goldberg says that people do not always tell the truth in focus groups, so he hypnotizes and questions them about things such as choosing chunky over smooth peanut butter. The article notes that "supposedly" they do not lie under hypnosis. It also quotes an account planner for an ad agency as saying, "This technique seems a little scary but hypnosis is perfectly valid in psychotherapy. There's no reason it can't be used in the business world, too."



The Power of Narrative: Exploring Past Lives

Gannett News Service, May 12, 1997, Scott Owens

This article is a review of *Children's Past Lives: How Past Life Memories Affect Your Child* by Carol Bowman. The book explains that Bowman's son was frightened by fireworks during a Fourth of July celebration so the author had a friend "regress" her five-year-old son to a former life. The boy recovered memories of being a soldier killed in the Civil War - an explanation for his fear of fireworks.

The author of the article notes that "Past-life therapy bestows the confidence-building vindication that all your quirks and mistakes are not the products of your own shortcomings but are due to some grand trauma in a previous life." He noted that beliefs in things such as past-life are "fairly bulletproof against logic, so we might as well relax and enjoy the show. The millennium is approaching, and things haven't gotten half as weird as they're going to get."



"You can't depend on your eyes when your imagination is out of focus."

Mark Twain

Courts Consider the Question of Immunity From Prosecution under State Statutes Mandating the Reporting of Suspected Child Abuse

Editor's note: Most states that mandate the reporting of suspected child abuse also grant immunity from prosecution to those who report "in good faith." It is with this phrase, "in good faith," that a balance is struck between society's need to protect its children from abuse by protecting those who report it, and the need to ensure that these reports are not maliciously or negligently made. In most states, it is presumed that a report is made in good faith. Under those circumstances, a reporter generally cannot be sued for negligence, defamation, and the like—even if injury results from the reporting of suspected abuse.

To rebut the presumption of good faith, many courts require evidence of negligence, of recklessness, or of willfulness in making a false report. Some courts have specifically limited the immunity to the act of reporting or to court related actions.¹ In fact, courts in most jurisdictions have concluded that the immunity granted to mandatory reporters is limited to reports that were submitted in good faith.²

It should also be noted that a growing number of jurisdictions have specifically held that mental health professionals owe a duty to individuals whom they negligently accuse of child abuse.³

A recent ruling by the Connecticut Supreme Court (reported below) appears to ignore statutory language limiting immunity to reports of suspected child abuse which are made in good faith. Nor does the majority opinion consider the interpretation of similar statutes by other jurisdictions or convincingly show that the harm to the falsely accused father was not foreseeable.

References

¹ A unanimous decision by a California Appellate Court, *James W. v. Superior Court*, 17 Cal.App.4th 246 (Cal. App., 1993), held that a therapist and foster parent who treated a minor child after the initial reporting were not immunized from liability under state reporting statutes. "The Act is a reporting statute and its protection runs to reporting: it does not apply to activities that continue more than two years after the initial report of abuse by parties who are not acting as reporters."

² Decisions which held that a reporter's liability hinged on whether actions were made "in good faith" include: *Montoya v. Bebensee*, 761 P.2d 285 (Colo. App., 1988); *Byrne v. Haynes-Seman*, Colo. Ct. of App., No. 95CA486 (unpublished, Aug. 8, 1996); *Michaels v. Gordon*, 211 Ga. App. 470 (1993); *Pryweller v. Cohen*, 282 Ill.App.3d 899 (1996); *Lehman v. Stephens*, 148 Ill.App.3d 538 (1986); *Hazlett v. Evans*, 943 F.Supp. 785 (U.S. Dist., 1996) applying Kentucky statutes; *Todd v. State*, 685 So.2d 313 (La.App., 1996); *Bol v. Cole*, 561 N.W.2d 143 (Minn., 1997); *Carly S. v. Child & Adolescent Treatment Services, Inc.*, 614 N.Y.S.2d 661 (1994); *Peterson v. Walentiny*, 1995 U.S. Dist. LEXIS 4290 (unpublished, Jan. 9, 1995) applying Oklahoma law; *Yiviano v. Moore*, 899 S.W.2d 326 (Tex. App. 1995); *Sabia v. Neville*, 687 A.2d 469 (Vt., 1996); *Wilkinson v. Balsam*, 885 F.Supp. 651 (U.S. Dist., 1995) applying Vt. statutes; *Murray v. White*, 155 Vt. 621 (1991); *Dunning v. Paccarelli*, 63 Wash. App. 232 (1991); *Leslie v. State ex rel. Dept. of Soc. & Health Serv.*, 83 Wash. App. 263 (1996); *Elmore v. Van Horn*,

844 P.2d 1078 (Wyo. 1992); *Byrne v. Haynes-Seman*, Colo. Ct. of App., No. 95CA486 (unpublished, Aug. 8, 1996). See also, Annot., 73 A.L.R.4th 782, 826 (1989).

³ See, e.g., *Tuman v. Genesis Associates*, 894 F. Supp. 183, 188 (E.D. Pa., 1995) ("a therapist owes a duty of reasonable care to a patient's parents, where 1) the therapist specifically undertook to treat the child for the parents; 2) the parents relied upon the therapist; 3) the therapist was aware of the parents' reliance; and 4) it was reasonably foreseeable that the parents would be harmed by the therapist's conduct."); *Montoya v. Bebensee*, 761 P.2d 285, 289 (Colo. App., 1988), ("a mental health care provider owes a duty of care to any person, who is the subject of any public report or other adverse recommendation by that provider, to use due care in formulating any opinion upon which such a report or recommendation is based."); *Carly S. v. Child & Adolescent Treatment Services, Inc.*, 161 Misc.2d 563, 572, 614 N.Y.S.2d 661 (1994) ("where the determination of sexual abuse is made by a professional treating a child, with subsequent actions taken based upon that determination and aimed, whether in whole or in part, at shaping not only the conduct and well-being of the child but also the conduct of the suspected abuser, or the relationship between them, a duty of care is owed not only to the child but also to the alleged abuser."); *Peterson v. Walentiny*, 1995 U.S. Dist. LEXIS 4290 (unpublished, Jan. 9, 1995) ("It seems immanently clear the harm caused by an accusation of sexual abuse is foreseeable...This court is persuaded that the Supreme Court of Oklahoma, faced with the facts of the case at bar, would determine Walentiny owed a duty of professional care to [the accused father] which may have been breached by Walentiny's actions, resulting in foreseeable harm to [father]. Of course, the existence vel non of negligence is a question of fact for the jury."); *Wilkinson v. Balsam*, 885 F.Supp. 651 (U.S. Dist., April 17, 1995) ("plaintiffs have adduced sufficient facts to create a genuine issue as to whether Balsam ought reasonably to have foreseen that his negligent evaluation, diagnosis, and treatment of [the minor children] and his decisions...would cause injury to [the accused father]. If the fact finder determines that harm to [father] was foreseeable in the circumstances, then Balsam owed a legal duty to [father] to conform his conduct to the appropriate standard of care."); *Doe v. McKay*, 286 Ill.App.3d 1020, 678 N.E.2d 50, (Ill. App., 1997) ("in a case such as this involving repressed memories of sexual abuse, where the parent is brought into the treatment process by the therapist, the therapist's duty to the patient to use reasonable care in the treatment process is extended to the parent.").



Connecticut Supreme Court Holds that Mental Health Professionals Granted Absolute Immunity under State Reporting Act

Zamstein v. Marvasti, 240 Conn. 549 (Conn., April 22, 1997)

The Connecticut Supreme Court interpreted the Connecticut statute⁴ mandating reporting of suspected child abuse as granting absolute immunity to reporters. The majority concluded that "imposing a duty on mental health professionals pursuant to the plaintiff's theory of liability in the present case would carry with it the impermissible risk of discouraging such professionals in the future from performing sexual abuse evaluations of children altogether, out of a fear of liability to the very persons whose conduct they may implicate." While the majority emphasized the "strong public policy of encouraging medical professionals and other persons to report actual and suspected child abuse" which motivated passage of the statute, they apparently ignored the qualifying language which grants immunity to prosecution only where the action was undertaken in good faith.

In a strongly worded dissenting opinion, Justice Berdon referred to the injury described by the plaintiff father as "a tale of horror caused by the defendant's negligent conduct." At the time psychiatrist Marvasti agreed to evaluate plain-

tiff's minor children, he knew that the children were the subject of a bitter custody dispute and that the plaintiff's wife had brought criminal charges of sexual abuse against plaintiff. Marvasti never met or spoke with the plaintiff. He did present to the state's attorney's office edited videotapes of his interviews with the children. From those tapes, he had deleted the children's statements and actions exculpating the plaintiff from the allegations of sexual abuse. It was not until Marvasti was cross-examined at the father's criminal trial that this was discovered. Evidence showed Marvasti used several improper techniques to elicit incriminating responses from the children, including the use of coercive interview techniques, asking leading or suggestive questions, and offering candy as a reward. The father was subsequently acquitted of all criminal charges.

Justice Berdon concurred with the majority that a determination of whether a defendant owes a duty to another requires a two part inquiry: 1) whether it is foreseeable that harm of the general nature suffered by the plaintiff may result if care is not exercised; and 2) whether the imposition of such a duty is consistent with the public policy of this state. However, Justice Berdon stressed, "Because the legislature in adopting @17a-101(h) refused to grant absolute immunity from civil liability to mental health professionals for reporting child abuse when required by law, it cannot possibly be the public policy of this state that mental health professionals owe no duty under any circumstances to persons they negligently accuse of child abuse...Once the legislature has spoken, it establishes the public policy of the state."

Regarding the question of foreseeability, Justice Berdon emphasized, "It is clear that the harm caused to the plaintiff in this case was foreseeable...If, as a result of the edited videotape, the state continued with its prosecution of the plaintiff for sexual abuse, requiring him to endure a three month criminal trial during which it was discovered for the first time that the videotape was edited and at which he was found not guilty, the defendant would be hard pressed to convince a trier of fact that he acted in good faith...[Marvasti] knew or should have known that his actions would have a direct impact on the plaintiff's criminal prosecution and on the child custody proceedings, and could cause irreparable harm to the plaintiff and to his relationship with his children."

It is agreed that mental health professionals should not be discouraged from reporting child abuse. However, as Justice Berdon noted, "The concern that subjecting those professionals to civil liability for their negligent conduct could affect their professional judgment is allayed for several reasons. First, any parent who seeks to impose civil liability must prove that the mental health professional was negligent — that is, he or she failed to meet the appropriate

standard of care...Imposing liability on mental health professionals when they act negligently will result in the profession policing itself and establishing professional standards. These standards will not only provide guidance for the conduct of professionals, but will also have the salutary effect of safeguarding healthy relationships between parents and children, which could be destroyed when a parent is negligently accused of abuse."

References

4 Connecticut Gen Statutes (Rev. to 1995) @ 17a-101(h) provides that psychiatrists and other persons who in good faith make the report required by that section shall be immune from any liability, civil or criminal, which might result from making the report.



Dad Sued Therapist over Daughter's Memory of Abuse

by Ramon Coronado, *Sacramento Bee*, May 30, 1997

An accused father has sued a Sacramento therapist who allegedly "implanted and reinforced" false memories of child molestation in his 36-year-old daughter. Roger L. Brown, his wife and his son claim the therapy ruined their relationship with the Brown's daughter. The suit, which was filed in Sacramento Superior Court late in May 1997, names as defendants licensed clinical social worker Kim Johnson-Gebhardt, Cornerstone Counseling Services and psychiatrist Douglas Lidge, a former supervisor of Johnson-Gebhardt. The suit seeks at least \$1 million in damages.

The Browns' daughter, identified only as Jane Doe, is not a party to the suit. Jane Doe was admitted into a private psychiatric facility in Roseville for depression in August of 1992 and was under the care of Johnson-Gebhardt and Lidge. Upon her release, the woman was placed in an outpatient program of psychotherapy, which included the reading of the book, *The Courage to Heal*.

The Browns and Doe's husband attended several separate sessions with Johnson-Gebhardt. According to the Complaint, during a "confrontational session" between Mr. Brown and his daughter, Johnson-Gebhardt "encouraged the plaintiff's daughter to read a rehearsed script where Roger Brown was accused of sexually molesting his daughter from ages 2-4."

Mr. Brown denies he ever molested his daughter. "This therapy has torn my family in two," he said. The Browns are represented by Joseph C. George who is also a psychologist. Attorney George said the problem with repressed memories is that they are often believed by the patient without being independently verified.

Pivotal Decisions Anticipated

During the next few months important decisions are expected on "repressed memory" cases from Supreme Courts in Illinois, New Hampshire, Pennsylvania, and Tennessee as well as several State Appellate Courts.

Third-Party Lawsuit filed in Canada

Bergen, et al v. C. Ross, T. Schultz, Govt. of Manitoba, College of Physicians and Surgeons, Univ. of Manitoba, Queen's Bench (Civil Division) Winnipeg Center, File No. CI 97-01-02334⁵

The husband and sons of a former patient have sued psychiatrist Colin Ross and family therapist Tammy Schultz and their employer, the Provincial government and Provincial licensing agency. In a Complaint filed May 7, 1997, George Bergen and his two sons claim that the therapists administered excessive doses of drugs, fraudulently diagnosed MPD and implanted false memories of satanic abuse (SRA). They allege that as a result Mrs. Bergen became mentally disoriented and permanently disabled until she could no longer act as a parent.

The Complaint also states that the defendant Government set up a "Satanic Cult Committee" which relied on defendant Ross's beliefs that satanic cult crimes were occurring in Manitoba. According to the Complaint, the Government's Satanic Cult Committee had a duty to act on reliable scientific, medical or police evidence in order to protect the plaintiffs and the public. Instead, it "used and promoted unscientific, unproved, fraudulent literature, for public educational purposes." Defendant Schultz, in turn, provided her patients literature on SRA used by the Governments' Satanic Cult Commission, represented that she was on the Government Satanic Cult Committee and that her counseling was therefore fully approved by government authorities. Defendant College and University are charged with facilitating or permitting the defendant therapists to exercise professional misconduct which caused injuries to plaintiffs' family.

Mrs. Bergen entered therapy in 1992 for stress-related problems. Through memory recovery therapy she came to believe she had repressed memories of childhood sexual abuse, SRA, infanticide and devil worship which supposedly occurred over 22 years earlier. In 1994, she and her family sued her former therapists, but she discontinued the suit a year later for medical reasons. Mrs. Bergen's sister was also treated at defendant Ross's dissociative disorder program at the University of Manitoba and she also subsequently began to believe she had been sexually abused by satanic cults during her childhood. In 1986, her mental condition seriously deteriorated and she committed suicide. Plaintiffs state that defendant Ross breached a duty of care as director of the dissociative disorder program at the University where both sisters were treated. Plaintiffs claim they did not become aware of all the material facts on which their claim is based on until about January 15, 1997 when they reviewed sworn testimony of defendant Ross.

Reference

⁵ See FMSF Brief Bank #3.

Family Pursues Suit Against Police in Maryland Court

by John Wharton, *Enterprise*, June 1, 1997

A summons has been reissued against several officers from the St. Mary's county sheriff's department and a social worker based on their actions in removing two minor children from a family home. Their father had been charged with the sexual abuse of his teen-age daughter based on the daughter's "recovered memories" which developed in therapy. The suit alleged that the boys were threatened by law officers during their father's arrest and that five months later the boys were handcuffed, removed from the home and initially denied permission to speak with their lawyer.

The father, Danny Smith, was tried in 1993 on charges of sexual abuse of his daughter. The trial ended in a mistrial, with jurors unable to reach a unanimous verdict. His daughter, Donna, has since denied that her father ever sexually abused her or that she ever suffered from ritualistic abuse. According to the family's lawyers, the daughter feels that her "understanding of the truth had been manipulated by her therapists in determined efforts to support incorrect diagnoses and support the St. Mary's County prosecution of her father."



Therapy Records Must be Disclosed if Patient Raises Own Mental Condition as a Litigation Issue, South Dakota Supreme Court Rules

Maynard v. Heeren, 1997 SD 60, (So. Dakota, May 28, 1997)

The South Dakota Supreme Court noted that physician-patient communications are normally privileged and confidential under state law (SDCL 19-13-7) unless that privilege is waived by the patient. However the court held that state law (SDCL 19-13-11) also specifies that privilege is waived when an individual uses his own physical, mental or emotional condition as an element of his legal claim or defense.⁶

In this case, the Maynards sued for slander, negligent misrepresentation, and intentional infliction of emotional distress. The alleged emotional suffering of the plaintiff was offered as evidence of damages. The court held that the waiver of privilege under SDCL 19-13-11 gives the party seeking disclosure an absolute right of access to the privileged material. The court did note that the trial court may use sound discretion in placing reasonable restrictions upon dissemination and use of the therapy records. An in camera hearing (that is, in the judge's chambers) may be held to determine whether the material is relevant. State law assures that no privileged information which is not necessary for litigation purposes is publicly disclosed. In addition, the party seeking to invoke the privilege may file a motion for protective order under SDCL 15-6-26(c).

Reference

⁶ For similar rulings, see FMSF Working Paper, "Access to Records."

Eighth Circuit Court Rejects Tolling Statute of Limitations Regarding Determination of Causal Connection

Frideres v. Schiltz, 1997 U.S. App. LEXIS 11614
(U.S. App., May 19, 1997)

Following a lengthy history,⁷ a lawsuit alleging childhood sexual abuse over 24 years prior to filing was dismissed by a U.S. Court of Appeals. Plaintiff claimed that she had been sexually abused as a child between the ages of five and fourteen by her brother and father. Plaintiff admits that she always had some memories of abuse and that she spoke to her family physician and priest about it, but argues that she was unable to understand its causal link to her current problems until she began counseling. The court held that the facts admitted would have "prompted a reasonably prudent person to begin seeking information as to the problem and its cause," citing *Woodroffe v. Hasenclever*, 540 N.W.2d 45 (Iowa, 1995) and *Borchard v. Anderson*, 542 N.W.2d 247 (Iowa, 1996). The court noted that even if plaintiff did recognize additional injuries after her treatment with her psychologist in 1990, this fact does not revive her claims for injuries occurring much earlier than this date.

Reference

⁷ Originally filed in 1991 in district court, several certified questions were decided by the Iowa Supreme Court, *Frideres v. Schiltz*, 540 N.W.2d 261 (Iowa, 1995).



Five Sex Charges Dropped Against Toronto Teacher

by Dale Anne Freed, *Toronto Star*, May 16, 1997 *Regina v. Cox*, Ontario Court, Provincial Division.

Five charges of sexual offenses were dropped on May 15, 1997 against a Toronto elementary school teacher because of lack of evidence. The teacher, John A. Cox, was charged with indecent assault of a 26-year-old former student. The woman claimed she had no memory of the alleged assault until two years before the charges were laid. She eventually named five other men who she said had also abused her. Cox's defense lawyer, Michael Code, said the woman's videotaped statement was "full of all kinds of indices of unreliability. She kept on alleging more and more people were sexually assaulting her. That was eventually what broke the charges."

Ontario Court Judge Arthur Meen, said, "It's regrettable it's taken this length of time to get the charges withdrawn, but it's better late than never." Attorney Code urged police to insist on "very, very thorough investigations before they lay the charge. I think we're currently living in an environment where you utter the word child abuse and everyone is spooked. It's reminiscent of the Salem witch hunts three centuries ago," he said.

After the acquittal, Mr. Cox, who had been a teacher for more than 27 years, learned that he won't be allowed back into a classroom until the Toronto Board of Education con-

ducts its own review. If the outcome of the review is negative he could face firing.



Court Clears Police Chief of Sex Abuse Charges

by Bill Hunt, *The Intelligencer*, June 6, 1997

A police chief from Perth, Ontario Canada was cleared of all charges that he sexually assaulted his daughter years earlier. Thomas Halliday's 36-year-old daughter alleged that he sexually assaulted her from age 3 until she was 10, and that he also assaulted another woman whose identity cannot be released. Following a five day trial, the jury reached a not guilty verdict on all counts.

Defense attorney Alan Gold told the jury that the complainant had admitted that she had no recollection of the events alleged to have taken place between 1963 and 1979 until she began to imagine them during therapy. Attorney Gold stated, "You could not possibly convict anyone on the quality of the evidence provided."



A Case Study of Justice Gone Awry - The Edenton Case

The complex child sex abuse case⁸ in Edenton, North Carolina received national attention in the third installment of a PBS Frontline documentary which aired May 27, 1997. "Innocence Lost: The Plea" by producer/director Ofra Bikel⁹ described a criminal case which originally involved seven defendants, 29 children and hundreds of charges. Along with horrific accounts of sexual abuse, young children from the Little Rascals Day Care Center told tales of sharks and spaceships and babies being shot. Of the seven adults accused, charges against three were dropped, but only after six years. Through Bikel's unwavering look at the facts of the case, questions are raised about our criminal justice system in general and plea bargains in particular.

Beginning with the arrest of Robert Kelly in April 1989, the Little Rascals case became the most expensive and prolonged criminal prosecution in state history. It cost more than \$1.5 million and the trial lasted over 8 months. Kelly was convicted on 99 counts of sex abuse in 1992 and sentenced to 12 consecutive life terms in prison. The next year Kathryn Dawn Wilson, the cook at the center, was also convicted on sex abuse charges and given a life sentence.

There was no physical evidence, no conclusive medical evidence and no eyewitnesses. The prosecution based its entire case on the post-therapy affidavits of 29 children - none of whom complained about abuse prior to visiting with the psychologists. Despite testimony that objects were used to inflict painful damage to the children, no physical evidence was presented. There was testimony that the center

was open at all times and that parents dropped in without warning. Nobody saw anything. Nobody found any evidence, such as the pictures children said were taken.

Also accused were Kelly's wife Betsy, three other staffers and a video store owner who claimed never to have been inside the day-care center. The convictions of Kelly and Wilson, though ultimately overturned, helped prosecutors convince Kelly's wife Betsy, and Willard Privott to plead "no contest." The alternative was to risk trials that could have sent them to prison for life. They had spent 2 and 4 years in jail, respectively, awaiting trial.

In 1995, a unanimous North Carolina Court of Appeals¹⁰ overturned the Kelly and Wilson convictions and criticized prosecutors and judges. In one decision, the court said prosecutors were guilty of "flagrant violation of our rules of evidence and misuse of closing argument." Citing numerous errors in the trial, the appellate court ordered that Bob Kelly and Kathryn Wilson be granted new trials. In September of 1995, the state Supreme Court affirmed the appellate court's findings. An editorial from a Wilmington NC paper said, "Those two decisions are about the only aspect of this notorious case in which North Carolinians can take pride."

Finally, last December prosecutors decided to drop the charges against three other young female employees. Charges against Dawn Wilson, who had refused to accept a plea despite enormous pressure and increasingly generous offers, were also dismissed.

Four days before the airing of "Frontline," Prosecutor Nancy Lamb said she was dropping the remaining charges against Bob Kelly because the parents of the children involved did not want to put them through another trial. But the ordeal is not over for Kelly. Prosecutor Lamb has filed new charges against him, alleging that he abused another child, not a student at the day-care center, even before the alleged abuse at Little Rascals. Kelly is still scheduled to be tried on those charges.

The new charges, which Lamb said surfaced during a review of the day care case, allege that Kelly raped and molested a 9-year-old Edenton girl over 10 years ago. Details of the new case are sketchy. Kelly said he is innocent and that he has never met the girl, although he knows her family. On May 23, Lamb said she didn't know when the new case would go to trial.

Robert Kelly, who spent six years in prison, has been free on bail since September 1995.

References

8 For more information, see www.pbs.org; Click on: "Innocence Lost" May 27, 1997. For a chronology of the case, see Whitlock, C. and D. Loomis, (5/24/97) "Little Rascals charges dropped," *The News and Observer*, Raleigh, NC.

9 Producer Ofra Bikel won an Emmy and two prestigious duPont-Columbia Silver Batons for her earlier "Innocence Lost" installments in 1991 and 1993.

10 *North Carolina v. Kelly*, and *North Carolina v. Wilson*, 118 N.C. App. 589, (May 2, 1995).



Comments About Edenton

"The full truth of what happened at Edenton may never be known. What is known is that prosecution became persecution. And it isn't over yet."

Editorial, *Morning Star*, Wilmington, NC, 5/29/97

"The Little Rascals case has been painful for everyone. It has wasted many years of many lives. The greater waste will be if nothing is learned from it."

Editorial, *The News and Observer*, Raleigh, NC, 5/28/97

"Beginning with the arrest of Kelly in April 1989, the Little Rascals case became the most expensive - at more than \$1.5 million - and prolonged criminal prosecution in state history. And now it can be said that rarely have so much time and money been spent in vain. Never has the state devoted such resources to wrecking lives with such flimsy evidence and unconscionable delays. [I]t is a chilling example of the judicial system that was unchecked by common sense or common decency."

Editorial, *News and Record*, Greensboro, NC, 5/28/97

"The importance of Bikel's latest film lies not only in its eternal questioning of accepted truths, but also in its ability to force you into the shoes of the defendants, making you wonder how you would decide if confronted by the choices facing some of the defendants: Plead innocent at a trial that brings the probability of a lifetime in prison, away from your loved ones, or agree to the partial admission of guilt that comes with freedom?"

Los Angeles Times, 5/26/97

"Children all too often do suffer terribly at the hand of perverse and brutal adults, often parents and relatives...Children must be protected not only from predators but from counselors of questionable credentials. And those accused, no matter how horrendous the charges, are entitled to a presumption of innocence and a scrupulously fair trial."

Editorial, *The Washington Post*, 5/24/97

"The silence of the prosecutors is deafening: the only possible explanation is that they are trying to save face. On Friday, prosecutors said they would not retry the last two remaining defendants, whose previous convictions had been overturned on appeal. They claimed it was because they didn't want to put the children through another trial, and not because of a lack of evidence. Those who watch tonight will know better."

Editorial, *The Atlanta Journal and Constitution*, 5/27/97

"But the documentary does suggest that the plea-bargain system is like a lose-lose situation for defendants. As one defendant says angrily, "If I'm supposed to be the monster they said, why did they offer me a plea?"

Steve Hall, "Documentary focuses on plea-bargains," *The Indianapolis Star*, 5/27/97

"I assumed that if I was accused of doing something I didn't do, the system would take care of me. That's an illusion...I wanted to hear from [the prosecutors]. I needed something to quiet me, to assure me that the prosecution wasn't whimsical."

Ofra Bikel, filmmaker/producer of "Innocence Lost: The Plea," regarding her conclusions about the justice system after her research, 5/27/97

Communists, Confirmation, Critics, And The Courtroom

August Piper Jr., M.D.

Return with me, for just a moment, to the bad old days! Yes, dear readers, to those thrilling days of yesteryear, when perhaps the deadliest accusation one could face was that of being a "card-carrying Communist." (In the bad new days, of course, an accusation of "child abuse"—say by a divorcing spouse in a custody battle—possesses a similar damage-inducing capacity. But I digress.)

A recent letter's first sentence—"I have been advised that you are, or were, affiliated with an organization known as the False Memory Syndrome Foundation"—sounded like the writer thought the FMSF was some kind of Communist or terrorist front. But the letter turned out to be nothing more than an intelligent and well-written request for information. I thought this column's loyal readers might find the discussion interesting.

First, the writer wondered if information existed that would allow current or former patients to determine whether their memories were true or false.

The letter continued: "I have read that some psychotherapies, especially those involving hypnosis, may make patients vulnerable to even slight suggestion, to the point that false memories develop. Is this true? And suppose this actually occurred: would it then be possible to reinforce the memory, in case a patient began to recognize its falsity?"

Now to discuss these questions. Of course, the answer to the first is simple and well-known: proof of memories' accuracy can be obtained only by some kind of external corroboration.

What kind of corroboration suffices for proof? Ay, there's the rub! In one recent trial, for instance, an expert tried to convince a jury that a man's mental illness, and his alleged—not

proven—mistreatment of one sister proved that he had sexually mistreated another sister. Such elastic criteria for "proof" flower not only on the witness stand, but appear in published papers as well. For example, one 1995 study claims to provide "confirmation of recalled abuses in 56% of [the study's] cases." How did the author obtain "confirmation"? Why he took his patients' words, of course! "I accepted my patients' accounts of [the] confirmations and confessions," he writes.

A heated debate rages around the second question. The treatments loosely described as "recovered-memory" therapies are the ones against which this kind of accusation is most often made. I should mention in passing here that this debate burns so brightly partly because no one agrees exactly which techniques should be included under the term "recovered-memory therapy." Further, no one agrees on exactly how vigorously a given technique would have to be pursued by a therapist before he or she could legitimately be said to be implanting memories. More on these two points just below.

Several studies have produced what appears to be quite solid and convincing evidence that under at least some circumstances, people can come to believe things that never happened. And yes, hypnosis is one of the factors that can lower thresholds of belief, thus making people susceptible to implanted false memories. It is, of course, because of this ability to render people more suggestible that American courts have for years taken an exceedingly dim view of hypnotically-refreshed testimony. By the way, formal hypnosis-inducing procedures—you know, staring at the swinging watch or the lighted candle—are not necessary to produce a state of hypnosis.

Can peoples' false memories be reinforced? I'll let you answer that, based on the following true story. I know about one patient who stayed in a certain hospital for several months.

The physician, who was clearly an authority figure for this patient, repeatedly interviewed her, telling her that he knew she had hidden "abuse memories." In addition, the staff and physician offered plausible-sounding explanations, based on the idea that the patient had been mistreated as a child, for her present-day symptoms. The doctor strongly discouraged contact with her disbelieving family members. And finally, the patient was encouraged to spend several hours each day rehearsing the thoughts and feelings associated with the "memories" she developed.

In other words, this patient was exposed to several procedures known to contaminate memories and reinforce inaccurate beliefs. For a more extensive discussion, see Lindsay and Read, *Applied Cognitive Psychology* 8:281-338, 1994.

Well, one might ask, if the evidence is all that "solid and convincing," then how come a debate rages? It rages because critics attack these studies. The critics argue: *merely showing* that one can implant inaccurate memories of relatively benign childhood events (such as breaking a punch bowl) says nothing at all about whether recollections of more malignant experiences (such as being raped at age two at a family picnic) can be similarly implanted. The critics argue, in other words, that what happens in the laboratory has nothing to do with what happens in the therapist's office.

The debate rages for another reason, too. Earlier, I mentioned the disagreements that swirl around the concept of "recovered-memory therapy." These disagreements allow therapists accused of implanting false memories to say, "Well, it may be possible to make people believe things that didn't happen, but the techniques I use in my practice can't do this," or, "Well, I occasionally ask questions about childhood sexual abuse, but these questions wouldn't implant memories if they

weren't already there."

This, of course, is the classic "it's those other guys who are doing bad things" argument; the lengths to which it is sometimes stretched are truly astounding. Take just a single example. One well-known authority in the field of multiple personality disorder has started to testify against people being sued for practices quite similar to those he himself advocated not too long ago.

Yes, it is possible that psychotherapy is poorly modeled by laboratory experiments. Yes, it is most unlikely that an occasional simple question from a therapist would ignite a firestorm of sexual-abuse memories in a patient. But let us cut through these distractions, these marginal concerns. The central and fundamental question in recovered-memory cases is—or should be—whether patients are harmed when therapists encourage them to believe things that never were true. For example, is it harmful for a doctor to tell a patient, as in one recent case, that the patient's grandmother had boiled babies in a vat to make soap, or, as in another, that at a family picnic the patient's relatives were serving meat made from human flesh?

* * *

FLASH! The next column will discuss a leading multiple personality disorder proponent's realization, reported in the January 1997 *US News & World Report*, that 20% of MPD diagnoses are incorrect!

* * *

I recently talked to a mother and father who are suing their daughter's former therapist. A deposition in the case was scheduled in a few days. (A deposition is an official questioning under oath by an attorney as it would be in court; your answers are written down and may be used during a later trial.) These parents wanted to reduce the stress of being deposed, and they wondered what I, as a therapist, thought of their idea of buffering this stress by providing an occasional

humorous or sarcastic answer during the deposition.

As everyone knows, much of humor's power rests on its nonverbal features—rhythm and timing, facial expression, gesture, accent, intonation. Indeed, a joke's words may be completely contradicted and overridden by its nonverbal elements. However, because these elements cannot be captured in the written transcript on which lawyers must rely, the humor is completely lost. The opposing lawyer would have the luxury of examining the deposition's words, stripped of their nonverbal coloring. In my opinion put simply, humor in depositions is death.

A lawyer I consulted on this question made another interesting comment. He said that judges attempt to avoid excess emotionalism in the courtroom, because it impairs cool and rational consideration of the legal issues. I knew this, but did not consider the implication: witnesses are often forbidden to cry in the courtroom. At the first sign of weepiness, His or Her Honor often calls a recess. What this means is the effect is lost. If you're hoping to use emotion to help reach the jury—don't.

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M A K E

①

D I F F E R E N C E

When bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle.

Edmund Burke Vol. I, p. 526.

Thoughts on the Cause of the Present Discontent

This is a column that will let you know what people are doing to counteract the harm done by FMS. Remember that five years ago, FMSF didn't exist. A group of 50 or so people found each other and today more than 18,000 have reported similar experiences. Together we have made a difference. How did this happen?

We are always urging families "to tell your story." If we want to reach a multitude of people, we need to go where the people are. Where are the people? Look at the best seller list, both fiction and non-fiction. Pick your favorite author and get his or her mailing address from a local book store. Write and tell your story.

Our stories are true and as the saying goes "truth is stranger than fiction." Think of the components of any family story: fanaticism, greed, incompetence, malpractice, ruined families, suicides, lawsuits, extortion, secret settlement out of court, insurance fraud and sometimes, happy endings.

Louisiana: Many FMS groups have regular meetings. A dad suggests setting a goal at the beginning of each year for your group. Get a complete set of FMS Foundation Newsletters and donate them to the library in your area. The cost could be split. The contact with local librarians is invaluable and it could lead to book displays on FMS or even book discussions on FMS and associated topics.

Illinois: Through the generosity of an FMS Dad, Illinois families were able to secure a booth and hand out information at the Rockford, Illinois Senior Citizen Fair. Hundreds of people attended. The families were well received and are looking for other "Senior" events in which to participate.

Washington: If you think a book would be valuable to others, let the publishers know. Recommend it to book clubs like the Oprah Winfrey Book Club, for example.

Send your ideas to Katie Spanuello c/o FMSF.

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No Middle Line on Corroboration

by Allen Feld

"Taking the middle line: can we accommodate both fabricated and recovered memories of sexual abuse?"

Jonathan Schooler, Miriam Bendiksen, and Zara Ambadar. In Martin Conway (Editor) *Recovered Memories and False Memories*. Oxford University Press, 1997

Thus, in the absence of actual corroborative evidence, science may never be able to tell an individual for certain whether his/her memory is real or simply fabrication. Such an individual, like the field as a whole, may have to come to accept the fundamental ontological uncertainty of many recovered memories. (p. 287)

Jonathan Schooler and his colleagues included in their chapter title the question, "(C)an we accommodate both fabricated and recovered memories?"¹ They believe we can. However, they still found it necessary to include the above statement as part of their concluding comments. They support "accommodate(ing) both fabricated and repressed memories" after reviewing the evidence for both kinds of sexual abuse memories. They analyze four cases they contend demonstrate that some people may actually forget being sexually abused.

Material familiar to readers of the *Newsletter* is used to support the existence of false memories of sexual abuse: the research from cognitive psychology and the research on the frequent use of highly suggestive therapy practices; the recovery of "incredible events"; retractor stories and "the powerful lessons from history on the dangers of discounting individual susceptibility to persuasion." *Newsletter* subscribers may also be acquainted with some of the material used to support the existence of recovered memories. However, the analysis of the four cases, which forms the substance of

their pro-recovered memory position, may be material that is less well-known to readers.

The individual cases are analyzed using three "distinct claims" to validate a sexual abuse recovered memory: *"the reality of the event... the reality of forgetting... the reality of the recovery experience"* (260, italics in the original). While these seem to be reasonable criteria, their application requires some subjectivity. The authors point out the uncertainty of whether the four cases fully meet the prescribed standards. Significantly, Schooler and colleagues unequivocally embrace the necessity of corroborated evidence to determine the veracity of a recovered memory. The significance rests not in that new ground is broken in this article. It is where the statement appears - in an article that examines what the authors report as documented cases of "recovered memories" of sexual abuse.

There would have been no need for a Foundation if corroboration had been the universal therapeutic practice. If therapists adhered to a corroboration standard, thousands of families would have been spared the devastation of being torn apart. If the tolling of the statutes of limitation for these crimes included a corroboration requirement, thousands of people would have been spared the ordeal of litigation. Millions of tax, insurance and private savings dollars would not have been wasted. There is no "middle line" on the need for corroboration of new memories of sexual abuse by adults. After all, this need for corroboration is where the science is.

Reference

1. Schooler, J. W., Bendiksen, M. & Ambadar, Z. Taking the middle line: can we accommodate both fabricated and recovered memories of sexual abuse? *Recovered memories and false memories* (ed. M. A. Conway). pp. 251-292. Oxford: Oxford University Press.

Allen Feld is Director of Continuing Education for the FMS Foundation. He has retired from the faculty of the School of Social Work at Marywood College in Pennsylvania.

F R O M O U R

R E A D E R S

Responses to Stephen Lindsay (June, 1997)

Dear Editor:

I am disturbed by a comment in the letter from Stephen Lindsay in the June issue of the newsletter. He wrote, "I have submitted this letter for publication in the FMSF Newsletter because I believe that some competent psychotherapists who do not use suggestive memory work in their practices and who might be powerful and effective allies in discouraging others from using such techniques, perceive the FMSF as claiming that all or virtually all recovered-memory experiences are illusory..." Is Dr. Lindsay implying that competent therapists, who might be powerful and effective allies in discouraging others from using suggestive memory work, knowingly are not doing so? Is he implying that they are knowingly not doing so simply because of their perceptions of FMSF claims regarding recovered-memory experiences?

Surely Dr. Lindsay does not condone competent therapists being silent witnesses to the destruction of families by therapists who use dangerous and unscientific practices. Despite their perceptions regarding FMSF, competent therapists have a moral and ethical responsibility to muster the courage to publicly discourage both the use of suggestive techniques and the reckless "cutting-off" or isolation of clients from their families.

Michele Gregg

* * *

Dear Dr. Lindsay:

There are several points that I believe need to be made in reference to your letter in the June 1997 issue of the newsletter. Some time ago I realized that discredited fringe therapists are not the major obstacle to the expeditious ending of irresponsible "mem-



ory work." It is the influential, respected professionals who unwisely endorse unsubstantiated beliefs and who use their clout to spread them around. Ambiguous statements on "repressed" and "recovered" memories issued by various professional associations are among the most disturbing examples of harmful concessions to pseudoscience. The failure of most of these associations to base their conclusions on scientific evidence rather than on expedient political notions set the clock in the "memory war" back substantially. It is clear that many people will not easily give up their belief in the "repression" and "recovery" of previously "repressed" memories. Too many careers have been built around this notion; too many jobs have been created in the wake of sex abuse hysteria.

It seems obvious, therefore, that in order to move ahead, we have to reach out, to search for common ground and to seek points of agreement without compromising science. In the past few years, consensus has emerged with respect to the existence of false memories and to the impossibility of distinguishing between true and false memories in the absence of independent corroboration. This consensus on two critical points was an important development. To move ahead we need to nurture a common ground embodied by the quest for corroboration. The quest for corroboration is paramount to ending this crisis. It will eliminate the miscarriage of justice in the courts. It will weed out dubious research based on presumed but never verified traumas.

I was disappointed that you did not bring up this important point about corroboration of memories in your letter. Instead, you claim that some abuse is "implausible" and some is "relatively plausible," but where do you draw the line? Even if abuse is plausible, does that mean that it happened? I know a case where a man was sen-

tenced to 7 1/2 years in prison because a judge found the uncorroborated memories "plausible" although many others felt they were "implausible." If we judge the veracity of memories solely on the basis of "plausibility," we are treading on very shaky ground from a legal, ethical and scientific viewpoint.

I am deeply concerned that your proposed model of "recovered memory experience" (RME) adds confusion to an already complex situation. You argue that because a recovered memory experience encompasses both true memories and "illusory memories," the statement "some recovered memories are true," is a correct statement. Since you reject the concept of massive repression, you base this statement exclusively on "forgotten-and-remembered" memories. The confusion comes from the fact that there are still some people who believe in repression and for whom the statement "some recovered memories are true" means some "repressed-and-recovered" memories are true. Because these different interpretations of the statement can be made, it is confusing. To help us move forward, we need to have statements that carry the same meaning for all participants.

In the early 90s and up until quite recently, the term "recovered memories" applied exclusively to "repressed-and-recovered memories." The assertion that "some recovered memories are true" carried with it the underlying assumption that the "recovery" was preceded by "repression." After all, the Foundation was formed to help individuals who, without exception, reported accusations based on "repressed-and-recovered" memories. I suspect that even now, a majority of people, both lay and professional, would interpret the statement "some recovered memories are true" as a confirmation of "repression." Only recently, as the concept of massive repression has become discredited, has there been

a need to muster support for this statement by including "forgotten and remembered" memories.

You wrote: "...an ordinary forgetting mechanism can sometimes lead people to forget isolated instances of child sexual abuse especially if the abuse was not physically violent..." and "...it seems likely that some adults who experience [isolated instances of non-violent abuse] will fail to remember it in adulthood and that some such adults could recover essentially accurate memories of the abuse if appropriately cued..."

How do people know that sometime in their past they "failed to remember?" Isn't that an untestable hypothesis? For example, I may recall absolutely nothing about my first Girl Guides field trip on my own, but when cued by a friend, a photograph or an old diary, the memories surface with surprising clarity. Was there any period in my life when I would not have been able to recall these memories? I don't know. How could I know? Do these memories also qualify as "recovered memories?" Or is this term reserved only for memories of child sexual abuse?

Although I appreciate your desire to help people find points about which they can agree, I think that your efforts to expand the scope of the term "recovered memories" to include ordinary forgetting and remembering, does the opposite. The term "recovered memory experience" is too broad to serve the purpose of effective discussion. A fresh neutral term is needed - perhaps "intermittent recollection" or "cued recall" for the condition of "forgotten-and-remembered."

Sincerely,
Paula Tyroler

"Just as Ebola is coming out of the rain forest, multiple personality is coming out of the United States."
Linton Weeks
Washington Post, April 12, 1997

Back Where We Were Five Years Ago

As you may know, my daughter came back and, in time, admitted her error. She even worked for about a year in my office while I was representing the victims of False Memory Syndrome in lawsuits. She often brought with her to the office my youngest grandson who was then under a year old. It was a time of healing and reestablishing the strong bonds of affection and respect that had been undermined but not destroyed. We remain on good terms and I see both my grandsons as often as I wish with no restrictions. Words cannot express the relief and gratitude I feel.

Looking back from this vantage point it is like a nightmare from which we have awakened. There were for us distinct stages. I was devastated at first, unable to carry on my practice or do much of anything. Then came our discovery of the Foundation and hundreds of other families who were enduring the same misery. We became activists and, on a very modest scale, organizers. Our top priority in life was working to fight the bogus therapy that caused the misery we all felt. During that time I was not very interested in or involved in my practice. Then came an integration of our activist interest in exposing the toxic therapy and the fact that I was and am a trial lawyer. I took on a series of cases against therapists, doctors and hospitals. Over a two year period these cases ran their course. I guess I am back to what I was doing about five years ago just before the FMS bombshell exploded in our lives.

A Very Happy Dad

Initiating a Talk about "It"

After a two year breach, my daughter initiated contact and essentially reestablished her relationship with me — but never discussed the matter further. It has been over a year now and I thought that maybe we should address those matters of repressed memory/false memory recovery. So I initiated the subject through suggesting that she read a book. I had in mind Dr. Paul Simpson's *Second Thoughts*. Enclosed is my daughter's reply and my reply back to her.

Dear Dad,

I received your letter about wanting to talk about what caused us so much disruption. A part of me feels like I don't ever want to get back into it. It's done; it's over and as long as we both treat each other with decency and respect right now that's all that matters. But then a part of me wonders if there might be some things we could resolve.

I assume the book you want me to read is on the false memory syndrome. If you want me to read that book and say, "I made a grave mistake. It was all false," I don't think it is likely, and I don't think it is likely that you will read one of my books on repressed memories and tell me that my memories are real. The only reason I really delved into my memories was because I felt that they were at the core of my bulimia. In June, it will be four years since I've practiced the bulimia. My biggest concern right now is living fully in the present, without anything weighing me down. I don't blame you any more Dad. You have always given me everything you could and that's all I could expect. So I'm not sure what is left to discuss except maybe to apologize for any unintentional harm we did to each other. I am open but must say that I have no desire to debate it or have to prove myself "right." The only thing that would motivate me is the potential of further healing and improving our relationship. At this point that's all that matters.

So, that's where I stand. I look forward to hearing from you soon, Dad.

Love always

Dearest "Daughter",

I believe that I am blessed to have you reunited with me after the time you and I were estranged. I do not want to jeopardize the rapprochement by picking at old scabs. But I have always believed that ultimately it is the best policy to know and speak the truth. I believe this because errors of understanding create problems of their own and the truth can be dealt with no matter how painful it may be. So I have brought the subject up between us after an appropriate time in which we have reestablished contact first and then resumed some of the normal daughter-dad relationship...In your own time, I would like to go over the matter with you. I do not know whether we can ever settle the matter because we seem to still have diametrically opposed positions and both of us cannot possibly be correct about the issue...You see, I never was exactly told by you what your memories were. Similarly, when you reunited with me two years later, you never told me what caused you to do so, i.e. what you felt about those repressed and recovered memories now. That's why I wrote you. Your letter is helpful to me to understand where you are at now.

I am not trying to argue the matter and I know the subject is way too powerful for either one of us to dismiss our beliefs as false. I do not think I can convince you and I believe that you could not convince me either. But that does not dismiss the fact that we ought to try to understand the other's point of view. So I propose that we read a little of the opposing literature and then see how we feel about things afterward. Let me know what you might want me to read and I'll do the same, if you agree.

Love, Dad

This Just In...

California Appeals Court holds "repressed memory" claim does not meet evidence requirements under *Kelly-Eve* and plaintiff may not testify as to any "recovered repressed memory." *Engstrom v. Engstrom*, Cal. App., 2nd Dist., No. B098146, unreported, June 18, 1997.

"Television has done much for psychiatry by spreading information about it, as well as contributing to the need for it."

Alfred Hitchcock

Update from Sweden

On April 4 we had a meeting with the Swedish Society for Psychiatrists and with the Government Board for Public Health. We, the working party, consist of two doctors, one scientist, one nurse and some family members. Like our earlier contact with the Psychology Society and the Board of Social Welfare, the Psychiatrists were first astonished that such an evil thing had really come to fine, nice Sweden. In September the Swedish Board of Social Welfare will arrange a meeting where one of the medical members of our Working Party will present information about the problem of FMS.

The Courage to Heal has now been translated into Swedish. The Working Party will try to disseminate information about books that present scientific information about memory to the public and professionals. A book published in Sweden (in English) that Americans may be interested in is *Textual Analysis: A Scientific Approach for Assessing Cases of Sexual Abuse*. Vol 1 and 2 by Max Schamberg (1996) Acta Universitatis Upsaliensis, Uppsala Studies in Education.



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Leo Tolstoy

STATE MEETINGS

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July 1 @ 1pm in Thousand Oaks

Speakers: Pamela Freyd and Eleanor Goldstein
Cecilia (310) 545-6064 or
Carole (805) 967-80085

OHIO

The Rutherfords will be speaking in September.

Please see next month's issue for more information.

NORTHERN MOUNTAIN REGION

October 18 in Helena, Montana

Speakers: Pamela Freyd and the Rutherford family
Lee & Avone (406) 443-3189

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