



Dear Reader

Ensuring that information about false memory and how it occurs is readily available to the public has been one of the Society's challenges. When we began in the early 90s the internet was in its infancy and regular access came some years later. Now we have reached the point where the British Library has asked to archive the BFMS website as part of its programme to permanently preserve selected sites to represent aspects of UK documentary heritage and as a result they will remain available to researchers in the future. They aim to develop preservation mechanisms to keep our publication permanently accessible as hardware and software change over time. An historical record of the website is now assured.

Moving some resources into book publishing is providing us with an additional mechanism for preserving information. Two of our latest books, *Miscarriage of Memory* and *The Ravages of False Memory* are reviewed for us on page 12 along with a full insight into Meredith Maran's story of retraction in *My Lie*. *The Ravages of False Memories or manipulated memory* by Brigitte Axelrad has been translated into English from French, published by the BFMS and will be launched at this year's annual general meeting. *Miscarriage of Memory* has been well received but we still need to ensure that it ends up on many more professional bookshelves. Members can help with this task.

Our attention was recently drawn to yet another advertisement for past life regression at a centre in Bristol. The therapist states that through hypnosis it is possible to access the stored information in the sub-

conscious mind. How useful it would be if a therapist, like the one referred to, found time to complete their continuing professional development requirements by reading the BFMS position statement on the recovery of memory prepared for us by our Scientific and Professional Advisory Board. (See page 3). Dr Naish points out, "...when no memory whatsoever has been proffered, the only things that a misguided therapist can feed back are his or her own beliefs about what might have happened." A past life perhaps?

Finally, we are very fortunate to publish a succinct summary of the complex 211 page Law Commission's report on Expert Evidence in Criminal Proceedings, recently published in March 2011.

Madeline Greenhalgh

Table of Contents

Editorial.....	1
News Features.....	2
Special Feature	
BFMS Position Statement	3
Members' Forum.....	6
Book Reviews	
Miscarriage of Memory.....	12
Ravages of False Memories....	12
My Lie.....	13
Legal Forum	
New Proposals on Expert	
Evidence.....	15

NEWS

Latest news on the regulation of counselling and psychotherapy

Over the last four years, some BFMS members may have been following the debate about New Labour's plan for statutory regulation of counselling and psychotherapy via the Health Professions Council (HPC). In a supplementary paper to the new Health and Social Care Bill released last month, the Coalition Government quietly abandoned Labour's plan, but simultaneously announced a new approach based on accreditation of existing voluntary registers by a statutory body.

The decision by the Department of Health in 2007 to appoint the HPC as the regulator had been contentious from the moment it was announced and it soon ran into opposition from all sides. Even professional bodies which were in favour of statutory regulation said that HPC was the wrong choice. The new approach involves the existing voluntary registration bodies such as the British Association for Counselling and Psychotherapy (BACP) and the United Kingdom Council for Psychotherapy (UKCP) applying en-bloc for accreditation by the Council for Healthcare Regulatory Excellence (CHRE). CHRE is the 'super-regulator' which already oversees all the other statutory bodies such as the General Medical Council, the Nursing and Midwifery Council, and the HPC. The CHRE will also change its name to the Professional Standards Authority (PSA) and become independent and self-funding via a levy on those it regulates and accredits.

Detailed criteria for accreditation of the voluntary registers have yet to be announced but expect to see clear ethical guidelines, robust and accessible systems for handling complaints with independent involvement, and some means of removing people from the register ('striking off') where there is serious misconduct. A key issue for BFMS members will be third party complaints. BACP, the largest organisation in the field, already accepts complaints from third parties directly affected, so this could well be one of the criteria for CHRE/PSA accreditation, with appropriate safeguards to protect clients and practitioners from any malicious allegations. The new approach has been broadly welcomed, including by those who were opposed to HPC regulation, and it could potentially be up and running quite quickly as it won't require the transfer of thousands of practitioners to a new state register.

It will also be open to other presently unregulated professions to apply to CHRE to have their voluntary registers accredited.

LINKS

CHRE has issued a statement about its new roles and responsibilities which can be found here: http://www.chre.org.uk/img/pics/library/Proposals_for_new_roles_and_responsibilities_for_CHRE.pdf

CHRE is also currently asking for suggestions on how 'fitness to practice' adjudications could be improved. BFMS members may want to contribute their views. There is a web based feedback form here: <http://www.chre.org.uk/yourviews/375/>

Alternatively you can send email to policy@chre.org.uk

The Government's command paper, 'Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff' can be downloaded here: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_124359

Other useful links

The Council for Healthcare Regulatory Excellence www.chre.org.uk
British Association for Counselling and Psychotherapy www.bacp.co.uk
United Kingdom Council for Psychotherapy www.psychotherapy.org.uk

Jennifer Maidman
She is a full time musician, a qualified counsellor and a member of BACP
(See page 19 for details of her interest in the plans for regulation of psychotherapy and counselling.)

BFMS
17th AGM
9th April 2011
London

SPECIAL FEATURE

BFMS Position Statement on the Recovery of Memory from Dr Peter Naish, Chair of the Scientific and Professional Advisory Board

We are very well aware that adults who were victims of childhood sexual abuse may display changes in brain structure¹, and have an increased risk of suffering from a number of psychological problems². However, these problems are not specific to those who have been abused, and consequently the symptoms do not serve as proof of abuse. Some therapists do not understand this simple point, and are convinced that all manner of dysfunctions in adults are clear indications that they were abused. This reasoning is as foolish as the following: People with malaria have a fever; Mary has a fever so Mary must have malaria.

Unfortunately, many in the therapeutic professions who believe in the certainty (or at least high probability) of abuse are assiduous in searching it out. They are reluctant to accept a simple denial from their client, and assume that the client cannot remember the abuse, which (they think) must certainly have taken place. Having misunderstood the relationship

between abuse and possible symptoms, the therapists go on to make three highly questionable assumptions: a) mental trauma triggers protective dissociative processes, keeping the unpleasant material out of memory; b) there are therapeutic techniques (such as hypnosis) which can break down the dissociation barrier and allow the events to be remembered; and c) remembering the events is a necessary part of recovery.

Dealing with those in reverse order, the treatment of choice (advocated by NICE) for many psychological problems is Cognitive Behavioural Therapy (CBT). This scientifically validated approach has Behaviourist origins, which specifically eschewed any consideration of the original cause of undesirable behaviour; all that was of concern was the desired goal and the training regime that would achieve it. The cognitive element of CBT does give rise to a rather more thoughtful (less mechanistic) style of therapy, but nevertheless, the procedures do not depend upon knowing the causes of current symptoms. Although patients generally like to have an explanation for their problems (it frequently elicits responses such as, “Thank you for explaining it; I though I was going mad!”) there is no evidence that recovery is aided by the uncovering of forgotten causes³.

Can memories be ‘helped to the surface’? Of course they can; for example, the police use what is known as the ‘cognitive interview’ when trying to squeeze every last drop of information from a witness. It should be noted, however, that this will not be a witness who denies any knowledge whatsoever of the event. The interview builds upon what is already freely remembered, feeding it back, asking for it to be considered from another perspective, or in a different sequence. In therapy, when no memory whatsoever has been proffered, the only things that a misguided therapist can feed back are his or her own beliefs about what might have happened. Herein lie the seeds of false memories. To dabble in ‘dissociative’ procedures merely multiplies these dangers. Although not the only dangerous means of eliciting so-called repressed memories, hypnosis is especially well known for generating these imaginings-dressed-as-memories. In its guidelines on the therapeutic use of hypnosis⁴, the British Psychological Society specifically warns that it must not be employed in any memory-searching way. The Society’s guidelines cite research⁵ showing that even to define a context as ‘hypnosis’ causes people to start generating false memories. Other techniques, such as those that involve relaxation and trying to imagine possible scenarios are also highly likely to result in the production of false memories.

In therapy, when no memory whatsoever has been proffered, the only things that a misguided therapist can feed back are his or her own beliefs about what might have happened.

The issue of trauma and amnesia is complex, so item (a) - the notion that protective processes will keep painful material out of memory - will be dealt with in more detail. A serious traumatic incident, such as a road traffic accident involving fatalities, can lead to posttraumatic stress disorder (PTSD) in a proportion of survivors. During the incident there appears to be a dramatic shift in brain functioning⁶, causing significant disruption to normal memory processes. As a result, during the situation a victim may well be unable to access some existing memories, even familiar ones, such as the name of a close relative. In parallel, normal memories of the unfolding events are not laid down effectively, leading to amnesia for aspects of the event. In place of the memories that should have been stored, a different mechanism sets up very easily triggered and very vivid memories for a few key elements of the event. These elements are typically of the most frightening stages; they can continue to return, months or even years later, as unbidden, distressing hallucination-like 'flashbacks'. Treatment involves having the courage to work through these deeply troubling images, while remaining calm enough to enable normal memory processes to work on them. In this way, conventional memories of the event are formed, to replace the flashbacks. The replacement memories are unpleasant, but they behave like other memories and do not continually force themselves into consciousness.

...there is no evidence of the person's mind protecting itself from the horrors by some process of repression...

The sense of losing touch with reality, as experienced by PTSD victims (both during and after the event) is termed dissociation. The changes in brain function that bring this about may include a shift in emphasis between the hemispheres, thereby facilitating the generation of hallucinations⁷. Unfortunately, the term 'dissociation' has sometimes been taken to imply the repression of distressing material, so that the brain somehow 'splits off' the un-

wanted item from conscious memory. This interpretation is incorrect; there is no indication that dissociation has this effect, although there is evidence that it is associated with the formation of false memories⁸.

Three points concerning the above account must be underlined. First, the flashbacks are not necessarily accurate; there have been cases of people suffering from vivid images of things that had not happened. Second, the fresh, more healthy memories, laid down during treatment, may also contain inaccuracies. These errors are not generally particularly important; it is not as if memories of being abused are being implanted. The third, most important point is that, distressing as the precipitating event will have been, there is no evidence of the person's mind protecting itself from the horrors by some process of repression. As explained, there are likely to be lacunae in the recollection, but the victim will have no difficulty in recalling the basic event and indeed, will find some of the memories all too vivid and memorable.

Those who are reluctant to abandon the twin notions of memory repression and memory recovery retreat into the childhood realm, implying that the brain behaves differently at that age, so that trauma memories from that period can become hidden. The great advantage for these therapists of locating the processes in childhood is that any assertions concerning so-called recovered memories will be well-nigh impossible to disprove. A recent version of these speculations is termed Betrayal Trauma Theory. It claims that, when a person in the role of carer abuses a young child, the victim is placed in an impossible position. On the one hand the adult has betrayed the child's trust, so deserves it no more, but on the other, the child is still dependent upon the adult for nurture. The solution, we are told, is for the child to employ dissociative processes, which will cut off the horrid truth from consciousness. There are many inadequately answered questions raised by this account, not least why such a helpful mechanism should be confined to children abused by carers; it would be so comforting for the PTSD victim to be able to repress the memories! Nevertheless, the proponents claim that there is evidence to support their theory⁹, while other scientists have high quality research data that fail to provide support¹⁰.

It is probably too early to make a hard and fast pronouncement about betrayal trauma theory. Indeed, it is probably unwise ever to make blanket pronouncements in this field, since if a thing is at all possible, then our highly versatile brains probably achieve it at least on some rare occasions. In light of this, we are bet-

ter to avoid countering the strident claims of the recovered memory proponents in similar fashion. Rather, we should rely on simple statistics. Of course material can be forgotten then subsequently remembered, but it can be seen from the account presented here that there is only a remote chance of a person successfully hiding a memory from him- or herself in such a way that it can subsequently be unearthed. That our conclusion is appropriate is supported by the remarkable lack of solid evidence that this memory feat can occur. Again, we do not deny that it is possible, but if it were an everyday occurrence researchers should be able to produce abundant evidence of it; they cannot do so. In contrast, there is an enormous wealth of both clinical and formal research data, showing how remarkably easy it is to generate convincing, but false memories¹¹. Thus, on a simple statistical basis, any hitherto unknown 'memory' recovered during therapy is far more likely to be false than true. This, taken together with the doubtful therapeutic merit of accessing any particular memory, leads us to the following assertion: Any therapist who persists in guiding clients towards the 'recollection' of denied sexual abuse is less interested in the wellbeing of the client than of the wellbeing of his or her pet theory.

References

1. Tomoda, A et al. (2009) Childhood sexual abuse as associated with reduced gray matter volume in visual cortex of young women. *Biological Psychiatry*, **66**, 642-648.
2. Soloff, PH, Feske, U & Fabio A (2008) Mediators of the relationship between childhood sexual abuse and suicidal behaviour in borderline personality disorder. *J. Personality Disorders* **22**, 221-32.
3. E.g. Paris, J (2005) Restitution, myth and reality. *J Personality Integration*, **15**, 89-93
4. Heap, M et al., (2001) *The Nature of Hypnosis*. BPS, St Andrews House, Leicester.
5. E.g. Green, JP, 1999. Hypnosis, context effects, and the recall of early autobiographical memories. *International Journal of Clinical and Experimental Hypnosis*, **47**, 284-300.
6. Bryant, RA et al. (2005) Neural networks of information processing in posttraumatic stress disorder: A functional magnetic resonance imaging study. *Biological Psychiatry*, **58**, 111-118.
7. Naish, PLN (2010) Hypnosis and hemispheric asymmetry. *Consciousness & Cognition*, **19**, 230-234.
8. Giesbrecht, T, Lynn, SJ, Lilienfeld, SO & Merckelbach, H, (2010) Cognitive processes, trauma, and dissociation—misconceptions and misrepresentations: Reply to Bremner. *Psychological Bulletin*, **136**, 7-11. See also the same authors, (2008) *Psychological Bulletin*, **134**, 617-647.
9. Freyd, JJ (1996) *Betrayal Trauma: The logic of forgetting childhood abuse*. Cambridge, MA: Harvard University Press.
10. McNally, RJ (2007) Betrayal trauma theory: A critical appraisal. *Memory*, **15**, 280-294.
11. E.g. Loftus, EF & Davis, D (2006) Recovered memories. *Annual Rev. Clin. Psych.*, **2**, 469-498.

Newsletter bibliography

To help people who want to track down articles in the Newsletter, there are now two resources on the website:

- a BibTeX file and
- a PDF of the entries in the BibTeX file.

If you don't know what a BibTeX file is, don't worry; those who do will find it helpful.

For technical reasons, all the articles without an author come first in the PDF followed by all those with an author. But you should be able to search the PDF as you can a normal text document.

So far only Volumes 7-18 have been included in the bibliography; the earlier volumes will be added in due course.

Note that, if you want to search for things on the website, you can use Google's Advanced Search (below Search) to restrict your searches to the BFMS website.

MEMBER'S FORUM

The creation of a satanic myth: an abuse of professional power

Background

My sister, Carol, a vulnerable and mentally ill adult, was found dead in her flat in 2005. The cause of death was indeterminable. My family have been fighting for five years to get to the bottom of the extraordinary events surrounding her death.

The facts are as follows: Carol died on 29 June 2005; my brother was notified of Carol's death by Sharon Marshall (a Coroner's Assistant) on 14 July 2005. In the meantime, an eminent doctor, Dr Linda Fleur Fisher, declared herself as my sister's next of kin, arranged Carol's cremation and disposed of her personal possessions. My family are in possession of a letter from Westminster Coroner's Office. The letter is signed and dated. The letter states:

The next of kin spoke to Mrs Marshall, said there was no family to contact and that she had been a treating doctor for Miss Myers many years ago ... The next of kin arranged the funeral and then spoke ... about a letter she had found at Miss Myers' flat, which was from Richard Felstead, apparently the brother of Miss Myers.

No member of my family – except Carol – has ever met Dr Fisher. In fact, prior to 2005, my family were completely unaware of Dr Fisher's existence. Following Carol's death, Carol's father checked with the Court of Protection, the Probate Registry, the High Court and many other official bodies to find out if Carol ever appointed Dr Fisher to act as her representative in any legal capacity. No such appointment was ever made.

The cremation was prevented by my family less than 24 hours before it was due to take place; Carol was given a family service and burial in Stockport.

On 28 July 2005, my brother received by post a small parcel. He opened the parcel which contained an unmarked box. The box was 14 inches long, 9 inches wide and 3 inches deep. It looked like a shoebox. The box contained a small number of my sister's possessions: a photograph, key ring and an old passport. The passport contained my father's name and address (these details are accurate to this day). There was no letter or note inside the box identifying who had sent it. The box contained no details of the sender.

The only other personal items that we received were Carol's watch, a ring and a pendant, which came in an evidence bag from the Metropolitan Police.

My family now know that Carol met Dr Fisher in 1985. Carol was a fully qualified nurse, capable of running a hospital ward. Carol was a happy, sociable and out-going girl. Carol enjoyed her life and seemed to have the world in front of her. Carol's brother used to work at the same hospital and regularly had his tea break with Carol when they both used to work the same shift. Carol was independent and had moved away from home although she maintained regular contact with her family. She had a regular boyfriend with whom Carol's brother still occasionally has contact. Carol had a very normal life with a bright future ahead of her.

After 1985, Carol's contact with the family became less and less frequent and, a few years later, she moved away to live in London. Throughout the last twenty years of her life Carol maintained sporadic but relatively regular contact with her family; about once every eighteen months she would contact various members of the family and send birthday cards and Christmas cards.

The reason that Carol always gave for the lack of contact with her family was that she was furthering her career. This explanation was never really convincing and the lack of contact with Carol was frustrating, to say the least. Carol's family made repeated attempts to contact her, but we now realise that these attempts were hampered significantly by the fact that Carol had apparently changed her name by Deed Poll in 1992.

After Carol became estranged from her family, Carol's mental health deteriorated and Carol was

sectioned under the Mental Health Act in 1992. Carol's family were not informed of her illness.

My family simply never had any idea that Carol was mentally unwell - ever. Her mental illness was kept from us by Carol and those responsible for her treatment.

Carol's gradual separation from her family was very difficult to accept. It broke her parents' hearts and although it was something which we had to come to terms with, it didn't really make any sense. There were periods when we didn't have a contact address or telephone number, but we now know that when my family were under the illusion she was a nurse working in various hospitals, furthering her career, the real truth is that Carol was a mental patient who spent a considerable amount of her adult life in various mental institutions.

Carol was asked, repeatedly, to make more of an effort to contact us. She would always state that she was not having any problems and that she was working shifts and pursuing her career. Carol living in London and the rest of our family living in Stockport did not help. We were forced, with much regret, to accept that Carol was an independent adult and was moving on with her life. Although she did ring up and send birthday and Christmas cards, all of which tended to contain the message of how she would come to see us in the near future, nobody in our family actually saw Carol from 1995 onwards.

Inquest

An inquest into Carol's death took place on 12 August 2005 (the inquest returned an Open Verdict). Dr Fisher did not attend the inquest and Dr Fisher was not named in the inquest. In fact, my family were quite unaware of her existence at this time.

Not only did Dr Fisher arrange Carol's cremation; she also helped identify Carol. We have a letter from the coronial office which states that the Coroner's Assistant took a photograph of Carol in a mortuary and compared this with a photograph provided by Dr Fisher.

My family were to find out after the inquest that, on the day that Carol died, Dr Fisher made an Emergency 999 phone call to the Police, while she was in Manchester, some 200 miles away. The Metropolitan

Police have refused, repeatedly, to allow my family to listen to this call.

The Emergency 999 phone call was not mentioned in Carol's inquest. My family only became aware of Dr Fisher after a police officer inadvertently mentioned her name in a telephone conversation after the Inquest had taken place.

We did a quick internet search on Dr Fisher and became aware that she specialises in health care ethics and was formerly Head of Ethics at the British Medical Association.

The Telephone Call made by Dr Fisher to Diamond Insurance Company on the 7th July 2005.

Dr Fisher continued to be involved in Carol's affairs, even after Carol had died. On 7 July 2005, Dr Fisher phoned Carol's insurance company to take out insurance on Carol's car, so that she could drive the car to her home in Plymouth. In the taped recording of this phone call, Dr Fisher can be heard, in her own words, declaring that she is Carol's next of kin and Executor.

This phone call took place eight days after Carol died, and seven days before my family were informed of her death. Dr Fisher made this telephone call from Carol's flat.

Police Investigation

We lodged a formal complaint about Dr Fisher. The Metropolitan Police Force carried out a 15 month investigation into the criminal offences of attempted illegal cremation, theft and perverting the course of justice. The investigation, which concluded in 2009, appears to my family as a complete whitewash.

The charge of arranging an illegal cremation was not even put before the Crown Prosecution Service (CPS). The case was treated differently to every other case in the United Kingdom. It was **not** allocated a unique Crime Reference Number, a Unique Case File Reference Number, nor did it have a unique Crown Prosecution Service Reference Number. This case had no unique identifying reference numbers whatsoever. In other words, it stood no chance of success because it was not lawfully processed.

Carol's Medical Records

Following her death, Carol's father wrote to her doctor to request copies of Carol's medical records. Carol's GP refused to supply details from her medical file, on the grounds that her records remained confidential - even following her death. Carol's father did eventually obtain from the Primary Care Trust (PCT) Carol's medical records (what is left of them). These records were legally obtained in 2006 following a Freedom of Information Request.

When Carol's father received these records, the first twenty one years of Carol's life - with the exception of three documents - were missing. All sectioning medical records were missing. Many pre-operative and post-operative medical records for a number of operations were (and remain) missing.

Carol's father was informed by the PCT that, on the very day that he contacted Carol's doctor, the latter requested that all of Carol's medical files be returned to herself. The doctor kept these records for nine months.

In Carol's medical records, there is a letter which states that Dr Fisher gave Carol counselling in 1986. Carol was aged 22 at this time. All medical notes relating to this treatment are also missing.

Amongst the medical records which my family have in our possession are a number which illustrate that Dr Fisher was fully aware of the existence of Carol's family.

False Allegations

Dr Fisher passed a document to both the Metropolitan Police and the Coroner's Office. This has been confirmed in a letter written from the Coroner's Office to Carol's father.

The document, entitled 'Life Assessment' alleged that Carol was a victim of child abuse. The document contained a number of grotesque allegations. It stated that Carol's mum had murdered another daughter, Joan Julie Felstead, in 1967 (Joan Julie is also not named and is referred to as 'my sister who was born with Down's Syndrome'), sat the dead baby on top of Carol and then attempted to murder Carol by setting the house on fire.

After being informed about the so-called life as-

essment document, my parents were also informed by the Coroner's Assistant about a fictitious court case in which they were supposed to be the defendants in a major criminal trial accused of Satanic Ritual Abuse. The trial is meant to have taken place in the late 1980's/early 1990's. (My parents are not named explicitly; they are mentioned generically as mother and father). The trial is supposed to have collapsed.

Following disclosure of these false allegations, Carol's father instigated a number of Police inquiries, which involved Greater Manchester Police, Cheshire Constabulary and the Metropolitan Police.

The results of these inquiries were:

- There had never been a court case.
- Joan Julie Felstead (who suffered from Downs Syndrome) died a medically documented natural death in Stepping Hill Hospital, Stockport on the 7th October 1962; the date and details of her death are on her death certificate
- The fire was a real event based on a household accident and took place in 1963; it was reported in the local newspaper at the time - the 'Stockport Express' - as being an accidental house fire in which no-one was injured or harmed in any way. My family have a copy of the original article, with shows that Carol's mother was extremely upset by this tragic event.
- Carol was born on June 8th 1964 in Stepping Hill hospital in Stockport - which is apparent by looking at her birth certificate.
- Therefore Carol was not alive as she had not been born when Joan Julie died or when the fire took place. **The events are not just false but they are actually impossible.**

On receipt of Carol's medical records, my family believe that we have found where this purported life assessment has come from. In Carol's psychiatric notes, she alleges that two former Cabinet Members abused her at Conservative Party Headquarters, and that these well-known politicians and our family were all members of a Satanic Cult. Carol also said that she suspected that the police and medical doctors were part of the cult. The conclusion of Carol's psychiatrist was that Carol was delusional.

False allegations of Satanic Ritual Abuse

From Carol's medical records and other information that my family have acquired since Carol's death, it appears that Carol was given vast amounts of therapy.

After receiving therapy, Carol's medical records reveal that Carol made a number of therapeutic-induced claims which were preposterous and actually impossible.

Carol's medical records also reveal that her therapy was supported with extensive medication.

Carol's medical records are littered with false allegations of satanic ritual abuse. In 1991, Carol spent 3 months as a patient in a mental health hospital, after suffering a complete mental collapse. Carol's family were not informed of her illness.

Carol's medical records show that she was sectioned and placed on the Mental Health Register on 29 June, 1992. Carol's family were not informed and all sectioning papers and psychiatric notes are missing.

Carol was subsequently treated in the Tavistock Clinic by Robert Hale and Valerie Sinason. Carol's medical records contain a letter written by Dr Hale. The letter is dated 28 May 1993 and it is signed by Dr Hale. The letter confirms that Carol had received weekly therapy from Hale and Sinason:

'Ms Myers was originally referred to our clinic for psychotherapy in the autumn of 1992 and has been seen by Mrs Sinason and myself for the past eight months on a weekly basis. The problem that she presents is abuse of the Satanist variety since very early childhood'.

The following year, in 1995, Carol was receiving therapy from Vera Diamond, at the Centre for Autogenic Training, in Harley Street, London. Diamond is on the record confirming her belief in satanic ritual abuse.

Carol's medical notes contain a number of false and preposterous allegations. Carol's parents were supposed to have been the High Priest and High Priestess of a Satanic Cult. My family are supposed to have dug up graves and performed ritual sacrifices, which include murder.

My family now know that in the period from 1991 – 2000, Carol was hospitalised on numerous occasions as her physical and psychological health collapsed. Carol remained cut off from her family throughout this period. Dr Fisher attended appointments with Carol and continued to be involved in Carol's life.

Carol's medical notes document that Carol suffered from repeated bouts of depression and she had suicidal thoughts which led to Carol taking overdoses on a number of occasions. Carol also self-harmed and suffered from alcohol-abuse.

Prior to receiving therapy, Carol was a healthy and well-balanced young woman.

My family are appalled at Carol's treatment. We are equally appalled that to date the authorities have not taken action over what happened to Carol.

Dr Kevin Felstead

For further information, contact www.justiceforcarol.com

Our Christmas Miracle?

It was ten days before Christmas, and almost three years since my husband's trial. We were attending the funeral of my cousin, when upon our arrival, we saw that two of my daughters who had made very serious allegations against Ted, were also there. Fearing a show down, we sat in our car and waited for the funeral cortège. Within five minutes the girls came over and knocked on our window. My heart was pounding with fear. I wound the window down fearing the worst, but to my amazement, they burst into tears, saying, "We are so sorry". Ted and I got out of the car and the girls embraced us both. I was swept away with the emotion of this most unexpected occurrence, and was also reduced to tears. After the service, we all went for coffee and I was quite taken aback that one of my girls, who needed to be shielded by a screen whilst giving her evidence in court, was now sitting with the man she had accused of

many counts of rape, chatting quite happily, and making eye contact. The following evening, they brought their children to our home and showered us with gifts and flowers.

In my wildest dreams, I never anticipated that these events would occur but, I have needed to take a step back from all the emotion, because they are acting as though nothing ever happened, and I can't let the current situation continue without some explanation as to their turn around or why they needed to take the path that they did with the allegations and subsequent trials. Personally, I feel it would be morally wrong for me to allow this to continue, so for the time being, I am keeping my distance, having told the girls what I expect from them. Perhaps this appears a little harsh, but we went through two trials at a great cost to the tax payer, and I cannot allow them to sweep this under the carpet. I ponder as to what the Detective Constable, the Judge and Jury would be thinking if they knew of this development.

Jennifer

“Let Go? Never!”

This letter is a heartfelt response to one entitled, “Let Go? Not yet” which appeared in the BFMS Newsletter Sept 2010, Vol 18, No 1.

If you truly believe in your own innocence Mr ‘Accused Father’ then never ever give up the fight to clear your name and so provide yourself with peace of mind. Never accept the total injustice of it all! I didn't and was never prepared to do so even if it meant carrying the fight to my grave. I won through in the end and after thirteen years had the wrongful convictions overturned. After another four years I was awarded substantial compensation. But no amount of money can repair the damage done to me and my family. My wife and I and our family are now living out our remaining years abroad, away from the gross injustices of the British judicial system.

In those 17 years starting in 1989, unlike you, my wife and I had to cope with the initial accusations, the bombastic attitude of Nottinghamshire police,

the court appearances, bail, a farcical trial and finally jail for a sentence of nine years. Under the prison system then, because I behaved myself, I was allowed three years remission for good behaviour. Of the other six years I had to serve every single day of the 2,192 days because I refused to admit to a set of crimes I had not committed. I was not granted a single day of release on probation. At least I had the satisfaction of not being under any obligation to the probation service.

Because of the unbelievable injustice of being wrongly imprisoned for something I hadn't done and the burning anger I felt, I never faltered in my never-ending campaign to win an appeal. I wrote literally thousands of letters, my wife wrote a similar amount, to MPs, Members of the Lords, the Royal Family, Government Ministers, church leaders, (even the Pope). I regularly wrote to every newspaper in the land, embassies and other political leaders in other countries.

I decided to keep myself in the limelight in every way possible while in jail. I refused to lie down and accept my fate. I went on hunger strikes, I studied and fully learned the prison rules and then sued the prison authorities on numerous occasions for breaches of their own rules with the tax-payer picking up the bill for my legal aid. Virtually every morning I submitted dozens of written complaints to the governor. I intended to be, and was, a constant thorn in their side.

During all this time the prison authorities kept up relentless pressure on me to ‘confess to my crimes’ and to attend ‘remedial courses’ to ‘address my crimes’. I fought my war against them and successfully resisted this non-stop pressure but they punished me and my family in many ways. They ‘ghosted’ me numerous times with no notice to almost every jail in the country. On several occasions they actually shifted me on the day my family was due to visit. I was always a class C, low-risk prisoner but ended up in barbaric places like Lincoln, Dartmoor, Albany on the Isle of Wight and even two years in high-security Whitemoor. All as a class C prisoner but they never cowed me. I was so proud of how I coped.

Eventually they gave up hounding me, shifted me to Wymott in Lancashire and gave me the Library to run for my last two years. At last even the staff believed in my innocence. With the active help

of the Library warders I continued my campaign and by this time had convinced the famous barrister Anthony Scrivener of my innocence and he went on to represent me. I even had the ex-Home Secretary, Kenneth Clarke, on my side as well. All of this was because of my unswerving persistence and the loyal support of my wife and other daughters.

In 1996 I was released; they couldn't hold me any longer. And I continued my fight. The writing campaign was stepped up a gear. I published numerous websites on foreign servers, I even defied the courts and published everything about the sick daughter who had falsely accused me, publicly identifying her and including pictures of her. I publicised these websites and provoked the authorities in every way I could for the wrong they had done me. I received numerous threats from them ordering me to stop various courses of action – I ignored them all and even published their threats online as well. They never carried out a single threat because they knew I would have relished the publicity in defying them further.

In 2002 I eventually obtained my day in the Court of Appeal and all the unsubstantiated convictions were quashed. I had won! But to this day no one has said 'sorry' or even officially admitted that I was innocent. Financially, I made the Home Office pay for their injustice to me and I was eventually awarded over £600,000 in 2006. My wife and I left the UK never wishing to return.

Among the many bodies of people who helped me, BFMS played a pivotal role and I will always be grateful to them for their support.

In conclusion, you ask the question "Let Go?" I repeat, "Never". Some people would describe my campaign as obsessive and they may even be correct, but I didn't see it that way. I saw it as a fight against a totally sick system, from the 'all are guilty till proven innocent' attitude of the police, to the 'all men are guilty of sex crimes' attitude of the social services, to the 'play acting' court system, to the pure thuggery encountered from the prison warders, to the 'holier than thou' probation service, to the 'don't tell me, it's too controversial' politicians, and finally the civil servants who say 'take this bundle of tax-payers money and just go away'.

If for no other reason than to simply challenge this sick system then do fight on until you win through!

A Father

Small Change!

Dear Members,

I have been a member of BFMS for twenty years now and the existence of the Society and its aims are very important to me. Three years ago I undertook the task of fundraising for BFMS and have now submitted around ten detailed applications to charities that express an interest in funding social justice; frustratingly and sadly these have not been successful. It is an unfortunate fact of life that money is short in the voluntary sector and also that it would be hard to find a more unpopular cause than BFMS; our fight for justice, wisdom and truth in the matter of false memories and false accusations having to battle against the highly emotive facts of genuine sexual abuse.

Our Society desperately needs cash in order to make sure that it keeps going for as long as it is needed. We can all help to make this happen!

This letter announces the launch of the **Small Change for Big Changes Campaign**.

At this year's AGM you will be given a flat pack cardboard collection box which simply needs assembling and placing in a prominent position! For anyone who can't make it to the AGM this time, you will find a box has been included with this newsletter. Please will you use it to clear out your pockets and purses of all your small change?

Over a 12 month period, by collecting 1p, 2p and 5p coins, there could be as much as £30 - £40 in it. With the 500 boxes we have purchased this could mean as much as £15,000 per year, a very significant part of our total annual running costs. I am hoping that you are willing to pass on boxes to sympathetic friends and relatives too.

An initial contribution of 50p to the empty box to get it going will cover the purchase price of the box and make sure we move straight into profit mode!

I suggest that we have a big count up before the AGM in 2012, send a cheque for the total to BFMS and then at the next AGM the total raised will be announced.

In times when we can feel utterly helpless about the storms raging around us it is the small things that can make a big difference. So, let us all get together and help to make our dreams for justice

come true.

Wishing you all well, and thanking you in advance for your support of our Society!

Annie Noble, Trustee, BFMS

BOOK REVIEWS

***Miscarriage of Memory, Historic abuse cases: A dilemma for the legal system* Ed. William Burgoyne and Norman Brand (2010)**

Published BFMS ISBN 978-0-9555184-1-6 Paperback £8.99

Reviewed by a BFMS member

If you are not aware of the truly appalling situations psychotherapy and counselling can sometimes put people in - then read this book. It contains many stories of the predicaments encountered when innocent people find themselves involved with the law, accused of crimes they have never committed. It explains how these situations can arise: a central issue being that the judiciary and the police have not yet fully recognised the importance of the findings of the science of human memory.

The start and source of all these tragedies are the theories emanating from psychotherapists who do not correct their practices and procedures because the troubles they create land up on other people's doorsteps and not their own. As one contributor puts it, 'The thought that their own beliefs and theories are erroneous must simply not occur to them, nor the devastation these professionals leave in their wake as they move on'. A whole book could be written about the psychology of how it is that professionals manage to avoid such thoughts occurring to them.

Especially important and valuable in the book are the contributions from a number of legal experts who see the difficulties for the legal profession but also point the way forward.

The book contains a Foreword by Earl Howe, Parliamentary Under Secretary of State, Department of Health; contributions from

psychologists, and from accusers who have retracted their accusations. There are 13 case histories: one being by a father (in the medical profession) of his daughter who, after referral to a child psychiatrist, spent time in a psychiatric unit. She came to accuse her father of sexual abuse. Titled 'Doctors, heal yourselves', the judge threw out the case saying, 'There is not one scintilla of evidence against the man', adding 'His reputation has been dragged through the mud'. The father writes, '...my 20 year career as a local GP had been ruined and I was the poorer by £600,000.'

Also valuable and to be noted, is the inclusion of the summary of the 'widely agreed and acknowledged scientific findings' on human memory as published by the British Psychological Society 2008 in their document 'Memory and the Law'.

'The best book on false memory therapies bar none':- *The Ravages of False Memories—or manipulated memory* by Brigitte Axelrad, Translated from French into English by Robert Shaw (2011)

Published BFMS, ISBN 978-0-9555184-2-3 Paperback, £8.99

Reviewed by a BFMS member

Brigitte Axelrad (2010) *Les ravages des faux souvenirs ou la mémoire manipulée* Nice: Book-e-book ISBN_13 978 2 915312 22 5 €9.90 from www.book-e-book.com

The ravages of false memories is the best book on false memory therapies bar none; the author combines a broad understanding of the issues, the ability to communicate them and personal experience to create a book which through questions and answers will satisfy the lay reader and through the breadth of her knowledge may well

point fellow experts in new directions. In nine chapters she covers what they are, how they operate, where they came from, how people exploit them, how any memory can be distorted, their impact on families and multiple personality disorder. An interview with Elizabeth Loftus concludes the book.

She unpicks the conflicts in Freudian therapy, the denial of women's suffering, the history of our understanding of false memories, the ways in which people have manipulated memories and the consequences for all the victims of manipulated memory.

The BFMS will publish an extended English edition in April incorporating an interview with Arnold Wesker, whose play *Denial* deals with recovered memory therapy, and a short history of false memory research up to February 2011 (no, that is not a misprint).

Very occasionally her enthusiasm for the subject appears to lead her to overstate her case slightly but this may be because in these cases she is relying on translations and summaries of research. Most of her citations and knowledge are from well-referenced original sources going back over a century.

It should be on the reading list of every counselor, every psychologist and every psychiatrist as well as the Archbishop of Canterbury and families and friends of those who have been caught up in recovered memory therapies.

***My Lie—a true story of false memories* by Meredith Maran (2010)**

Published Josey-Bass, A Wiley Imprint, Hardcover, ISBN 978-0-470-50214-3, £16.99 at full price

Reviewed by a BFMS Member
From the Prologue to Meredith Maran's book:

"Have you ever done anything really awful?" Joanne asked me. "Something you'll always regret?"

At fifty-six I'd accrued an age-appropriate assortment of woulda-shoulda-couldas. But only one rose to the level of aching remorse.

"When I was in my thirties," I answered, "I accused my father of molesting me. I didn't see him or talk to him for eight years. I didn't let my kids see him for eight years, either. And then I realized that it wasn't true." Joanne stared at me, her face a mask of disbelief. She said, "The same thing happened to me."

Standing sentry around us, ancient redwoods shuddered and dripped. "Let me guess," I said. "It was the late eighties, early nineties. Someone gave you a copy of *The Courage to Heal*. You started having strange dreams, crying jags, trouble with sex," I went on. "You were seeing a therapist two or three times a week. Finally you remembered that your father had molested you."

"How did you know that?" Joanne asked. "I haven't talked about it for fifteen years."

This is how Meredith Maran's book opens. If you are like me, reading this would have set so many alarm bells ringing that your head will be buzzing. We are used to reading stories like this, but almost always from the accused person's point of view or from that of a family member who has suffered collateral damage in "false memory/recovered memory" cases. In a sense it is a consolation because the efforts we have made to convince others of the essential falsity and scientific lack of validity of the recovered memory epidemic are here supported and underpinned by an accuser – and retractor.

As in so many other cases *The Courage to Heal* rears its ugly head. Without explicitly accusing it of causing mountains of damage to innocent parents, Meredith Maran clearly implies an influence of pandemic proportions.

In this grippingly written book, Meredith Maran describes how she was brought into the world of incest politics by editing a book for a 'pioneering feminist' researcher. She spent several years writing on Child Sexual Abuse (CSA) for newspapers

and magazines. She joined the CSA ‘panic’ (her word) and shortly after the publication in 1988 of the ‘Bible of the recovered memory movement, *The Courage to Heal*,” accused her father of molesting her. Whatever help it has brought to genuine survivors of CSA, *The Courage to Heal* is here revealed as the incredibly damaging vehicle it has been in encouraging or inciting women falsely to accuse parents.

Maran describes the relationship she had with her father (largely to the exclusion of her mother), in her early years. She describes her lengthy involvement with therapists, her marriage, the raising of her two children and the effect on them and

“Maran has not only done an immense service to those falsely accused of CSA, she has also done a great service to genuine survivors of CSA by delineating ways in which women get to believe, wrongly, that they have been abused.”

the whole family of her accusations. She describes the break up of her marriage and the establishment of a relationship with a woman who was also living with the effects of alleged CSA but the memories of which Maran eventually comes to believe to be false, like her own. This realised, she severed their relationship.

Maran had nightmares about incest. Eventually she concluded “My incest nightmares weren't fantasies. They were memories.”

After eight years of separation, Maran finally became reconciled with her father. She apologised to him, “I accused you of doing something terrible to me. And I was wrong.”

Reactions to this book are bound to be complex because readers will come to it from many and varied backgrounds. However, in so spectacularly blowing the lid off the ‘false memory/recovered memory’ hysteria of the 1980s and 1990s, Maran has not only done an immense service to those falsely accused of CSA, she has also done a great service to genuine survivors of CSA by delineating ways in which women get to believe, wrongly, that they have been abused. In doing

this she has put into relief the experiences of the genuinely abused, the vast majority of whom, far from having difficulty remembering the abuse they suffered, have difficulty in forgetting.

Following publication of *My Lie*, Maran received hate mail and even death threats. Although not excusable, such reactions are understandable when they come from people who have been falsely accused and who, to establish their innocence, needed to do the impossible, that is to prove a negative. “I didn’t do it.” “Prove it then!” The only way for people to obtain justice is through the firestorm of a trial whereby evidence can be weighed and a verdict delivered. But what a way to obtain justice! And how fraught with the dangers of a wrongful conviction! No wonder feelings run high.

Meredith Maran has received many negative reactions to her books in comments sections of book reviews and on internet blogs. She has also created a problem for herself by saying in an interview:

Maran “Would I allow an innocent man to sit in prison if it meant keeping children safe?”

Interviewer “So would you make that choice?”

Maran “I think so.”

This comment disturbed many people. It runs counter to the principle enunciated by the English jurist Blackstone in his *Commentaries on the Laws of England* published in the 1760s (according to Wikipedia). The Blackstone Ratio states that “*better that ten guilty persons escape than that one innocent suffer.*” The principle predates Blackstone and has been re-affirmed a multitude of times since, any debate about it centering mainly on the appropriate ratio of innocent to guilty men. (<http://www2.law.ucla.edu/volokh/guilty.htm>).

Meredith Maran has given me this explanation of her comment:

“The intention of my answer was this: during the 1980s and early 1990s, the prevalence and severity of child sexual abuse came to light. This

caused a lot of false convictions but also caused policy changes and consciousness changes that undoubtedly saved many, many children over the decades since. At a professional conference during the 1980s I heard a presenter asked if one false conviction was justified if it saved many children, and she said yes--a difficult moral call, a sort of Sophie's choice of the time."

If you are struggling with this response I can recommend reading *Mistakes were made (but not by me)* by Carol Tavris and Elliot Aronson (Pinter and Martin Ltd., 2008), a book that I hope will be reviewed in a future Newsletter. This book is subtitled "Why we justify foolish beliefs, bad decisions and hurtful acts." Meredith Maran's response would be described by the authors as an example of "cognitive dissonance." It explains how any of us can and do get ourselves into positions whereby we try to justify actions that we know to have been wrong by various forms of rationalisation.

The publication of *My Lie* was problematical on many levels. Maran's motives in publishing it have been questioned and her honesty doubted (Given that she lied about her abuse, how can I believe her now etc.?) However, Meredith Maran must have anticipated the furore publication of her book would raise, even if she did not predict its full force, so the decision to publish was a courageous one.

There have been many other retractors, of course, but few, if any, with an already established reputation in literary and journalistic circles like Maran's. Owing to her reputation as a writer, her book was bound to attract attention from the start and in a location (the San Francisco bay area) where it would be immediately seized upon and hotly debated. For this reason, *My Lie* carries a weight and significance greater than many other retractor stories and supports the claims of innocence of the many parents who, like Maran's father, suffered the intense pain and damage of being falsely accused. For this, she deserves our thanks.

LEGAL

New Proposals on expert evidence

Robert Shaw

Review of The Law Commission (2011) *Expert evidence in criminal proceedings in England and Wales* LAW COM No 325 HC 829 London: The Stationery Office

The Law Commission's report *Expert evidence in criminal proceedings in England and Wales* was published on 21 March 2011. It follows the consultation undertaken in 2009 which in turn had been prompted by a call for reform from the House of Commons' Science and Technology Committee.

In Part I they summarise the background to the consultation and the reasons why special rules need to be applied to expert witnesses:

- firstly, expert witnesses are privileged witnesses able to present 'opinion evidence' (para. 1.14) outside most jurors' knowledge and experience which can lead to their evidence being wrongly given undue weight
- secondly, expert evidence of doubtful reliability has been proffered which it is difficult to deal with using cross examination techniques
- thirdly, such evidence is not in any case being challenged in cross examination effectively
- fourthly, expert witnesses have 'an overriding duty to provide the court with impartial evidence within their area of expertise' (para. 1.22).

Accordingly, they propose a new reliability test (para. 1.32):

- (1) The opinion evidence of an expert witness is admissible only if the court is satisfied that it is sufficiently reliable to be admitted.
- (2) The opinion evidence of an expert witness is sufficiently reliable to be admitted if:—
 - (a) the evidence is predicated on sound principles, techniques and assumptions¹;

(b) those principles, techniques and assumptions have been properly applied to the facts of the case; and

(c) the evidence is supported by [that is, logically in keeping with] those principles, techniques and assumptions as applied to the facts of the case.

Expert evidence has to be able to assist the judge and jury in areas of which they lack knowledge or experience

together with a number of guidelines for judges, though they envisage these might ultimately be merged. The reliability test would operate within the more general admissibility test, that is, the evidence would have to be admissible anyway.

They recognise that these proposals would not eliminate all miscarriages of justice arising out of expert evidence.

In Part II they summarise the current situation. Expert evidence has to be able to assist the judge and jury in areas of which they lack knowledge or experience; it has to be relevant but it did not have to be impartial in criminal proceedings, only in civil cases, until 2010 and it has to reach a common law threshold of reliability which, however, is not very high. They note that the first three tests would also apply to evidence of fact provided by expert witnesses; however, their concern is opinion evidence where the low level of the threshold is the area of concern.

In Part III they summarise the results of the consultation. There was overwhelming support for the new reliability test with opponents, including the British Psychological Society, mainly raising practical difficulties in its implementation. There had been overwhelming support for the idea of guidelines but most respondents wanted a single set of guidelines, rather than one for scientific and another for non-scientific expert evidence as suggested in the consultation. Again a small number of respondents, including the British Psychological Society, wanted specific guidelines relating to specific areas of expertise. There had been disquiet about applying the reliability test in all cases, particularly where there are no known con-

cerns about a particular type of evidence; so the Commission had produced revised recommendations on this. There had been widespread support for the onus of proving reliability resting with the party producing the evidence and the Commission thought that the objections to this based on the principle that the innocent should not have to prove their innocence were already being dealt with in other ways anyway. They point out that the prosecution has to prove guilt beyond reasonable doubt and therefore the accused only has to produce enough expert evidence to prove that there is reasonable doubt. Moreover, the reliability test should ensure that the accused never has to prove their innocence in the face of disputed medical or scientific evidence. They also argue that an expert witness offering a minority opinion should not be dismissed just because it is a minority opinion but only if that opinion cannot be shown to satisfy the reliability test. There was also widespread support for codifying the Commission's principles in law.

In Part IV they set out the thinking behind the draft Criminal Evidence (Experts) Bill which forms Appendix A.

In Part V they argue that there should be a statutory admissibility test which would apply to expert opinion evidence and to evidence of fact where there was any doubt about it. They have revised the guidelines to provide a generic test of reliability with examples. They say (para. 5.17):

We therefore recommend for criminal proceedings:

(1) a statutory provision in primary legislation which would provide that expert opinion evidence is admissible only if it is sufficiently reliable to be admitted²;

(2) a provision which would provide our core test that expert opinion evidence is sufficiently reliable to be admitted if –

(a) the opinion is soundly based,

(b) and the strength of the opinion is warranted having regard to the grounds on which it is based³;

(3) a provision which would set out the following key (higher-order) examples of reasons why an expert's opinion evidence is not sufficiently reliable to be admitted⁴:

(a) the opinion is based on a hypothesis which has not been subjected to sufficient scrutiny (including, where appropriate,

experimental or other testing), or which has failed to stand up to scrutiny;
(b) the opinion is based on an unjustifiable assumption;
(c) the opinion is based on flawed data;
(d) the opinion relies on an examination, technique, method or process which was not properly carried out or applied, or was not appropriate for use in the particular case;
(e) the opinion relies on an inference or conclusion which has not been properly reached⁵;

...the judge should focus on the ‘validity of the material, processes and reasoning underpinning the expert’s opinion evidence’ in assessing its reliability rather than secondary factors like membership of particular organisations.

(4) a provision which would direct the trial judge to consider, where relevant, more specific (lower-order) factors in a Schedule to the Act and to any unspecified matters which appear to be relevant.

In considering the factors which should be taken into account, they argue that peer review is just one factor, impartiality has now been made fundamental to the process and the judge should focus on the ‘validity of the material, processes and reasoning underpinning the expert’s opinion evidence’ (para. 5.26) in assessing its reliability rather than secondary factors like membership of particular organisations. They propose (para. 5.35) that the judge should consider:

- the extent and quality of the data and the validity of the methods used
- the nature of any inference from the data
- the margins of uncertainty that might apply to a particular procedure
- whether the results have been peer reviewed
- whether any of the material falls outside the expert witness's area of expertise
- the completeness of the information
- if there is a range of opinion on the subject, where in the range the expert's opinion lies
- how far the procedures adopted followed

standard practice and the reasons for any divergence from this.

They stress the importance of identifying evidentiary issues in magistrates courts and providing sufficient clarity about those issues for them to be referred to a District Judge for determination though magistrates courts should be able to deal with time-wasting attempts to refer cases to a District Judge.

They argue that judges should be allowed to dispense with the reliability test in the absence of a reasoned argument that it should be applied; in other words non-contentious expert opinion evidence should not have to be assessed every time it is presented. The expectation would be that any challenge would take place before a jury had been sworn and that only exceptionally would the reliability test need to be applied later, for example, if new evidence unexpectedly arose in the course of a trial. They give some examples of how their proposals might be implemented before turning to the issue of appeals and argue that the Appeal Court should consider the judge's determinations on admissibility and reliability in the context of the case as a whole; it should not be possible to appeal solely because one disagreed with the judge's decisions about admissibility or reliability. In closing this part, they point out that their proposals will need to be supported by measures outside the control of the courts to ensure the reliability of expert opinion evidence but that, in summary, they provide

- a framework within which judges can assess the reliability of expert opinion evidence
- training for judges in the new approach
- support for the Court of Appeal in reviewing cases
- the opportunity for the trial judge to call on his/her own expert opinion evidence.

In Part VI they describe the background to their suggestion that a Crown Court judge should have the power to appoint their own expert witness to assist, for example, in assessing the reliability of expert opinion evidence. Though the common law allows this to happen, it very rarely does partly because of the current *laissez faire* approach to expert witnesses, partly because judges are reluctant to use the common law power when there is no explicit authority to do so and partly because they would not know whom to appoint.

Incorporating this power in statute would not change the law but might encourage judges to use it.

In the consultation document, they had outlined a procedure whereby the court appointed expert witness would provide a report which might be the basis for a pre-trial hearing after which the judge would make a ruling on reliability, including, if it was ruled to be insufficiently reliable, whether parts of it could be used. There was overwhelming support for the approach in principle, the main concerns being of a practical nature; for example, people doubted that the prosecution and the defence would be able to agree on a list of suitable experts from whom the judge could choose and the Criminal Cases Review Commission was concerned that ruling out a particular approach might hinder certain lines of research. The Commission agreed with the former but considered that the latter would only be a temporary setback for a particular line of research and might indeed encourage people to refine what they were doing.

Accordingly, they recommend an independent non-governmental panel to produce a short list of expert witnesses from which the judge, taking into account the views of the prosecution and defence, would select someone. The advantage of this scheme over the common law would be its

...the judge should have to consider whether or not to give a cautionary warning to the jury where the prosecution case depends substantially or wholly on disputed expert opinion evidence.

transparency. They envisage that the circumstances in which a judge could request a court appointed expert witness would be limited and their evidence would be treated in the same way as that of the other expert witnesses. They argue that, though their proposals might lengthen the pre-trial process and would involve some additional costs, they could also shorten the length of some trials and thereby reduce their costs.

In Part VII they address procedural matters arising from their proposals, including changes to the Criminal Procedure Rules, in particular requiring

expert witnesses to set out where their evidence supports the opposing party. They reject any requirement on the defence to disclose any expert evidence they may have obtained which they do not intend to use, not least because it is up to the prosecution to prove the case 'beyond reasonable doubt' and the threat of having their evidence scrutinised by a court appointed expert witness should encourage prosecution expert witnesses to ensure that their evidence is reliable. They also reject any further tests for expert witnesses on the grounds that the proposals will lay a statutory obligation on expert witnesses to disclose anything which is material to their presentation of expert evidence.

However, they recommend that the rarely used power to order a pre-trial meeting of expert witnesses be made explicit in the Criminal Procedure Rules and that the judge should have to consider whether or not to give a cautionary warning to the jury where the prosecution case depends substantially or wholly on disputed expert opinion evidence.

In Part VIII they consider the implications of their proposals in practice arguing by reference to actual case examples such as those of Sally Clark and Angela Cannings that, while not foolproof, their approach would have prevented unreliable prosecution evidence being placed before a jury.

Part IX is a summary of the recommendations, Appendix A a draft Criminal Evidence (Experts) Bill, Appendix B Part 33 of the Criminal Procedure Rules 2010, Appendix C the impact assessment which concludes that implementing the report would result in net savings and Appendix D the Acknowledgements.

The report meets the Commission's own criteria for collecting data, analysing and drawing inferences from it and is frank about the limitations of its proposals, however welcome they may be. For example, in my own case, the reports of all the expert witnesses, prosecution and defence, would have met the admissibility and reliability criteria set by the Commission; however, the Crown Prosecution Service simply chose to ignore their unanimous conclusion that the allegations against me were unreliable!

References

1. That is, principles, techniques and assumptions which are not only well founded, but also appropriate for the type of evidence in question.
2. Draft Bill, cl 1(2). As explained already, cl 1 (3) provides that if there is a doubt as to whether an expert's evidence is evidence of fact or opinion evidence, it is to be taken to be opinion evidence.
3. For this aspect of the test cl 4(1)(b) of our draft Bill, the expert's opinion should be expressed with no greater degree of precision or certainty than can be justified by the underlying material on which it depends. The material includes relevant general matters (such as scientific hypotheses) and relevant evidence in the particular case.
4. This test is framed in this negative way to accord with the procedural provisions in cl 6.
5. This example (cl 4(2)(e) of our draft Bill) addresses the reasoning process of the expert and the use of any subjective interpretive skill (see also para 1(h) in Part 1 of the Schedule). The question whether an expert has the necessary interpretive skill to give an opinion is governed by the requirements of cl 1(1)(b) and cl 2; see paras 4.15 to 4.24 above.

Kaim Todner Solicitors

A leading London based firm which specialises in all manner of Crime, including cases of a sexual nature involving False Memory, of which we have extensive experience.

**Also offering:
Family, Extradition and
Mental Health Advice.**

**If you require assistance please
contact:**

**Claire Anderson
0207 842 0650**

Continued from page 2

Jennifer Maidman's interest in the regulation of psychotherapy is explained here.

"I have had many years experience as a client, mostly positive but twenty years ago was in therapy with a practitioner who suggested I had been 'satanically abused' on the basis of 'symptoms'. Although initially confused, I fortunately terminated the therapy and the entirely false allegations went no further. I strongly opposed Health Professions Council regulation on the grounds that it was economically rather than ethically driven, that it would generate widespread 'false compliance' amongst practitioners, and worst of all would fundamentally misrepresent therapy as being akin to science or medicine when it is in fact inherently interpretative, imprecise, and subjective. I believe that counselling is in essence an art, the 'art of relationship' and that it is dishonest and dangerous to conflate personal, narrative or existential 'truths', no matter how compelling, with objective reality. I believe that it is when therapists try to appropriate the linguistic and professional paraphernalia of medicine, seeing themselves, and being seen by society and those in authority as doctors or psychological detectives, that the trouble starts. I do however strongly support high ethical standards and proper accountability for practitioners I am hopeful that the Government's new approach based on professional standards will work. Accountability means to 'give an account' and this requires firstly that the activity in question give a true account of itself, and refrain from in any way falsifying its nature or its efficacy in the pursuit of economic or social advantage."

BOOK LAUNCH

The Ravages of False Memories-or manipulated memory

At BFMS AGM 9th April 2011

Overseas False Memory Societies

Please feel free to write or phone if you have relatives in these countries who would like to receive local information. The American, Australian and New Zealand groups all produce newsletters.

AUSTRALIA

Australian False Memory Association Inc., PO Box 694, Epping NSW 2121, Australia
Tel: 00 61 300 88 88 77 · Email: false.memory@bigpond.com · www.afma.asn.au

CANADA

Paula – Tel: 00 1 705 534 0318 · Email: pmt@csolve.net
Adriaan Mak – Tel: 00 1 519 471 6338 · Email: adriaanjwmak@rogers.com

FRANCE

Alerte Faux Souvenirs Induits, Maison des Associations, 11 rue Caillaux, 75013 Paris, France
Tel: 00 33 6 81 67 10 55 · Email: afsi.fauxsouvenirs@wanadoo.fr · www.psyfmfrance.fr

NETHERLANDS

Email: info@werkgroepwfh.nl · www.werkgroepwfh.nl

NEW ZEALAND

Donald Hudson, Casualties of False Sexual Allegations New Zealand Inc, 80 Avondale Road, Christchurch, New Zealand
Tel: 00 64 3 388 2173 · Email: cosanz@clear.net.nz · www.geocities.com/newcosanz

NORDIC COUNTRIES

Åke Möller – Fax: 00 46 431 21096 · Email: jim351d@tninet.se

USA

False Memory Syndrome Foundation, 1955 Locust Street, Philadelphia, PA 19103-5766, USA
Tel: 00 1 215 940-1040 · www.fmsfonline.org

The Scientific and Professional Advisory Board provides BFMS with guidance and advice concerning future scientific, legal and professional enquiry into all aspects of false accusations of abuse. Whilst the members of the board support the purposes of BFMS as set out in its brochure, the views expressed in this newsletter might not necessarily be held by some or all of the board members. Equally, BFMS may not always agree with the views expressed by members of the board.

SCIENTIFIC & PROFESSIONAL ADVISORY BOARD: **Professor R J Audley** – Professor Emeritus of Psychology, University College London. **Professor Sir P P G Bateson, FRS** – Professor of Ethology, University of Cambridge. **Professor Martin Conway** – Professor of Cognitive Psychology, University of Leeds. **Professor H L Freeman** – Honorary Visiting Fellow, Green Templeton College, University of Oxford. **Professor C C French** – Professor of Psychology, Goldsmiths College, University of London. **Professor R Green** – Emeritus Consultant Psychiatrist. **Dr Cara Laney** – Visiting Assistant Professor of Psychology at Wittenberg University, Springfield, Ohio. **Mrs Katharine Mair** – Consultant Clinical Psychologist. **Mr D Morgan** – Child, Educational & Forensic Psychologist, Psychologists at Law Group, London. **Dr P L N Naish** – Visiting Reader in Psychology, The Sackler Centre for Conscious Science, University of Sussex. **Professor Elizabeth Newson, OBE** – Professor Emeritus of Developmental Psychology, University of Nottingham. **Dr J Ost** – Senior Lecturer in Psychology, International Centre for Research in Forensic Psychology, University of Portsmouth. **Mr K Sabbagh** – Writer & Managing Director, Skyscraper Productions. **Dr B Tully** – Chartered Clinical & Forensic Psychologist, Psychologists at Law Group, London. **Dr Kimberley Wade** – Assistant Professor of Psychology, University of Warwick. **Professor L Weiskrantz, FRS** – Professor Emeritus of Psychology, University of Oxford. **Professor D B Wright** – Professor of Psychology, Florida International University.

BFMS · Bradford on Avon · Wiltshire · BA15 1NF
Tel: 01225 868682 Fax: 01225 862251
Email: bfms@bfms.org.uk
Website: www.bfms.org.uk
Registered Charity Number: 1040683

Management and Administration
Madeline Greenhalgh, *Director*
Sue Ryder, *Administrator*
Roger Scotford, *Consultant*