**The Newsletter of the British False Memory Society**
Vol. 9, No. 1 – December 2001

Serving People and Professionals
in Contested Accusations of Abuse

Dear Reader

At times during the last decade, the tunnel we travel may have seemed long and unending, but now there are glimmers of light. For those of us facing yet another day of challenging the ease with which false allegations of abuse can destroy a man and his family, our spirits were lifted when a recent early morning radio report charged the day with optimism. BBC Radio Four announced that the Lord Chief Justice, Lord Woolf had given a warning that child abuse allegations "were easy to make" and "may not be accurate". During an interview with the *Independent,* Lord Woolf outlined serious concerns brought to his notice by the Criminal Cases Review Commission, of the dangers of miscarriages of justice, stating "we have all got to be cautious not to readily jump to conclusions." He was referring to retrospective accusations of sexual abuse against care home workers, but the gauntlet has been thrown down and the judicial challenge against unsound accusations of sexual abuse has been made.

This watershed is the third, hugely important step in recent weeks towards the light we all seek. The first, in October, when the House of Lords was led by Earl Howe in a landmark debate on the damage caused to families by false accusations of abuse. Every member of the House of Lords has received information about the work of BFMS. Seventeen members of the Lords spoke during the debate. The second step was the very recent development of an all-party group of Members of Parliament and members of the Upper House. They have come together to research and identify any flaws in the process of child abuse investigations. Having taken these strides forward, this country now has the major ingredients in place to make a commitment to set up a Royal Commission to review practice and propose reform.

I know that many BFMS members have helped with this process by contacting and writing to their MPs and to Earl Howe who has been superb in managing to respond to everyone. The sheer weight of awareness-raising that has taken place in recent months has been possible through the combined determination of the members of the many groups working together as part of the United Campaign Against False Allegations of Abuse.

The lobbying will continue but meanwhile we are still receiving calls from families who are new to the horrors of being falsely accused. They tell of the sorts of cases that just should not be happening today with clinical practice; therapeutic mumbo-jumbo; social work anomalies; unworkable risk assessments and suggestive interviewing techniques all playing their part in perpetuating the problem. The storm

## Table of Contents

we thought would be over within a few years goes on, simply because of the long list of influences that together can determine the outcome of a case.

We get regular reports that families are reuniting; for most, it is a tenuous return to family life; for a few, apologies are given and relationships start to rebuild, but what are the answers to why some retract, some return or all too many accusers don't get in touch? In order to understand what is happening and to gain an overall picture in 2002, together with our academic colleagues, we are planning another Family Survey to follow on from the one conducted by Dr Gisli Gudjonsson of the Institute of Psychiatry back in 1996. To produce a sound piece of academic research we need your contribution and we will be calling upon everyone to set aside some time to help.

Many of you will recall that at the Annual General Meeting in May our Treasurer, Bernard Reed, noted that quite soon BFMS would need to have a fund raising drive among its members and supporters to help us raise much needed funds. We have now reached that point; I don't like to ask – some of you are already generous with your financial support – but we do need everyone to give whatever they can manage so that we ensure the valuable work goes on. The power of collectivism will be proved – by all for the benefit of all - so please show your support.

Our very best wishes for the Christmas Season and the New Year from everyone at BFMS.

**Madeline Greenhalgh**

## The Auld Review

The Criminal Courts Review by Sir Robin Auld was published last July. Comments on the report's recommendations are being sought by the Government.

Sir Robin is known to have received a substantial number of representations from people and groups concerned about the safeguards against wrongful conviction in retrospective abuse cases.

The deadline for submissions is 31st January 2001.

*For further information see www.criminal-courts-review.org.uk or contact BFMS.*

# NEWS FEATURES

## Abuse convictions may be unsafe, Lord Chief Justice warns

Many innocent people may have been wrongly convicted on retrospective sexual abuse charges, the Lord Chief Justice Lord Woolf has warned. In an interview in the *Independent* (23.11.01), Britain's most senior judge was reported to have said that child abuse allegations were "easy to make" and could be financially motivated.

He said he had been alerted to the problem by the Criminal Cases Review Commission who told him of "serious concerns" over a number of convictions involving former residents in care homes. The report states that Lord Woolf said that many of the recollections, "may not be accurate" particularly when tempted by compensation awards and the police asking "Did anything happen to you?"

The stand taken by the Lord Chief Justice was said to have divided legal opinion (*Independent* 24.11.01), but a senior figure on the Law Society criminal law panel, solicitor Malcolm Fowler agreed that child abuse trials are often prejudicial: "This is getting into Alice in Wonderland territory where we go through an expensive and elaborate quadrille just so we can convict the defendant. It's almost like having the sentence before the trial."

George Williamson, the chairman of Action Against False Allegations of Abuse, told the *Independent*: "We are very concerned by corroboration by volume to persuade juries of somebody's guilt. They put all these allegations together and then at the end of the case the judge says to the jury you must treat them all separately."

Lord Woolf's remarks were immediately welcomed by the BFMS founder, Roger Scotford, speaking on BBC Radio 5 Live. "We are absolutely delighted that at last the judiciary seems to realise that maybe there are many miscarriages of justice out there, caused by the

fact that it is only one person's word against another."

Speaking of the retrospective police trawl cases in children's homes, Mr Scotford said: "What we are asking for is that when these cases are investigated, you have to be extremely careful not to put ideas in people's heads and certainly not offer them compensation, as happens in many of these cases.

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# Time limits for claims change

The Law Commission has recommended changes in civil limitation laws that could have a far-reaching effect on damages claims in retrospective allegations of abuse. The proposals, currently under consideration by the Lord Chancellor's Department, would allow claimants to sue parents and others accused for a potentially unlimited period under a special dispensation of time periods in which to sue.

Under current rules, there is an absolute bar on bringing civil cases against alleged perpetrators in child sexual abuse cases later than six years after the incidents, or the age of majority, so that 24 is the usual cut-off point. Since the case of Leslie Stubbings in 1992, campaigners have sought to change the law to include "recovered memory" and late reported claims.

Up until now most civil child abuse compensation claims have been brought against insurers of local authorities and care homes following police "trawls". These are claims in negligence, possible under current rules. Occasional historical claims in negligence against parents are predicated on either or both parents failing to protect against abuse by the other.

The Association of Child Abuse Lawyers, who represent child abuse compensation claimants, argued for a special category of claim outside the standard time limits for sexual abuse claimants. The Law Commission has rejected this but has recommended that any supervening disability caused by abuse should delay the running of time against the claimant and this, arguably, could include "dissociative amnesia" opening the door to "recovered memory" claims.

With or without alleged memory loss, claimants will be able to apply to a court to waive the standard three year recommended time limit, though the ability of the position of the defendant in countering the claim will be taken into account.

The proposals are incorporated into a draft bill prepared by the Law Commission which is currently under consideration by the Lord Chancellor's Department. If enacted during the next parliamentary year they could be in force by 2003.

*See Legal forum for specialist articles on this issue.*

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# Limelight on false allegations

The first national conference of the United Campaign Against False Allegations of Abuse (UCAFAA) took place in London on 22nd September. An in-depth item on Radio 4's *Today* programme by Jon Silverman signposted the conference with the announcement of the formation of a back bench parliamentary all party group on abuse investigations. This development, together with the forthcoming House of Lords debate on false allegations, lent the conference a momentum that false abuse allegations were coming out of the shadows and on to the public agenda.

UCAFAA was convened as a campaigning and lobbying network now comprising 18 groups and organisations concerned solely with false allegations of abuse in the context of fictitious crimes. Founder members include BFMS, Action Against False Allegations of Abuse (AAFAA) and Falsely Accused Carers and Teachers (FACT), the Bryn Estyn Staff Support Group (BESST) and Friends of Derek Brushett (FoDB).

In a late scheduled appearance at the conference, Neil and Christine Hamilton spoke of their own experience as victims of false rape allegations and the steep learning curve it had engendered. Neil Hamilton spoke persuasively of the need for better safeguards for the accused within the criminal justice system. "It came to me as rather a shock, as a former member of the establishment, that we live in a police state," he remarked

laconically of their own experience of arrest and police interrogation. Drawing on his past experience as a government minister and barrister, Mr Hamilton outlined a series of proposals to protect people from precipitate action by the police in unfounded allegations of abuse, while highlighting the issue of compensation as a catalyst over the past decade for false reports.

Recorder Nicholas Valios QC questioned whether there were adequate safeguards in the trial process for defendants facing retrospective charges of abuse. He asked whether the presumption that jurors would have to be convinced that the complainants had good reasons for delaying reporting the alleged offences before convicting did in fact protect innocent defendants. Jurors, he noted might be more swayed by the notion that the accuser would not make the allegations in court unless they were true. He particularly criticised the current restrictions on disclosure of records and other prosecution and third party material in trials which had a potentially prejudicial effect on defendants.

Psychiatrist Dr Janet Boakes spoke of how the fallacies of repressed and recovered memory tainted the expectations of both professionals and the public because they had become embedded in the cultural backdrop they were so prevalent. Speaking to an audience where many had no direct contact with the "false memory" issue, Dr Boakes explained how the fact that counselling might not have been the cause of a false allegation did not rule out "false memory". "If a false allegation isn't simply a lie, then it is a false memory" she said.

Former prison governor, criminologist Professor David Wilson spoke of his concern about the number of people wrongly convicted in prison and how the parole system discriminates against them. In his experience it was not true, as is often said, that large numbers of guilty people continued to deny their offences in prison. He pointed out that although people often initially denied genuine offences, the pressure to accept guilt was intense in the prison environment, and that this, together with time, meant that it was very difficult to maintain false innocence without it having a perceptible effect on their mental stability.

Floor participation was active throughout the day, and none more so than when *Observer* journalist David Rose advised on using the media both to attract publicity for miscarriages of justice and engaging journalists in conducting case research.

Calls for greater accountability in investigation and the tape recording of all witnesses in police investigations were made in the knowledge that public disquiet is growing about the issue of false allegations, and that the issue is at last becoming an item on the political agenda.

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# FOCUS ON PRACTICE

## Risk Assessment

*A first-hand account by a father who has faced abuse allegations.*

Risk assessment is not a science. There are no laid down procedures to be followed. It is but one person's opinion which may be swayed by preconception or preconditioning.

Strong words, but ones based on personal experience and worrying in view of the weight that social services departments and the courts may give to these assessments.

A few years ago my wife and I were referred to a Midlands-based organisation by social services. We have three children, a daughter (then aged 26) and two sons (then aged 22 and 24). Our elder son suffers from Downs Syndrome, having a mental age of about five years and severe communication difficulties. Our younger son was living and working away from home following the relocation of his employer.

Our daughter had moved back into the family home following the breakdown of her marriage. She was suffering from mental health problems for which she was receiving psychiatric treatment. We later found out that whilst undergoing that treatment she made allegations that I had repeatedly sexually abused her as a child between the ages of five and 15 and that her mother had known about this and condoned it. These allegations were repeatedly made, then

withdrawn, but at all times she refused to talk to the police. Our daughter continued to stay at the family home during this period despite being offered alternative accommodation by the mental health team.

Social services became aware of the allegations because of our daughter's two children. When they were about to approach us regarding contact with our grandchildren, our daughter wrote us a letter stating that people would not believe her retractions of the allegations. At this stage she left the family home.

During the period following the breakup of our daughter's marriage our handicapped son had shown signs of mental regression and depression. Following medication he was showing definite signs of improvement. On learning of our daughter's allegations his psychiatrist and social services decided that his regression was due to his having been abused. His psychiatrist subsequently described his condition as "Post Traumatic Stress Disorder (PTSD) arising from abuse". However, for a period of three months, no contact was made with us on the issue, nor was any attempt made to obtain any family records from the local authority in whose area we used to live.

Shortly after our daughter left home a meeting was arranged with social services to discuss matters relating to our grandchildren. Without prior notification to us, that meeting was attended by an officer from the team giving support to our handicapped son. He told us they wished our son's immediate removal from the family home and that if we objected, they would take urgent action under the Mental Health Act. This was to prevent us interfering with their investigations as to whether he had been abused. Supervised contact would be permitted for one hour a day. Our son was taken direct from his day centre to alternative accommodation. We sought immediate legal advice but a subsequent meeting with social services and their legal advisor brought no concessions.

The social services investigation consisted of our son being talked to by "people who know him and can understand what he is saying". These people were part of a team which had already decided that he had probably been abused. Social services also brought the police into this process. This process in itself was flawed. Despite living with our son for 24 years, there were frequent occasions when we could not understand him. The people talking to him had at the most seen him for about one hour a week for two years. To our knowledge none of these talks were recorded. Arising from these talks allegations were attributed to our eldest son whose content was far beyond his likely comprehension or communicational abilities. These clearly represented someone's interpretation of what they thought he had said. With knowledge of the family background and his interests, and an open mind, it would be possible to put totally different interpretations on those "allegations". No attempt was made to talk to my wife and myself, nor to our other son.

He told us they wished our son's immediate removal from the family home and that if we objected they would take urgent action under the Mental Health Act.

After four months of unsatisfactory progress my wife, myself and our younger son were all suffering from stress. At this time our younger son confided in his mother that when he was about eight his sister had sexually abused him on a number of occasions. We were concerned that our elder son may have also been abused by his sister and following consultation with our solicitor informed social services of this matter. As a result, and under pressure from our solicitor, social services agreed to refer the matter to an independent organisation. They also agreed to a joint referral with our seeing all the material submitted. Social services prepared a chronology for submission which was given to us for agreement. However, where we disputed matters of fact they were only prepared to add a note to this effect, insisting that their records were correct.

After the referral nothing happened for two months. We were then expected to travel to the Midlands on two occasions to be interviewed.

These interviews totalled over four hours each and were recorded on video. Interviews of about one hour in length were subsequently held with our daughter and, in the presence of social services, with our eldest son. We were not informed of the dates of these, nor whether they were also recorded. Despite promises to do so, no attempt was made to interview our other son or even to contact him by telephone, via his answering machine or by letter. They later claimed that they had made numerous attempts to phone him!

Following our interviews it took a further two and a half months for the report to be prepared. It was obvious that information had been given by social services which we had not seen, some documentary and some possibly verbal. By this time social services had applied to the courts for a guardianship order for our son on the grounds that we were unable to protect him from harm. The assessment formed part of their evidence. We were thus able to obtain a court order for social services to give us the documents which were identifiable. However, there were still references within the report with unidentifiable sources. When making the order the judge commented that he had yet to see a favourable report on an accused person from the organisation conducting risk assessment.

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The risk assessment concluded that I had sexually abused both my daughter and eldest son. Close examination however failed to show the evidence to support this conclusion. It relied on behavioural patterns described as "classic symptoms". In respect of our daughter these included self-harm, alcohol abuse, mental instability and childhood delinquency. It concluded that if these are coupled with allegations, however made, they prove abuse. Amazingly, in referring to our daughter's interview, it stated that she viewed me as a benign influence. It offered no explanation or views on this apparent anomaly. In respect of our eldest son, it relied on the psychiatrist's diagnosis of PTSD, his "allegations" and his improvement since removal from the family home. His improvements prior to that time were conveniently ignored. Criticism of the methods used to obtain those "allegations" were dismissed on the grounds that professionals are not incompetent and don't make mistakes.

The report contained a number of factual inaccuracies and misinterpretations. Statements made by my wife and myself during interview were often misrepresented or taken out of context. Our youngest son's allegations in respect of his sister were dismissed as conveniently timed to assist his parents. In reaching this latter assessment, the ages of the two children were wrongly stated as eight and six, not twelve and eight, despite this detail being clearly shown in the social services chronology.

Overall the 11-page report gave the impression that the conclusions had been preconceived and the supporting information adjusted to suit those conclusions. It relied heavily on compliance with set behavioural patterns to prove its case, ignoring the fact that those patterns may arise for other reasons than abuse.

At a subsequent court hearing the author could give no satisfactory reasons for the factual errors in the report. Nor could he remember the source of some of the information contained within the report. He was asked to outline the criteria which, in his opinion, would identify an abuser. He did so, and when asked if I met any of those, he admitted I did not, although he still felt that I was an abuser.

With hindsight, although the report was damning in its content, we were fortunate in having a judge who was determined to give us a fair hearing. He told the local authority that if they wished to prove the abuse they would have to produce evidence not opinions. This would require our daughter to give evidence as well as those who had talked to our elder son. He also stated that he would wish to know the context in which our elder son's "allegations" were made. In so doing,

he effectively sidelined the assessment report. As a result no evidence was offered and the judge made a finding that the abuse had not occurred. He also strongly criticised the handling of the case by social services.

If you are ever placed in this position there are a number of things you can do to increase your chances of a fair result.

1 Although you will be in a stressful situation, do not allow social services to bully or blackmail you into agreeing a particular course of action. In particular, the threat of court action in the event of non-agreement should not be feared. The courts can control the excesses of social services and give instructions which **must** be complied with. Social services are likely to ignore agreements with you if it suits them.

2 In the event of risk assessment being undertaken, agree methods and procedures in advance. Ensure that you know what material is to be submitted and that you see it before submission. ***If social services want to withhold information from you don't agree to the assessment.*** Agree the persons to be interviewed. Ensure that all interviews are recorded and that tapes are not destroyed until the conclusion of **all** proceedings. Those tapes may be vital in the event of any disputes over the content of the interviews.

3 When the report is produced ensure that they do not rely heavily on opinion. Remember even professional judgement must rely on facts and not "gut feeling". If information is used, the source of which is unclear, challenge this. If you feel that the report is inconsistent or inaccurate in its approach, make notes of the points in contention, together with your comments and immediately send a copy of this to social services and, if appropriate, the court. You should also consider whether to lodge a formal complaint with the authors.

4 Finally, remember that you have a right to a fair hearing. Don't let anyone take that away from you. Remember that all local authorities have complaints procedures. Don't be afraid to use them.

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# FEATURE FORUM

## Statement Validity Analysis

### by Bryan Tully

Historically, disputed evidence amounting to one person's word against another's has posed great difficulty for courts. Somehow, the matter has to be decided. Perhaps one party has a better reputation or character; or is more verbally fluent and assured; or attractive; or gives more detail; or appears not to be stressed or prone to making errors. All of these factors are taken into account by the judge or jury - even though there is no scientific evidence that they are good indicators of evidential reliability.

So are there any reliable indicators of truth-telling? This is a matter that has received detailed attention in Germany and Scandinavia. It began in Germany in the early 1950's when several young men were convicted of sexually assaulting a young teenager of good social standing. The conviction seemed safe - why would she lie about these strangers? There were technical grounds for an appeal and, during the course of preparation, it was discovered that the complainant's story kept on changing and it seemed almost as if she wanted the appeal to succeed. She was interviewed by a psychologist, Professor Udo Undeutsch, who eventually discovered she had initially lied to a limited extent to cover up an evening when she was late home from school. She had to elaborate these lies even further as she was pressed for further information for the trial and investigation.

The Court of Appeal quashed the convictions after Undeutsch reported that the girl had admitted lying to him but could not find any way of escaping from the consequences.

As a result of this case, the court asked Undeutsch to set up a special study to see if psychologists could help courts faced with this sort of problem in the future. Undeutsch's work revealed that when people, especially the young, provide an honest and authentic account of an experience of sexual victimisation, there were more special characteristics concerning their account than were

forthcoming from those inventing such claims. He developed these into "criteria" and one stage of Statement Validity Analysis requires the contents of such putative victims' narratives to be reviewed in this light. This is called "Criteria Based Content Analysis". People reporting authentically more frequently demonstrate certain traits such as honest doubts about their own memory; or express judgements as to what was going on in the perpetrator's mind.

A key criterion in younger children is the reporting of something whose significance is not appreciated. Where experts in sexual offence victimology and child development used these methods and where certain other validity criteria were also positive, then these factors supported the authenticity of reports (which might also include honest errors).

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However, the analysis was not foolproof. Much depended on the investigative knowledge of the assessors. A very young child or person reporting from the distant past, might produce an impoverished account for that reason alone. While someone who had been through a similar experience before or had exposure to others who had, could not have their statement validity criteria judged in quite the same way.

A frequent modern problem is where the investigator, instead of discovering validity criteria spontaneously, may suggest, or hint at, alternative answers meeting the criteria – for instance, the investigator may give a reason as to why an immediate report was not made. This helps the truth teller and false accuser equally and robs the chance of there being an independent objective judgement on this matter.

The Germans and the Swedes have used these methods for several decades now. More recently, American military police discovered that in disputed rape cases (as to consent), genuine victims often spent as much time, or more, talking about the aftermath of the incident on their lives, and the dilemmas they had as to what to say or do, as they did on the specifics of the incident, and indeed, these might not be recalled fully since trauma interferes with recall of details. By contrast, a number of false accusers gave detailed gruesome accounts of terrible assaults, and yet when given the opportunity to talk about dilemmas and the aftermath (who to tell, how to tell?), were suddenly in great difficulties, providing only the thinnest and stereotyped accounts by comparison with the authentic cases. Not having been raped, they had no source of such matters and had not prepared any answers since they expected the police not to ask questions beyond the time of the course of the attack.

Unfortunately, while some investigators have improved their techniques these days, some victim oriented services, in their zeal to provide unconditional support to someone believed to be a victim, actually feed suggestive details out of empathy or sympathy before any tribunal has made a finding of fact.

False accusations may be retracted, but in some cases involving young children, true allegations are also falsely recanted. Statement Validity Assessments have proved helpful in sifting out fact from fiction, but they are not scientific protocols giving a reading of "True" or "False". Often there is a mixture of true and false ingredients in a statement, because even a genuine victim may have their own "agenda" which does not match the expectations of the police or child protection authorities. Overall, the value of Statement Validity Assessment protocols is to permit the investigator or reviewer to make step by step evaluations for those factors known most likely to have jeopardised veracity, or alternately to support such reports against unreasonable attempts to rebut.

*Dr Tully is a Chartered Clinical and Forensic Psychologist with the Psychologists at Law Group*

# Belief with a hole in the middle

## by Kathaine Mair

As a retired clinical psychologist with a sceptical interest in ritual abuse, I attended the conference held by the Ritual Abuse Information Network and Support (RAINS) and Clinic for Dissociative Studies in September along with about 180 other delegates, none of whom appeared to share my scepticism. My impression was that most of them were dedicated therapists with at least one client suffering from dissociative identity disorder (DID) which they were convinced had been caused by ritual abuse. In addition, there were several "survivors", i.e. people who believed that they themselves had suffered this abuse in the past. Women heavily outnumbered men in both categories.

The topic of ritual abuse has aroused strong feelings for many years now, dividing health care professionals and the general public into two camps: those who believe that this is a serious and widespread problem, responsible for untold suffering and long-term damage in thousands of children and adults, and those who refuse to accept that ritual abuse does happen in this country. What is ritual abuse? In this conference it was defined as "sexual abuse occurring in the context of symbols or activities….. used repeatedly to frighten children". The symbols relate to some supernatural power and the activities of the robed and masked perpetrators are so horrific and perverse that the term "satanic" is often used. These include: murder (often of babies and children); cannibalism; bestiality; consumption of bodily fluids (especially blood); torture; the use of drugs and various forms of "mind control" to ensure compliance and secrecy. This provides the context for every imaginable form of sexual abuse. Children are systematically traumatised from infancy and made to participate in cruel and barbarous practices including the sexual abuse and sometimes even the killing of other children. This occurs within organised groups or "cults" which aim to control their members and ensure lifelong loyalty. They are said to be multigenerational, so that the leaders may have been born into them and themselves suffered the abuse they later inflict.

Concern about ritual abuse in Great Britain grew during the late 1980s and the government funded an investigation into its occurrence by anthropologist, Jean La Fontaine, who reported in 1994 that she could find no evidence of the type of organised ritual abuse that was being reported by various therapists, carers and alleged victims. This, together with emerging publicity about false memories, increased public scepticism and made the work of those who continued to believe in ritual abuse more difficult. Psychotherapist Valerie Sinason was spurred into developing her own clinic because the Tavistock Clinic, where she previously held the post of child psychotherapist, refused to support further work with ritual abuse survivors. Several speakers at the conference referred to the sacrifices that were made by those who persisted in their efforts to uncover cases of ritual abuse or treat the survivors. One thing the La Fontaine report does *not* seem to have done is to change the minds of any of those who were already committed to a belief in ritual abuse.

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Valerie Sinason acknowledged that believers in ritual abuse had a problem when trying to convince others of their beliefs: their knowledge of ritual abuse came solely from the testimony of alleged "survivors". None had been able to provide independent, incontrovertible evidence of what had occurred. "There is a hole in the middle" she admitted. After more than a decade of searching, no relics of the reported gruesome ceremonies had been found: no bones, no bloodstains, and no bodies. There had been some successful prosecutions for child sexual abuse which was accompanied by strange and frightening rituals, but these did not in any way match the horrors reported by most ritual abuse survivors. Their stories always included killings, usually several of them, but there had been no prosecutions for ritual murder. She called for

more research to convince others of the reality of ritual abuse, but the only method she was able to suggest was working with the survivors to provide more information on their experiences and their circumstances. This would hardly fill the hole.

Therapists claim that the various stories of ritual abuse are very consistent. This enables them to speak with conviction about a wide variety of cult practices and to know what to look for with new clients. A survivor told me how grateful she was that, after years of treatment with one therapist, she had gone to another one who immediately recognised the physical signs and other pointers to ritual abuse thus enabling her to recall the details during eight more years of therapy. A history of ritual abuse is said to be hard to detect, and most orthodox therapists never do detect it. This is because survivors usually have no conscious memories of it before going into therapy. Even when they do remember, they are said to be reluctant to tell their stories, because they are afraid both of the continuing power of the cult and of being disbelieved by the people they turn to. However, I was surprised to hear from one speaker that 80 per cent of calls to the Dundee rape crisis centre were about ritual abuse.

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Given that the testimony of survivors has not yet been independently corroborated and that there are often cases in which it seems extremely improbable, what made the people at this conference so convinced that ritual abuse happens? In most cases it was their experience of being told "this happened to me", usually by a very disturbed and distressed individual. "No one would put themselves through that torment if it wasn't true". "When you have eye contact with somebody….you know". "As soon as she started talking, I knew she was a survivor". "When you sit in front of someone who is a genuine DID case, you cannot disbelieve". Several people spoke of the increased severity of the revelations as their receptiveness increased. "Everything I touched seemed to escalate". "The abuse stories got unbelievably worse" – but she still believed! Therapists themselves were often traumatised by what their clients were telling them, and this powerful experience may have strengthened a bond in which any questioning of testimony was quite unthinkable.

Norma Howes, a social worker and therapist for both adults and children, told the conference that she was working with someone who did not know whether her memories were real or were dreams: "Therapeutically it doesn't matter. If your dreams require metaphor of such horror, then something awful must have happened to you". She did add that you cannot use such information in the courts, because "what is compelling in therapy is not in the courts".

Most people who are believed to have been ritually abused display signs of dissociative identity disorder during therapy. This means that they switch into different personalities, usually referred to as "alters". It is mostly while they are in these dissociated and often childlike states that they are said to remember traumatic experiences from their childhood. They are believed to have dissociated as children to protect themselves from a full awareness of what was happening to them. The memories of the abuse are then held by the detached alters and the core personality may be unaware both of the alters and of what she has suffered. Different alters have different tales to tell and all must be acknowledged. Thus therapy typically involves an adult therapist talking to child alters (i.e. another adult who behaves as though she was a succession of different children). There was talk of how to deal with the various alters. Some of them might be loyal to the cult which had abused them, or to their parents. Some might make allegations that were patently ridiculous (such as being abused by aliens), and some might try to disrupt the therapy. This was attributed to "programming" by the cult. Children were deliberately confused, so that their testimony would not be believed. Several speakers mentioned "mind control" and the use of torture and deprivation to enslave the child and make him or her terrified of telling anybody.

Clients do not simply describe abuse and torture; they also appear to re-experience it during the therapy sessions. They may scream and whimper

and try to hide. They can even show bodily changes, such as the spontaneous appearance of burns and wounds. Some similar phenomena have been produced experimentally, using hypnosis, but the mechanism is hard to explain and the effect is uncanny. Several therapists at the conference mentioned physical manifestations in their clients, either observed during therapy or occurring outside it. They explained these as "body memories": the body is remembering and re-experiencing what happened to it previously. Valerie Sinason even suggested that some unexplained physical problems occurring at the present time could be seen as evidence that earlier abuse had occurred. For example, gynaecological pain could indicate earlier sexual assault, and food allergies could be a reaction to earlier enforced cannibalism. She also claimed that full blown DID was "proof" of earlier torture.

The therapists who believe in ritual abuse seem to have an answer for many things that the rest of us find puzzling. Why do people who claim to be survivors of long term ritual abuse usually have no memory of this before they go into therapy? Until recently the disputed mechanism of repression was invoked. It was also pointed out that in DID cases some of the "alters" might have memories, but that the "host" personality was unaware of these before therapy. Now, neurological mechanisms are invoked, thanks to research that has been done on the brain functioning of people who have been subjected to known trauma, such as fires or other severe accidents. It has been found that their memories of this trauma are processed rather differently, bypassing that area of the brain, the hippocampus, that is involved in laying down long term memories. Some victims of known trauma appear to have a slightly shrunken hippocampus. Two speakers told the conference that this research could be useful in providing some explanation for memory difficulties in ritually abused clients. No information seemed to be available on the states of their hippocampi, however, so it was hard to see how this research on people who had suffered a completely different type of sudden trauma could be applied. Also it seems rather paradoxical to suggest that the survivors who provide the therapists with all their detailed knowledge of ritual abuse are suffering from damage to the part of the brain that is involved in long-term memory. RAINS chair psychiatrist Dr Joan Coleman said that RAINS accepted the reality of false memories, but thought they were less likely to be induced by therapy than by the perpetrators of ritual abuse. She pointed out that these people induced false memories deliberately, using many methods, including drugs and hypnosis. These false memories are of happenings, such as alien abduction, that are so fantastic that they will discredit the testimony of the victims. Until the last session of the conference I heard no warnings to therapists that they might unwittingly induce false memories. At this final session we were addressed by a panel of speakers including Norma Howes. She said that hypnosis must not be used to elicit memories, though it could be used in other ways to help clients. She did not elaborate on this and her message was somewhat obscured by another panel member, a survivor, who said that she totally disagreed: "I would never have recovered my memories without hypnosis". This remark was not challenged.

I heard no dissent at this conference. Therapists and survivors shared a powerful belief system that seemed bizarre to outsiders, but was proof against all attacks and even seemed strengthened by the criticism it provoked. When I tentatively suggested that some aspects of survivor accounts seemed incredible, I was quickly told that some stories may be muddled, because of the drugs and programming that survivors have received while in the cult, but that they are always essentially true: "The abuse is real". When I queried how survivors had been able to complete their education, sometimes to university level, and to function so well after a childhood of unremitting suffering, I was reminded of the wonderfully protective effect of dissociation. I did not raise the question of the lack of evidence for the existence of ritual abuse cults because I had already heard the answer: cult members have infiltrated many influential professions and are found in the police, the legal system, parliament and the national health service. Thus prosecution can be avoided and evidence destroyed, for example by doctors disposing of bodies in hospital incinerators.

Believers in ritual abuse have answers for everything, and can speak with impressive conviction. Sceptics, by their very nature, are doubters, who ask questions rather than give

answers. There are no easy answers for the sceptics. It seems that they cannot change the views of the believers, but neither can they dismiss these people as simple-minded or crazy. The therapists I met seemed to be intelligent, caring and conscientious people, genuinely wanting to relieve the suffering of their clients, while acknowledging that therapy was inevitably disturbing and that clients had to get worse before they could get better. Although no independent studies have demonstrated any benefits from this therapy, it is clearly here to stay. Therapists and clients believe in it, and the more they do it the more their beliefs are reinforced. Their experience is telling them that they are right, and other factors simply do not come into consideration. Those people who feel that they have been harmed by therapy for the alleged effects of ritual abuse, either as clients or as relatives of clients, may be able to influence public opinion by telling their stories, but unfortunately their voices are unlikely to shake the faith of the true believers.

*Katharine Mair is a retired consultant forensic psychologist*

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*The following is a summary of the talk on retraction presented at the last AGM. References given in the article are available from BFMS.*

# Retractors' experiences of making and repudiating claims of childhood sexual abuse

## by James Ost

### Introduction

There are a growing number of cases in which individuals now report that previously they came to falsely believe that they had been sexually abused as children (see de Rivera, 1997; Lief & Fetkewicz, 1995). These individuals, referred to in the literature as "retractors" or "recanters", made claims that they were sexually abused as children, only later to repudiate those claims as false. Some researchers have expressed reservations about the accuracy of retractors' accounts of their experiences on the grounds that these retractions may be the result of retractors being unduly suggestible, or unreliable witnesses (Blume, 1995; Kassin, 1997; Kluft, 1999). Other researchers argue that such retractions should generally be taken at face value (Schachter, Norman & Koutstaal, 1997). The aim of this research project was to examine retractors' experiences to establish whether there were any factors that might help us understand why they first made, and then repudiated, their claims of abuse.

### Methodology and findings

- We surveyed 20 self-reported retractors from both the UK and the USA. All were contacted through the British False Memory Society and the False Memory Syndrome Foundation. Each responded anonymously to a 62-item questionnaire regarding their experiences of recovering and subsequently retracting their claims of childhood sexual abuse.
- It is important to note that not all of our respondents' claims of childhood sexual abuse were made as a result of therapy. Although the majority in our sample (seventeen) reported that they had not been aware of any abuse before they embarked upon their course of therapy, three reported that they suspected that they had been abused before they began any course of therapy.
- Seventeen of our respondents stated that the person, or persons, treating them had told them that they must have been sexually abused.
- Eleven of our respondents explicitly mentioned that they were either told to cut off contact with their alleged abusers, or else remain silent about what happened during the therapy sessions. Only one was told to talk to her mother about the possibility that her father might have abused her.
- Four of our respondents reported that they have been subjected to lengthy and emotional interviews in order to find out what was wrong with them. One respondent mentioned being hypnotised for a total of 18 hours over a

few days, whilst another reported that she was restrained on a table with straps so that she wouldn't hurt herself whilst "reliving the trauma."

- Three of our respondents were provided with seemingly incontrovertible proof that they had been abused. One respondent was told that some "tests" had been performed which "proved" that she had Multiple Personality Disorder (now renamed Dissociative Identity Disorder) resulting from abuse. In another case, it was a statement allegedly made by the respondent after she had been injected with sodium amytal, and a third respondent was told that it was possible to remember "everything, even being born." Whilst the validity of the MPD/DID diagnosis is still the subject of much debate, there is certainly *no evidence* that sodium amytal acts as a "truth drug," or that individuals can remember being born.

- Some respondents reported that they were also provided with a concrete explanation for *why they could not remember having been sexually abused*. Ten of our respondents claimed to have been told that they were "repressing" or "dissociating" their memories of abuse and that this is the reason that they could not remember it.

- Two respondents reported that whenever they questioned the possibility that they had been abused then they were subjected to intimidation and threats (one was subjected to intimidation by his wife whilst the other was told that if she left the therapy she would "end up dead").

- Regarding social pressure, sixteen of our respondents reported that they had experienced "moderate" or "substantial" pressure, either from support groups that they were attending or from whoever was treating them (who were described as psychologists, therapists, hypnotists, General Practitioners, counsellors or psychotherapists) to report that they remembered having been abused. They also reported that this pressure was significantly higher than the pressure from their families to retract such claims. For example, one respondent reported that she "was given to understand by my therapist that I would not get better unless I accepted that my father had sexually abused me."

- Whilst we must be cautious in interpreting these findings, two factors are clear. Firstly, these reports, if accurate, describe forms of therapy that have been condemned by several psychological and psychiatric organisations. Secondly, they share some of the same features as situations in which individuals make false confessions about crimes in police interrogations (see Gudjonsson, 1992; Ofshe, 1989; Kassin & Wrightsman, 1985).

**Summary and caveats**

It has been argued that retractors' reports of the circumstances in which they made claims of being victims of childhood sexual abuse may not be accurate, as they may be unreliable witnesses or highly suggestible individuals. It must be noted that for a number of reasons we, the researchers, are not in the position to be able to confirm, or disconfirm, the correctness of their earlier claims of childhood sexual abuse. Nevertheless, what is clear is that the reports we have obtained from our respondents, both in the UK and the USA, are *consistent*, in terms of the reported social pressure and so forth. Furthermore, their reports share similarities with conditions identified by other research as being central to false confessions in police interviews. If these reports are accurate then they might indeed explain how our respondents might have come to falsely report that they were sexually abused, only to claim later that the abuse did not occur.

*This research, conducted by Dr Ost as part of his Ph. D. in Psychology (awarded June 2000), was supervised by Prof. Alan Costall and Prof. Ray Bull at the Centre for Forensic Psychology, University of Portsmouth. These data are taken from two papers that are currently in press. If readers would like a pre-publication draft of either paper or have any comments/questions about this study then please contact Dr. James Ost at the Centre for Forensic Psychology, Department of Psychology, University of Portsmouth, King Henry Building, King Henry I Street, Portsmouth, Hants PO1 2DY. Email: james.ost@port.ac.uk. The author would like to thank all the respondents who took part in the study.*

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# MEMBERS FORUM

## Making contact

Dear BFMS

We have recently moved house and have taken this opportunity to write to solicitors acting for our estranged daughter and son, asking them to inform their clients of our new address. This has given us the chance to say, again, that we would really love to see them.

Let's hope good will result and certainly we trust a court order won't follow for "continued harassment".

A mother

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## For me it was a question of "Don't rock the boat!"

Dear BFMS

We had always been a very happy family. My two sons were close in age and had been very happy playing together since infancy when their lovely mother died in 1974. They were very grieved and during her last month over the Christmas holiday she was confined to her bed and the boys spent a lot of their time by her bedside. Charles moved to Australia after a few years. I visited him four or five times and had very happy times with him. A year or two ago he had to give up his restaurant and he married for the third time. He came over here with his new wife and stepson for a month and they also stayed with his brother. After they returned he gave up the restaurant and he and his wife separated for a short while. In April 1999 for my 80th birthday I received the usual cheerful birthday card. But in the following May I received the most extraordinary letter from him containing innuendos about his parents and grandparents. He wasn't specific. His mother had died 24 years before. My father died before he was born and my father-in-law only saw him when he was an infant. My mother was in hospital most of the time when he was young. Charles came back to his wife but he forbade her to contact me and gave only a box office number. I eventually got his address by accident. Although I tried to ring him he would not speak to me.

Then 'out of the blue' after two years' silence in 2001 I suddenly got a telephone call from him. It may have been my birthday and since then we have telephoned each other from time to time but I have never spoken of the two years' silence. I know that Charles employed a therapist and I suspect that person assisted Charles in creating a false memory of his childhood.

His contact means a great deal to me. I am hoping that he will come to England for a week as we have some important things to sort out.

I have always appreciated the help and the advice from BFMS.

A father

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## Enduring Powers of Attorney

Dear BFMS

My late husband and I drew up enduring powers of attorney (EPA) in case of need. We then realised that if we were incapable of giving permission for an EPA to be activated there could be serious problems as our daughter is estranged permanently from the family. Some years ago, when my late father's EPA had to be activated due to his mental incapacity it was done after consultation with his wife, me as his only child, and his only sister. If I were to wait for activation of any EPA until I was mentally incapable then it seems the permission of my children would be sought. (I am a widow and an only child). This would mean, I assume, that my son who is very supportive and helpful would have to try to trace his only sibling whose address is unknown and she would, if she could be contacted, undoubtedly oppose such a move.

This realisation made my late husband and I decide to activate our EPAs while we were each capable of doing so. We each appointed two attorneys with the power to act jointly or severally. We instructed our solicitor accordingly and were each sent a certified photocopy of our own EPA. We simply used this to inform the bank, Inland Revenue and financial advisor etc. As my husband has since died, the fact of allowing my attorneys to act jointly and severally

has meant that I have not had the trouble or expense of drawing up a new EPA (as my husband and son were my attorneys).

I still manage my affairs safe in the knowledge that my son can assist at any time and help if I have any difficulties. He signs some cheques now for me.

Note: To do what my husband and I did does mean one has to have absolute trust in those appointed as attorneys.

A mother

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# New leaders for prayer group

In 1998 Ian and Hazel Hutson started a non-denominational Christian prayer group for BFMS families. Many families have found the group supportive and have managed to meet up at the Annual Meetings in London. Now Ian and Hazel have decided to step down from the running of the group and they are pleased to pass the reins over to Jean and Norman Brand who can be contacted on 01844 212813.

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# Citizens Advice

Thanks to the vigilance of one of our members who is a part-time worker for his local Citizens Advice Bureau, BFMS was informed that it was not listed on the CABs central information database. In the early years of our existence we spent some time ensuring that the major help and advisory organisations were fully aware of our work and we know that many CABs have referred affected parents to us over the years.

We are pleased to report this serious omission has now been rectified and future falsely accused people seeking information will not be turned away empty handed or even pointed in the wrong direction. It is important for everyone caught up in the nightmare of false allegations of abuse to register their case with their local CAB as each branch collects and submits statistics to the central office who publishes a report outlining current problem areas CABs are dealing with.

It would also be a useful test to ensure that their new system works.

**Are you interested in participating in a research project looking at how true and false narratives of childhood sexual abuse come to be constructed?**

I am a PhD student at the University of York researching women's experiences of constructing narratives of childhood sexual abuse. The research is funded by the Economic and Social Research Council and supervised by Professor Jackson. It will be conducted in accordance with British Sociological Association ethical guidelines.

The aim of the research is to look at the processes by which women come to construct a history of childhood sexual abuse and the resources involved in constructing such histories. Although I am concerned about "recovered memories", my intention is not to engage directly with their truth or falsity, but rather to focus on women's experiences and understanding of how sexual abuse narratives come to be constructed. I aim to look at the experiences of women who have continuous memories and those who have "recovered memories" of sexual abuse in childhood. I am particularly interested in the experiences of women who have rejected the sexual abuse histories they once believed to be true.

It is hoped that this research will not only provide a greater understanding of how and why women come to construct sexual abuse narratives but also identify more appropriate responses for those women who, although unhappy or disaffected with their lives, do not have normal recall memories and may not have been sexually abused.

The research can take the form of written accounts and/or interviews. If you are interested in participating please contact me, Jo Woodiwiss, at the Centre for Women's Studies, The University of York, Heslington YO10 5DD or email jw166@york.ac.uk.

# NEWS FORUM

## Parliament raises false abuse concerns

Late in October an all-party parliamentary group was formed to inquire into child abuse investigations. Chaired by Crosby Labour MP Claire Curtis-Thomas, the group aims to look at the way the police and social services investigate child abuse allegations and the pre-trial process in the light of serious concerns about the number of people wrongly accused and prosecuted. Meetings are open to members of both Houses of Parliament.

The group's deputy chair in the House of Lords, Earl Howe, the Conservative front-bench spokesman on health, tabled a debate in the House on false allegations of abuse on 17th October shortly before the group's inauguration. Highlighting "recovered memory" allegations, "police trawls" for institutional allegations, and accusations of deliberate harm against parents under the diagnosis of Munchausen's Syndrome by Proxy, Earl Howe described the issues as a matter of "deep significance for the well-being of countless children and families up and down the country".

*The debate is published in Hansard, 17.10.01, 645-679 and on www.parliament.uk under House of Lords debates, 17.10.01, child abuse.*

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## Recovered memory in the courtroom

Chartered forensic psychologist Dr Bryan Tully has written on the special legal requirements for forensic assessment of "recovered memory" evidence in criminal trials in the UK which includes four case studies of different types of RM cases. His chapter appears in *Sex and Violence – the Psychology of Crime and Risk Assessment* edited by David P. Farrington et al, published by Routledge, price £25 p/bk ISBN 0415268915.

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## "Abuse" challenge to will fails

A man claiming to have been abused by his mother forty years ago lost his attempt to win a share of his mother's £220,000 estate in the High Court, Chancery Division, in July. Raymond Marks, 48, from Poole, had suffered from psychological problems and bulimia and had visited a psychologist in 1996 when he first mentioned abuse. An argument about money and a letter blaming his mother for a traumatic childhood led to an estrangement and Mr Marks was excluded from his mother's will when she died in 1999.

The case rested on whether the claimant satisfied the court that the abuse had happened. Experts were called on both sides with Dr Janet Boakes for the defendants, the two sisters of Mrs Marks, who were the beneficiaries and executors of the will, stating that the type of abuse alleged to have been committed by his mother was extremely unlikely unless she was suffering from a severe psychiatric or personality disorder for which there was no evidence. His reports of abuse were inconsistent and his memories claimed from infancy were unreliable and unlikely to have been remembered with the type of detail Mr Marks was able to offer in court.

The judge, Mr Justice Etherton, rejected the claim that bulimia was reliable evidence of childhood sexual abuse and ruled that there was not the level of cogency of proof needed to satisfy the high standard of proof necessary to accept claims of serious sexual abuse. Describing some of the evidence as fantasy, Mr Justice Etherton said "A mere possibility that abuse occurred is not enough." He went on to say "I gained a sense in some way that Mr Marks had brought this action for closure. The courts are an inappropriate tool for such a therapeutic exercise."

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## A devil of a tail...

In case you hadn't heard, the satanic abuse, alien abduction and military mind control theories that keep the likes of the Ritual Abuse Information Network afloat have been subsumed and superseded by the reptile conspiracy.

This development can be tracked through the internet and by reading sceptic researcher Robert Schaeffer's amusing account of a Californian conference for conspiracy theorists in the *Skeptical Inquirer.*[1]

"Survivor" narratives of the nineties, where child incest victims were delivered to a CIA experimental mind control programme coded MK-ultra, have been amended to include the lizard connection. One such presenter, Cathy O'Brien claimed to have seen President Bush (the elder) momentarily revealing his true self in a "lizard projection" during her former existence as a White House sex slave. Like so many others, Ms O'Brien was apparently quite unconscious of her early experiences, until the hypnotically repressed "memories" began to surface at around the age of 30. The victims, who have been programmed to have "false memories" of a normal existence, tend to wake up at this point in their lives. But through pre-programmed sabotage, the victims self-destruct or go crazy at this stage – which explains why so many only discover their true lives in the confines of MPD psychiatric units.

Masterminding the reptile connection is Britain's own grade-one listed conspiracy theorist, former TV presenter and goalkeeper, David Icke. Icke strides the stage with tales of the world being governed by lizards cunningly disguised as world leaders who secretly slake their thirst on the blood of sacrificed infants made available by a global network of satanic paedophile covens. The aliens it seems, have not only landed, but have always been with us, and for Icke and his ilk it is no coincidence that the Evil One has traditionally been portrayed with a slippery spiked tail.

Interestingly, reptile apparitions displayed by channellers on Icke's web-site bear a passing resemblance to ET. This was the image of choice of the now-passé alien abductees. ET meanwhile looks a bit like a ninja-turtle, and they were supposed to have abused the children in the Orkney ritual abuse case back in 1991. QED for Icke? That these characters are the creation of Hollywood, and are chronologically synchronised with the theories, might pose an alternate explanation. It provides the setting for a perfect folie à deux between theorists and victims who have both imbibed the same imagery. Jurassic Park would explain the ascendancy of the reptile connection over ET, just as the benign Indiana Jones films contained much of the pre-1990 satanic imagery of snake pits and drinking blood. No doubt Icke would have Hollywood ruled by the lizards too, but why they should give themselves away so readily when they have rocket science at their bidding is not clear.

Whether the reptile connection will be endorsed by therapists remains to be seen, but the O'Brien presentation suggests that leakage, if not the truth, is already out there. After all alien abductee and satanic abuse theories, though superficially poles apart, were reconciled through the military mind control paradigm which preceded the reptiles. And this was endorsed by the likes of MPD psychiatrist Colin Ross. Furthermore images of brain structure are now routinely paraded before forests of glazed eyes at traumatic memory conferences. Bombarded with talk of neurotransmitters and the amygdala, what's the betting that all some delegates subsume is an image of a hazy rippled outline called the "reptilian brain" only to re-gurgitate it as a "lizard projection" on a client's "alter"? Watch this space.

1 *Conspire this!* 1.11.01, pp23ff.

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# Data Protection Act 1998

*The Data Protection Act 1998 creates new rights and responsibilities in relation to third party information. Below, solicitor* ***Nicola Hunter*** *explains the Act which may have significance for people seeking to remove false information from official records.*

On 1st March 2000 the Data Protection Act 1998 came into force, repealing the Data Protection Act 1984. It gives extended rights to individuals to know what personal information is held about them and sets down enforceable obligations upon those who hold or "process" the individual's information. This applies to all bodies holding information, from private firms such as credit reference agencies, to public bodies such as the police, social services and health authorities.

There are now eight enforceable principles of good practice which these bodies, known generally as "data controllers", must follow in processing information, notably: that it must be done fairly and lawfully; be accurate; not kept longer than necessary and must be adequate, relevant and not excessive.

The Act now covers most information held on computer records but also covers certain paper records held as part of a "relevant filing system". This refers to most information held on manual records by bodies such as local authority housing, social services, health and school records.

Under the Act, there is a general right to access your personal data upon written request to the relevant "data controller" and payment of a fee of not more than £10.00. You should be sent a copy of the information held about you, including details of the purpose for which that information has been recorded and any third parties it may have been passed on to.

However, the data controller is allowed to withhold information under certain circumstances. An important exemption relates to situations where the release of the information would identify another person who does not consent to it being released, or where it would identify another person as the source of the information. However, if the data controller could still release the information by deleting the names and other relevant details to avoid identifying the other person(s) then the information must still be released. This requirement of balancing the individual's right to access to information with a third party's right to privacy is most likely to give rise to problems in obtaining full disclosure of personal information, but there are also further important exemptions under the Act. These include provisions allowing information on health records to be withheld if it is likely to cause serious harm to the physical or mental health of the "data subject" or any other person.

From this brief outline of the Act's provisions it can be seen that whilst there is now important legislation allowing an individual to find out what information is held about them on the records of both public and private bodies, it does not guarantee a full right of access. If you feel that you have not been supplied with all your personal data and you have been unable to resolve the issue with the body concerned, you are entitled to refer your case to the Information Commissioner who will look at your case and establish whether the obligatory requirements have been met. The Commissioner can then require the body to disclose the information to you. Under the Act there is also now a right to compensation through the courts if you can prove that you have suffered damage as a result of the data controller not disclosing information to you and, exceptionally, compensation for distress if damage is proved.

*For further information contact: The Information Commissioner at www.dataprotection.gov.uk*

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# BOOKS AND REVIEWS

## Review by Nick Anning

*Lure Of The Sinister: The Unnatural History Of Satanism* by Gareth J Medway
New York University Press, New York and London, 2001 – ISBN 0-8147-5645-X

*The Politics And Experience Of Ritual Abuse: Beyond Disbelief* by Sara Scott
Open University Press – ISBN 0-335-20420-1

Call me old-fashioned, but I have always believed in fighting fallacy with fact, so I welcome Gareth J Medway's book *Lure Of The Sinister: The Unnatural History of Satanism* as a meticulous contribution to the cause. I thoroughly enjoyed it and congratulate the author for his hard work and the publishers for publishing it.

Trouble is, fallacy is a term deriving from the process of logic, and what Medway has tackled is something less easily defined, less susceptible to logical analysis and running deeper in people's psychological make-up: to be accurate - Myth. He is a physicist by education and happily admits to being a pagan in his religious views, a "priest of Themis in the Fellowship of Isis", no less. What's more, he doesn't believe in the existence of Satan. But he's very interested in those people who do and he tackles the subject with well-turned scepticism.

Any culture that indulges in a little navel-gazing will discover fluff, and for all our scientific advances, the ability of Western cultures to subsist on a diet of staggering triviality has more than kept pace. The public's appetite is fed by print and TV media which require more and more, as public credulity and gullibility are massaged to ever-higher levels of sophistication. Parallel to this phenomenon - which is by definition unable to tackle or answer any of the more profound and troubling moral questions - runs a decline in broad religious observance and adherence. In this kind of climate, those who cannot bear to examine Myth will be unable to assimilate its instinctual significance and integrate it into their view of the world. They will be dominated by atavistic fears and anxieties and end up believing in a wide range of superstitious and conspiratorial rubbish. That is precisely what creates moral panics.

What is Satanism, where did it come from and where did it go? This book will tell you.

This is where Medway is at his best. He asks basic questions and delivers informative, well-argued and factual answers. What is Satanism, where did it come from and where did it go? This book will tell you.

With a wealth of historical material blended in to back it up, the analysis here is simple: the idea of Satanism - devil-worship, the "black mass" and everything that goes with it in the popular imagination - is a convenient fictional construct and a commercially-nurtured figment. Religion invented demons and fallen angels. The medieval church and the Inquisition nurtured and deployed the full panoply in its fight against Christian heretics and "witchcraft" (another powerful myth); clerics and even politicians have used it to fight real and imaginary enemies. Most recently, charlatans have added further sensationalist dimensions, turning out first potboiler journals, novels and newspaper reports and last, but not least, Hollywood feature films.

Medway picks a careful way through this garish underbrush and traces its genesis over the first hundred pages of his study. Then comes the added-value: the second two-thirds of the book looks at the way in which "Satanism" became conflated with another late-twentieth century obsession - the sexual abuse of children. As two strands of taboo became intertwined, evangelical Christians, police, social workers and many a cod therapist, became convinced that there were bands of "Satan-worshippers" in America and Europe secretly violating and killing children in their rituals.

What followed is dispassionately documented by Medway and is a dismal reflection on our society, with small-time self-appointed inquisitors tearing up families, wrongfully imprisoning the many innocent parties. The investigations of some of the most well-known cases of "satanic ritual abuse" were all too often reported in the media without a hint of any scepticism - in rather the same way that criminal trials are often given the greatest coverage when the prosecution has just outlined the case, rather than the eventual outcome. In some instances, laughable TV documentaries were made on the same basis. Medway takes a fresh look at many of the major cases - McMartin in the United States, Rochdale and Orkney here, and some others less well-known, and draws the conclusion that so many people had difficulty reaching at the time: they were all trumped-up and baseless in one way or another. Serious injustice was perpetrated - not just against adults, but against children, too.

How was it possible to give credence to the kind of "experts" who claimed that millions of children were being sacrificed each year in the United States, with never a body discovered? What was it that led people to make best-sellers out of the therapy-couch confabulations of women who convinced themselves, and the so-called professionals, that they had been kidnapped or suborned into "satanic covens", sexually maltreated and forced into unwanted pregnancies that were then terminated without record for ritualistic reasons? All without their families, schoolteachers or friends noticing anything untoward? Strange indeed, and there has to be a massive and culpable gullibility at work for this kind of rubbish to enter the therapeutic canon.

That the phenomenon has not gone away is evident from the continuing proliferation of "survivor" stories, often written up and presented as factually-based by therapists and counsellors of dubious professional pedigree. All of it ignores factual evidence, which is very inconvenient, of course, particularly to the adherents of concepts like "repressed memory", but as long as there are practitioners who can tap into what is clearly a nice little earner, then the facts will be conveniently ignored. Which is fine, as long as we're dealing with the promotion for some whizz new board-game. But that is not the case at all.

As part of some background research I once looked into a woman called "Doreen Irvine" - who features in Medway's book. Nobody by that name appears to exist in the factual record, yet she, like a handful of fellow authors writing on surviving witchcraft and Satanism and finding religion, has achieved a kind of fame and notoriety with her totally uncheckable tall tales. I could lay down an interesting challenge: show us a birth or marriage certificate or a deed poll document detailing your change of name, give us the names of your childhood friends, your real family, the names of your former associates in crime in darker days - and even better, the identities of the dark forces who kept you in thrall until you managed to escape. Then we can see how much truth there is behind the stories. But this won't happen. It can't, because when fact is set against fallacy, the whole edifice comes crumbling down.

And a reading of Gareth Medway's book will help in such a process. Which is more than can be said for Sara Scott's *cri de coeur*: *The Politics And Experience Of Ritual Abuse: Beyond Disbelief*. Published by the Open University in hardback at an astonishing £55, this is also obtainable in paperback for £16.99. For an extra three quid you can get Medway in hardback - a more durable volume in every respect.

*Nick Anning is an investigative journalist*

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**Provisional date for the next AGM**

Saturday, 20th April 2002, in London

# LETTERS

***From Professor Jean La Fontaine***

**Jervis on Russell and Armstrong**

One expects some hyperbole from journalists but hyperbole should not be a substitute for accuracy - Margaret Jervis goes too far in her review (*Newsletter, Nov 2000, Vol 8.1 "Feminist researcher backs down on recovered memory"*).

First, the title is inaccurate. Diana Russell did not base her research on "recovered memories", in the sense that this phrase usually has now, but on a sociological survey in which the subjects were asked to report their childhood experience. It is characteristic of "recovered memories" that it takes repeated sessions for them to be constructed but the subjects in Russell's research were mostly interviewed once or twice. Nor were her subjects already labelled as having suffered sexual abuse; they were drawn randomly from a particular population. Thus her new account cannot possibly be called a "climb-down", since she was never "up", so to speak, and to compare it with Freud's change of heart is ridiculous.

Secondly, the methodology of Russell's survey is wrongly impugned. Of all the surveys I reviewed when doing my own research in the early 80s, Russell's was the soundest, methodologically. The training of researchers was necessary at the time she did her research because, as I know from personal experience, there was a general inhibition about asking questions of the sort Russell's questionnaire used.

The training is described, as is the interview procedure, so it is wrong to say that there is no way of judging the effect of the interviews. As in any sociological survey it is possible to check whether particular researchers are inducing more reports than others and hence may be inducing fabrication; checks were used. We can never tell whether the answers to surveys are 'true' since they report the past. But again the context was not such as to encourage false narratives: unlike those who recover memories, interviewers did not use hypnosis, did not argue that telling was healing, promise action against anyone or publicity for the survivor's wrongs so the various

methods that seem to induce false memories were absent – an encouraging sign. The breadth of Russell's definition of sexual abuse raised the prevalence rate, true, but also militated against fabrication; why invent the frequently reported single episode? Moreover, in her new introduction Russell seems to have taken great care to distinguish the reports that constituted her data from typical recovered memories. So really her book is not a good one on which to base a discussion of recovered memory. Her Introduction to the new edition of her work is a recognition of the changes that more than 20 years have brought to this topic. If she does not use the current terminology it is useful to know, but in itself, that does not make her work less credible.

I do not recognise Louise Armstrong in the portrait Jervis paints of her. One only has to read her 1994 book to know that she thought, naively perhaps, that her self-exposure would lead to action to prevent the sexual abuse of children. How one could ever prevent it has never been clear to me. She now regrets inventing the term "survivor" but did so because the only label in use at the time was "victim" and she did not wish to be viewed as such. However, she has never been part of a "survivor movement" such as was presented on TV or in magazines and newspapers. She, like Russell, sees herself as a feminist first and foremost. She is fundamentally a campaigner for change, change in the situation of women and children.

The historical and social context of work undertaken a generation ago is vital to understanding the work written at the time. Reading it through the issues of a later age distorts it, as all historians know. Even twenty years can change perceptions radically. Recently, the issue of recovered memories has bitterly divided survivors and feminists in the US. Some feminists, like Armstrong, claim that the response of the therapy profession to the discovery of the sexual abuse of children has been to infantilise women and turn incest into a career opportunity. There are also survivors who point out that true memories of abuse do not need to be recovered since they are never lost. This goes to the heart of the recovered memory issue: by claiming that there is no need for techniques to "recover" memory, recovered memories are denied credence. That conflict did not exist in 1978. By failing to recognise this division and by treating the earlier work of Armstrong and Russell as though it depended on "recovered memories" in the sense that the term is given now, the review appears biased. Jervis adds to this impression by paying lip-service to the truth of some reports, but preferring to dwell on those she deems false. I accept that most members of the BFMS are more interested in false memories, but it will do them and their cause no good to deny the existence of accurate recall.

***Margaret Jervis replies***:

This is a welcome debate in a grey area. Whilst I appreciate the title of the article may be confusing I specifically pointed out that Russell's survey was not based on "recovered memory" and highlighted the disparities noted by Russell herself between her survey and RM typology. Nevertheless, I maintain Russell's frank renunciation of her previous unquestioning belief in recovered memory cases is a landmark, both because of her position as a leading campaigning feminist researcher, and because it breaks ranks with the orthodoxy of the "survivor" movement. The point about the raw data in Russell's survey was that while there is no reason to believe that the major part is inaccurate, as I stated, it is precisely at the extremes (which are documented in detail) that confabulation or fabrication was likely to occur and that, because of their severity, these cases would have a disproportionate effect on the prediction of abuse histories. Russell, in her original survey, appears not to recognise that people do occasionally make up stories of sexual abuse for whatever reason, which is why it is important not to rely solely on reports for verification.

Perhaps the major difference between my position and that of Professor La Fontaine – and this is an issue which is not clear in both Russell's and Louise Armstrong's more recent work – is that I maintain, in common with the majority report of the Royal College of Psychiatrists, that it is neither a necessary nor a sufficient condition of a false "recovered memory" that it is therapeutically induced through the use of particular techniques, rather all that it needed is for someone to believe that the experience of serious and repeated sexual

assaults can be routinely shielded from consciousness and "remembered" for the first time in adulthood. These "reminiscences", especially if cumulative, may be no more, or less, reliable than those produced under the baton of the hypnotherapist.

Louise Armstrong's 1978 book *Kiss Daddy Goodnight* clearly exemplifies belief in the "remembering" of previously unknown sexual assaults and promotes it as a common occurrence where the process of "incest memory construction" is a beneficial and liberating process. If Armstrong was correct in believing these constructions identified genuine offences in 1978, then why is there still no bank of scientifically corroborated recovered memory histories?

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# LEGAL FORUM

# Limitation Periods - Dark Clouds on the Horizon for Defendants?

## by Christopher Yemm

Under the present civil law, proceedings for damages for intentional torts such as rape or sexual abuse must be issued within six years of the assault alleged or the claimant's 18th birthday whichever is the later.[1]

Since 1992 when the application of the six year limitation period to cases of deliberate (as opposed to negligent) assault was confirmed by the House of Lords,[2] the practice has developed of claimants commencing proceedings in negligence - perhaps against both parents - alleging a negligent failure on the part of each to protect the claimant from the deliberate assaults of the other.

This is because in a claim for negligence, unlike intentional torts, the court has a discretion to extend the usual three year limitation period.[3]

By bringing the claim in negligence a claimant can circumvent the normal six year limitation period. He or she could then hope to persuade the court that there were good reasons – mental health problems or the recent emergence of recollections through sympathetic counselling – for the court to exercise it's discretion and allow the claim to proceed.

This artificial way of getting round the strict six year limitation period has recently been considered by the Law Commission[4] which has made a number of recommendations destined to make it easier for claimants to bring proceedings in the future. It recommends a primary limitation period of three years for both negligent and intentional assaults which can be extended at a judge's discretion. There will no longer be any distinction between negligent and intentional assaults for limitation purposes and no "long-stop" period beyond which such proceedings can no longer be instituted.[5] The concern for defendants is that this will lead to an increased number of potential claims since most claimants will fancy their chances of persuading a judge to exercise his discretion in their favour. At least one case has already been stayed by the court pending such an anticipated change in the law.[6]

In order to persuade a judge to disapply the proposed three year limitation period in all future personal injury cases a claimant will have to show that his or her date of knowledge falls within the three year period prior to the issue of proceedings[7] or that it would be unjust for the judge not to do so[8] after weighing up the potential hardship which would be caused to both defendant and claimant. As has recently been pointed out[9] a great deal of case law has already built up over the interpretation of the predecessors of these proposals, sections 14 and 33 of the Limitation Act 1980, and it seems reasonable to assume that a court will look to these earlier cases when attempting to interpret the amended criteria now being proposed.

In so-called "false memory" cases it will always be possible for claimants to argue that the mental effect on them of the alleged abuse has been sufficient to delay their effective date of knowledge as defined in section 14. Indeed some claimants have successfully argued that the extent of their disability was so great as to prevent time running against them at all because of their inability to manage or administer their affairs by reason of mental disorder.

The extent of an individual claimant's actual or constructive knowledge is still going to be a question of fact in every case[10]; a situation not helped by conflicting authorities in the Court of Appeal.[11] The difficulty in defining "knowledge" for these purposes is best illustrated by the detailed attempts in the Report[12] itself to legislate for the various contexts in which it can arise!

If the Law Commission's proposals are implemented the second course open to a potential claimant, against whom the "old" six year limitation would have applied, is to issue proceedings and seek a direction under what will be an amended version of the present section 33 discretion. Under this section the courts currently have a very wide discretion to allow "worthy" cases to proceed and we have come a long way since the House of Lords in *Donovan v Glentoys*[13] refused to make a section 33 direction on a "stale" five year old claim. In that case the court were clearly swayed by the absence of any communication from the claimant to the defendant for five years after her accident and the fact that she had a potentially far easier claim against her legal advisers who had failed to issue proceedings in time.

The same issues were considered in the recent case of *Steed v Peverel Management Services Ltd*[14] in which the Court of Appeal agreed to an application to disapply the usual three year limitation period where, although solicitors had again failed to issue within time, the defendants had nevertheless received early notification of the claim and had been in negotiations with them. The court concluded that on those facts the defendant would suffer no material prejudice as a result of it exercising its discretion in favour of the claimant.

It remains to be seen how the courts will approach the claims of those who appear to have "recovered" memories some time after the event or whose allegations appear to come completely "out of the blue", but clearly a claimant will face something of an uphill struggle in such a case.

In this respect it is interesting to compare the present section 33 criteria with the additional provisions recommended by the Law Commission.

Section 33 provides that :-

> In acting under this section the court shall have regard to all the circumstances of the case and in particular to:-
>
> (a) the length of, and the reasons for, the delay on the part of the claimant;
>
> (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the claimant or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 [ by section 11A] or (as the case may be) by section 12;
>
> (c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant to the claimant's cause of action against the defendant;
>
> (d) the duration of any disability of the claimant arising after the date of the accrual of the cause of action;
>
> (e) the extent to which the claimant acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
>
> (f) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

In paragraph 3.169 of their report the Law Commission add three new categories to these criteria which judges will be expected to apply when exercising their discretionary powers viz.

> (a) the effect of the passage of time on the ability of the defendant to defend the claim
>
> (b) any alternative remedy or compensation available to the claimant
>
> (c) the strength of the claimant's case

The reference to an alternative remedy is clearly an attempt to reinforce the *Donovan* decision. However, whilst refusing to distinguish between sexual abuse claims and personal injury claims generally, the Law Commission has in these provisions nevertheless specifically recognised the problems that defendants of "false memory" claims can have in obtaining a fair trial many years after the event in terms of identifying and locating relevant witnesses and documents. Genuinely abused claimants are protected by the absence of a "long-stop" limitation period[15] thus enabling them, subject to the strength and justness of their case to bring a claim at any time.

The burden of proof in future section 33 applications in relation to the primary limitation period and the date of knowledge will be fairly and squarely on the claimant.[16] In considering such applications, however, it is arguable that a judge will be slow to close the door prematurely on a potentially just claim particularly where, if the usual limitation period is disapplied, there will still be a substantive further hearing at which the merits of the parties claims can be fully assessed.

Additionally, since the coming into force of the Human Rights Act 1998 last year both the UK and European courts have confirmed that "striking out" potentially arguable cases at an early stage could amount to a breach of the right to an effective remedy under Article 13.[17]

In those cases where a claimant has been thwarted by the old six year rule and where there is "cogent" evidence in the form of a criminal conviction or admission the burden of proof will be that much easier to meet. Where the claimant has seen a succession of quasi-counsellors; has never mentioned the allegations before, and the claim appears to be gainsayed by school and medical records and family testimonials, the burden of proof is unlikely to be satisfied.

Claims that have been prudently stayed will no doubt be pursued.[18] Claims which have been wrongly directed in the past may also be pursued. In the case of *Shapland v Palmer*[19] the Court of Appeal allowed a second claim for personal injury to be brought out of time against a different defendant in respect of the same accident where the first claim issued within the limitation period had been struck out. Thus, an earlier unsuccessful claim brought in negligence against a mother for allegedly failing to protect a child from an abusive father would not preclude a claim in trespass to the person against the father. A second claim against the mother would not however be possible.[20]

What then can a potential defendant do in such a changing landscape?

The first answer is "don't panic!" Judges are not fools and following the publication of the Brandon Report[21] there is a much greater awareness of the problems caused by false memories of abuse. This awareness will in practice lead judges to look very carefully at the revised section 33 criteria and the balance of hardship in every case.

In the past public funding support for a claim has often been regarded as a blank cheque by claimants' lawyers.

Further, despite the uncertainty caused by the Law Commission's recommendations, claimants will be unable to pursue their claims unless they are able to obtain substantial financial backing. Going to court is expensive and can take several years to resolve. In the past public funding support for a claim has often been regarded as a blank cheque by claimants' lawyers. This is no longer the case.

Under the provisions of Part 1 of the Access to Justice Act, 1999 the Legal Services Commission (LSC) has set up a Special Cases Unit for publicly funded cases to control and monitor very high cost cases i.e. those where the costs are likely to exceed £25,000.[22] This would include most "recovered memory" actions.

Under the new provisions such cases form part of an individual contract between the lawyer and the LSC – a contract that requires the submission of a detailed case plan, strict compliance with affordability criteria and fixed cost agreements for specific steps in the proceedings. Above all,

the LSC will want to be satisfied that there are realistic prospects of success before committing public money to speculative litigation on a large scale. The restrictive effect of these individual contracts, and the limited hourly rates payable under them if the claim is unsuccessful, will increasingly lead responsible claimant lawyers to think long and hard about pursuing them even with the benefit of public funding.

The alternative method of funding such claims namely under a conditional fee - or "no win, no fee" - agreement is likely to prove equally unattractive to the majority of lawyers when there are easier cases for them to take on and win. At the end of the day it will only be those deserving cases that stand a very high prospect of success that will be pursued.

Judges are themselves better informed about the nature and high cost of defending speculative cases. Under the provisions of the Civil Procedure Rules, 1998 they can now insist that claimants and their lawyers focus on core issues and act proportionately, something which will be of increasing importance as they begin to flex their case management powers in pursuit of achieving the "overriding objective" of dealing justly between the parties.[23]

In conclusion, although the Law Commission's proposals are likely to lead to a larger category of potential claimants their ability to pursue their claims will in practice be limited. The alertness of judges to those cases where a fair trial is no longer possible coupled with stringent cost/ benefit criteria applied by claimants' solicitors and the LSC will lead to an early weeding out of unmeritorious claims. Dark clouds on the horizon yes, but there may yet be a silver lining in the long run!

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Notes

1 S.2 Limitation Act 1980
2 *Stubbings v Webb* [1993] 2WLR 120
3 S.33 Limitation Act 1980
4 Law Commission Report on Limitation of Actions Law Com No. 270
5 Except in the case of adults under a disability who are in the care of a "responsible adult" in which case there is a 10 year cut-off date after which the normal 3 year period will start to run.
6 *Sparks v Harland* [1997] 2WLR 143
7 Law Com 270 para 3.7
8 Law Com 270 para 3.169
9 Baldock Nicholas: Limitations - Discretion to Extend the Period, s.33 Cases *Journal of Personal Injury Law*, September 2001 p.286
10 *Sneizek v Bundy (Letchworth) Ltd* [2000] PIQR p.213
11 *Nash v Eli Lilley* [1993] 1 WLR p.782 and Forbes v Wandsworth HA [1997] QB p.402
12 Law Com 270 – Recommendations at Part VI pages 201-204
13 1990 1WLR p.472
14 *Times Law Reports* 2001 16th May
15 Law Com 270 para 3.107
16 Draft bill clause 37(1)
17 *Barrett v Enfield LBC* [1999] 3WLR 79 and Z v United Kingdom UKHRR 10th May 2001
18 *Sparks v Harland* [1997] 2WLR 143
19 1999 1WLR 2068
20 *Walkley v Precision Forgings Ltd* [1979] 1WLR 606
21 Brandon S and others "Recovered Memories of Childhood Sexual Abuse"(1998)172 *Br J Psychiatry*
22 Solicitors information packs are available from the Special Cases Unit at Brighton – Tel: 01273 878870
23 Civil Procedure Rules 1998 Rule 1.1 [SI 1998/3132]

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# Time rules the memory wars

## by Margaret Jervis

The background to the limitation laws illuminates the divide in "recovered memory" claims between Britain and the United States.

In the US, out of time civil claims for sexual abuse arose during the 1980's and received a varied response. The earliest "recovered memory" challenge to the limitation law was *Tyson v Tyson*[1] heard by the Supreme Court of Washington State in 1986. The question asked was whether the "discovery" rule – when the plaintiff knew or should have known of the existence of a cause of action - could be delayed to take account of previous memory blocking during the normal time of limitation. In the case, the plaintiff alleged sexual abuse by her father in childhood the existence of which had only come to light through "memory recovery" in therapy. At this point, aged 26, she had filed a lawsuit.

The court was divided, but the majority held that unless the alleged acts were independently verifiable (corroborated in the strict sense of the word), "repressed memory" claims could not be brought outside the primary time limit. The court distinguished the alleged "discovery" of sexual

assaults based on memory recovery from malpractice cases such as harm caused by a sponge left in a body during an operation, which was only discovered many years later, because the cause of the latter could be objectively determined. It ruled that delayed discoverability would only apply where "the objective nature of the evidence makes it substantially certain that the facts can be fairly determined even though considerable time has passed since the alleged events occurred."[2]

The court also delivered a remarkably astute and robust attack on the reliability of recovered memory. "The fact that the plaintiff asserts she discovered the wrongful acts through psychological therapy does not validate their occurrence…. From what 'really happened' to what the subject or patient remembers is one transformation; from what he remembers to what he articulates is another; from what he says to what the analyst hears is another; and from what the analyst hears to what she concludes is still another…while psychoanalysis is certainly of great assistance in treating an individual's emotional problems, the trier of fact in legal proceedings cannot assume that it will produce an accurate account of events in the individual's past."[3]

A dissenting opinion voiced the speculative theory of the child sexual abuse accommodation syndrome whereby the victim would, in some undetermined lawlike fashion, "accommodate" the abuse by blocking it out of memory until symptoms emerge in adult life with the history most often only recovered through therapy promoting healing. Consequently, it was stated that child abuse victims with repressed memory ought to be able to sue out of time.

The mooted "post-incest syndrome" became the basis of argument for allowing a delayed discovery rule for sexual abuse claimants or for amending the statute of limitations in many states. In order to sue, the plaintiff had to introduce expert evidence to attest to the fact that a failure to remember abuse until therapeutically excavated was a common response to paternal abuse. Through explicit argument in court, the "repressed" or "recovered" memory syndrome became open to examination. It was through this process, and the experience of countless families in the late 1980's and early 1990's, that the science upholding the theory began to be examined and found wanting. It was realised the complainants, rather than having "recovered memories" as they asserted, were in all likelihood the victims of delusional beliefs excited by fear, suggestion and the power of the imagination: hence the term "false memory syndrome" was coined as a riposte.

Thus began the "memory wars" resulting in the withering away of "repressed memory" claims in the US courts. For while courts and state legislatures became more sympathetic to the hearing of late claims, expert opinion – particularly at the appellate level – became weighted towards the rejection of "recovered memory" as a reliable form of evidence. By 1999 the vast majority of courts had ruled against the admissibility of "recovered memory" with one legal commentator observing

> If recovered memory testimony is offered into evidence, it must be supported by expert scientific testimony explaining the purported principles of memory repression. Seven national scientific societies in four English-speaking countries have issued position papers on the recovery of repressed memories. Rather than demonstrating general acceptance of the repression principle, these papers demonstrate considerable scientific controversy. Moreover, none of these papers cites a single reliable example of memory repression ever being observed. This implies that the principle of memory repression does not have a scientific foundation strong enough to warrant admitting into court expert testimony on memory repression. This, in turn, implies that neither should testimony by witnesses who claim to have recovered their memories from repression be admitted. If their testimony is uncorroborated it is too unreliable to admit; if their testimony is corroborated, it is unnecessary:[4]

The fact that in the US plaintiffs have to demonstrate the admissibility of recovered memory testimony through expert evidence is a key factor in its demise. Overwhelmingly, "recovered memory" theory did not pass the threshold for scientific evidence laid down in the *Frye* and *Daubert* tests regulating the acceptability of expert opinion in court. Without this endorsement, the plaintiff's testimony would not be admitted and so the case would collapse.

This onus explains why the "recovered memory" issue has been largely turned on its head in the UK with proponents challenging the validity of

"false memory syndrome". With "delayed discovery" civil claims ruled out to date following *Stubbings* v *Webb* the main focus of claims has been in the criminal courts, where in contrast to the US, no limitation period pertains.

Importantly, this has meant there has been a presumption of admissibility of prosecution evidence – a fact which has allowed a large number of trials to go ahead on the basis of newly reported memory. The hallmark of the claims in the UK is that that complainants in criminal cases have no incentive to claim newly remembered experiences so that the terms "recovered" and "false" memory cancel out. Yet it is apparent in a significant number of serious accusations that some form of fabrication, whether intentional or through sincere but misguided belief, is at issue and that the current safeguards against wrongful conviction in the UK are seriously inadequate.

Were the current scenario in the criminal law in the UK to be replicated in civil law in this country it would result in far more widespread injustice than has been experienced in the US.

However, the situation in the US is also changing with some states moving back to the criterion of objective corroboration as exemplified in *Tyson*.[5] Unsurprisingly, there are disputes as to what comprises independent corroboration in such cases. With the court in *Moriarty* accepting a weaker criterion than customarily accepted, the possibility of spurious claims being successful remains a real threat.[6]

1 727 P 2d 226 (1986)

2 Subsequently *Tyson* was overruled by the state legislature.

3 Reagan, R. (1999) Scientific Consensus on Memory Repression and Recovery, *Rutgers Law Review* 51:2:275-321.

4 See for instance *Franklin v. Stevenson*, Supreme Court Utah 1999 Utah LEXIS 95, 1999 UT 61, June 18, 1999. In criminal law in the US the majority of States have held that "repressed" or "dissociated" memory is not a valid ground to set aside a limitation law since *State of New Hampshire v Hungerford*, A.2d 916 (N.H., 1997). For more information on US caselaw law see www.fmsf-online.org

5 See *Moriarty v Garden Sanctuary Church* No 25156 SC Sup Ct, June 26 2000, Filed (10000S.C.Lexis 149)

6 For instance, the creation of claims by retrospective interpretation of medical records or the filing of multiple complaints retrospectively that are indirectly linked through interviewer or solicitor contamination, see especially the 5-fold test in Supreme Court of Canada in *R v U(FJ)* [1995] SCR reprinted in the Nova Scotia Internal Investigations Report.

# Human Rights update

As predicted, Article 6(1) of the European Convention of Human Rights concerning the right to a fair trial within a reasonable time has become a key issue in retrospective abuse cases with Scottish law in this respect diverging from that in England and Wales. A judgment upholding the current position in England and Wales, *AG Ref No.2 of 2001 [2001] EWCA Crim. 1568* has been criticised by a number of legal commentators in relation to the compatibility with the jurisprudence of the European Court of Human Rights. See "*Delay and Article 6(1): an end to the requirement of prejudice?*" By Alistair Webster, QC, in *Criminal Law Review* [2001] pp876-793.

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Extract from "The Bearing of *Daubert* on Sexual Abuse Litigation" by Dr Yolande Lucire, *The Australian Journal of Forensic Sciences* Vol.32 No.2 July-December 2000. Also available on http://members.ozemail.com.au/~lucire

"Recovered memory is claimed in jurisdictions where the statute of limitations can be overcome by claiming delayed awareness, but denied in those states where it is not admitted as evidence. But is it memory at all? The multiple phenomena covered by the term 'memory' are part of the diagnostic repertoire of psychiatrists trained in the identification and diagnosis of false belief states.… the focus on the notion of memory has hijacked the debate into arguing about the truth or falsehood of mental content.

"Pseudologia fantastica, the pathological recounting of tall tales often passes for 'memory'… Linguistic analysis reveals the use of the past conditional construction concerning what the offender 'would have done'. Lawyers do not recognise confabulation of childhood, intellectual disability and brain damage, but nurses know about them. This population is prone to innocent lying and misinterpretation… the ability to recognise a delusion is the province of an expert, but non-bizarre delusional beliefs are routinely accepted by laymen."

## 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**
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