



Serving People and Professionals

Dear Reader,

This newsletter was originally planned to go to press in late September. I had drafted an editorial and written up a number of articles for the ‘In the News’ section. At this point in time, the BFMS was receiving a significant number of media enquiries. Very often, press interest does result in publication. However, a few months previously, The July/August edition of *Wired* magazine published a detailed article on false memory, entitled *The Memory Hacker*. The piece featured a profile of Dr Julia Shaw (a member of our Scientific and Professional Advisory Board). I attended a photoshoot with Julia at Southbank University and participated in telephone interviews before the magazine went to publication. The article contained a number of short case histories – both old and new – including a section about former Prime Minister Sir Edward Heath who is of course deceased, but has been the subject of a police operation launched in 2015 by Wiltshire police. The Edward Heath allegations received widespread media coverage. One of Heath’s multiple accusers, known as Lucy X, had received hypnotherapy and psychotherapy prior to making allegations. The fantastical allegations made against Heath include Satanic Ritual Abuse and murder. The police operation which was shut down earlier this year is estimated to have cost over £1 million pounds. The *Wired* article concluded with a quotation from distinguished Professor of Psychology, Elizabeth Loftus, who has suggested that criminal courts consider adopting a new oath: “Do you swear to tell the truth, the whole truth, or whatever it is you think you remember?” This statement seems entirely apt in legal cases where false memory is suspected.

Following publication of the *Wired* article, I was contacted by several freelance journalists and independent documentary makers investigating false memory. With one notable exception, which has now been signed off by a major television station, those projects did not come to fruition. Subsequently, after the calm of August, I was reading in the newspapers about an unusual case

being tried at Blackfriars’ Crown Court. What first attracted my attention to this particular case was that one of the two complainants had received regression therapy. After the jury had returned a not guilty verdict, journalist David Brown, who had been present during the trial, published on 21 September a first-class article focusing primarily on regression therapy. Immediately after publication, journalist, Georgie Keates, who was also working for the *Times* newspaper, telephoned to interview me about our caseload.

Later that day, she posted two short articles on the home page of the *Times Online* newspaper, including a short piece on the Carol Felstead scandal. The articles were amalgamated and published in the printed edition of the *Times* the following day, under the title of ‘*Nonsense’ therapy investigated after abuse allegations*. Other newspapers adopted a similar perspective, and on 24 September Sarah Baxter, writing in the *Sunday Times*, reported again on the Blackfriars’ trial with a very good piece entitled ‘*Quack therapy drives a troubled family to tragedy*’.

It had been quite a week and Madeline, Carolyn and I were delighted with the publicity. But what

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we didn't realize at this juncture was that the media were just warming up. In particular, the Georgie Keates' article had come to the attention of BBC London News who wanted to speak to me about false memory in general and about the Carol Felstead case specifically. On 29th September, I boarded a train to London accompanied by my father. The BBC met us on the platform at Euston Railway Station. Only five minutes earlier I had received a telephone call from a researcher from the Victoria Derbyshire show. We were interviewed and filmed in a local pub and the broadcast went out at prime time following the national news. Dr Julia Shaw was interviewed in the BBC studio. The main thrust of the programme was that psychotherapy needs to be more robustly regulated. I'm sure that we can all agree on that point. The BBC additionally put a link to the broadcast on BBC Facebook; a short video clip of the interview was also released.

In hindsight, this represented a watershed for the BFMS. A few days later, I undertook a series of telephone interviews with Antonia Hoyle of the *Daily Mail* who dispatched a photographer to my house. On 11 October, 'What made them falsely accuse their dads of sex abuse' appeared in the *Femail* section of the *Mail*. The article discussed three BFMS case studies – Alan White, Maxine Berry and Carol Felstead. Professor Chris French was interviewed. Discussing recovered memory therapists, he asserted: 'Sadly, some psychotherapists are still using these dangerous techniques. Society finds it easy to accept the idea that a victim of abuse has repressed the memory and that a skilled therapist can bring it to the surface. But there is little evidence to support the idea that a traumatic experience will be pushed into the unconscious mind. You are far more likely to remember a traumatic event than to forget it.'

During the week 9 to 13 October BBC Radio 3 broadcast a series of programmes on the nature of memory under the generic heading, 'The Strangeness of Memory.' Professor Chris French's talk was entitled, 'False Memories: Examining childhood memories and analysing their accuracy;' Professor Fiona Gabbert's talk was entitled, 'The Fallibility of Memory.'

A few days later, on 17 October, the Solicitor General gave authorisation for the family of Carol Felstead to apply to the High Court to seek permission to quash the second inquest into her death. This was an extraordinary development and the press were quick to pick up on it. The first journalist to cover the story was David Brown from the *Times*. I undertook a telephone interview

with the *Times* within an hour of the ruling. The article was published the following day – 'Family of satanic sex abuse nurse can seek third inquest.' The piece went further than anything previously published on the topic. Fast track early evening and I was just sitting down for food in a local tapas bar celebrating with family when the mobile phone rang. I answered. "Hello, my name is Gareth Davies. I'm calling from the *Mail on Line*. Are you available to undertake a telephone interview?" I figured that cold food was a minor price to pay for further publicity. Within a few hours of my telephone interview the *Mail* published (with slight embellishment) a very good piece entitled: 'Family of a nurse who died in Mysterious circumstances after falsely claiming that her father ran a Satanic cult and impregnated her are awarded a third inquest to determine what caused her death.' The following day, I participated in a telephone interview with Alison Maloney from the *Sun on Line*. I was uncertain about what stance the Sun would adopt and I was pleasantly surprised with what turned out to be another first-class article replete with eight photographs.

Moving away from the media, we have been extremely busy over the last year and our case-load has risen. A small number of our members are currently subjected to police bail and another is anxiously awaiting trial in December. The helpline continues to be busy (although unaccountably, not normally on a Friday when our volunteers staff the telephone). The last few months have been intense, to say the least and time-management was taken to new and dizzy heights in order to manage a number of competing priorities which included of course producing the newsletter.

Members of our Advisory Board continue to be very active in providing expert evidence. In a number of cases, these interventions have resulted in outstanding – and life-changing – outcomes for defendants facing wrongful allegations emanating from false memory. I have witnessed first-hand how expert testimony can have a profound impact on assisting the case of the defence. I should perhaps point out that not all of these cases involve BFMS members. The Society is contacted regularly by solicitors and barristers seeking expert testimony. This is of course something that we are uniquely placed to assist.

The BFMS website goes from strength to strength. On average, we now receive over 3,000 visits to the site each month. It is obvious from day to day telephone conversations and e-mail interactions that there is now a much greater

awareness about the subject of false memory. The website is up-dated on a regular basis. Recent posts include links to Dan Josephsson's extraordinary book, *The Strange Case of Thomas Quick: The Swedish Serial Killer and the Psychoanalyst Who Created Him*, and also *Freud: The Making of an Illusion*, by Frederick Crews.

Quick, whose real name is Sture Bergwall, was Sweden's most notorious serial killer – a Hannibal Lecter figure no less. He confessed to 36 murders and was convicted and sentenced to life imprisonment for eight murders. Josephsson describes how, during the summer of 1992, Quick together with his psychotherapist, psychiatric nurses, a memory expert, the police and his solicitor were searching in the Orje Forest for the bones of one of his murder victims (which unsurprisingly they couldn't locate because they didn't exist). Thomas Quick was not in fact a serial killer, but he is Sweden's most notorious miscarriage of justice case. His murder convictions were subsequently quashed. In 2013, the Swedish government instigated a public inquiry which resulted in major reform to their criminal justice system. This is a shocking – and disturbing – story involving abysmal psychotherapy and psychiatric input – 'junk science' to quote one reviewer – which resulted in a vulnerable man recovering 'memories' of impossible events which no right-thinking individuals would believe. Yet Quick was convicted by eight separate juries without any corroborative evidence whatsoever. Significantly, a recent study by Huddersfield University working in collaboration with a Barrister's Chambers in Manchester concluded that the personal experience of jurors can have a decisive impact on their decision-making. Alarming, the study found that 43% of jurors in rape cases reach a guilty verdict before the jury has begun formal deliberations. This figure rises to 83% where jurors have themselves been sexually abused. The study, based on mock trials, recommended that juries ought to be vetted for pre-conceived bias. Nigel Booth, a barrister who participated in the study opined: 'This research asks some very serious and difficult questions about the fairness of jury trials in rape cases.'

I have enjoyed reading press coverage of Frederick Crews' latest book about Freud. The author certainly cannot be accused of fence-sitting. In fact, Crews pulls no punches in his incisive assessment of Sigmund Freud who, according to the author, was a fraud and a charlatan. Working outwards from his previous work, *The Memory Wars: Freud's Legacy in Dispute*, Crews attacks Freudian analysis and argues that traumatic mem-

ories cannot be repressed in the manner that Freud and his followers subscribed to. Crews is critical of Freud's main ideas, his untenable methodology and Freud's personal integrity. He argues further that Freudian psychology is in fact pseudoscience and that the claims of the recovered memory movement regarding repression are baseless. Moreover, Freud's approach to medical ethics was appalling. This will of course come as no surprise to members of the BFMS who have experienced first-hand the devastating impact of convoluted, unscrupulous and unregulated therapeutic practices which continue to pose a menace to society.

Elsewhere in this newsletter, you can read author Mark Pendergrast's first class review of *The Keepers*, a documentary series broadcast earlier in the year. In the light of what is now an established body of scientific literature about memory, it never ceases to amaze me how the myth of recovered memories continues to proliferate. As Pendergrast notes, *The Keepers* accepts uncritically the notion of repressed memories yet the programmes have been subjected to widespread critical acclaim. We may have increased awareness of false memory, but this project demonstrates that we still have a long way to go.

Kevin Felstead

Diary Date

**BFMS AGM
2018**

Saturday 21st April

in Central London

IN THE NEWS

2017 AGM

The 2017 AGM and annual conference was held in central London on 1 April. I don't think that it is an exaggeration to state that the event goes from strength-to-strength. The turnout from our membership was excellent; students from Warwick, Goldsmiths and Portsmouth Universities were also in attendance. Professor Fiona Gabbert was our keynote speaker. Fiona is a Professor of Applied Psychology and Director of the Forensic Psychology Unit at Goldsmiths University. She is renowned for her research on the suggestibility of memory and evidence-based investigative interviews. Her talk was entitled: 'Using psychological science to make criminal investigation fair and effective.' Professor Gabbert warned about the inherent dangers of poor interviewing techniques; she also delivered a cautionary note about the potential unreliability of eye-witness testimony. The talk was erudite, illuminating and scientifically-based.

Our second speaker was Dr Ros Burnett, a senior research associate at the Centre for Criminology, University of Oxford. Her talk ('Why it is too easy for innocent people to be wrongly accused of sexual abuse') is printed in full elsewhere in this newsletter. Ros highlighted the inherent dangers to those falsely accused of sexual abuse by police and prosecution failings, legal and cultural developments. In the absence of physical evidence in allegations of historic sexual abuse, it is becoming more and more difficult to amount a successful defence in these types of cases which often date back to 10, 20, 30 or 40 years ago. Very often, juries are forced to decide whether to 'believe' the accuser or the accused. As a criminal solicitor recently commented: 'It's a beauty contest.' Which I suppose is fine if you are beautiful. But what about the rest of us? Personally, I believe that a Statute of Limitations ought to be implemented as a matter of urgency. I would be interested in your feedback on this point.

Helen, a BFMS MEMBER, was our final speaker. Her presentation focused on the life-changing chain of events after the police knocked on her door early one morning after a family member had made allegations. Helen – who, in my opinion, stole the show – described the shock and bewilderment on this totally unforeseen development, the immediate impact on her family and her arduous journey – with her husband – into the

criminal justice system. Her legal situation was resolved successfully, but the traumatic impact of these

The Ted Heath Saga

The Satanic Ritual Abuse (SRA) nonsense refuses to go away. Let's take a closer look at the complainants – one of whom first began to 'recover' memories following hypnotherapy in 1988. At that point in time, the Satanic Panic in the United Kingdom was at its peak (Nottingham, 1987; Rochdale, 1990; the Orkney Islands, 1991). During the late 1980s and early 1990s, a plethora of books, since discredited, were published which help stoke up the SRA myth and the Ritual Information Abuse Network (RAINS) was set up in Manchester in 1989. In February 1992, Channel 4 broadcast a documentary on SRA which featured several adult survivors who claimed to be victims of SRA. Lucy X, one of the main accusers in the Edward Heath fiasco originally claimed to have witnessed child sacrifice in 1989. The police investigated and concluded that the allegations were not credible. Another of Heath's accusers, 'Nick' (from Operation Midland fame) also recovered memories following protracted psychotherapy. Operation Midland which focused on high profile VIP allegations was heavily criticised by retired senior judge Sir Richard Henriques who concluded that the fantastical allegations of murder and child-torture were without foundation. Criminologist, Dr Rachael Hoskins, who investigated the allegations against Heath and wrote a lengthy report for Wiltshire Police also concluded that the allegations were untenable and almost certainly based on false memory.

Let's be clear what we mean by SRA. In 1996, Dr Valerie Sinason and Dr Robert Hale from the Tavistock and Portman clinic were awarded a research grant of £22, 000 by the Department of Health to undertake a pilot study into SRA. I have recently been furnished with a copy of that study. It is revelatory. In one sub-section entitled: 'Descriptive Definition of SRA', the authors define some of the features of SRA as 'murder, necrophilia, bestiality, cannibalism.' They later claim that 72% of participants in their sample alleged witnessing murder with a high proportion of those claiming further that this included infanticide. 68% of respondents claimed to have witnessed necrophilia and a further 64% made allegations about bestiality. I will never cease to be amazed that this nonsense continues to be ped-

alled – never mind investigated by police who ought to hang their heads in shame.

Student Threatens Legal Action Against the Police and Crown Prosecution Service

Our shambolic criminal justice system was thrown into further disarray following the collapse at trial of rape allegations against criminology student Liam Allen. Following criticism from the judge, Scotland Yard and the CPS are undertaking an urgent review of the case which was halted mid-trial after it was disclosed that police had withheld key evidence which undermined the allegations of the complainant, a former girlfriend of the accused. Allen had spent almost 2 years on police bail before the case was halted in Croydon Crown Court. His legal team had advised that he faced a minimum of 10 years in prison if convicted. Mr Allen was charged with six counts of rape and one count of sexual assault. Police withheld a series of graphic text messages written by the complainant which completely undermined the case set out by the Crown. In total, police had downloaded around 40, 000 text and social media messages which were saved on a disc but not disclosed to the defence. In one text message, she described being aroused by scenes of rape. In a press interview outside of court Allan commented: “I can’t explain the mental torture of the last two years. I feel betrayed by the system which I believed would do the right thing – the system I want to work in.”

Police and prosecutors were at a loss to explain why the text messages had not been disclosed to the defence prior to trial. Shailesh Vara, a former justice minister, commented: “What has happened in this case is simply unacceptable. There needs to be a thorough investigation, led from the top, by both the CPS and the police to put in place measures to ensure this does not happen again.” Anyone familiar with the criminal courts in the United Kingdom will not be surprised by Mr Allen’s case which may be the tip of a very large iceberg. It is now more difficult than ever to receive a fair trial in court. Joanna Williams, author of *Women v Feminism* has warned against what she has termed as ‘rape lynch mob culture.’ Williams, writing in the Daily Mail, stated tellingly: “Increasingly, from the moment an allegation of rape is made, the police and judiciary tend to use language that implies it is based on fact and that

all men are potential predators of women.” This is most apparent from the outset of the investigation when complainants are called ‘victims’ and are treated very differently to the accused. The police and courts moreover appear largely oblivious to the fact that some complainants may not be telling the truth. They are even more oblivious to mental health problems and fantasy-prone accusers, some of whom may well believe the narrative of alleged events reported to police. Belief is not evidence as members of the BFMS know all too well. As Ros Burnett highlighted succinctly at the AGM earlier this year, there have been a whole series of legal developments which have made it more difficult for the falsely accused to get a fair trial. The whole atmosphere in court works against the accused. Contrast Special Measures, where the complainant can give evidence by video link or from behind a curtain, with the glass dock where the defendant stands, marginalised and accompanied by a prison guard. Barrister, Matthew Scott has previously argued that most civilized countries have abandoned this practice and it is now about time that this country did so. Otherwise the plight of the falsely accused will continue to deteriorate.

Hot Off the Press Book Review

Memory Warp: How the Myth of Repressed Memory Arose and Refuses to Die

by Mark Pendergrast

Upper Access, 2017

Available in Kindle and paperback edition

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‘In the 1990s, a faddish pseudoscience, repressed memory theory, destroyed millions of American families by creating false memories of childhood sexual abuse. At the time, Mark Pendergrast published his widely acclaimed book *Victims of Memory*, exposing the false nature of the science and counselling techniques that were alienating teenagers and grown children from their families. In *Memory Warp* Pendergrast revisits that subject, updating his research and describing where it

stands now, in 2017.

All notable scientific researchers in the field of memory now agree that repressed-memory theory is misguided and harmful – that the “memories” produced are false, and that those accused – mostly parents and other family members and caregivers – have suffered greatly from false allegations of horrible crimes against their own children. But does that mean that the scourge is now behind us? Unfortunately, no. The disproven theories of repressed memory continue to surface throughout American cultural life, and although usually more subtly, in the work of therapists. In this new book, Pendergrast provides a lively social history of our recent past, documenting how this incredible juggernaut of pseudoscience which caused so much harm, came to be. But more importantly, the book also shows how these misguided theories continue to fester ...’

Why it is too easy for innocent people to be wrongly accused of sexual abuse

By Dr Ros Burnett

At the end of last month a special BBC Crime-watch Programme with a helpline invited callers to report non-recent sexual offence, and on the same day (February 27) the first public hearing of the Independent Inquiry into Child Sexual Abuse (IICSA) was held. These are the latest, well-publicised, events in two to three decades of publicity about widespread hidden sexual and physical abuse of children, women and vulnerable adults, calling for people to report their experiences or suspicions of such abuse. In the same week, the Head of Operation Hydrant (the nationwide police inquiry into historical child sexual abuse) noted that the numbers of such offences reported were continuing to rise and that police forces had ‘reached saturation point’.

Rarely if ever do those leading such inquiries mention or warn against the possibility of some of those allegations being false. This therefore is a good time to take stock of policy and legal developments that increase the risk of innocent people

being caught in the net. This is not to ignore the false negatives (people who go unprosecuted or who are acquitted when they are guilty) that also occur. But the risk of errors cuts both ways. In the space available the following is a selective and truncated listing of these developments.

More details and sources can be found in Burnett, Hoyle and Speechley (2017 forthcoming) and in contributions to Burnett (ed.) ‘*Wrongful Allegations of Sexual and Child Abuse*’.

General features that make handling of sexual abuse (particularly non-recent) prone to mistakes

No physical evidence and no requirement for corroboration

A general feature is that there is very often no physical evidence that a crime has been committed. The complainant’s account is the evidence, and this is taken on trust in the absence of contrary evidence. As in other jurisdictions (Scotland being an exception), in England and Wales there is no requirement for the professed

victim to provide corroboration beyond their own testimony in order for the CPS to prosecute and for a jury to find the defendant guilty.

A moral obligation to report abuse

There is heightened awareness of childhood sexual abuse (CSA) and rape, and constant media coverage rouses a moral obligation to look for signs of abuse and to report suspicions, or to own up to one’s own victimisation and become a voice for survivors. Newspapers, television and the internet provide a continuous onslaught of shocking cases of sexual exploitation and child abuse, burning into public consciousness, ensuring this is high profile on the political agenda, and remains a primary matter of public interest. Similarly, publicity campaigns by child protection charities and support groups for victims of rape and domestic violence, prompt reporting of suspicions as a civic duty.

Invitations to come forward and reassurances of anonymity

At the end of the many television dramas in which the psychological damage of childhood sexual abuse and rape is represented, helplines are advertised via which people are invited to discuss how they have been affected and to seek support. It is now widely claimed that many psychological

problems, alcohol and drug additions, and relationship breakdown can be attributed to childhood sexual abuse. People with mental health issues learn that they may have PTSD having suppressed painful memories of abuse. Sufferers are encouraged to report their abusers no matter how long ago. The concept of ‘closure’ is used in connection with seeing their abusers prosecuted, convicted and punished.

There is no Statute of Limitations

The UK does not have a Statute of Limitations against the prosecution of crimes in the UK (except for ‘summary’ offences, tried in the magistrates’ court): thus, there are no time limits on bringing prosecutions for sexual offences or child abuse alleged to have occurred decades ago, if the accused is still alive. There are obvious difficulties for the defence in obtaining providing exculpatory evidence.

The relative ease with which compensation can be claimed

As well as reporting past victimisation as a civic duty and to seek therapeutic help, compensation services provide a way to make some money in the process. Individual claims can be made from the Criminal Injuries Compensation Agency (CICA) or through a lawsuit, often as part of a group action, pursued by personal injury solicitors. Importantly, the alleged abuser does not need to have been convicted, and may be deceased, and under section 33 of the Limitation Act 1980 the court can exercise its discretion to allow a claim for compensation to be made many years and perhaps decades after the alleged child abuse (for example, if psychiatric problems are later attributed to the abuse or if memories of abuse are recovered during counselling).

Once accused, always listed

Records are kept of people who have been investigated in response to allegations of child abuse, rape and other sexual offences, whether or not they were charged or convicted. The Police National Computer includes data on arrests, and the Police National Database records ‘soft’ local intelligence: for example, details of allegations or police investigations that did not lead to arrest or charge. Quite apart from implications for employment or voluntary work with children or vulnerable adults when DBS checks are necessarily made, being listed as the subject of a previous complaint would be taken into account should that individual ever be accused again.

An absence of warnings about the risk of false allegations

In policies that promote belief in allegations of abuse, and encourage victims to come forward, it is rare for warnings to be given or acknowledgements to be made of the concomitant dangers of false allegations.

Specific developments that have facilitated reporting of abuse, prosecution and conviction

Removal of the corroboration warning

As in other jurisdictions (Scotland being an exception), there is no requirements in England and Wales for the alleged victim to provide corroboration beyond their own testimony for the defendant to be found guilty. Whereas there was previously a requirement for judges to warn juries about the danger of convicting on the uncorroborated testimony of a complainant of a sexual offence, this was abrogated by Section 32 the Criminal Justice and Public Order Act 1994. It was left as a matter for the judge’s discretion what, if any warning, he or she considers appropriate.

In the 1990s there were significant modifications to ‘similar fact evidence’

As the name suggests, ‘similar fact’ testimonial evidence was originally permitted only if there were ‘striking similarities’ between provable facts. This was extended by a Court of Appeal ruling in 1946 to include similar allegations. Two further judgments by the House of Lords in the early 1990s weakened the safeguards further. In 1991, in *DPP v P*, the court rejected the requirement that allegations, in order to be admissible, should be ‘strikingly similar’. In 1994, in *DPP v H*, the court held that, in ruling on the admissibility of a series of similar allegations, the judge should generally assume that the allegations in question were true. See *Similar Fact Evidence: the origins and erosion of the modern similar fact principle*. (Webster, R. (2002)).

Developments that improved the prospects for claiming compensation for abuse, and therefore making allegations

Following the enactment of the Criminal Injuries Compensation Act 1995, the Criminal Injuries Compensation Agency established a statutory scheme for setting standard amounts to be paid for injuries (‘the Tariff’). The current awards for injuries caused by sexual abuse range from £1,000 to approximately £44,000. Also in 1995, ‘no win, no fee’ legal cases – that is, conditional fee agreements (CFAs) – were introduced in 1995

to replace legal aid funding of litigation. With CFAs, claimants do not have anything to pay when the case is lost, but agree to a percentage being deducted from successful claims. These, and damages based agreements (DBAs), are considered to be more accessible to claimants because there are no initial payments and bureaucratic formalities.

Bad character evidence

With the implementation of the Criminal Justice Act (CJA) 2003, 'similar fact evidence' was largely overtaken by 'bad character evidence', although common law 'similar fact' principles are operative in the context of propensity and cross-admissibility of allegations. 'Bad character evidence' is broadly defined and wide in scope (CJA 2003, ss 98-113). It includes previous convictions, and evidence of specific acts of misconduct and reprehensible behaviour. But it also includes the following more speculative indicators of bad character: 'evidence of reputation for misconduct'; 'an offence for which the defendant has never been prosecuted'; and 'an offence for which the defendant was acquitted'. (This and the next paragraph draw on Edge, R. and Mills, A. (eds.) (2016) *Evidence, 18th Edition*. Oxford: Oxford University Press.)

Cross-admissibility

In establishing the defendant's propensity for relevant bad behaviour, from the standpoint of a defendant who is innocent, some rules of evidence regarding cross-admissibility would be troubling. The court can take account of allegations that did not result in a conviction; evidence in relation to one count (that might be a false allegation) is cross-admissible in relation to another count; and 'the judge is required to assume that the evidence is truthful unless no jury could reasonably believe it'.

The Victims' Code

The introduction of a Code of Practice for Victims, was established by the Domestic Violence, Crime and Victims Act 2004. Introductory leaflets explain that a victim is anyone who tells the police about a crime in England and Wales, and that this brings them various entitlements, including: referral to 'victim services organisations that can provide you with practical and emotional support', and advice on obtaining compensation (Ministry of Justice, 2014, p.3; p.8).

Special measures to protect and assist complainants in trials for sexual crimes

Complainants of sexual offences are automatically assumed to be vulnerable and therefore eligible, unless they opt out, to be granted special measures, under the terms of the Victims' Code. These include: screens to shield the witness from the defendant; live links to enable the witness to give evidence during the trial from outside the court through a televised link to the courtroom; video-recorded interviews with the witness before the trial; use of intermediary to assist the witness to give evidence at court (and also at the investigation stage); evidence given in private, after members of the public and press have left the court (except one named press representative). Sparing the complainant in a sexual offence trial from face to face cross-examination by the defence is a humane practice, but may be in tension with Article 6(3) of the Human Rights Act, the right to examine witnesses against an accused.

Prosecution Policies

The Crown Prosecution Service has based its Guidelines for Prosecuting Rape and Sexual Abuse on the Victims' Code. Changes in the approach to complaints about abuse were reflected in the Guidelines on Prosecuting Cases of Child Sexual Abuse, introduced in 2013. The Guidelines also specified that 'prosecutors should guard against looking for "corroboration" of the victim's account or using the lack of "corroboration" as a reason not to proceed with a case.' (2013, para. 55)

Policing policies in relation to victims

Investigations following allegations of sexual offences are carried out from a position of believing the 'victim', with most official documentation choosing not to refer to 'complainants'. For example, guidance for police senior investigating officers under 'Operation Hydrant' underscores the importance of belief from the perspective of victims' therapeutic needs. A report in 2014 by Her Majesty's Inspector of Constabulary, *Crime Recording: Making the Victim Count*, recommended: 'The presumption that the victim should always be believed should be institutionalised'. The Crown Prosecution Service and Metropolitan Police Service (2015) Action Plan on Rape asserts that prosecutors 'must focus their case on the behaviour of the accused, not the complainant' (p.2).

Victims' right to review

In June 2013, the CPS launched a scheme which allows victims of crimes to seek a review of CPS decisions not to charge, to discontinue or other-

wise to terminate proceedings. The title of this right is telling. Calling the complainants ‘victims’ carries a presumption of belief in their claims and is prejudicial to the defendant.

Conclusion

Everyone concerned about victims of sexual offences and physical abuse could read the preceding list with approval, and think ‘quite right too’. Tremendous progress has been made in tackling the problems and there is more to be done, particularly to intervene. To the extent that these developments are helpful in counteracting abuse and making life better for victims, they are to be welcomed. At the very least though, there must be acknowledgement of the dangers they pose of widening the net to include innocent people. Resisting the significance of those dangers by arguing that false (untrue) allegations are rare does not allow for the methodological blocks against collecting such data, and does not allow for the dynamic context of a changing landscape that provides more scope for mistaken or opportunistic claims to be made.

When the beep goes as a person walks through the airport metal detector, we don’t immediately assume that a terrorist has been caught. We know there are numerous false alarms. But when someone is caught in the spotlight of publicity after being accused of historical child abuse, s/he will be cast in the image of a sexual predator with usually no forensic means of revealing the error. There is no equivalent of an x-ray machine to act as a corrective.

About Ros Burnett

Dr Ros Burnett is a senior research associate at the centre for criminology, University of Oxford. Her books include *Joined-up Youth Justice*; *Where Next for Criminal Justice?* and *Wrongful Allegations of Sexual and Child Abuse*. She is a research consultant to FACT (Falsely Accused Carers, Teachers and other professionals) and an associate editor of the *International Journal of Offender Therapy and Comparative Criminology*. This extract was formerly published on the Justice Gap website and is republished with consent of the author. Dr Burnett presented a longer version of this article at the 2017 BFMS AGM.

The Keepers: A Dangerous, Misleading Netflix Series

By Mark Pendergrast

The Keepers, a popular seven-part documentary series aired by Netflix in May 2017, heavily promotes the theory of repressed memories by resurrecting and validating a previously dismissed Baltimore case from the early 1990s.

The show relies almost entirely on recovered memories of abuse to convince viewers that a now-deceased Catholic priest, Joseph Maskell, or another priest known only as “Brother Bob,” murdered a young nun named Cathy Cesnik in 1969, in order to prevent the nun, an English teacher, from reporting sexual abuse of high school students at Keough High School in Baltimore, Maryland.

The series is dramatic, artfully constructed, and based on real events, but it is extremely misleading, especially in accepting without question the validity of repressed memories.

The Keepers purveys all the old stereotypes, including a psychologist who explains confidently: “Some things we experience are so unbearable and so painful that we shut them out.” This popular series could undo years of good memory science in the public arena.

The star of the series is Jean Hargadon Wehner, known as “Jane Doe” in the dismissed lawsuit, who was a student at Keough from 1967 to 1971. She had no abuse memories until she reached adulthood, but beginning in 1981, the year after the publication of *Michelle Remembers* (the first blockbuster book about repressed memories and satanic ritual abuse), Wehner began to see a series of counselors and therapists, including massage and movement therapists.

She also learned to put herself into a prayerful trance, which she called “dialoguing with the inner child,” a kind of pseudo-multiple-personality state in which she identified various internal child personalities named Jeannie, Beth, Gloria, Ethel, and Martha, each of whom apparently held different abuse memories.

During the 1980s, she recovered memories of how her uncle and an array of strangers abused

her from age three to twelve – typical of false “massive repression” memories with a ritual abuse flavor. She also recalled that the uncle abused her ten siblings, though none of them remember it.

During the 1990s, Wehner read an array of popular books about repressed memories, no doubt including *The Courage to Heal*, the “bible” of the recovered memory movement, first published in 1988. In 1992, Wehner began therapy with Ph.D. psychologist Norman Bradford (currently in practice and a professor at Goucher College in Baltimore), who had her keep a dream journal.

Shortly afterwards, she began to retrieve her first memories of priest abuse, starting with Father Neil Magnus, whom she envisioned masturbating while he took her confession. When she discovered that Magnus was dead, Wehner switched to retrieving memories of abuse by another priest, Joseph Maskell, who had been her high school counselor. She eventually recalled vaginal and anal rape (sometimes with a vibrator), oral sex, enemas, him putting a gun in her mouth, and forced prostitution.

But Wehner’s sex abuse memories expanded dramatically beyond Maskell to include two policemen, three high school teachers, a local politician who practiced a political speech while she performed oral sex on him, three more priests (Father Schmidt, Father John, and Father Daniels), four religious brothers (Brother Tim, Brother Bob, Brother Frank, and Brother Ed), two religious sisters (Nancy and Russell), and another religious brother known only as Mr. Teeth, who read from the Book of Psalms as he had sex with her. Wehner also remembered that she herself killed an unidentified nun at her school.

Yet the millions of people who have viewed *The Keepers* did not learn many of these background facts. (Netflix is notorious for keeping viewer numbers secret, but *Newsweek* revealed that it had the top two streaming shows in 2016, both with over 20 million viewers.) What viewers see is that Jean Hargadon Wehner seems to be an attractive, sensitive, self-assured woman with a supportive, wholesome family, and that she claims to have recovered memories of abuse by Father Maskell and a few others.

And director Ryan White – whose aunt was Wehner’s high school classmate -- goes out of his way to portray her memories as real. After listening to her tell her story for hours, White told his producer, “This woman is telling the truth and we need to be part of this.”

It is true that Sister Cathy Cesnik, 26, an attractive, popular English teacher, was murdered and probably raped on November 7, 1969. Only three days later, another young woman, 20, was killed two miles away in a very similar fashion. It is quite likely that the same unknown person killed both of them, but the murderer probably didn’t know that Cesnik was a nun, because she had just begun working at a public high school and had permission not to wear her habit.

As part of her prayerful memory process, Wehner visualized how Father Maskell had taken her to see Cathy Cesnik’s body, and that her face had been crawling with maggots. Maskell must have known that she would immediately repress the memory, just as she allegedly forgot her rapes every time the door clicked shut as she was leaving his office. When Maskell’s body was exhumed in 2017 (he died in 2001), his DNA did not match the DNA at the murder scene.

The second star of *The Keepers* is Teresa Lancaster, “Jane Roe” in the 1994 lawsuit, who was a year behind Wehner at Keough High School. She claimed to have always remembered that Father Maskell forced her to disrobe, sit on his lap, endure his fondling, and take enemas and douches while he watched, and that he was present during a gynecological exam. But it was only after she learned about “Jane Doe’s” claims and met repeatedly with Wehner’s lawyer (who also represented her) that she recovered memories of rape by Maskell, the gynecologist, and a policeman. Those recovered memories were confused and inconsistent.

In 1993, Wehner and her siblings sent letters to other former Keough High School students, asking about possible abuse, and they received many responses. *The Keepers* makes it appear that a hundred or more people claimed that Maskell sexually abused them, but since none of them appeared as plaintiffs in the lawsuit, it is unlikely that any recalled severe abuse.

It is more likely that Maskell was indeed inappropriate in many ways, and he may have hugged and fondled girls and watched as they took douches. Other former students may have recovered memories or tried to. One classmate thought Maskell must have drugged her Coca-Cola. “I’ve never been certain of what happened. There’s so many gaps in my memory of being with him, and I only have fragments.” And some may have reinterpreted always-remembered incidents to make them more sinister in retrospect. As one of them says in the series, “Something that may

have seemed insignificant at the time has relevance now.”

Unforgivably, *The Keepers* puts two true believers in repressed memories on screen as “experts.” Psychologist L. M. Lothstein asserts: “Some things we experience are so unbearable and so painful that we shut them out. The major systems for protection of the self, the hypothalamic pituitary adrenal, fight-flight response, the vagal response to play dead, to dissociate, to be unaware of something, they’ll come right into play in order to protect the self from harm.”

This is pseudoscientific claptrap. He goes on to say, “We now know so much more about memory. It’s scientifically accepted that memories can be compartmentalized and not known to the conscious ego.”

This is absolutely untrue. Reputable memory scientists know that repeated traumatic events tend to be recalled all too well. As Lothstein pontificates, the filmmakers flash sensational headlines about a 2004 study, claiming: “Psychologists Offer Proof of Brain’s Ability to Suppress Memories,” and “A Freudian Theory Proven,” even though this was a study of word pairs that demonstrated nothing whatsoever about repressed trauma memories.

The documentary also features psychiatrist Richard Sipe of Johns Hopkins, who served as a witness for Wehner and believed her recovered memories. “There are things that have the ring of truth, even if they are hard to believe,” he explains in *The Keepers*. Sipe diagnosed Wehner with post-traumatic stress disorder (PTSD), which he compares to that of war veterans.

“Naturally we know so much more about this because of men and women coming home from war and being traumatized. We have all sorts of knowledge now about how the brain handles those.” But the brain does not handle war experiences by repressing them, but by being unable to forget them. That is what causes PTSD.

Sipe criticizes his colleague Paul McHugh, the head of the Department of Psychiatry at Johns

Hopkins, as having a “blind spot” about repressed memories because McHugh testified that they had no scientific validity. McHugh apparently convinced the Baltimore judge in the case, who dismissed it before trial, a decision upheld on appeal.

In *The Keepers*, Jean Wehner tells viewers, “There’s an awful lot I still don’t remember,” so stay tuned for more horrific abuse memories yet

to come. She demonstrates how she recalls her memories, lighting a candle and lying down to go into her prayerful state. As she does so, the camera zooms in on an angel figure beside her, which says “Believe Believe Believe Believe Believe.”

Critical response to *The Keepers* has been overwhelmingly positive and credulous. In a review, a *Baltimore Sun* reporter asked rhetorically why Wehner had not come forward earlier. “Because that’s how ritualized long-term abuse works in children,” she wrote. “The abuser is able to control the victim through threats and intimidation.... Jean says that to survive the horror, she in effect dissociated herself — severed herself from the experience, put the entire ordeal into a box, sealed it up, and buried it. It would stay buried for over 20 years.”

New York Times reviewer Mike Hale called *The Keepers* “a fascinating and devastating experience” and identified Jean Wehner as “a steely heroine.” He wrote that “trying to obtain justice based on recovered memories has the outlines of a classic tragedy,” without expressing any skepticism about the validity of such memories. *The Guardian* called the series “a breathtakingly brave true crime documentary.”

Prompted by *The Keepers* series, *Vice* magazine’s Kaleigh Rogers published an article reviewing the alleged scientific validity of repressed memories, asserting that since the 1990s “we’ve built a much stronger understanding of how and why childhood trauma could lead to repressed memories.” On the contrary, reputable memory scientists have found that years of traumatic events are impossible to forget and that false memories of abuse are frequently produced through suggestion and influence. Rogers erroneously concluded: “The science is firm that traumatic events can cause memory loss, and that these memories may resurface years or decades later.” I am sure that she sincerely meant well, but from her photo, Rogers is a young Millennial who was swayed by the series and accepted the myth of repressed memory hook, line, and sinker.

I fear that she is representative of a new generation who will be vulnerable to these dangerous theories.

--Mark Pendergrast is a science writer and independent scholar and the author of many books (www.markpendergrast.com.) He discusses *The Keepers* in his forthcoming book, *Memory Warp: How the Myth of Repressed Memory Arose and Refuses to Die* (October 2017).

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 and Australian groups have produced newsletters.

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