



Dear Reader

Many of us are keen followers of the news - we read a daily newspaper, start the day by listening to BBC radio 'Today' programme and end it watching the evening news on television. In the last few months there have been many announcements of concern to everyone who is following the subject of historic allegations of sexual abuse. We have been shocked by the horrors of the Jimmy Savile saga and the sheer numbers of people who have been affected. This period was closely followed by the revelations about a number of celebrities having committed abusive acts back in the 60s, 70s and 80s. All of this served to undermine the position of anyone who has been accused of historic abuse but who knows of their innocence, yet the current climate shows little room for cases involving sexual allegations being anything other than proven guilty. A plea of innocence is simply rejected as 'denial'. We do not deny the pain and suffering of those genuinely affected but both science and commonsense tell us that in the midst of such vast numbers of claims there will be some, at least, that do not reflect the truth. Who can verify claims that are made about events that happened so long ago? This is a challenge to the criminal justice system for each case must be thoroughly investigated before its authenticity can be assessed. It is regrettable, therefore, that the police have intimated that the veracity is indicated by the volume of claims. Historic sexual abuse crimes sit in a niche area of the law and we must continue to avoid the all too easy belief that when an accusation is made it is sufficient to

condemn the accused. Building a defence, for an innocent person, to an historic claim of events that never happened, requires specialist help.

Our criminal justice system is also a major feature of the news at this time. For those falsely accused the prospect of being able to find a good quality, experienced legal team on legal aid, appeared to be fading rapidly. One of our most experienced lawyers in this field has written of her fears, see page 7. The latest news from the Law Society and the Government is more promising. Importantly, we can all make a concerted effort to show our dismay by writing to our MPs and signing the e-petition referred to in the article. Cut backs and therefore changes are inevitable but we need to do all we possibly can to protect the best of what we have.

Madeline Greenhalgh

Table of Contents

Editorial.....	1
News	2
Special Legal Feature	
...BFMS to the Rescue	4
...Death by a Thousand Cuts	7
...Thoughts on R v Clark.....	9
...False Memory Expert in Court.	11
Therapy.....	12
Members' Forum.....	14

NEWS

Professional Standards Authority

Accredited Voluntary Registers Scheme

People engaging with talking therapies now have greater opportunities to identify providers of quality service, and to seek redress if things go wrong. By seeking out the Accreditation Mark of the Professional Standards Authority's Accredited Voluntary Registers (AVR) scheme, service users and the public can be assured that their therapist belongs to a professional body that requires and actively checks for high standards of personal behaviour, technical competence, and business practice.

The scheme requires organisations to undertake independent assessment of their voluntary register. If found to meet the Authority's demanding Standards and fulfilling any conditions necessary to ensure public protection is at the heart of their operation, the organisation and its members will be able to display the Authority's Accreditation Mark. This will offer both competitive advantages to providers and assurance to service users seeking quality care.

The Authority has met with several organisations, including the British False Memory Society (BFMS), since the beginning of the scheme to ensure that issues were identified and accounted for within the accreditation process. This article outlines how the AVR scheme takes account of the issue of false memory.

The scheme operates a robust assessment process requiring organisations to demonstrate compliance with 11 key standards encompassing every aspect of their register. This process begins with the scrutiny of an application form and continues through evidential reviews, site visits, interviews with senior staff, observations of conduct hearings, and more. An important part of the process is

the Call for Information, in which the Authority invites the public and stakeholder organisations to submit their evidence as to whether or not they think that the Standards are met by the applying organisation. Through this, subject-experts such as the BFMS are able to inform the Authority of possible risks related to the occupation registered by the applying organisation.

The Authority requires organisations to have "a thorough understanding of the risks presented by their occupation(s) to service users and the public - and where appropriate, takes effective action to mitigate them." Applying organisations are required to submit a risk matrix as part of their application for accreditation. The Authority would expect to see the risk of false memory and appropriate controls in place to mitigate it listed in the matrix. In addition, as part of the assessment process the Authority interviews the senior management team of the applying organisation and asks: "Is there a risk that memories could be formed within the therapeutic context, of events which never happened? What does your organisation do to mitigate this risk?" The wording of these questions was agreed with the BFMS in a recent meeting with the Authority. The Authority requires the organisation to demonstrate how registrants are both trained and ethically bound to minimise the chance of false memory occurring, and how to react appropriately if it does.

When service users, and related third parties, do have concerns about treatment received, the Authority requires organisations to provide effective complaints procedures that focus on protecting service users and the public and putting matters right where possible. The complaints procedure of the applying organisation is assessed by the AVR team to ensure that third party complaints are considered by the organisation. The Authority believes this to be an important aspect for the families of service users affected by false memory. Furthermore, organisations must demonstrate transparency, sound decision making, and the commitment to share concerns with related agencies and professional bodies.

Over 70 organisations have so far expressed their interest in applying for accreditation of their voluntary register. The Authority has

received applications, and expects more from, organisations representing the majority of counsellors, psychotherapists and related occupations within the United Kingdom. The AVR scheme will require them to demonstrate their awareness and mitigating actions for the risk of false memory.

For more information about the AVR scheme visit: <http://www.professionalstandards.org.uk/voluntary-registers>

New Member of the BFMS Scientific and Professional Advisory Board

Dr Fiona Gabbert has recently joined Goldsmiths, University of London as a Reader in Psychology having come from the University of Abertay, Dundee. She is an expert in the area of applied psychological research on the reliability of memory. Her contribution to the eyewitness memory field spans the past 10 years. She sits on the Scientific Committee of the International Investigative Interviewing Research Group (iIIRG) and was awarded an Academic Excellence Award (June 2011) by the iIIRG in recognition of "Outstanding Achievements to the area of Investigative Interviewing". She is an invited member of the International Centre for Research in Forensic Psychology.

Response to Oliver James

Professor Michael O'Donovan, Cardiff University, wrote to the Observer (19 May 2013) to chastise Oliver James, clinical psychologist and author, who made the claim following his reference to 36 unquoted studies "it is becoming apparent that abuse is the major cause of psychoses".

Turning away from attempts that will prove DNA differences as a cause for mental illness, James suggests that the lack of medical evidence provides little hope of an answer but he claims a huge body of evidence (unspecified) that our early childhood experiences combined

with subsequent exposure to adversity go a long way to explaining adult emotional risk.

In response, Professor O'Donovan wrote:

"While I am not elected to speak on anyone's behalf, I felt very strongly that someone should take James to task for his disgraceful comment. I can only imagine the pain these insinuations cause to those in the direct line of fire. I really hoped the days when parents were seen as to blame for psychosis were drawing to a close. Sadly, medieval attitudes are proving resistant, but we have to keep trying. I believe very strongly that significant progress in understanding is being made at a fundamental level, and it is my hope that will contribute to changing perceptions, as well as better treatments."

Treasurer's Appeal Update

Bernard Reed our treasurer wrote to all our members in April explaining the Society's financial predicament. He asked for your support in helping us continue the work that we do by sending £200 each or any amount you could afford.

Once again you responded magnificently and to date we have received £9,725. We recognise these are difficult times financially for many people so truly appreciate your generosity.

If you had meant to donate but have forgotten we hope this may jog your memory - it is not too late!

Professor Elizabeth Loftus at Goldsmiths, University of London

On 20th March 2013 Professor Loftus gave a talk entitled 'Memory Matters'. You can see and hear this talk on www.youtube.com

SPECIAL LEGAL FEATURE

BFMS TO THE RESCUE

Catherine Wilson

When celebrities are accused of sex crimes allegedly committed decades ago, they have the cash and the connections to ensure the best legal team, but when an ordinary pipe-fitter is accused and put on trial, getting a good legal representation is yet another nightmare. My brother is the pipe-fitter, and he could have been imprisoned for fifteen years on the word of a mentally disturbed young woman, the child of his former girlfriend.

For months, John (not his real name), who is in his 50s had been working away from his home when police broke into his flat, presumably searching, in vain, for evidence of paedophilia, specifically video tapes which the woman claimed had been made by him of their sexual activity. Alerted by a neighbour John returned home to find police instructions to report to the station immediately where officers took a statement, did a cursory check of his proffered laptop, and bailed him pending further investigations.

Stunned by the allegations, John told me later that it was as if she had seen a film or read a book and had fantasised about the sex she imagined had happened. I thought immediately about false memory syndrome and a search on the Internet lead me to The British False Memory Society which, ultimately, was instrumental in our eventually finding effective legal representation and expert witness advice.

Four months later, in January 2012 John appeared in Magistrates Court and was formally charged on eighteen counts of indecent assault and rape of a girl from the age of 7 to 12 and on several occasions later when she claimed to have

visited him at his home. There were no specific dates. John pleaded Not Guilty and the case was sent to Crown Court for trial September 28, 2012. It was reported in the local newspaper and picked up by Google where it remains.

John was represented by one of the largest law firms in the Welsh city where he lives, comfortingly describing themselves on their letterhead as a 'Quality Solicitor'. But we were never seen by a solicitor, apart from four brief 'conferences' with our barrister, our only point of contact was a young caseworker who claimed she was under the supervision of a solicitor. It appears that that is the way things are done in Wales.

Having gone through the complainant's statement myself, and that of her long-term clinical psychologist who, it would seem, was to be the prime prosecution witness, and later statements from her mother, father and brother, who were not to be called as prosecution witnesses, I had compiled a list of avenues of investigation and since it seemed unlikely our caseworker would have the wherewithal or time, and we, the family were advised not to get involved, I suggested at our second brief meeting with the barrister that we hire a private detective. His response was that he would wait to see what the complainants psychiatric history revealed. There were, he said "a truck-load of medical files which our forensic psychiatrist will examine and if necessary I'll read them myself." Later he mentioned to me the name of an eminent forensic psychiatrist often involved in cases at The Old Bailey, who he planned to approach for this case.

However, our barrister saw fit to commission a local psychiatrist who was a consultant at the psychiatric hospital where the accused had been treated as a long-term in-patient. I emailed our barrister to voice our fears about a conflict of interest but our concerns were not

acknowledged and I was reprimanded for approaching the barrister directly. I must go through the caseworker, I was told, even though she was difficult to contact.

At a pre-trial hearing six weeks before the trial date, we learned that the complainant was once again in the hospital where our psychiatric expert worked, and he then declared a conflict of interest and resigned his role as a defence witness. So our barrister found another local forensic psychiatrist. Time was running out now for a close examination of a truck-load of files. I later saw a copy of the forensic psychiatrist's bill; he had charged for six hours work for a report which was damning of John, concluding that her problem, known as Borderline Personality Disorder, was in most cases the result of child sex abuse. It said that she exhibited all 9 signs of BPD but "there was nothing in her condition to undermine her evidence." After extolling the "good and trusting therapeutic relationship" with her clinical psychologist, he concluded: "I have no advice that would assist the defence in this case." He mentioned in the report that a therapist had described her as "an inconsistent historian" and he did not question the account from her clinical psychologist that in a psychotic phase when she had stopped taking medication that she suffered auditory hallucinations of John telling her to kill herself. He said: "There is reference to therapy sessions being focussed on the relationship with her step-father (John)". It occurred to me that therapy concentrating on statements made when she was psychotic could lead to her believing her hallucinations were real.

There was no mention in his report that, throughout her teens, the complainant had been prescribed strong anti-psychotic drugs which she would stop taking and instead take recreational drugs including heroin, ecstasy, cannabis and seven pints of cider in a day. No weight either was given to the chaotic and neglectful upbringing during her teens, after John had left her family. I noticed in the report that at some stage she had been diagnosed as suffering 'co-morbid psychosis' which my psychologist friend Lynne Jackson looked up and translated as "severe mental derangement of the whole personality".

The bill for that report was dated August 9 but we didn't hear about it until a meeting with

the barrister on September 6, although we had requested a meeting as soon as that report was available. Our barrister declared that since the report was so negative, as a tactical measure, he would ask the judge to make the complainant's mental condition inadmissible to the jury. We were stunned and asked in a panic what would John's defence be? The barrister replied: "It will be like a pantomime, she says he did and he says he didn't. Her word against his."

Three weeks before the trial and we still had no idea what the defence case would be, no solicitor to consult, a caseworker who had not yet taken character witness statements or alerted them to the date of the trial, no expert witness and a barrister who was not inspiring confidence. Fortunately for me, I had a solicitor in my family, my husband's daughter, Sarah Wilson. She read the two pages of the psychiatric report which we had been given and asked why we did not have the full report. She advised us to contact the senior solicitor at the law firm to complain about the manner in which the case was being handled and the confusing conclusions of the psychiatric report. Again, Lynne Jackson was there to guide me in composing the psychiatric complaint which I emailed to the barrister and the head of the solicitors firm that night. No response.

On September 14, there was another pre-trial hearing which I was unable to attend. John told me that the barrister was adamant that he apply to make the complainant's BPD inadmissible. He had already agreed this with the prosecution barrister. He was called to meet with the judge in private and must have shown him my email because the barrister reappeared with a different attitude. He said the judge had called for the forensic psychiatrist to address my questions in a second report by September 19. We discovered a few days later that the forensic psychiatrist was on holiday, so the trial was postponed to January 28, 2013. The forensic psychiatrist's response to my complaint did arrive, but made no sense whatever.

John and another brother were called to a meeting with the barrister in which they were told that they have to trust their legal representation and take their advice, or move

to another firm. “Perhaps we ought to leave it to the pro-fessionals”, said my other brother and I wondered if my interference was hindering the case.

The next day, the October edition of the BFMS newsletter arrived in the post. There was an article advising on what to expect from your legal representation if you are falsely accused. This confirmed my suspicions that Johns legal team was not adequate for the task. Underneath the article was an advertisement for London solicitors Kaim Todner, co-incidentally the firm that Sarah Wilson worked for. Claire Anderson, it said, had extensive experience in sex abuse trials.

Before we knew that we could transfer to a London firm, Claire spent more than two hours listening to John’s account of his defence to date and she agreed to apply to Legal Aid for a transfer. John had already paid £10,000 towards his legal costs and now he was not working because he had to be available for the proceedings, and because of his mental anguish over the case. That two-hour interview was more time than we had spent with our barrister throughout the previous year, and she was teeming with ideas of avenues to investigate and appalled that John had not viewed the videotape of the complainant’s statement.

Claire Anderson arranged for an eminent consultant psychiatrist with experience of historic sex abuse cases to report on the complainant’s psychiatric health files, but when the files were requested from the forensic psychiatrist who had written the negative report, they had already been destroyed. It was mid-December, Christmas break looming and all the various files had to be located, copied and forwarded. But we were in safe hands now.

Various files began arriving from different locations in the country where the complainant had been treated and our new consultant psychiatrist began the first of a three-part report detailing horrifying detail of the complainant’s psychiatric history and identifying gaps in accounts of treatment. Her report concluded that the complainant was a seriously unreliable witness and was a victim of false memory syndrome as a result of her psychiatric therapy compounded by drug

therapy alternating with drug and alcohol abuse.

The trial date in January was fast approaching and the prosecution applied for more time for their psychiatrist to study the report and once again the trial was postponed for another three months. In March the prosecution psychiatrist interviewed the complainant questioning her about the possibility of her memories being false. She assured him they were not, in such a way (she had studied psychology in college and had all the psych lingo) that he concluded that she was fit to give evidence, although in the previous paragraph he says: “..... Ms X has at various times, particularly when psychotic, had difficulty in distinguishing truth from delusion.”

Days later the complainant withdrew her statement and the prosecution dropped the charges. There was no report of that in the local paper, and no documentation to confirm that the charges had been dropped. John’s name and those unspeakable charges are up there on Google forever.

Our defence had not decided whether to use the false memory argument as Claire Anderson explained that judges were not convinced by it, and there were other issues in the report worth pursuing and also numerous inconsistencies in witness statements.

Relieved as we were that charges were dropped, I was sorry Claire Anderson’s day, or weeks, in court were denied her after all her work on the case.

It cost John and his family 18-months of trauma, and taxpayers many tens of thousands of pounds all because the police and prosecution must be seen to be listening to ‘victims’ without considering the dearth of evidence and the character and unlikelihood of guilt of the accused.

John and I offer heart-felt thanks to Madeline Greenhalgh for her advice throughout our nightmare.

DEATH BY A THOUSAND CUTS

Claire Anderson

Catherine Wilson's article entitled "BFMS to the rescue" opens with the sentence:

"When celebrities are accused of sex crimes allegedly committed decades ago, they have the cash and the connections to ensure the best legal team, but when an ordinary pipe fitter is accused and put on trial, getting good legal representation is yet another nightmare".

I am afraid if this Government's proposed dramatic cuts and changes to public funding in the Criminal Justice System are introduced the "nightmare" referred to by Catherine is about to get a whole lot worse.

I was the solicitor recommended to Catherine's brother, John after Catherine became seriously concerned about the level of representation that had been provided to him by his first legal team.

Once a client is granted legal aid, it is incredibly difficult to effect a transfer of that legal aid to another firm. Ultimately the court before which the case is going to be tried decides whether a transfer is appropriate and strict criteria have to be met. In this case I was actually quite surprised that a transfer was allowed given the very late stages that the case had reached. However, luckily for us the solicitors that were in place agreed that the relationship between themselves and their client had broken down and so the court allowed me to assume the conduct of John's defence.

In brief, when I received the papers they were in an extremely shoddy state. A psychiatrist had been instructed to comment on the complainant's medical history but given the complexity of the complainant's mental health I found the report to be extremely brief and I immediately took issue with the psychiatrist's opinion that the complainant's mental condition was very suggestive of somebody who had suffered sexual abuse.

What became apparent was that there were a

very significant amount of medical records that had not been provided to the defence by the Crown Prosecution Service. In cases like this, medical records are not 'served' material and specific steps have to be taken by the defence to obtain their disclosure.

In all criminal cases sight of 'unused material' is very often critically important in identifying strong defence points. In this case I was able to identify, together with the psychiatrist that I instructed on behalf of my client, very significant inconsistencies provided by the complainant to her various treating clinicians over a lengthy period of time. What was clear to me was that none of these inconsistencies appeared to have been identified by my client's first legal team, which was worrying in the extreme.

Both my client and his sister (who worked diligently on his behalf and was incredibly helpful in co-ordinating defence witnesses etc) slowly began to see rays of light in terms of his defence case, whereas previously John had completely lost faith in anyone's ability to vigorously defend him.

Any readers who have been under investigation or charged in relation to similar allegations or any criminal offence will understand how immensely stressful it is facing a prosecution that in the event of conviction would inevitably lead to a very significant custodial sentence.

Luckily for John he was able to change his representation and choose a solicitor recommended to him, with the relevant experience necessary to unearth the important medical disclosure. It was those factual discrepancies which were quite instrumental in this case being dropped.

This brings me to the nightmare scenario I referred to at the beginning of this article.

Chris Grayling, the current Secretary of State for Justice, is proposing to introduce very dramatic changes to criminal legal aid, which, had they been in place at the time, would have dramatically changed the complexion and outcome of John's case.

Our Criminal Justice System is held up across the world as being one of the fairest and most respected that there is, something as a defence

lawyer I am incredibly proud of. The Government have, however, decided that there needs to be more cuts to the Criminal Legal Aid budget and are planning the following:

Introduction of Price Competitive Tendering (PCT) where providers bid for Legal Aid contracts.

Defendants with a disposable income of more than £37,500 will be prevented from having automatic access to legal aid.

Client choice will be curtailed and if anyone is arrested and seeks legal representation at the Police Station they will be allocated a contracted solicitor who they will have to remain with for the duration of their case. That solicitor will be a local one

In short this means that publicly funded clients will be prevented from choosing a solicitor like me who has built up expertise in a chosen field and will have to stick with their 'allocated solicitor' whether they are good or not. For John that would have meant that he would have had to stick with the solicitor that he was initially provided with, despite their apparent lack of experience and commitment to the issues in his case. That would have put him at a very significant risk of conviction because at the time that I assumed conduct of this case, his solicitors considered they were 'trial ready'.

I opted to pursue a career in criminal defence work, the vast majority of which is legally aided, because I find the law fascinating and equally enjoy forming what I consider are valuable professional relationships with my clients. People like me do this job for the love of it. We are not the 'fat cat' lawyers often referred to by the media. On the contrary the general public would be quite astonished at what criminal defence solicitors actually earn.

There has been a significant amount of press coverage regarding changes both on the radio and in the newspapers over the last couple of weeks. Chris Grayling states that the lack of a choice is not, in his view, an issue that should cause any concern and maintains that 'Quality Standards' will be imposed on any firm who are granted a contract under the PCT proposals to ensure quality.

Well Mr Grayling, I can tell you that the solicitors firm who previously acted for my client were one of those 'quality solicitors' who had

achieved all of the relevant 'quality audits' currently imposed by the Legal Aid Agency but it is one thing having a quality stamp on your letterhead and quite another being experienced and equipped to do a proper job. I know plenty of 'quality solicitors' who cut corners with a view to cutting costs and subsequently have little concern for the outcome of the cases that they defend.

Criminal Defence Legal Aid has been pruned to its limit and further cuts cannot fail to drive down quality and that will of course subsequently lead to poor representation when a person's entire future is at stake.

If the Government's proposals are introduced none of the people recommended to me by the BFMS will be able to approach me personally if they are eligible for legal aid. They will have to be allocated to a solicitor in their own area despite their expertise (or lack of it) and whether they have faith in that solicitor or not.

In summary this spells complete catastrophe. Be in no doubt that this will inevitably lead to miscarriages of justice and wrongful imprisonment.

The Government encourage the media to bang the 'fat cat' drum and to wheel out headlines such as 'some criminal trials cost £10 million'. Those ridiculous headlines are designed of course to get the general public on side and to encourage them to believe that the people who do my job are overpaid and somehow privileged. What is clear by the public's general response is that the Government had wildly underestimated the public's admiration and respect for the current Criminal Justice System. There is an e-petition that has many thousands of signatures already, please locate and sign it at:

<https://submissions.epetitions.direct.gov.uk/signatures/10177569/verify/dODHP6yQIbSL1YYBEDyD>.

In addition I would urge you to write to your local MPs to voice your concerns about these proposed changes. The more noise we can make the better because to see any person who requires public funding deprived of quality and passionate legal representation is an absolute travesty. Effectively the best representation will be reserved for the well off.

If any readers would like to email me their

experiences so I can put them forward to my own MP, please do so on canderson@kaimtodner.com. I will keep you all posted as to how things develop but please do what you can to keep proper Criminal Justice alive.

Claire Anderson
Senior Director
Kaim Todner Solicitors Ltd

Stop Press

At the point of going to press, breaking news is that the Lord Chancellor Chris Grayling, has acknowledged the value of maintaining client choice of solicitor for legally-aided defendants, following a meeting between the Law Society and the Lord Chancellor.

The Law Society has also indicated its readiness to work with the government in developing its alternative to price-competitive tendering.

Further Thoughts on R v Clark

Dr Peter Naish

On 13th December 2004 the judge ruled that the evidence of an expert witness, concerning the dangers of accepting evidence apparently obtained as a result of hypnosis, should not be presented to the court. It will be argued that this decision was wrong, both intrinsically, and also as a result of another late decision by the judge: to release the full transcript of the hypnotherapy sessions about which the expert was supposed to comment.

The sequence of arguments leading to the ruling was unclear, but it touched briefly upon the Expert's evidence and Home Office Circular 66/1988, and appeared to be based upon the ruling in R v MacKenney, which had been raised by the Prosecution. References to the Expert's statement were

not only brief, but managed to miss key elements of the evaluation. Similarly, extracts selected from the Circular entirely missed such key sections as:

“A person under hypnosis is particularly vulnerable to suggestion and may easily be encouraged – often inadvertently and innocently – to incorporate inaccurate memories and fantasies into the account given under hypnosis. The subject may himself imagine or transfer memories of other incidents to fill gaps in his recall, and subsequently such material may become firmly established in his waking memory.

As evidence obtained from a witness who has been hypnotised cannot properly be tested in cross-examination, there must be a serious risk that the court would rule it inadmissible under section 78.”

The latter would suggest that, if the expert were not to be heard, then the witness should certainly not give evidence. It will be noted that the Circular post-dates the MacKenney ruling, yet it does not follow the implications of the latter, namely that the jury should be allowed to assess the reliability of the witness. This is entirely right and proper, since as the first extract indicates, the erroneous information may come to feel to the witness like a genuine memory. As a result, their description of the fabricated material will seem frank and truthful. Without expert guidance a jury has no reason to maintain a sceptical stance.

In the present case (R v Clark) the Judge, in his ruling, made reference to the witness claiming always to have remembered the alleged incidents. Although he did not develop the argument, it would presumably proceed as follows. A witness who claimed not to have known that certain events took place, but then recovered the memory as a result of hypnotherapy, should not be relied upon to produce accurate information. In contrast, one who was aware of the details before undergoing hyp-

nosis cannot have acquired the material as a result of that procedure. That is entirely true, but if the witness cannot provide additional evidence (e.g. having told someone else, who remembers being told) there remains the risk that the belief in an enduring memory is itself a product of the hypnotic procedures. The judge did not comment upon this danger, and appears not to have taken it into account.

In addition to the impossibility that a lay jury, without expert guidance, can properly make allowance for the dangers of hypnosis, there is a further hypnosis-related risk. Uninformed members of the public tend to attribute remarkable powers to the process of being hypnotised. It is commonly believed that hypnosis can unlock hidden memories, and that it is impossible to lie when hypnotised. Both these beliefs are incorrect, yet it has been shown that potential jurors will bring those beliefs to bear, when assessing material in witness statements (Wagstaff, Vella and Perfect; 1992). In other words, the testimony from someone who has been hypnotised is more likely to be believed. This shift to a more credulous stance undermines the effectiveness of the jury, and requires correction, via instruction by an expert.

All the above points indicate that expert evidence should be heard in cases of this nature. Indeed, in the case of *R v Atherton* (Middlesborough, circa 1998) it was the case, not the expert, that was dismissed.

As stated, the Judge's reference to the Experts statement was brief. It is possible that he would have given more weight to its contents, had these been couched in stronger terms. The whole tenor of the statement would indeed have been far more robust, had the full transcript of the hypnotherapists notes been available from the start. In the version first made available large areas had been blocked out. The Expert was finally permitted to see the full version only an hour before the case was due to be heard. There was insufficient time to decipher the handwriting, fully to evaluate the newly exposed contents and properly to brief counsel. The evaluation that would have been made, had time permitted, is given below. At the request of the Prosecution, certain material discussed during the therapy will not be described in detail.

As if to support her allegations of abuse, and to

underline its impact upon her, the witness makes three specific claims: that she has sickness phobia (she was forced to have oral sex); that she dislikes people approaching from behind (the accused touched her inappropriately as they climbed the stairs); and that she dislikes sex (these early experiences were all traumatic). In addition, she sought therapy because of general unhappiness, perfectionism and lack of self-esteem, broadly attributed to the alleged abuse.

The unexpurgated version of the therapist's notes tells a very different story to the above. One of the 'presenting problems' of the client was sickness phobia. From an early stage in the therapy (before mention of the accused) it emerged that, during a traumatic childhood, she was punished (hit) for being sick and was made to clear it up. These are precisely the kinds of circumstances that would lead to such a phobia. The notes show that immediately after describing the fear of having people behind her, the witness gave the reason that when she was aged 16 a boy had jumped on her from behind, and pulled a coat over her head. There are also incidents that would account for a dislike of sex. The very unfortunate childhood described in the notes precisely predicts the emergence of the insecure perfectionist that the witness became. There is also a strong probability that the witness would grow into a highly hypnotisable, fantasy-prone young woman.

The therapist's behaviour was appalling. In passing it can be mentioned that the treatment offered for the phobia was not of the best, and the diagnosis of obsessive-compulsive disorder is not supported by the detail given in the notes. This supports my assessment that her training is at best completely inadequate, and probably down right wrong. However, the truly shameful actions are concerned with her shaping of her clients beliefs. Mention of the accused does not occur until the fifth session. Prior to that, a great wealth of material had been revealed by the client, all more than adequately explaining the various problems and symptoms. In spite of this, it is in Session 5 that she states (Statement of the hypnotherapist), "At this point I began to suspect that something had happened to my client during her childhood that may have been the cause of the problems ..." This appears to be the turning point, both for the therapist and the pa-

tient, both of whose statements are couched in terms that link symptoms to the alleged abuse, while the actual notes of the sessions reveal that no such linkage was being made. The therapist's statement is circumspect in its mention of age regression, but the notes themselves are peppered with references to regression to various ages. These fishing expeditions suddenly cease after Session 5. Why? A most plausible explanation is that the therapist had found what she wanted.

In my first evaluation of this material I concluded that, because hypnosis was involved, there was in principle a risk that the memories were false. In the light of this more complete evidence I would now say that the risk is very real, and is better described as a probability.

Reference

Wagstaff GF, Vella M and Perfect T (1992). The effect of hypnotically elicited testimony on jurors judgements of guilt and innocence. *Journal of Social Psychology*, 132: 591 – 595.

Editor's Note:

In R v Nigel Paul Clark [2006] EWCA Crim 231 the judgment ruled "there are passages in Dr Naish's statement which are admissible and that cause us to conclude that the judge's ruling refusing to allow him to be called was wrong." It goes on to determine that the verdicts were not regarded as safe and must be quashed. A re-trial was called for.

False Memory Expert in Court

A Cumbrian man has been cleared by a jury of historic abuse, said to have occurred more than 30 years ago, after his barrister suggested his accuser may be a victim of false memory syndrome.

The man who was found not guilty of 10 counts of child sex abuse, including three rapes, said that he had never had a relationship with either a woman or a child. His accuser, a woman now in her 40s, claimed that he

subjected her to years of abuse during the 1970s, starting when she was six.

In evidence the woman said she saw a counsellor after suffering flashbacks and disturbing dreams. On the counsellor's advice, she read the book, *The Courage to Heal*, which argues that abuse victims often bury their traumatic memories and that readers feeling uncomfortable as they read did so because the memories were resurfacing.

Defence barrister, Elizabeth Muir, said to the woman, "Is it not the case that you have had difficulties in your personal life over the years and read *The Courage to Heal*, and that you have persuaded yourself that this had happened to you?"

A recognised expert in false memories, Dr Janet Boakes, a retired consultant psychiatrist was asked by the court if people who have false memories believe them. She said, "Yes, they are not liars. They are reporting what they believe to have happened to them, but in many cases it can be shown objectively that it could not have happened.

Such memories emanated from a misunderstanding of how memory works, in particular, from the idea that it was natural for an abused child to forget what had happened to them. But there was no evidence that the normal response to atrocities was to forget them. The normal response to a serious or significant trauma of any kind is that it can't be forgotten. It haunts you."

In her closing speech, Mrs Muir told the jury, "People do not forget being raped over the years." She explained that the expert could not say whether or not the complainant had false memories but, given that issue and the "contradictions" highlighted in the evidence, the jury could not be sure that the man had committed the offences alleged.

Reported in the News and Star,
Phil Coleman, 15.6.13

THERAPY

False Memories and Dangerous Therapies

Dr Peter Naish

The problem

The bulk of the false memory cases we hear about at the BFMS concern memories of childhood abuse which were recovered by an adult undergoing therapy. These apparent memories are not in fact *recovered* at all, because they are not recollections of actual events; they are false memories, produced by very bad therapeutic practice. What is worse, the bad practice is not accidental; the procedures are carried out deliberately.

Why do therapists cause harm?

Of course they do not intend to, and most do only good, but some are influenced by three misguided beliefs, ideas which are unfortunately very plausible. They are as follows:

- a) If you were abused as a child your brain protected you from the awful effects, by repressing all knowledge of the event.
- b) The protection is never complete, so some symptoms (often quite common ones, such as depression) will emerge in adulthood.

**CBT Therapist
Tony Freeman**

**Support & therapy
for anxiety, stress and
psychological issues
Family mediation**

**0208 343 4869
office@freemancbt.com
www.freemancbt.com**

c) The only way to a cure is to remember and then 'work through' what happened.

Working in this framework, some therapists will interpret almost any symptom as evidence of abuse, and denials by the client are explained as the result of repression. The therapist goes to work, helping the client to remember what happened, and the procedures used (trying to picture likely events, seeing if they feel familiar, sometimes employing hypnosis) cause many people to feel that they are beginning to remember things. These are not real memories.

But didn't Freud prove we repress things?

Freud didn't *prove* anything, although he did have various theories, including on repression, most of which have been discredited. He was working a century ago, and we have learned an enormous amount about the workings of the brain since then. Unfortunately, because Freud was one of the first in the field and his ideas were simple to grasp, the theories have entered popular culture. The truth about brain function, including memory and the response to abuse, is very complex. Nevertheless, our Scientific Advisory Board assures us that modern brain science¹ calls into question all the assertions (a), (b), (c).

Why are therapists allowed to continue these practices?

Many culprits are not properly trained psychologists, so do not come under the British Psychological Society umbrella. Currently, the law does not prevent any person from offering a psychotherapeutic service. Until such time as this situation is changed the BFMS believes that the best weapon against these practices is education.¹ We urge you to help us disseminate the details provided in this article as widely as possible.

References

1. Those wishing to know more of the science behind this assertion may request the original Advisory Board document: *BFMS Position Statement on the Recovery of Memory in Therapy*.

Why CBT is the preferred option

Tony Freeman

The question asked by parents whose children have been led into False Memories is frighteningly similar - "How could they have done this, they were supposed to be helping. Aren't they professionals?"

Unfortunately, as with any trade, there is always a small minority of bad or dangerous therapists who can wreak havoc in the lives of their victims, or destroy their families. It would be comforting to think that these belong to the non-qualified variety that thrive in the UK's uniquely non-regulated therapy industry. Alas, many are qualified, established or well regarded. For it is in the nature of psychopaths, bullies and abusers to promote themselves, and their ridiculous theories of recovered memory, with shameless over-confidence and no regard for moral or ethical practice.

While the vast majority of therapists are ethical and base their work on a moral need to help their clients, this small minority is able to create havoc and make themselves wealthy under cover of an industry that - for all its faults - tries to do the right thing.

It is helpful for those whose lives have been blighted by False Memory Therapists to understand that they are most likely dealing with a bully, psychopath or abuser using therapy to find victims, enrich themselves and practice their evil art. Many are able to carve out successful careers peddling this nonsense, where there is always a supply of trusting victims ready to be bullied, coerced and threatened into recovering false memories.

Most of us have known someone in an abusive relationship who refuses to leave. Their friends and family can see the damage or violence, threats or control - but there is little that can be done until the victim realises this and decides to escape. I notice identical behavioural patterns in those abused by False Memory Therapists. Threats, manipulation, abuse for money, sex or power and other behaviours are found. Unfortunately the added weight of psycho-babble and authority of a degree gives the

abuser even more power.

Like vampires - bullies and psychopaths require victims in order to survive. In general, they are incapable of normal relationships, have few genuine friends, and live in a world of suspicion and mistrust. They are capable of entrapping weak, insecure or needy people into terrible relationships of misery and fear.

Some victims seek nothing more than assistance in difficult times. In the hands of a skilled abuser, any normal, healthy difficulty can be twisted and used as evidence of mysterious past deeds. Like a magician, the therapist conjures up fantastic tales of childhood mistreatment and declares the victim must free themselves, in order to be happy.

Like all good fraudsters, the therapist declares that they are the only way to salvation, and refusal to cooperate will leave the victim to suffer forever. Now, like a fly caught in a spider's web, the more the victim tries to free themselves of imaginary psychological trauma, the more caught up in the nightmare world of psychoanalytical fraud they become - and the greater control the therapist has over their life.

Charming, caring and generous at first, relationships slowly turn to criticism and control. It is not in the interest of the bully that the victim be happy, confident or free - for they require insecure, needy or desperately unhappy people around them to satisfy their need for superiority, control and financial gain.

In order to complete this control, victims are often encouraged to reject their parents, family or friends - those who might warn them of danger and protect them from the therapists control. Such is the evil grip in which victims are held - many reject those who would protect them, rather than risk losing the chance of healing.

As paedophiles are drawn to children's homes, abusers can be drawn to therapy - a place where they may find victims and abuse under the good name of a helping industry. Unfortunately, it is almost impossible for the industry to check for abuse - and so it continues.

Traditional therapy has great emphasis on childhood and spends a great deal of time looking to trauma, abuse and other issues from the past to explain current problems. While this can help, it also allows bad therapists with

poor ethics or an axe to grind, to use the template of childhood abuse. Even ethical therapists can become bogged down in the past, creating weak, self-obsessed clients with little hope. Though most believe memory to be reliable, it has been shown to be frighteningly untrustworthy and easily influenced. Hypno-therapists, counsellors and other types of therapists have been found using false memory to entrap clients.

CBT Therapy is a modern, practical and straightforward therapy that places less attention on the past, being mostly concerned with using simple techniques to change the present. It gives clients the tools they need to take charge of their lives, creating independent, strong and self-reliant people. This short term approach leads to quick results, and CBT is now the main therapy used by the NHS.

It may be helpful for those who have undergone False Memory therapy to see a CBT therapist, as this no-nonsense practical approach teaches self-reliance and takes away the unhealthy or dangerous reliance on a therapist and obsession with the past.

I believe it is most helpful to understand the difference between the various therapy styles, their dangers, and what best suits the victim and family in their recovery. Parents would do well to read up on the nature of psychopaths, bullies and abusers – so that they can understand what a family member has been through.

Some parents have mentioned the success of mediation as a method of talking to those who have been encouraged to be suspicious of family members, meeting at a neutral therapists office, or speaking by phone or Skype can be immensely helpful – as direct contact can sometimes be too much of a leap.

Editor's Note:

Tony Freeman has taken an interest in the subject of false memory and has attended two successive BFMS Annual General Meetings to gain a better understanding of the issues and insight into the parents' view. The BFMS cannot recommend any one therapist but with an informed view and with caveat emptor in mind the client is as well placed as possible.

MEMBERS' FORUM

Dear Madeline

The answer to your question posed on the front page of the October Newsletter (Vol 19, No 2, Oct 2013) is easy. Present day Italy houses the powerbase of the Catholic Church. It is the only country of your list to have effectively resisted the Reformation. To escape Vatican influence you have to cross the sea or hide in the mountains.

My comments do not express support for any particular denomination and its practices. The boundary between helpful and damaging psychology is infinitely narrow and those who practise it should not (be allowed to) cross this line. This principle applies wherever the emotions, imagination and imagery of those in psychological need are toyed with, whether in church, the consulting room or the workplace.

The Catholics ran a tight ship, maintaining, as best they could, firm control over their officials. The reformation encouraged both the belief that splendour on earth was an invalid depiction of heavenly glory, and, much worse, the idea that ordinary, unqualified individuals could get at the spirit themselves: and, even worse than that, could minister (conduct the healing process) to the spiritual needs of others. Need I say more? Maybe.

Of course the churches continued to do terrible things, but mostly in public - to exercise influence over the people at large. Today mass demonstrations of spiritual reality remain popular – worship knees-ups, making up a silly language, and everyone falling over to demonstrate the physical power of the spirit, as well as the collective reinforcement of marvelling together at the words of a good salesman (revered prophet). Of course its fun doing things together. Collective ministry may have the potential to make people feel better (for a week), but it is unlikely to do as much harm as inappropriate personal counselling (though it may help recruit patients).

A handful of Puritans took this idea of DIY spiritual ministry with them in the Mayflower,

and look what they did with it. Based on isolation, fear and superstition they founded America, with what they had – not a lot. Arthur Miller’s *Crucible* is a good allegorical example of what unregulated, DIY psychology (going under the name of faith) can do. Given modern communications coupled with the freedoms of democratic principle the individual, regardless of personal shortfalls and ignorance, has power as never before. A trawl through the internet reveals more practitioners offering deliverance ministry (from demons) than credibility would countenance. Low grade psychotherapy is not a million miles from here – without the demon imagery and some prayer warfare its the same thing.

The countries you mention as distinct from Italy are either English-speaking, north European (Lutheran), have strong American political connections (S. America and Japan) or France. France, once an important catholic country, is divided from Italy by the Alps, has immediate historical connections with northern Europe, Switzerland, Britain and the USA, and experienced its own bitter struggle with Protestantism, much more so than attempts to reform Italy.

Freud comes in for a lot of stick these days, but his most profound statement, “Truth is what my patient believes”, says it all. Much care is needed when dealing with the patient’s version of truth. But under the guises of equal job opportunity (regardless of ability), authority is bad (be it professional or patronistic), you deserve it (why?), let everyone have a go, and many other such liberal and egalitarian recklessness, the children have been given free access to the sweetshop. To put it another way, amateurs have been allowed to take over the asylum - for their own entertainment, to satisfy a need for control over others, or financial gain. (The same applies in many other demanding fields – because successful post-reformation, ill-informed, over-indulged and naïve super-democratic societies can afford and are prepared to accept and live with the damage.)

Incidentally, when did the false memory business start, to the extent that societies such as your own were required? I wonder if there is a connection with the post war renewal of the spirit revival, made easier by the availability of trans-Atlantic travel. The following *Wikipedia*

item caught my eye:

Deliverance Ministry Popularity

*Though Christian deliverance has occurred from the time of Christ, the rise of deliverance ministries in the United States appears to have occurred almost immediately following the release of the film *The Exorcist* in 1973,^[citation needed] and the film has been credited with creating interest in casting out demons,^[citation needed] even though the practices of deliverance ministries differ widely from the highly ritualized exorcisms carried out by the Catholic and Eastern Orthodox churches. The same year, a Baptist minister named *Frank D. Hammond* and his wife *Ida Mae Hammond* published a book entitled *Pigs in the Parlor*^[3] which was a hit book on the subject.^[citation needed] *Derek Prince* was also viewed as an authority on deliverance during his lifetime. He wrote, “*They Shall Expel Demons*”.^[4]*

Controversy

This relatively modern movement within Christianity has been marked by some controversy. Some Christians argue that all people, including believers, can be indwelt by demons, and others argue that only non-believers can be inhabited. Some have labelled deliverance ministry a departure from orthodoxy and a hurdle to spiritual growth, whilst others have seen it as supported by the Bible and an aid to Christian Sanctification.^[who?]

I appreciate that secular psychotherapy may well see itself as something quite different, but the psychological principles employed are similar – versions of the same thing, in fact.

Yours sincerely,

Mike R.

Editor’s Note:

To attempt an answer to Mike’s question which is an essay in itself, “When did the false memory business start...” Following Freud’s theories and the subsequent climate of scepticism about the extent of incest and child abuse there followed in the late 1970s and 80s a feminist backlash against this denial. Women began to tell their histories to psychotherapists and to publish their stories. By the late 80s in America and early 90s in the UK, false memories began to be identified and the resultant False Memory Societies were set up.

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 produce newsletters.

AUSTRALIA

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

CANADA

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

FRANCE

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

GERMANY

Schulterschluss bei Sektenbetroffenheit e.V.
Email: kontakt@schulterschluss.info.
www.schulterschluss.info

NETHERLANDS

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

NEW ZEALAND

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

NORDIC COUNTRIES

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

USA

False Memory Syndrome Foundation,
www.fmsfonline.org

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

SCIENTIFIC & PROFESSIONAL ADVISORY BOARD: **Professor R J Audley** – Professor Emeritus of Psychology, University College London. **Professor Sir P P G Bateson, FRS** – Professor of Ethology, University of Cambridge. **Professor M Conway** - Professor of Cognitive Psychology, City University, London. **Dr H Cameron**—Consultant Child Psychiatrist (Retired) **Professor C C French** – Professor of Psychology, Goldsmiths , University of London. **Dr Fiona Gabbert**, Reader in Psychology, Goldsmiths , University of London. **Professor R Green** – Emeritus Consultant Psychiatrist. **Dr Cara Laney** - Visiting Assistant Professor of Psychology at Reed College, Portland, Oregon. **Mrs Katharine Mair** – Consultant Clinical Psychologist (Retired). **Mr D Morgan** – Child, Educational & Forensic Psychologist, Psychologists at Law Group, London. **Dr P L N Naish** – Visiting Reader in Psychology, The Sackler Centre for Consciousness Science, Sussex University. **Professor Elizabeth Newson, OBE** –Professor Emeritus of Developmental Psychology, University of Nottingham. **Dr J Ost** – Senior Lecturer in Psychology, International Centre for Research in Forensic Psychology, University of Portsmouth. **Dr. G Oxburgh**—Senior Lecturer in Forensic Psychology, Teesside University. **Mr K Sabbagh** – Writer & Managing Director, Skyscraper Productions. **Dr B Tully** – Chartered Clinical & Forensic Psychologist, Psychologists at Law Group, London. **Dr Kimberley Wade** – Assistant Professor of Psychology, University of Warwick. **Professor L Weiskrantz, FRS** – Professor Emeritus of Psychology, University of Oxford. **Professor D B Wright** – Professor of Psychology, Florida International University.

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

Management and Administration
Board of Trustees
Director: Madeline Greenhalgh,
Administrator: Carolyn Dutch,