



Serving People and Professionals
in Contested Accusations of Abuse

Dear Reader,

A number of legal cases known to the BFMS are under police investigation and some are pending either criminal or civil trials. During the search for records it becomes clear that in several cases there are indications of early therapeutic intervention. However, uncovering any specific details, let alone finding any contemporaneous notes to clarify what occurred years ago, can prove elusive. Without this information, an accused person will remain disadvantaged. Missing records, as with potential witnesses being deceased, provide the foundation for the defence to bring ‘an abuse of process’ argument before the judge, but from what we have seen, it now appears that this approach carries increasingly less favour with the courts than previously. A barrister who is currently involved in such a case has agreed to write more on this topic for our newsletter once his case is over. Compare this with the administrative demand that we retain proof of the Society’s public liability insurance for the next fifty years, and one has to ask why it is that all therapy notes, in which details of any criminal offence have been recorded, are not similarly retained for a lengthy period.

The idea of wiping the slate clean by retracting allegations which have led to a criminal trial and possible conviction is close to a pipedream. In one such case we know of, the accuser has made a sworn affidavit retracting the allegations which sent her father to jail. The affidavit was duly despatched to the police who wasted no time in warning the daughter that if she pursued this tack then she would be subjecting herself to a charge of perjury. Some would suggest that she must face the consequences of her actions, but there are complications. Bear in mind that she now has a young child and a husband to consider. Social services involvement in her own family life is now a foregone conclusion, after all, she is ‘in denial’ of the abuse; she desperately wants to introduce her child to her father – an accused man – and to stand up to all this could jeopardise her marriage. Too much is at stake, I fear, although it is a case we are following. There are some amazing examples, however, of unexpected retractions in our special focus on returning to reality in which we first have a close look at the definition of questionable recovered memories.

The GMC’s independence and competence to handle several high profile cases concerning doctors’ professionalism is raised in an article (see page 2) about its handling of the case against Dr Camille de San Lazaro, a consultant paediatrician, whose involvement in the Shieldfield Case has been previously covered in this newsletter. The GMC is currently hearing a case about which the BFMS has grave concerns but, we have been hampered in the telling of this case because it is being held in camera. Hardly an indication of the drive towards transparency but clearly another example of special pleading for cases linked to claims about childhood sexual abuse.

While expert evidence has received recent negative press, it is vitally important that an expert witness provides judge and jury with clarity about scientific matters which are beyond the understanding of the ordinary person. The science behind issues of memory, childhood amnesia, the concept of repression, etc. are examples of complicated areas that fall within the remit of Dr Janet Boakes, a consultant psychiatrist, who describes her role as an expert witness on page 13.

We are soon to have the rare opportunity for a gathering together of our advisors, trustees and staff, so now is an appropriate time for me to record, on behalf of all our members and friends, just how much we value their help, guidance and contributions to the work of BFMS.

Madeline Greenhalgh

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NEWS FEATURES

Mind Manipulation Master-class

Professor Elizabeth Loftus led a team of psychologists from the University of California to successfully turn people off certain foods by simply using the power of suggestion.

Student volunteers were manipulated into believing that certain foods had made them sick when they were children.

The food studies are the latest in a series of memory experiments by Professor Loftus, who is most famous for her work on recovered memories of childhood sexual abuse. The food experiments are the first in which she has explored a positive, practical application of memory manipulation.

In the strawberry ice cream experiment the volunteers described their food experiences and preferences. Some were given a computer analysis which falsely claimed they had been very sick from eating strawberry ice cream as children. Of the subjects, 20% agreed that the ice cream had made them sick and that they intended to avoid it in future. In a second experiment when the volunteers were asked to describe the imaginary childhood episode, an amazing 41% indicated that they believed the tale and would avoid the food in the future.

The research has sparked the idea that potentially the techniques used could be adapted for use by parents to persuade children to eat more healthily or to help individuals in their fight against obesity. The subject was taken up by *Woman's Hour* on Friday 23 September when a recorded interview with Professor Loftus was followed by a discussion between, Dr Peter Naish, the chair of the BFMS Scientific and Professional Advisory Board and consultant psychotherapist, Valerie Sinason, about the power of suggestion and the ethics of implanting false memories.

The BFMS is currently organizing a series of **meetings for members** to be held during October and November. Suitable venues will be chosen in Plymouth, Darlington and Stoke on Trent.

Full details will be available shortly.

A Crisis of Public Confidence

Did the GMC fail to follow the advice of their own legal advisor?

by William Burgoyne

If the thirteen day hearing into the Shieldfield case did not cause the General Medical Council (GMC) to worry about the public reputation of paediatricians, then the media coverage should, particularly the full-page report in the *Daily Telegraph* of 31 May 2005 by Cassandra Jardine. There can be few parents among the paper's 900,000 plus readers who, having read the report, did not silently pray that their children would never have to come into contact with a paediatrician. And there can be few nursery nurses in the country, and others who regularly work with children, who did not feel, but for an accident of place and time, they, not Dawn Reed and Chris Lilly, might have been the innocent victims of Dr San Lazaro, the paediatrician and 'expert witness' at the hub of the Shieldfield allegations.

For those who are already familiar with the background to the Shieldfield scandal (see BFMS Newsletters, Vol 10 (1) and 11(1)), the article offers some interesting insights into the working of the GMC's Fitness to Practise Panel (FPP - the committee of doctors and lay members who hear complaints against members of the medical profession).

The *Daily Telegraph* report says that Reed was not allowed to instruct her own solicitor. 'When you complain to the GMC they choose a solicitor for you. If you don't accept their choice, you have to pay privately. Is that independent?', said Reed. Apart from appearing to prejudice the complainant's right to ensure that his or her case is properly represented, possibly by a member of the legal profession who is already familiar with the background (and may have previously acted for the complainant), it is clearly 'one law for the rich and one for the poor'. Ms Sullivan, Counsel for the Panel (and representing the interests of Reed and Lillie), was merciless in exposing the numerous inconsistencies in Dr de San Lazaro's record keeping, but failed to translate these effectively into evidence that she was guilty of serious professional misconduct. In particular, the widespread and deep distress that Dr de San Lazaro's errors had caused was not exploited. The GMC might say that this was outside the remit of the hearing - which was to look at the doctor's professional competence - and, in any case, statements from Reed and Lillie had been read out. If so, why was the defence counsel allowed to ask the doctor, 'to what extent did this affect you emotionally?' (day five, p.35 of the GMC FPP

transcript) and to develop this line further in his plea of mitigation on her behalf. Would a similar plea, on behalf of the two nursery nurses, in support of the case against Dr de San Lazaro, have been allowed to go unchallenged? As the *Daily Telegraph* article states, 'And they let her off after a colleague, Dr Christopher Hobbs, pleaded that she was overworked and under stress. Such a decision is troubling for those facing charges of sexual and other kinds of child abuse. Unreliable evidence from social workers and doctors often lies behind allegations that turn out to be false. Medical experts often give opinions in court without ever having seen the child or carer, using inaccurate hospital records that have a shattering effect on the lives of the accused. Yet, it appears they cannot be held accountable if they can plead tiredness and overwork - even if they are being paid large fees for their expert opinions.'

The Legal Advisor's advice was as follows, 'Mitigation arising from the circumstances in which the practitioner found himself or herself may be relevant to the level of culpability: once serious professional misconduct is proved, personal mitigation will be relevant to possible penalty. In our judgment, these are distinct issues, to be determined separately, on the basis of evidence relevant to them.' (Day 11, page 2 of GMC FPP transcript). There remains a very big question mark over whether this advice was followed. The doubtful defence that she was the victim of an 'epidemic' should only have been accepted as mitigation if it was proved that she had no part in its creation. Evidence that Dr de San Lazaro was tired and overworked should only have been considered after a decision had been reached on whether she was guilty of serious professional misconduct and should not have been party to that decision.

Jardine reports that within 48 hours of her interview with Dawn Reed, three further cases came to her attention - one involving Dr de San Lazaro whose belief that a father had sexually abused his daughter was later rejected by a clinical child psychologist. The father is quoted as saying, 'Had Dr de San Lazaro's practices been revealed earlier on, things might have gone differently. Had she been struck off by the GMC, I had hoped to reopen the case in the civil courts. Now, I can't.'

Anyone who has studied the case and has read the transcript can only be left with a feeling that the Panel operates outside the laws of natural justice - the accused was able to personally give testimony; the victims could not be heard and had to rely on representation through a third party. Another newspaper, the *Newcastle Evening Chronicle*, offered a solution, 'the matter would surely have been better dealt with had an independent body considered the evidence

rather than a council of her peers. For example, we already have an independent police complaints authority. As things stand, the GMC has hardly covered itself in glory; recent cases like that of Dr Harold Shipman and Professor Roy Meadows are proof that the system isn't working and this latest hearing has done little to inspire future public confidence'.

This view was echoed by the *Newcastle Sunday Sun* of 15 May, which quoted human rights lawyer Vera Baird, MP for Redcar and Cleveland, 'there needs to be a truly independent body scrutinising doctors because the public has no faith in the GMC. She (Dr de San Lazaro) has been let off by her peers despite the comments of the judge. This shows the GMC have not been impartial in this case. The problem with the GMC is that you have doctors deciding what happens to other doctors. This means they are likely to sympathise with the doctor's point of view over that of the public because they are contemporaries of theirs. We already have an independent police complaints authority and there is soon to be an independent solicitors' body, so there is absolutely no reason why we cannot have the same for medicine. The GMC has already been slammed by senior judge, Janet Smith, following her inquiry into Dr Harold Shipman's murder rampage. Dame Janet recommended that the government strip it of its right to judge medical misconduct. The council failed to act on suspicions over Shipman, Britain's most prolific serial killer.'

In the *Daily Telegraph* article Dawn Reed says, 'Given the devastation Dr de San Lazaro caused, Chris and I had hoped that the GMC would at least impose some restrictions on her work. Since they haven't, any parent who comes into contact with her should know her record.'

The case has been referred to the Council for Healthcare and Regulatory Excellence which, on 26 May, wrote to Madeline Greenhalgh, Director of the BFMS, 'I can confirm that we will be considering the GMC's FTP panel's decision of 13 May 2005 in the case of Dr Camille de San Lazaro under our standard procedures under Section 29 of the National Health Service Reform and Health Care Professions Act 2002. I can confirm that we will take into account the information which you have sent to me. Any appeal by CHRE to the High Court in this case would have to be lodged by 9 June 2005.' (Ed. Note: Many other interested parties will have made submissions to the CHRE also.)

The CHRE has since confirmed that it has decided to refer the decision of the GMC's Fitness to Practise Panel in respect of Dr de San Lazaro to the High Court. No date has yet been fixed.

SPECIAL FOCUS

Questionable Recovered Memories and Returning to Reality

Recovered Memory

Extract by Dr Bryan Tully from the Encyclopaedia of Clinical Forensic Medicine (2005), Elsevier Ltd

In cases of questionable recovered memories an emergent awareness that some terrible events happened in childhood often develops before initial imagery or flashbacks, which may come in staggered or fragmented bursts. Early imagery may be questioned or doubted by the subject, but over time it may become clearer, with more horrible events following on over days, or months, and the subject feeling more confident about the veracity of the same. This can be contrasted with normal autobiographical memory where, if all that exists is a knowing awareness that something did happen, then that awareness will have been lifelong, and if specific incidents are reminded later they tend to be limited. If there is less than full confidence in these fragments of old memory, that confidence does not markedly increase as further time passes by, although the intensity of that recollected feeling may increase in the face of another negative life event or depression.

Questionable cases of recovered memories are sometimes characterized by a mushrooming of new material over days and months, with apparently more memorable, more serious, and detailed or even bizarre events evolving over time. Normal memory for long-term autobiographical events recalls the most memorable and likely accurate relatively easily and early, once purposeful remembering begins. Further efforts may retrieve additional material, but such efforts bring diminishing returns.

Questionable recovered memories may completely transform the person's attitude to him/herself, the alleged perpetrator, and those who support or doubt him/her. People with normal long-term memories (even if fluctuating in awareness, avoidance, or denial) may change their behaviour once they make a decision to report belatedly, but that is usually based on a circumscribed set of circumstances. It is not usually transformative.

Questionable recovered memories arising in the process of recalling increasing volumes of memory often reach further and further back in time, sometimes going into the period of infantile amnesia during the first two years of life. Adults recall almost nothing of their first two years and limited fragments from the next two or three years. There is no research showing adults can recall their own specific thinking with

veracity when three years old or so. Gradual reaching back earlier and earlier, session after session, is not characteristic of normal remembering.

Questionable recovered memories often have a history of a person making repeated efforts to recall early life material, which itself may be associated or facilitated by counselling, psychotherapy, reading of survivor books, writing of journals, recalling dreams or television programs, or a period of distressing psychological breakdown. Normal, generally accurate autobiographical memory requires none of these special efforts, although specific and relevant reminders may act as an ambush trigger if the person is trying to put certain life events behind him/her, to avoid thinking about them, and engaging with alternative life issues.

Questionable recovered memories of early life are sometimes not stable or consistent, simply because they are newly manufactured. Tellingly, even the more recent memories of the process by which the alleged recovered long-term memories came to mind may be unstable and inconsistent, and give rise to a feeling of the "knew-it-all-along" phenomenon, i.e., the belief about knowing reaches further back than the documented evidence reflects.

Some questionable recovered memories arise for the first time within the context of a serious psychiatric disorder. Psychiatric disorder in people with normal stable long-term memories of childhood abuse does not prevent such patients from still having accurate recollections, but neither does it improve memory hugely. Normal memory of events from the past may be experienced with greater intensity or there may be difficulty thinking at all, depending on the disorder.

Where the emergence of recovered memories follows the onset of psychiatric disorder, then there is no research indicating that this makes it more likely true.

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Louise: A Story of Real and False Traumatic Memories

It was not long ago that I first met Louise; she had plucked up the courage to try hypnosis with me. Like many people, she was not entirely sure what hypnosis comprised, but had a general sense of unease about the whole thing. "It didn't help that you were a bloke," she later told me. However, she had been in touch with the BFMS Director, Madeline Greenhalgh, who had kindly indicated that I was to be trusted. I had been told only a little about Louise, but knew that she had been troubled by 'memories' which she felt must be false.

Few people carry their troubles openly and, like so many others, Louise was cheerful, almost bubbly; the tears came later. I subsequently learned that she was hoping to complete a degree course, and perhaps the label 'student-like' summed her up quite well. With the initial pleasantries over, we settled down to more formal ice-breaking, during which I could get to know a little more about her background. We then moved on to hypnosis, when a good deal of additional information emerged. I hasten to point out that this information was not elicited because the hypnosis magically accessed hidden memories! It is simply that being hypnotised generally engenders a sense of calm security, during which people feel able to address troubling material. Not all of the story I am about to tell was given to me that day; I have stayed in touch with Louise, and with her permission have filled the gaps, so that I can present the salient facts, in a sensible sequence.

They say that troubles, like buses, never come singly; I have certainly observed that current traumas seem often to afflict those who have become more susceptible, as it were, due to problems in the past. Again, I have to stress that this observation has nothing to do with seeking for 'repressed' material, as an explanation for present troubles; it is simply sensible to find anything that a person believes might still be contributing to their overall sense of unhappiness. With Louise it was a rape.

"I was really surprised how quickly you moved on from the 'memories' and had me talking about what happened. I had never told people all the details before, and it certainly hadn't been treated as an issue that needed dealing with."

The details were that, at the age of twelve, Louise had gone out for the day with a group of friends, travelling in a large van. At some point, a teenager in the party

took advantage of the absence of everyone else, and raped Louise. As is so common in this kind of situation, Louise felt guilty and bad, and certainly didn't go home and tell her parents. We worked gently through the scenes, until the hurt subsided. Louise told me later, "I knew it had worked, when I found that I could walk past large vans, without getting that pang of fear."

For Louise the rest of her childhood was not happy; her self-esteem was gone and she was bullied at school. She married young, but the relationship was abusive, and she was separated again by 2001. That was when her troubles took a real turn for the worse. Her husband had been much involved with the ideas of 'Wicca': he practised spells and spoke of spirit guides. This was a source of concern for Louise, as her background was as a practising Christian. It added to her already well-established sense of badness, making her feel that she might have become "tainted with evil."

Louise was already receiving help, and one day mentioned her evil-related anxieties to her community psychiatric nurse. What she was looking for was someone from whom to seek reassurance, not someone who would simply scoff at the silly notions of witches and magic. The advice she received was to telephone a support group called SAFE (Supporting Survivors of Sadistic/Satanic Abuse). It certainly didn't mean that Louise would be safe.

Over the course of the next two or three years, Louise was sucked in from making the occasional call, to being on the phone for a couple of hours every night. It all began innocuously enough, but when Louise mentioned distressing nightmares she was told that she couldn't have such dreams unless the imagined events had actually happened in the past. Naturally, she couldn't remember these events, but that, they explained, was because they had been repressed! The 'treatment' comprised hypnosis, although that label was never used; she was given deep relaxation instructions, and taken to the traditional 'safe place' of hypnotic inductions: a beach. So far, so good; no one could complain about a technique that produced a feeling of warm wellbeing. However, Louise then had to lie on the sand of her vividly imagined beach, and let the waves wash over her. With each wave a new memory would be uncovered. Of course, the 'memories' were elicited with appropriately leading questions and, no matter how bizarre, they were always accepted as veridical.

Bizarre the memories certainly were; they would have sat very comfortably alongside the evidence of a Seventeenth Century witchcraft trial. She came to believe that half the congregation of her church was involved in satanic rituals, with abuse of babies and all manner of perverse goings-on. Naturally, Louise was abused, and particularly frightening for her was the fact that her own mother was a key figure in these practices. The Satanists were cunning and covered their tracks well. For divulging their misdeeds Louise was putting herself in danger, and for a while she actually moved to Scotland, to escape any possible retribution. When she moved further South again she was near enough to her old home to be able to notice inconsistencies between what she saw of the geography of the place, and the 'memories' that had become so vivid. Importantly, she witnessed her mother's caring behaviour towards a new grandson. Could these be the actions of a baby-sacrificing Satanist?

One day, a fellow 'survivor' mentioned the BFMS to Louise. The mention was not a kind one: they were an organisation of abusers, set up to protect others of their sort she was told! Now, Louise has a stubborn streak; it has probably been the one thing that has kept her fighting on through all this. On this occasion it was certainly her salvation: as she put it, "You have only to tell me to keep away from someone, and I'm in there straight away!"

So, in late 2003 Louise rang the BFMS. She spoke to Madeline, and received what felt like straightforward, unpressuring, common sense. This was the start of regular contact with Madeline, and also Pat, a member of the Society. Everything began to fall into place, and she could see how the 'memories' just couldn't be true. However, one problem remained. If the whole thing were a tissue of lies, how was it that she had believed it so absolutely? At the intellectual level she could appreciate that the stories were ridiculous, but her feelings still screamed that they were true. I had once helped another 'retractor' with similar difficulties, so Louise came for hypnosis.

I am always telling people that there is nothing magical about hypnosis, so how was it able to help? Well, Louise tells me that there were three helpful ingredients. First, the general reduction in fear and guilt (concerning the rape) gave her a better sense of security and self-belief. Second, she recognised the exact parallels between what I was doing under the overt 'hypnosis' label, and what had been done to her by SAFE; they really had hypnotised her and "messed with my mind!" Obviously that could generate believable stories.

Perhaps most importantly, as Louise worked through the various images in her head she could feel the difference between the real and the false traumatic

memories. She knew that there had never been a time when she didn't remember the rape, "If I couldn't forget that, how come the satanic abuse memories could be hidden?"

Things really did seem to have fallen into place for Louise. It had been a terrible story, but the genuine trauma, perhaps the event that set her upon this disastrous path, had finally offered a means of eradicating the false. Nevertheless, it has to be recorded that simply rejecting the pseudo-memories has not made life entirely problem free for Louise. For a start, her dealings with the NHS were hampered for a long time, with key personnel reluctant to abandon the original wild and fantastic stories of abuse, and take in their place the simple explanation that they had been false memories. The long years of fear and unhappiness have left their mark too, but that stubborn streak is still keeping Louise fighting on; the last word must go to her. It was what she told me at the end of the telephone conversation in which she took me, step by step, through these sad events, "You know, going through all this again hasn't upset me at all; it would have done once. I must have got things sorted!"

How I got back with my Dad

This is a first hand account of a daughter who has suffered a long estrangement from her father

I am 43 years old, a qualified chartered accountant, now going through a divorce and, until a month ago, had been estranged from my dad for 15 years.

I had been sent to a very famous Harley Street psychiatrist who recovered some 'memories' for me which 'helped' me to understand why I was so sexually inadequate for my partner. It is all too easy to guess what comes next - it was all due to being sexually abused by my dad. Even worse was that he 'helped' me realise that my mum was bad too, as there is no such thing as an innocent parent where any type of abuse is concerned. It was not a great year for my family in 1990/1, in fact worse than when my parents divorced in 1979.

But I got by. I married the partner who had found the nice psychiatrist - no wedding - just me, him, a cook and concierge as the witnesses. I had a child but no thought for how he may miss having a granddad - no thought for the granddad.

I managed to block the feelings for my dad and his wife. I felt nothing, except when I got drunk when I could remember the nice psychiatrist with the truth drug needle hanging off my wrist and all the bad

feelings that came with the memories. Then about two or three years ago I really began to think and did a little research – the truth drug is mind altering, if it worked then the US would have found Bin Laden by giving sodium amytal to the prisoners in Guantanamo Bay. My memories were really muddled: stairs in the bungalow, the wrong dog in the house, my dad wearing PJ's and friends being the wrong age in the 'memories'; when I was 8 or 12 they were often much older - the age that I was at the time when my 'memories' were recovered. At times I did feel as though I was going mad.

For a long time my mum always wanted to get in touch with dad so when I said I wanted to see him she was pleased. My uncle would not give me dad's phone number as dad never asked about me and I would only upset his new life with my step-mum. It is true that dad never asked after me but my step-mum always did. So in January 2001 I wrote a letter to a solicitor that I thought he used but I didn't get a reply – it was not a nice letter but one demanding to know what had really happened.

Finally, I left the nice man who had found me the nice psychiatrist and exploded in anger at my nice uncle, demanding that he give me my dad's phone number. Eventually in June 2005 he left a message on my mobile with the number. What to do next I asked myself? It had been 15 odd years so what would another week matter? – I had to make the call but how do you say sorry for falsely accusing your father – “sorry for the lost years” and “sorry you have never seen your grandson”. Well I found BFMS and, amazingly, so had my dad and step-mother but even communication from BFMS was too slow for me. So I just picked up the phone and dialled. I can't remember what I said but dad told me it was just great to hear from me and that he loved me and there was no need to say sorry. About a month after the first phone call I got in the car and drove down to see them both. It was great; I stayed three weeks and although we met as semi-strangers, in that time we really seemed to catch up on 15 lost years. We now call often and, oh boy, has my dad been able to help me with my life. I almost feel as if I'm using him because his understanding and knowledge of me is just so thorough and sometimes too ruthlessly honest. I know when I left my dad I made a void in my life that was painful. Now that void is filling with love, knowledge and honesty. Without my dad just accepting me as I am now and loving me now I would be totally lost again and I never want to be lost again. So for parents reading this, please just think of your child as being lost and lost people are frightened. My dad and step-mum made it so easy for me. Thanks to mum, dad and step-mum.

A retractor

Out of the blue

In 1998 a letter arrived. It said “I thought it was about time you knew what you have done to me”.... “I was ill because of you, because of what you did to me”.... “Don't bother trying to deny it - there are two people who really know what happened - that's you and me and I've finished covering up for you.”

In 2004 the following arrived:

Dear uncle,

Not an easy letter to write, given all you've been through over the last ten years, but I wanted you to know as soon as possible. The woman I saw for hypnotherapy is currently under investigation and a dossier of at least eight cases is going to be put to her professional institution with a view to her being struck off.

I'm still coming to terms with the fact that I've been living a lie for all that time and for the destruction of my family. I'm not really sure how to even begin to say sorry for the suffering caused except that it is also rightly being pointed out that it was not my fault.

I believe that I've suffered clinical depression for most of my adult life and it is only in the last year that I am able to look forward to things and enjoy life like I think everyone else takes for granted. When I saw the hypnotherapist, the depression had not even been diagnosed and I was extremely vulnerable.

During the years of counselling I had afterwards, I kept hoping someone would say to me, “no, it's not true”, but no-one did and I believed it because it made sense of how I was feeling and what I was going through. It is only now I can see that that would also be true for severe depression. It's not nice to admit you have mental health problems, for there to be a reason for feeling suicidal, is something I guess I clung to. Please don't think that the feeling of guilt ever went away, or the knowledge that I was destroying a family that I loved.

I don't know whether any of you will ever want to have anything to do with me again, I will understand that, and quite honestly, I'm not sure that I could even face you at the moment anyway.

However, the fact is, as you know, that dad has nearly died twice now in the last four years and I want you to be able to see each other freely, without any thoughts of the past. I gather from mum that you have started to have contact with each other. I had already told dad in the summer that I wanted you two to have contact again regardless and I am pleased that you have spoken.

I suspect some of the anger and frustration may have also been directed towards mum because I know that she was doing a lot of protecting, both of me and of dad. I knew dad was already in counselling when I told him all those years ago so that I knew he had someone to talk to about it. I don't think he dealt with it very well though and I think mum did everything possible to give me space to get over it. I suspect you would do the same in a similar position.

I can only offer you my sincere regrets.

Your niece

IAH trained hypnotherapist causes more harm than good

With the warning of caveat emptor firmly in mind trouble of the sort reported here may be preventable.

I first went to see a hypnotherapist in 2005 as I had been suffering from irrational feelings of jealousy and depression, coupled with obsessive thoughts. I was often feeling paranoid for no good reason and wanted to get to the root cause of these symptoms. I noticed a hypnotherapist advertised on a website and saw that he was trained by the International Association of Hypnoanalysts (IAH). He happened to be based at a local holistic centre so I emailed him for more information. I was contacted by him on the same day and he assured me that he would be able to help and cure my problems through the use of hypnotherapy and various 'techniques'. He suggested that I come to visit him for an initial free of charge 'chat' to find out the basics of my problems and to see how well I thought the therapy would suit me. I agreed and the appointment was made.

At the first appointment he explained how the therapy would work, often using analogies and using a lot of swearing which seemed to me to be a form of forced teaming (see box opposite). Still, I thought it could not hurt to try it and I booked my first session (which was not cheap!!).

At the first session I informed the therapist that I had recently undergone treatment to remove ovarian cysts and that I was taking hormone medication which may be influencing my moods to some extent. At no time did the therapist request that I seek medical advice, or ask what medication I was using, or how I thought it may be affecting me. Also, in this initial appointment, I was told that I should not ever discuss the therapy with anyone as other people's involvement could influence me and ruin the therapy. I now realise that

this was just his way of preventing me from discussing my therapy with people who may have tried to stop me from going or who may have seen it as being damaging or inappropriate. This made me feel a little isolated and concerned as I could not discuss it with my friends or family, but still, I thought as the therapist he would know best.

I then underwent the 'hypnosis' part of the session which was a guided relaxation which succeeded in putting me into a deep trance-like state (although I was still very much aware of my surroundings and what was going on). I was asked to cast my mind back to when I was young, and focus on the first thing that I thought of and talk about the feelings and emotions surrounding that experience. I then had to 'link' that experience on to the next thought which came into my mind and express my emotions about that and so on.

During the course of the therapy I felt like I had to 'perform' or to pretend to remember things, or even to make up experiences completely. At one particular session I had remembered an experience involving a family member so the therapist made me begin with this memory at the start of the next session. This time, the memory did not seem to upset me at all so the therapist tried to lead the session by using statements such as "you are sitting on his lap"; "he is touching your neck" to try to upset me in order to make me feel some emotion, which I did not. When I told him that this did not upset me, he became quite angry and said I was not trying properly. I found this uncomfortable and quite threatening. This procedure happened throughout each session and I was beginning to feel like I was getting nowhere and maybe this was not the therapy for me. The therapist had also begun to use phrases such as "it's ok, it was not your fault", "you are safe", "you were innocent" which did not relate to me at all. I became increasingly concerned as to where this was all leading.

At the end of the fifth session, my memories had become very mundane and were only about normal childhood experiences. This seemed to annoy the therapist and when I voiced my concerns about the therapy he merely stated "there is always something else", which basically implied that there were other 'unrecovered memories' which would enlighten me as to why I have problems. I told him I could not think what all of these memories were about, to which he replied that he knew what they were about!

I repeated that I could not think of what these could be about and he sat me down and went through each reoccurring memory that I had had until he had created what can only be described as a pastiche of memories of abuse. He then said that if someone came to see him and kept talking about memories of death, then it would be logical to think that the person has

issues surrounding death. This made perfect sense to me so I again asked him what mine were about and again he reeled off my memories and said “what does that sound like to you?” I said “abuse, but I was never abused”. To this he gave me a knowing look and I began to get very, very concerned and angry. All of the memories which he had used to build up a picture of abuse had been taken completely out of context (e.g. a feeling of guilt was to do with stealing sweets!).

When I asked him which kind of abuse he meant, he said that it would all come out in my final session, which heavily implied that abuse was the root cause of my problems. I then asked him what would happen if I could not remember the final memory and he told me that there were techniques for ‘finishing off’, which worried me greatly.

At no time were other theories discussed. The memories were always interpreted as being about abuse which I found to be abusive and damaging. This left me very worried and distressed and I had to speak to my partner about this (who did not know I was in therapy) which I found terribly embarrassing. I finally contacted the BFMS who were very helpful, and I wrote a letter of complaint to the therapist’s governing body which was upheld and I was given a full refund (although I believe I only had my complaint upheld as I had spoken to the BBC about what had happened). This therapist is still practicing and it scares me to think what could be happening. I am lucky, I saw through it and got over it, but others may not.

A ‘survivor’ of hypnotherapy

‘Forced Teaming’

In his book *The Gift of Fear*, noted security expert Gavin De Becker describes the concept of ‘forced teaming’ – creating a sense of togetherness where one does not actually exist. This idea is used in many everyday circumstances, but criminals use it to gain cooperation or complicity from others. De Becker writes that ‘forced teaming’ is an effective way to establish premature trust because a *we’re-in-the-same-boat* attitude is hard to rebuff.

MEMBERS’ FORUM

Knock and it shall not be opened unto you

by Norman Brand

Readers may recognise a Biblical echo in the headline. It is entirely appropriate because it refers to correspondence between some of us in the Society and Mrs Janet Hind, who is the Church of England’s Child Protection Officer and, also, wife of the Bishop of Chichester.

We wanted a meeting and it was refused to us. Full stop. We had asked for it so that we could try to persuade Mrs Hind that the notorious *The Courage to Heal* was not a suitable ‘resource’ to recommend to readers of the Church of England’s policy document *Protecting All God’s Children*. We would also, perhaps, have liked to open a window for her into the agony of falsely accused parents.

The Courage to Heal is almost too familiar to describe to the BFMS readership. But, in case there are any new members yet to stumble across it, this is the book by two American women, Ellen Bass and Laura Davis, which says: “If you think you were abused and your life shows the symptoms, then you were.” Symptoms seem to include virtually anything except ingrowing toenails!

The book also says that it can be pleasurable for ‘survivors’ to fantasize about castrating or murdering their (putative) abuser. ‘Wanting revenge is a natural impulse, a sane response. Let yourself imagine it to your heart’s content.’ There is much more of the same in this merry tome of nearly 500 pages.

Regardless of the appallingly suspect science in the book, castration and murder are not Christian activities. And vengeance is forbidden, even when the grievance is genuine. We thought that Mrs Hind might be interested in that. Not enough, it seems. Apparently the Sermon on the Mount has passed her by.

Intriguingly, it is still not clear whether Mrs Hind has herself read the book. She certainly had not when she replied to a clergy member of the BFMS in an undated letter last November. More recently, after a very slow correspondence, she wrote to Madeline Greenhalgh, our director, in another undated letter in which she said:

“I have received your letters and articles and, with my colleagues, have considered carefully your concerns. I

have recently been able to consult some of my colleagues about your last letter requesting a meeting. It is our opinion that a meeting would not be helpful as we have nothing further to add to the letters already sent.

“I can assure you that we have listened to your criticisms to the extent that we are seriously considering producing our own material to support survivors in their healing journey.

“Our group would be pleased to receive any new research papers that you feel will inform our thinking.”

It is not clear, however, whether there will be any ‘health warning’ about *The Courage to Heal*.

In the last issue of the Newsletter I wrote an article headed ‘Waiting for a letter’. Broadly speaking, it dealt with the same issues as are outlined above. My letter to Mrs Hind was dated 18 December 2004. The reply which eventually came was dated March 5th and included the sentence,

“At present, if we have to make a judgment in cases where there is not an admission of guilt, great care is taken on the understanding that the welfare of children must come first.”

But all families and all accusations are specific to varying circumstances. This cannot be a rule of thumb. Is it really for the welfare of the adult, accusing child, that she should be alienated by a therapy-induced delusion from her ageing, innocent parents?

Meanwhile Madeline, on February 17th had sent a comprehensive summary of the issues to the Archbishop of Canterbury in which she said:

“To offer literature such as *The Courage to Heal* to a vulnerable person who seeks answers to their distress, in particular, when they are unclear about the cause of their depression, is extremely dangerous ...”

also: “The ripples from the fallout of false memories can be severe, not only for the individual who at last has found exculpatory reason for their distress which may not be the true reason, but also for the people on the receiving end of the accusations.”

The Archbishop’s office referred Madeline to Mrs Hind. Madeline asked for a meeting, with the result described above.

On the subject of Christian forgiveness, Mrs Hind wrote to another correspondent that the language of *The Courage to Heal* “is indeed severe and an-

grythis needs to be seen in the context of the experience of many survivors. Many speak of feeling further abused by the Church’s use of power in its insistence on forgiveness. They ask about the Biblical teaching on ‘justice’. We all hope that people who have been deeply harmed by abuse will in time be able to forgive and let go of the hurt. Our place is to support that person in their journey of healing and not to prescribe any particular timetable.”

Mrs Hind has also said: “We accept the experience of those we minister to as true for them without passing any judgment on actual events”.

I write as a member of the same church as Mrs Hind. My family has been hit by false recovered memory. Truth is not subjective here. It is a very slippery slope to accept this as a principle.

The truth of the accusers’ grief is true. That can be accepted. Is that not a better starting point?

It was Pontius Pilate who asked “What is truth?” and so washed his hands of his responsibility to the Innocent.

Editor’s note: the BFMS has recently learned that the Church of England intend to keep ‘The Courage to Heal’ on its reading list because it believes that survivors have found much of it helpful. Alas, our struggle to educate them is far from over.

In with Both Feet

by Carolyn Asher



Life is a complex business and often brings us into contact with situations we find challenging; for me, gaining insight into the many and far reaching implications and consequences a false allegation of sexual abuse can bring was no exception. On such occasions, I believe there are two basic options – to run from the situation or to run for it.

Being a bit of a literalist I therefore dived in with both feet and during one of my wilder moments of creativity ‘Marafun-draising 2005’ was born. The aims were simple enough...

1. to run around the country,

2. to raise £2005+ for BFMS in the process through sponsorship,
3. to increase awareness and understanding of the factors leading to false allegations through constructive publicity.

As I'm sure you'll agree, it's quite a way around Britain so, practicality ever in mind, the plan was to do the four Great Runs (North, South, East and West) plus the London and Isle of Man Marathons. Training began as soon as the Yule Log had turned to ash, as the Great East Run was on 20 February. However, the best laid plans of mice and marathon runners, snow stopped play. Undeterred, Plan B was quickly brought into action as, handily, there was a half marathon (twice the distance of the Great East Run) about five weeks later, that I could run instead. Not an entirely favourable exchange rate but it did provide better value for my sponsors and brought the planned distance run to 101.5 miles (plus about 2,500 to get to the various starts.)

So, with the year fast ebbing away, I offer an update.

From a running point of view it's "five down – one to go!" The Bungay Half Marathon (3 April) was hotly followed by the London Marathon (17 April) and the Great West Run in Exeter (1 May). Travel 'overseas' enabled completion of the Isle of Man Marathon (14 August) and an excursion to the 'far north' added The Great North Run in Newcastle to the list. The final run – The Great South Run – is in Portsmouth on 9 October.

Contributions from those who have already sponsored me have now reached £1,200 – but for those who would like to join in – worry not, there is still time. Both the BFMS website www.bfms.org.uk and my website www.lggf.co.uk will readily take pledges to enable you to part with your hard-earned cash!!

In terms of increasing awareness and understanding regarding false allegations, I am actively working on a couple of projects involving radio and television, so please watch this space. Many are doubtless aware of the propensity for misinformation and misunderstanding in respect of the work of the BFMS so great care is being taken. I feel that both the subject itself and those involved in and affected by it, deserve a fair hearing.

I get medals and a new T-shirt every time I complete a race – for those involved in contested allegations of sexual abuse there are no true winners. However, maybe if we all work together in whatever ways we are able, we can make a difference.

Many retractors have been fortunate that parents have refused to give up on them in spite of so much heart ache but, in some circumstances, it is just not feasible to keep taking the pain at the expense of your own health. This is an account of how one mother is dealing with that situation.

Moving On

My sad saga began early in June 2001 when my son-in-law told me in a Sainsbury's out of town coffee shop that my husband had abused our 46 year old daughter from the age of three-and-a-half to nine, plus I had been an accomplice! He said that if we didn't confess, we would never see our three lovely grandchildren again.

That day we received great help from our GP who had been informed by the treating clinical psychologist, a lady highly regarded, I was told. I also saw her in order to try and help. I gave her all the history of my daughter from birth. I asked the GP what he knew about 'false memory' and he gave me some interesting reading, but, I believe the clinical psychologist stopped him helping any more. Sadly, my frail husband died just eight months later.

During the past four-and-a-half years there have been three communications. Firstly, there was a tape which the clinical psychologist brought to our home when our GP was present. Secondly, a photograph of the three children, with a note saying, "You have missed so much of their lives". Thirdly and recently, a water colour painting that I had painted and given to my daughter years ago; was slashed and placed on her father's grave which I noticed as I walked past the churchyard. This was a criminal act. I was profoundly shocked and disgusted. The next day a vitriolic letter arrived. I was accused of seeing my daughter at the grave and not wishing to talk to her in case she made a scene. I replied very carefully, care of her in-laws as I have not had an address for her for the past two years. I said that I would have liked to see her and to have had a chat, but obviously she was not ready for that, so I asked if she was afraid of her guilt. She has shut all the doors; not me. I said that I missed the three grandchildren very much, now 21, 19 and 11 years old and that I also loved them very much and wished them well for the future.

She has closed all doors to my contact and with much sadness, as I near 75 years of age, I have thought very carefully about the rest of my life and come to the conclusion that I have no option but to close the door too.

A mother

BOOK REVIEW

Demonising the carer

The secret of Bryn Estyn: the making of a modern witch hunt by Richard Webster, Orwell Press, £25

Reviewed by James Le Fanu

While troubled adolescents are scarcely the easiest of groups to get along with, luckily there are always some decent altruistic people who find fulfilment in looking after juvenile offenders and the casualties of broken homes. For some, though, the motives may be rather more questionable including, regrettably, the closet paedophile for whom the prospect of teaching in a residential approved school might offer, only too readily, opportunities for the sexual contact he craves. *The secret of Bryn Estyn* is a dreadful story of how, over the last 15 years, the distinction between decent, respectable care workers, and the occasional paedophile in their midst has become blurred, with the result that several thousand have been accused – and dozens convicted – of gross sexual indecency with those in their care.

This demonisation of care workers, claims Richard Webster, is the most recent instance of a recurring pattern of successive waves of alarm about hidden (and at times orchestrated) child sexual abuse that includes the epidemic of false memory syndrome in the 1980s and the allegations (never substantiated) of widespread ritual satanic abuse in the Orkneys, and in Rotherham in South Yorkshire.

Bryn Estyn is a mock Tudor pile on the outskirts of Wrexham in North Wales that was home to about 60 teenage boys who, for a variety of reasons, required residential care. It closed its doors in 1984 but then, seven years later, in December 1991 a broadsheet paper revealed its “secret” on its front page claiming that “dozens of children were subjected to physical and sexual abuse in North Wales children’s homes for over a decade”.

The accusations certainly sounded plausible enough as this is precisely the sort of institution one would imagine that paedophiles might seek to infiltrate. Sure enough, two months later, when the police conducted a dawn raid on the homes of former staff they arrested 17, including the deputy headmaster Peter Howarth, who was charged with 14 counts of indecent assault and buggery.

Webster, in an epic piece of investigative journalism, examines the case against Howarth in forensic detail as it would become the template for thousands of

subsequent allegations against care workers. The nature of accusations clearly suggested Bryn Estyn to have been the proverbial den of vice, where Howarth, according to one former pupil, forced him to engage in sex up to four times a week for a year or more. But, as Webster points out, none of Howarth’s accusers had ever complained to their parents or social workers at the time these acts were allegedly taking place. Further, some former pupils portrayed the atmosphere of the school in a very different light. “The staff were pleasant, amiable and funny,” commented a former alumnus who arrived at the home aged 13 under a care order for being a “rent boy”. This perhaps obvious potential victim of a predatory paedophile insisted that Bryn Estyn provided “a real sense of warmth, security and care”.

The staff, too, willingly testified to Howarth’s exemplary character. But such countervailing evidence did him no good for he found it impossible to defend himself against the sheer number of allegations – what the deputy head of Merseyside CID would later call “corroboration by volume”. Some accusations were readily disputable in court but, as the trial progressed with its daily litany of gross sexual misconduct, even the most sceptical and sympathetic of jurors would become convinced that something sinister must have been going on. Howarth was sentenced to 12 years, but would die, protesting his innocence, after three.

...demonisation of care workers is the most recent instance of a recurring pattern of successive waves of alarm about hidden... child sexual abuse that includes the epidemic of false memory syndrome...

Before long, virtually every police force in the country was conducting its own investigations placing notices in the local press encouraging former pupils of residential homes to come forward. Many care workers followed Peter Howarth to jail, and it was only in the year 2000 with the collapse of the trial of the Wolverhampton Wanderers manager David Jones (facing 22 charges arising from a period working in a Liverpool residential home 20 years previously) that questions started to be raised about the *bona fides* of some of the accusers. Jones’ first prosecution witness, a man with more than 50 criminal convictions, thought better of his allegations and failed to appear, while another, a homosexual prostitute funding a £150-a-day cocaine habit, had previous convictions for armed robbery and arson. These, and others,

Webster claims, may have been unduly influenced in bringing their accusations in anticipation of general compensation payments offered in the event of a successful conviction.

In all, Webster estimates, the police have investigated accusations against 5,000 residential workers, of whom fewer than a fraction of a per cent, around 100, have pleaded guilty. His book bears eloquent witness to the suffering of all those, and their families, whom he believes to have been wrongly accused of these terrible crimes. The complexity and ambiguity of the events he describes have, until recently, concealed their significance from public view. Now we know better.

Reprinted with permission from *The Tablet*, 28 May 2005 (www.thetablet.co.uk)

James Le Fanu is a general practitioner, writer and columnist.

The pitfalls of diagnosing child abuse

From *The Week* Issue 518, 2 July 2005

The temptation to build theories of child abuse on insufficient evidence has a long and inglorious history. The following are just some of the recent examples:

1988: The Cleveland Inquiry chaired by Dame Butler Sloss criticised paediatricians and social workers for removing more than 100 children from their families on the grounds they exhibited Reflex Anal Dilation (reflex opening of the anal canal when the buttocks were parted – allegedly caused by anal penetration).

1991: Allegations of “satanic abuse” rings in Nottingham, Rochdale and Orkney collapsed when police were unable to find any circumstantial evidence of ritual abuse of small children.

1998: The Royal College of Psychiatrists [*Ed. Note: review paper by Working Party members*] in a major report criticised the techniques by which therapists elicited “recovered” memories from their patients of their being sexually abused when young – and whose subsequent suppression was allegedly responsible for their psychological disturbance.

LEGAL FORUM

The role of the expert witness

by Dr Janet Boakes FRCPsych

Medical expert witnesses have had a bad press in recent months as three experienced and high profile experts have come under the spotlight. Professor Sir Roy Meadow was struck off the Medical Register following his role in the conviction of Sally Clark; Professor David Southall banned from work in child protection for three years and Dr. Camille San Lazaro heavily criticised by the GMC after she admitted giving inaccurate evidence about sex abuse to a review tribunal. As a consequence, many child psychiatrists and paediatricians are now wary of giving expert evidence, with fears of the effect on child protection work. The Courts, never very keen on expert evidence in the first place, are even more reluctant to accept it, preferring to believe that most matters can be decided by a jury using its collective common sense.

The expert witness differs from the ordinary witness to fact. A fact witness can only testify to what he has experienced for himself. An expert is allowed to base his opinion upon all the available information drawing upon his professional knowledge and experience. The psychiatric expert is qualified by knowledge, training and experience, to give an opinion on psychiatric issues in order to assist the court about matters that are unlikely to fall within the experience of the jury.

Any expert evidence which advances a novel scientific theory or technique should be subjected to special scrutiny to determine whether it meets a basic threshold of reliability. This is, of course, the nub of the matter in historical allegations of sexual abuse where the theory of repressed and recovered memories is advanced. The argument is by no means over although it has perhaps gone underground, and the whole concept of recovered/repressed memory is one that falls under the rubric of a novel scientific theory.

In the USA the Daubert standard sets out four criteria for determining whether expert testimony meets the requirement to constitute scientific knowledge. These are:

1. whether the theory can be, or has been, tested (can it be falsified?);
2. whether the theory has been subjected to peer review and publication;
3. in the case of a technique, what is the potential rate of error;

4. whether the theory has gained acceptance in the academic and scientific community.

(For a more in depth explanation of Daubert see following article)

There is no such standard in the UK; the closest we come is the Bolam test used for professional negligence that holds that a doctor is not negligent if he has acted “in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art - even if there is a body of opinion which would take a contrary view.”

What makes an expert?

In the UK there are no minimum standards that must be met by aspiring experts. Anyone can declare himself to be an expert, all that is needed is some practical experience or a professional qualification. One expert in a historical sex abuse case was a therapist who described herself as ‘working with different worlds and different levels’, leaving judge and jury somewhat baffled. She had a professional qualification and experience, but absolutely no knowledge of memory, psychology, mental illness or the relevant research literature.

It is the judge alone who decides who is an expert and whether or not to allow the inclusion of expert testimony. Some judges will only admit psychiatric evidence to show that the accuser had a recognised mental illness at the time the allegation was made, and will exclude information that points to an iatrogenic condition, such as that arising from therapy or counselling. They regard this as within the capability of the jury to determine. It is rare, in my experience, for there to be clear signs of formal mental illness and most false allegations occur in people who are anxious and depressed and seeking explanations for why their lives have gone wrong. However, one case in which I recently gave evidence was dismissed when I was able to show, from the medical records, clear evidence of paranoid ideas, delusions and hallucinations that directly preceded the first allegations.

This is exceptional and, more usually, the expert will want to review competing hypotheses to explain how someone may come to make delayed allegations of sexual abuse; why the testimony of an accuser may change over time; or how any symptoms might have come about.

Judge’s dislike the battle of experts and would prefer not to allow the expert into court. Lord Justice Judge held that ‘if the outcome of a criminal trial depends on the serious disagreement between reputable experts, it will be unwise and therefore unsafe, for the prosecution to proceed’. In one case in which I was instructed, my report was so much at variance with that of the prosecution’s expert that the judge declared “If even the experts cannot agree, how can we expect the jury to do so” and stayed the case. Some judges restrict what can be admitted, allowing evidence about how memory works, but excluding evidence about the role of suggestion and external influence, others choose to hear evidence in a *voir dire* (preliminary hearing) before deciding on its admissibility.

Expert evidence

Broadly, we might divide the expert into one of three types. The scientific expert will be called to educate the court on the relevant scientific literature. In cases of historical allegations of sexual abuse this will probably cover the science of memory and of suggestion. It may also cover theories of repression and dissociation, ‘recovered memory’ and the ‘false memory syndrome’.

The second type of expert may be called as much for his clinical expertise as for his familiarity with the scientific literature. He will wish to review any medical records and give an opinion on the presence or absence of formal mental illness in the accuser that might affect the testimony given. A history of psychiatric illness does not automatically make an allegation untrue and the medical expert can help to tease out the development of the allegation *vis-à-vis* the illness; where it exists, and determine if the mental disorder has contributed to the allegations being false, or is an incidental finding that does not challenge the reliability of the accuser.

The ‘clinical expert’ may be asked to say whether any symptoms displayed by the accuser are ‘consistent with’ having been abused. This phrase ‘consistent with’ is much beloved of the legal services and social services. It must be borne in mind, and conveyed to the Court, that ‘consistent with’ is not the same as ‘diagnostic of’ and will fail to exclude those cases in which the symptoms arise from other causes. The clinical expert should be as well versed in the scientific literature as the first expert as he too may be giving evidence that will touch on the credibility of

It is the judge alone who decides who is an expert and whether or not to allow the inclusion of expert testimony.

the accuser. An expert is not allowed to state an opinion about whether or not the accuser is telling the truth - that is for the jury, or in civil matters, the judge - but his evidence may help the trier of fact to his conclusion. In practise, the clinical expert, in cases of alleged sexual abuse, is likely to draw upon his clinical experience as the basis for his expertise and to be less familiar with the relevant literature and this can lead to misleading information coming before the court.

The third expert is one who acts in a consultancy manner, assisting the legal team to understand the psychiatric aspects but not necessarily being called to give evidence. These roles are not discrete and may easily elide with each other.

The debate of recovered memories and false memories divides along academic and clinical lines. It is probably true to say that the academic and research debate is more or less over. However, within the clinical community, belief in the recovery of memory still, to a large extent, holds sway, especially in the area of trauma. What this often leads to is the

Meadows had become the experts' expert, training those who came after him, training also the judges who tried the cases...

opposition in court of an expert who draws upon the scientific literature opposed to one who draws upon clinical experience, usually with genuine 'victims'. This presents a potential problem as the two experts are drawing upon different, not always compatible, fields of knowledge.

What does the future hold?

Paradoxically, one of the problems with the Meadows / Southall cases was the absence of a robust adversarial position of expert against expert. Meadows had become the experts' expert, training those who came after him, training also the judges who tried the cases, and as the leading opinion of the day, he was unassailable. It was this that ultimately led to his downfall and brought the whole field of expert evidence into disrepute.

In today's complex and technical society the need for experts to assist the Court is unlikely to disappear, although in keeping with so many other areas, it will probably be hedged about with restrictions. It is likely that there will be increasing calls for training, accreditation and monitoring and some professionals have advocated the introduction of a Code of Ethics for experts.

Protecting the integrity of U.S. mental health expert evidence

Extracts from: Barden, R.C., Law, Science and Mental Health: Protecting Liberty and Reforming the Mental Health System, presented to the British False Memory Society, May 8, 1999, London, UK

...we will see that the ongoing efforts, from many sources and at many levels, to properly integrate science into the legal system is one of the most important tasks facing our civilization today.¹

"Let me give you a really powerful example of the good science v. bad science difference and how it works in the legal system. How many of you have heard of the Wade case in San Diego?² As a general summary, Mr Wade and his wife and daughter lived in San Diego, and one night a horrible crime took place. The Wade's young daughter was raped by a man who entered her bedroom at night, in the dark. She saw no-one she recognized, there were no witnesses. As the result of the psychological trauma experienced by this child she went into therapy. Sadly, she went into 'therapy' with a woman who had apparently not read any of the relevant, credible research on child trauma victims. The research on child trauma victims, indicates that neurologically unimpaired victims of childhood (over the age of 4) trauma remember it very well, and they do not repress the memories, and they do not disassociate the memories and that finding has been shown in studies of over 3,300 children known to have been sexually mistreated and about 10,000 general trauma victims.³ But in this case the therapist apparently did not know this critical research (much of which was published in previous years). What the therapist apparently did know was the reckless misinformation contained in books like *The Courage to Heal*, books that contain false doctrines about

...the therapist apparently believed that sex abuse was rampant in America and that it almost always involved fathers abusing daughters...

human memory and the psychological impact of trauma. Over a period of months this therapist began to work on this young, isolated girl, to coerce her into 'recovering the memory' of what happened to her. And since the therapist apparently believed that sex abuse was rampant in America and that it almost always involved fathers abusing daughters, lo and behold the daughter came to 'recover' a 'memory' of

being abused by her father. Mr Wade was arrested, taken to prison and was looking at a very lengthy prison sentence.

Fortunately for Mr Wade, and for our system of justice, someone in the local Sheriff's department remembered that at the time of the crime, they had collected evidence, which they'd carefully bagged and preserved. Among the evidence files were DNA stains which they tested and found that the odds were about one in a hundred million that it was Mr Wade who had perpetrated this crime. As a result of this laboratory testing, Mr Wade was released immediately. The investigators then began to look for DNA matches to known sex offenders who had been arrested and/or lived in the Wade's neighborhood. Within days they located a matching sample and solved the case. What would have happened to Mr Wade if we didn't have the scientific, reliable method of DNA testing? What would have happened to Mr Wade if the legal system had relied upon psychotherapy instead of DNA testing as source of reliable, scientific information? This is another excellent cautionary tale of the difference and distinction between good science and bad science and how it can have a real impact on the lives of real people.

The legal system in the United States has long been concerned with the issue of junk-science testimony. Over the last 70 years we've seen various rules, doctrines and methods used to keep junk-science experts out of the courtroom. The process of assessing and removing junk-science experts began in the U.S. in the 1920's with the U.S. Supreme Court's Frye Rule, which essentially asked the question, "Is the theory or testimony in question generally accepted in the relevant professional community?"⁴ The Frye Rule did keep out some junk-science. For example, hypnotically contaminated memories were banned from criminal trials. But, obviously, with regard to 'repressed memories' the simplistic Frye analysis - in several early cases - let the worst kind of dangerous junk-science into courtrooms. In these early cases - before national law-science experts became involved - misinformed judges thought that therapists might be a 'relevant community' and permitted experts to testify about dangerous ideas like 'repressed and recovered memories' of abuse. In sum, the almost total lack of science education and training in the international legal community coupled with the vague restrictions of the Frye rule left citizens at the mercy of junk-science experts in too many cases.

But in the early 90's the United States Supreme Court took a very large leap forward - a stunning moment in the history of the legal system. Legal commentators are just now beginning to realise this was truly a landmark case. As with trial lawyers and judges, the vast majority of legal commentators simply doesn't know much about science and are not trained to think like scientists. This is a serious weakness in modern legal education that must be changed through law school reform. It may take an entire generation to train lawyers, judges, prosecutors and legal commentators to think like scientists and understand the importance of methodology. The effort will be well worth it as having science illiterate professionals officiating at hearings designed to explore the methodology of complex science is hardly an optimal procedure.

Nonetheless, the Daubert ruling was an historic first step.

In the Daubert case, the Court said that expert testimony should not be permitted unless it meets certain

It may take an entire generation to train lawyers, judges, prosecutors and legal commentators to think like scientists and understand the importance of methodology.

minimal standards of scientific methodology and reliability. This doctrine certainly sounds reasonable, especially when we consider the alternative. Do we want expert witnesses saying they know a defendant is guilty because their 'body language' gave them away? Do we want someone testifying that a defendant is guilty as a result of ouija board analysis? Do we want mental health expert witnesses testifying about the results of so-called ink blot tests? Do we want mental health expert witnesses testifying as to the accuracy of hypnotically recreated memories? Do we want testimony about feelings the 'expert' may have as to which parent is better attached to their children? In general, such evidence has no more reliability or validity than using astrological charts, crystal balls or ouija boards.⁵ Again, it may take a generation to expose, debunk and remove such dangerously irrational testimony but, in the short term, we've had enormous success in getting the licenses and practices of people who testify improperly revoked or restricted.

In the Daubert ruling the U.S. Supreme Court gave judges a crash course in the basic methods of science. The Court said scientific theories are testable. We should note that much of the Supreme Courts concept of science follows the ideas of Prof. Karl Popper. His philosophy of science is now - following Daubert - generally the approach of the legal system of the United States of America.⁶ What do the Supreme Court and Popper require for science? Is the theory testable? Has it been tested? Has it been published in reputable peer review journals subject to criticism? Is it generally accepted in the relevant scientific

community? And what's the error rate? What's the percentage or probability that you are making a mistake when you've used this method? Such an analysis begins to provide a tremendous protection for citizens against junk science in the legal system. The Daubert ruling has just been dramatically expanded by the US Supreme Court in the Kumho case.⁷ This landmark ruling basically expands the Daubert analysis not only to scientific experts, but to all experts, including clinical experts, including therapist experts. This makes the defendants in our law suits very unhappy because we've already been able to convince each and every single court in which we have argued such a hearing, that repression is junk-science, and that experts should be prohibited from expressing an 'expert' opinion that 'repression', 'traumatic amnesia' or similar concepts are reputable science.⁸ The Kumho decision leaves junk-science 'clinical' theories in a precarious position indeed, if hearings are conducted by competent, science-literate attorneys and experts. In my experience, it is imperative that such cases and such hearings be conducted by teams of local lawyers and national science-law experts. This team approach has produced a stunning string of successes.

- 1 See, the ruling of the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
- 2 See the series of articles on this case in the San Diego Union Tribune, <http://www.uniontribune.com> by reporter Jim Okerblom. See, eg. Wilkens, John Innocent family awaits end to child-abuse saga, San Diego Union-Tribune, 14-Nov-1993 Sunday (Page B-1).
- 3 See compilations and reviews of this research in Brandon, et al. (1998) *Recovered Memories of Childhood Sexual Abuse: Implications for Clinical Practice*, *British Journal of Psychiatry*, pgs. 296-307.; and Pope, H.G., Oliva, P.S. and Hudson, J. I. "The Scientific Status of Research on Repressed Memories". In, Faigman, D.L., Kaye, D.H., Saks, M.J., and Sanders, J. (Eds) *Modern Scientific Evidence: The Law and Science of Expert Testimony*, Vol I, 1999 Pocket Part, West Publishing, pg. 115-155.]
- 4 See, *Frye v. United States*, 54 App. D.C. 46, 47, 293 F. 1013, 1014, for the rule that expert opinion based on a scientific technique is inadmissible unless the technique has achieved "general acceptance in the particular field in which it belongs"; See also, The history of the *Frye* analysis as described by Professor Gianelli in *Symposium on Science and The Rules of Evidence*, 99 F.R.D. 187, 189-190 (1983) and Gianelli, Paul C. *The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half-Century Later*, 80 Col. L. Rev. 1197, 1198 (1980) at 1223-1224.
- 5 See, Grove, W. M. & Barden, R.C. Protecting the Integrity of the Legal System: The Admissibility of Testimony from Mental Health Experts Under Daubert/Kumho Analyses, (in press) *Psychology, Public Policy, & the Law* (Fall, 1999); See also, Dawes, R.M. (1997) *House of cards: Psychology and psychotherapy built on myth*. New York: Free Press; See also, Hagen, M. (1997) *Whores of the Court: The Fraud of Psychiatric Testimony and the Rape of American Justice*. HarperCollins Press).
- 6 See, e.g., Popper, K.R. (1959). *The Logic of Scientific Discovery*. New York: Basic Books; Popper, K.R. (1962) *Conjectures and Refutations: The Growth of Scientific*

Knowledge, Basic Books.

- 7 See, *Kumho Tire Co., Ltd., et al. v. Carmichael, et al.*, No. 97-1709, WL 152275, U.S. March 23, 1999 (Opinion by Justice Stephen Breyer).
- 8 See, e.g. the most detailed, lengthy and costly hearing in history on this subject *State v. Quattrocchi*, Rhode Island Case No. P92-3759 (April 26, 1999) in which the Court concluded: "The State has not met its burden of establishing that repressed recollection is reliable and admissible as scientific evidence. As a result, expert testimony on the subject is inadmissible."; For a full review of court cases in this area see Grove, W. M. & Barden, R.C. Protecting the Integrity of the Legal System: The Admissibility of Testimony from Mental Health Experts Under Daubert/Kumho Analyses, (in press) *Psychology, Public Policy, & the Law* (Fall, 1999).

Appeal Upheld

The case of R v X (Childhood Amnesia) was heard by the Court of Appeal on 1 July resulting in the appellant's conviction being found unsafe, the conviction quashed and a retrial ordered; this five years after the accused was jailed for 12 years by a Crown Court.

The case is due to be re-tried in the spring.

R v X (Childhood Amnesia)

CA: Smith L J, Hughes and Wakerley J J: 1 July 2005

Expert evidence as to a phenomenon known as 'childhood amnesia' was admissible as likely to be outside the knowledge and experience of a judge or jury.

The Court of Appeal, Criminal Division, so held in allowing an appeal by X, on a reference by the Criminal Cases Review Commission against his conviction of four counts of rape and two counts of indecent assault.

SMITH LJ, giving the judgment of the court, said that the victim of the offences claimed to have memories going back to before she was three years old. In her witness statement, made at the age of 19, she had given very detailed narrative accounts, in relation to the offences of rape, of three specific incidents of sexual intercourse. At the hearing of the appeal, the defence were given leave to call fresh evidence, *de bene esse*, from a professor of cognitive psychology who had worked for about 25 years on memory formation and autobiographical memory. The professor gave evidence that the memories of a child were qualitatively different from the memories of later events. The period of 'childhood amnesia' usually extended up to the age of seven and he had never come across a person who had been able to provide a

detailed account of something that had happened to them at the age of four or five. His explanation was that during the first five years of life the frontal lobes of the brain were in a state of rapid change and development. He said that a detailed narrative account of an event during those years of childhood should be treated with caution, especially if it contained a number of details which were extraneous points. The court came to the conclusion that the evidence was true expert evidence suitable for admission at a trial and it would only be in the most unusual circumstances, such as the present, that such evidence would be relevant. The appeal would be allowed, the conviction quashed and a retrial ordered.

Reported by Clare Barsby, barrister, Incorporated Council of Law Reporting

Desperate doctors

by Richard Morrison

In *Times T2* 29 August 2005

A consultant psychiatrist at the Royal Edinburgh Hospital hit the headlines last week when he identified something called “*Desperate Housewives* syndrome”. The TV programme, said Dr Chris Freeman, may cause anorexia and bulimia among women in their thirties, forties and fifties by making them think that “it is possible to have this glamorous lifestyle and a great sex life if you’re skinny”.

Hmm. I wonder whether there is any cure for it. No, not *Desperate Housewives* syndrome. I mean the raging lust for self-publicity that prompts supposedly responsible doctors to make specious connection between trite TV shows and deep-rooted mental illnesses.

A member asks the BFMS about ViSOR

(Editors Note: If any readers have experience of accessing this system please let us know.)

Dear BFMS

“I am concerned about the new police database ViSOR. I understand it will hold details of those ‘suspected’ of being a risk to the public as well as those formally convicted. Does this mean it will

include names of people who have had false allegations made about them and who have been investigated by the police but never prosecuted?”

How does one know if one is on the database and whether the information is correct?

I am hoping that BFMS will be able to look into these issues. Maybe my fears are unfounded but, as I’m sure you will agree, logic and reason does not seem to abound where allegations of sex abuse (however false) are involved.”

Madeline Greenhalgh replies:

This is the national database for violent offenders and sex offenders to which all police forces and other law enforcement agencies will have access. It is the bringing together of all previous systems of police information into one database. PITO is the organisation that has been responsible for the design and implementation of the database through the Home Office. PITO describe ViSOR as follows:

“ViSOR will provide police and probation services with a shared national database to register, risk assess and manage sex offenders as well as violent offenders and others who may cause serious harm to the public. It holds information on individuals convicted of sex offences, or jailed for more than 12 months for violence, as well as unconvicted individuals who are still assessed as posing a risk.”

Within that statement, the most concerning aspect is for those who are still assessed as ‘posing a risk’. I asked both PITO and the Home Office how risk is assessed and both said assessment is made through multidisciplinary collaboration through a joint decision process. Any of the relevant agencies can request that an individual case is ‘assessed’- this does not mean that a risk assessment is made of each individual. At this stage I have not found information relating to any guidance in making such an assessment. I have asked Claire Curtis-Thomas to look into this.

Intelligence, i.e. what we might refer to as ‘soft information’ is assessed by police officers who award it a rating according to their assessment of the validity of the intelligence - again I have asked if it is known whether there are guidelines for making such an assessment. We know that with a Criminal Record Check it is ultimately the chief constable who can decide if an individual’s loss of privacy is justified with release of the intelligence.

Finally, I am assured, but, I fear it means little, that ViSOR, like any other information system, is subject to the Data Protection Act and the Freedom of

Information Act. However, it is a confidential system for police intelligence and they are likely to resist access to information on the grounds that it is not in the public interest.

If you decide to use DPA or FOI I would be interested to hear what happens. If an application is made might it at least determine that ViSOR does have information about an individual, even though the police will not reveal it, or could the response be so vague that it is never known whether the police hold information about someone or not?

Hungerford Ruling Challenge

(see BFMS Newsletter Vol 13, No. 1 February 2005)

Rockingham County Superior Court Judge Tina Nadeau recently ruled that Light's father, Phillip Bourgelais of Exeter, will not stand trial for allegedly sexually abusing his daughter between the ages of six and seven based on her recovered memories. Light, now 18, claims that she began recalling suppressed memories of sexual abuse in 2001, first only in fragments, and later in full memories.

The court's decision was handed down April 5 following an evidentiary hearing that began last summer and concluded, after numerous continuations, on March 10.

"After a six-day evidentiary hearing during which the court considered expert testimony, the state's motion is denied and the court precludes the state from introducing the victim's testimony," the court order stated.

A New Hampshire state law, known as the Hungerford Law, prevents repressed and recovered memories from being admitted in court unless eight criteria are met. Four of the criteria concern the reliability of the science, and four are specific to the individual whose memories are in question - having to do with the age of the accuser when the alleged abuse took place; specific circumstances surrounding the abuse and the recovery process of the memories.

The court order stated, "The memories in this case do not rise to such a level that they overcome the divisive state of the scientific debates on the issue."

The court went on to cite five reasons for its decision: the fact that Light was "engaged in psychological counselling consistently from the time she was four years old through the present"; the fact that the disclosures were made during a "heated custody

battle"; Light's age at the time the events allegedly occurred; the fact that the assistant county attorney requested Light attempt to retrieve more-specific memories of abuse, and the fact that "the court can find no corroboration for the alleged abuse."

The judge's ruling went on to explain that "the court must apply the standard articulated in Hungerford. In so doing, the court cannot conclude that the phenomenon of repressed memory recovery has yet been scientifically accepted ... nor can the court find sufficient indicia of reliability present in the particular memories here to allow their admission into evidence.

"The court does not mean to suggest that Rhianna has fabricated the memories of the abuse," the order continued. "On the contrary, it is apparent that she genuinely believes the abuse occurred. Rather ... based on the law and evidence, the reliability of memory retrieval has not been sufficiently established to allow the introduction of Rhianna's memories here."

In a prepared statement, Light said: "It's hard to say how I feel about it. There are so many different emotions. Am I hurt? Yes. Angry? Yes. Sad? Yes. Confused? Absolutely. All I can say is that I took it as far as I could. I didn't give up or give in, neither did my friends and family who stood by me the whole way through. I am very disappointed in the ruling of this case; however, I do realize that the judge reviewed all of the facts and evidence, and unfortunately there just wasn't enough to corroborate my memories. A case like mine is much harder to prove than a case involving DNA and contusions."

First published in The Exeter News-Letter 19 April 2005 (seacoastonline.com)

Looking to the future

The BFMS relies heavily upon voluntary contributions and values the support of its members. Without funds we are unable to continue to develop our services. Many choose to support our work by becoming a member or regular donor. You may also wish to offer long-term support to the BFMS by leaving a legacy.

The need for our services is still evident. Leaving a legacy to the BFMS would enable us to make provision for our future, and therefore continue to raise awareness of the devastation caused by false allegations. Together we must maintain a voice to challenge this injustice.

Overseas False Memory Societies

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

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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.

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