

Unearthed Memories Lose Ground in Court

By Chi Chi Sileo

Repressed memory theory, highly controversial, has been an increasingly popular form of evidence in abuse cases, but it's beginning to lose its standing as courts question its validity.

If the courtroom is the symbolic O.K. Corral of the American consciousness, then it's only fitting that it should be the scene of the final showdown over "repressed memory therapy," or RMT — the controversial psychotherapeutic technique that has ripped apart families and therapists in a vitriolic war of words.

Since 1989, believers in RMT have ruled the courts. About 900 cases have gone to trial on the basis of recovered memories of sexual abuse (many more

The first conviction based upon repressed-memory evidence came in the 1989 trial of George Franklin, whose daughter Eileen claimed she had uncovered a long-buried memory that her father had murdered her childhood friend, Susan Nason. The case riveted national attention on this new phenomenon; the jury, relying solely on Eileen's emotional testimony, sentenced George Franklin to life imprisonment. RMT also links up with the more sensational day-care trials including the McMartin Preschool case, since these involve false memories that critics say have been "implanted" in children by overzealous professionals — therapists, social workers and law-enforcement personnel.

In April, however, RMT's legal ground shook when a state court in Washington overturned the Franklin conviction. Within a week, a North Carolina court of appeals followed suit by reversing the convictions of two people sentenced in the Little Rascals trial, a case involving allegations of ritual abuse — including spaceship flights and baby killings — by nine staffers at the day-care center. (Two others plead guilty to lesser charges and the rest are still awaiting trial.) Earlier, the New Jersey Court of Appeals overturned the conviction of former day-care worker Kelly Michaels, who spent five years in jail; children had alleged she made them eat feces and tortured them with knives and spoons.

"State courts are waking up all over," notes Thomas Pavlinic, an Annapolis, Md., attorney who represents family members accused of abuse based upon RMT. As *Insight* goes to print, a New Hampshire circuit court judge is determining whether repressed memory is admissible in two cases of abuse in which it is the only form of evidence; if he deems RMT to be unreliable, both

cases will be thrown out.

"There's no way he can't throw them out, not if he is basing his decision at all scientifically," says Mark Pendergrast, author of *Victims of Memory: Incest Accusations and Shattered Lives*, who attended the pretrial hearings. Pendergrast tells *Insight* that press coverage of the hearings was sketchy. For instance, one of the plaintiffs is suing her eighth-grade teacher, claiming he impregnated her and took her for an abortion when she was 12 years old. But she testified during cross-examination that she began menstruating at the age of 14 which, if true, would render her claim physiologically impossible. "All kinds of news crews were there," Pendergrast recalls. "CBS, ABC, everyone. I expected to see that all over the next day's news. But they never reported that — or any other inconsistencies in the plaintiffs' testimonies."

Dry facts have a hard time competing with the lurid details and sweeping emotions of recovered-memory testimony, but they're regaining favor. During the last few months, the Alabama Supreme Court has allowed a patient to sue a former therapist for implanting false memories of abuse and federal district courts in Oklahoma and Texas



REBENTLEY/TIME MAGAZINE

Franklin's testimony convicted, but the decision was overturned in April.

have been settled out of court), often with those memories as the only evidence. But the last few months have witnessed a dramatic change: RMT is losing its status, as recent decisions at the highest state levels show.

"It is losing credibility very, very rapidly," notes Pamela Freyd, executive director of the False Memory Syndrome Foundation, founded in 1992. "Added to this are the increasing numbers of retractors [adults who recant their accusations] we're seeing lately. We feel very hopeful that things are finally starting to reach a balance."

Facts vs. Fantasy

Belief in repressed memory therapy has gone beyond litigation; it has led to important legislative changes as well. Several states, including Utah, Washington and California, have extended statutes of limitations on child sex-abuse cases, allowing them to be filed from the time an adult "remembers" sexual abuse rather than from the time the abuse allegedly occurred. And in Congress, the Child Abuse Accountability Act, sponsored by Rep. Patricia Schroeder, a Colorado Democrat, and signed into law in October 1994, allows plaintiffs in sexual-abuse cases to garnish their parents' federal pensions to pay for damages.

In writing the law, Schroeder was influenced greatly by the testimony of Sharon Simone, who successfully sued her father, a former FBI agent, on the basis of her recovered memories. At the time Congress debated the act, Rep. Connie Morella, a Maryland Republican, raised concerns about the possibility of false accusation. A spokeswoman for Morella said the con-

Commercialism, American-Style

The Marlboro Man has moved to Moscow. Like ads in American schools, he's all over this city that cut its ties with communism four years ago — on walls, on billboards, on scaffolding atop buildings. But Marlboro is only one of many advertisers that have found Russia to be fertile ground. Coca-Cola, Gillette, Hyundai, Xerox and others have mounted aggressive Russian campaigns, all striving to tap into a market that is cash-strapped but hungry for choices.

During his trip to Moscow in May, President Clinton discussed economic issues with Russian President Boris Yeltsin while catching up with American investors abroad. "I think that there's a real opportunity here," Clinton told a group of Russian Coca-Cola employees gathering at the firm's year-old plant just down the street from the McDonald's Moscow warehouse and headquarters. The Moscow Coca-Cola plant is owned by the corporate headquarters in Atlanta but has entered into joint operating agreements with bottlers around Russia.

Continued Clinton, "I think there's a chance that all of you, once you have a certain number of people who have worked in a market economy and have seen it and understand it and know how to perform in a world-class standard, I think you begin to change the attitudes for the entire country."

Russians who spoke with the



Russia's real thing: At "Coca-Cola University," Russians learn Western ways.

president and first lady Hillary Rodham Clinton noted that the culture of the former Soviet Union still is structured against them. "People are very surprised that we need to serve customers," said Maria Osherova, a human-resources manager of Coca-Cola St. Petersburg Bottlers.

At the plant's "Coca-Cola University," Russians learn the fundamentals of Western business — marketing, distribution, customer service and quality control. While the plant outlines the pros and cons about conducting business in Russia — positives include the large population, the low price of raw materials and the presence of foreign advisers; negatives include xeno-

phobia, high taxation and corruption — it doesn't mention one slippery factor: the widespread influence of corruption.

Take the example of Paul Tatum, who owns 40 percent of the Radisson Slavjanskaya, the Moscow hotel where the Clintons stayed. Tatum was barricaded inside his two-bedroom suite with armed bodyguards, protection against his own business partners, which include the city of Moscow. According to Tatum, the government is trying to take over the business. His other partners, which include the Radisson hotel chain, say the matter boils down to a legitimate business dispute.

By J. Jennings Moss

commercial" and biased because it fails to mention that most plastics aren't recyclable.

Interestingly, what *Captive Kids* regards as flaws are not always apparent to other observers. The report labels *Photo Pals*, a program developed by Fuji Photo Film Co., highly commercial, but the same program is deemed worthy by many teachers who say it inspires their students to be creative and become involved in classroom activities, according to Ernest Fleishman, senior vice president and director of education for the New York City-based Scholastic Inc., a major publisher of educational software, magazines and films.

What to do? According to Consumers Union's Baecher, "Schools

themselves must be more stringent about evaluating materials." But Fleishman, who was superintendent of schools in Greenwich, Conn., before joining Scholastic, notes that school boards already have their hands full monitoring textbooks and other materials. There's no time to examine the flood of offerings from corporations. "I think the teacher is able to make the distinction [between what's good and what's bad] to see if the product serves a genuine education need and if not, throw it away," he says.

Corporations also can act more responsibly, says Mary Guy Miller, founder of Interactive Design & Development. "Dole really did take my advice ... not to be commercial," she says. *5 A Day Adventures* carries the

Dole logo on the disc and at the beginning of the program. But Miller, who taught sixth- and seventh-graders before founding Interactive in 1991, talked with teachers before creating characters such as Stuart Spinach and Pamela Pineapple, who hold forth on nutrition and sing songs written by Miller's group. Young viewers are offered an electronic-mail address to obtain more information about foods that interest them.

Not surprisingly, Miller says she thinks that corporate help (and corporate advertising, properly done) will play a prominent part in education's future. It is as simple as this: "Money for education anywhere is never what it should be — and corporations do have money." ●

have ruled that therapists are obliged to corroborate their patients' accusations. A Baltimore judge threw out a case against a priest on grounds that repressed memory is not scientifically valid. In Louisiana, the state Supreme Court ruled that expert testimony about repressed memory was inadmissible.

Such skepticism is spreading. The National Center on Child Abuse and Neglect completed a special investigation last month that surveyed allegations of satanic-ritual abuse, or SRA, and found no substantiation. PBS' *Frontline* recently aired a skeptical documentary, *Divided Memories*, and Hollywood director Oliver Stone has just released a film about the McMartin Preschool case. "Things are coming fast and furious," says Pendergrast. "Everything is happening at once."

But is the repressed-memory craze really reaching its epilogue? Jury decisions still reflect belief in RMT: 70-year-old Violet Amirault and her daughter, owners of a day-care center in Boston, recently were found guilty of abuse and imprisoned. And "satanic panic" — the belief in SRA — slowly debunked in the United States, is flourishing in Canada. Professional mental-health organizations continue to rally

behind RMT practitioners.

For proponents, the therapy is more than a cherished belief; it's a significant source of income. Many have built exclusive practices upon it; they publish books, hold seminars, testify in court and speak in public — some for fat fees. "This is a war, a war being waged in courtrooms and in people's living rooms," says Stephen Ceci, a professor of human development at Cornell University and coauthor, with Maggie Bruck, of the forthcoming book, *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*. "Each side is just going to get more virulent and more nasty. This is not going away anytime soon." Ceci, who also is a member of the American Psychological Association's Task Force on Repressed Memory, is regarded widely as a neutral researcher on issues of children's testimony and child abuse.

Most observers agree that the death blow to RMT — if it comes — will be dealt by insurance companies. Many health maintenance organizations place caps on the number of psychotherapy visits they will cover and insurance companies are likely to follow. Since RMT frequently

requires long-term therapy and hospitalizations, caps will limit its use and availability. Furthermore, premiums for malpractice insurance are soaring, in part because of the growing numbers of patients suing therapists for allegedly implanting false memories.

"Over the next decade, you're going to see a real metamorphosis in the law," predicts attorney Pavlinic. "The biggest change we're going to see is in the number of third parties suing their family members' therapists for collateral damage." In California, Gary Ramona, a Napa Valley wine-company executive, successfully sued his daughter Holly's therapist after Holly claimed to have uncovered memories that he had abused her — the first such third-party case. "But that was a victory in principle only," Pavlinic notes. "Gary Ramona lost his wife, his job and his daughter. Still, it has reverberations that can only continue to grow."

He adds, "Twenty years ago, you couldn't sue your doctor for medical malpractice. What it took was the first brave soul to come forward and demand justice from the medical establishment. That's what it's going to take here — for the falsely accused to continue showing the courage to come forward." ●

gresswoman hasn't revisited the issue since those early discussions.

Hard-charging legislative changes are coming from the other side as well. Christopher Barden, a psychologist and attorney at the University of Minnesota Law School, has drafted a model bill titled the Truth and Responsibility in Mental Health Practices Act, already introduced in a handful of state legislatures. Barden predicts that within a year, 30 states will be reviewing the bill, which would mandate informed consent, including an explanation of risks, and require therapists to verify a treatment's scientific validity before receiving insurance reimbursements.

Although Barden's model bill is intended to protect patients from all kinds of unproven, risky or dangerous therapies, RMT clearly is fueling the fire. "Our intent is not to mandate legislation," says Tom Parks, a spokesman for the National Association for Consumer Protection in Mental Health Practices, based in Cedar Rapids, Iowa. "Our intent is simply to finally clear up this whole issue." Adds Barden: "Simply put, methods that are too vague and abstract to be scientifically

tested are too vague and abstract to be paid for with taxpayer dollars."

Thomas Pavlinic, an Annapolis, Md., attorney who represents families accused of abuse on RMT evidence, dismisses the therapists' notions of a backlash: "All we're asking is that they be held accountable."

Barden also agrees. "Psychotherapists want the prestige and power of medical doctors, so they should willingly accept the same responsibilities," he says.

Behavioral scientists have long decried RMT, and the American Medical Association has warned of its potential for misuse. However, the therapy remains a hot-button issue within mental-health organizations, which have yet to take a stand on the issue.

Not surprisingly, some psychotherapists have reacted harshly to attempts

to regulate their profession. A *St. Louis Post-Dispatch* opinion piece by psychotherapist Bernard Beitman, which appeared as the Missouri House of Representatives began consideration of the Truth and Responsibility Act in early May, blasted its "crippling requirements." The American Psychological Association, or APA, roundly condemned the act, declaring it would "create immense obstacles for psychotherapy practice." Lobbying efforts by the Illinois Psychological Association effectively halted the bill's progress in that state.

In a February meeting, the APA allocated close to \$1 million toward a public-relations campaign to "promote the value" of therapy, including \$18,500 to establish a task force "to monitor the backlash" against psychologists who "deal with sex abuse."

— CCS



Schroeder: RMT proponent.

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