

17. H. G. Pope & J. I. Hudson, *Can Memories of Childhood Sexual Abuse Be Repressed?* 25 PSYCHOL. MED. 121 (1995); H. G. Pope, et al., *Can Trauma Memories Be "Repressed"? The Evidence of Prospective Studies* (in press).

18. *Supra* note 9.

19. Paris, *supra* note 8.

20. S. Eth & R. S. Pynoos, *Children Who Witness the Homicide of a Parent*, 57 PSYCHIATRY 287 (1994); C. P. Malmquist, *Children Who Witness Parental Murder: Posttraumatic Aspects*, 25 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 320 (1986); C. Peterson & M. Bell, *Children's Memory for Trauma Injury*, CHILD DEV. (in press); L. C. Terr, *Chowchilla Revisited: The Effects of Psychic Trauma Four Years After a School-Bus Kidnapping*, 140 AM. J. PSYCHIATRY 1543 (1983).

21. J. Boakes, *False Memory Syndrome*, 346 LANCET 1048 (1995); Frankel, *supra* note 11; Paris, *supra* note 8; Pope & Hudson, *supra* note 17; Pope, et al., *supra* note 17.

22. A. Munro, *Recovered Memories in Psychotherapy*, 41 CANADIAN J. PSYCHIATRY 199 (1994); R. Ofshe & M. T. Singer, *Recovered-Memory Therapy and Robust Repression: Influence and Pseudomemories*, 42 INT'L J. CLINICAL EXPERIMENTAL HYPNOSIS 391 (1994).

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SO WHAT IS THE DISPUTE ABOUT?

Bowman and Mertz (1996) touch on two basic facts about childhood trauma that are critical to any legal discussion of repressed memory: (1) child sexual abuse happens (e.g., Finkelhor, 1979; Timnick, 1985; Russell, 1986) and (2) memories for childhood sexual abuse are sometimes impaired and/or unavailable (Williams, 1994, 1995; Feldman-Summers and Pope, 1994; Herman and Schatzow, 1987; Elliott and Briere, 1995; Briere and Conte, 1993; Loftus, Polonsky, and Fullilove, 1994).

Working from this empirical base, the "repressed memory debate" as couched by false memory proponents has little bearing on whether or not the courts should hear repressed memory cases. Bowman and Mertz accurately point out, "once the phenomenon of delayed or repressed memory is documented in even one case . . . we are no longer in the realm of debating whether this kind of forgetting can happen at all" (p. 9). Not only is it documented in one case, however, it is documented in a number of individual cases (Butler, 1996), and many systematic studies provide support for the existence of essentially accurate recovered memories of abuse (Schefflin & Brown, 1996).

So what is the dispute about? The debate sometimes looks like it is about whether people can and do sometimes forget (and later remember) abuse. But, as stated above, we know they can and do forget (and later remember) abuse. Other times, the debate looks like it centers around whether memory is sometimes incorrect or even sometimes essentially false. All sides must invoke the concept of memory distortion. Either the putative memory was essentially inaccurate before "memory recovery" or after "memory recovery." Most will also invoke some notion of human suggestibility. For example, either the abuse perpetrator and/or social climate suggested the abuse that did happen, did not happen; or the therapist and/or social climate suggested that abuse that did not happen, did happen.

The question of whether false memories can be implanted differs fundamentally from the question of sexual abuse memories being unavailable and later recalled. In fact, these are independent issues. Memory may be largely true or largely false for either continuous or recovered memories. We are aware of no scientific research showing that memory is more fallible for recovered memories than for continuous memories. Unfortunately, in the rhetoric and media coverage of this "debate," the questions have been blurred. For instance, anecdotes of people claiming to recover memories for events most of us will consider unlikely to have ever occurred (e.g., space alien abductions) have been used to inspire skepticism about recovered memories generally. However, we know that some people claim to have continuous memory for space alien abductions, too; indeed, is there any evidence at all that the former case is more prevalent than the latter?

The rhetoric of these arguments may be creating much ado about nonissues. The real question is not whether memories can be lost and found (they can), nor whether people can believe fundamentally false things (they can), but rather whether a given allegation of abuse is essentially true or not. This is a tough question. It cannot be answered in the abstract; it must be considered on a case-by-case basis.

Some individual cases of recovered memories enter the judicial system. We have already argued in support of Bowman and Mertz that there is nothing about the state of scientific knowledge in this area that should exclude a priori such cases from being considered. However, once they are in the courts, can and should science play a role? Bowman and Mertz address this crucial issue and provide a necessary framework for the further exploration of scientific and legal issues in the domain of repressed memories. As they note, a "balanced approach" is important. Too often, a balanced approach has been interpreted as one that provides equal time to the proponents of the false memory hypothesis and those who argue people can forget (and later remember) abuse. Discussing trauma in these terms creates an unrealistic dichotomy between false and repressed memories. That people make errors in aspects of memory does not negate the essential truth to their memories, and yet over and over the debate confuses these two issues. A better approach, discussed below, is to seek balance by asking what science can and cannot tell us about memory for traumatic events.

Scientists must play the critical role of educators for courts and juries as to what research shows about errors in memory, as well as what is known about memories that have been unavailable and later remembered. Such education is critical because of common misconceptions about memory. For instance, it would be a mistake for courts to believe that memories are necessarily true. It would also be a mistake to assume that because memories were unavailable to conscious recall and then remembered, they are necessarily false.

What can science tell us about trauma and memory? First and foremost, both prospective and retrospective studies indicate that memories for child sexual abuse can be unavailable to conscious memory and later remembered. Sci-

entific research is beginning to address the question of how trauma may influence memory.

Science can also address the question of why someone would forget a traumatic experience. "Betrayal trauma theory" (Freyd, 1996) posits that there is social utility in being unaware of trauma. In the case of a child being abused by a caregiver, the child depends on her or his attachment to the caregiver for survival. Awareness of harm caused by the caregiver threatens that attachment, and thereby threatens the child's survival. Remaining unaware of the abuse allows a child to maintain an attachment. In addition to providing an explanation for the utility of forgetting, betrayal trauma theory sets out a series of testable hypotheses that focus on the cognitive mechanisms underlying information blockage, as well as the role of betrayal in forgetting (Freyd, 1996). Analyses of extant data sets are consistent with one of the key predicts made by betrayal trauma theory: that periods of forgetting are more likely if the perpetrator of sexual abuse is a relative versus a nonrelative or a parent versus a non-parent of the victim (Freyd, 1996).

We must beware of misusing science in the courts. It is inappropriate to exaggerate the relevance of research to the domain of repressed memory cases. For example, the famous "shopping mall" experiment (Loftus and Ketcham, 1994) has been used to argue that whole narratives can be implanted into memory that never occurred; this notion is then used to argue against the validity of repressed memories. The study itself involved family members telling a participant that he or she had been lost in a mall as a child, and that the family member had actually witnessed the incident; a minority of participants reportedly then "remember" being lost in the shopping mall. This study has been questioned on a number of grounds. Arguably, every child has had an experience of being lost, or nearly lost, in a store. If so, the memories recalled by participants are not wholly false. Pezdek (1995) attempted to plant false memories of events from childhood that were either familiar (lost in a shopping mall) or unfamiliar (a rectal enema). Pezdek found that three of the 20 participants "remembered" the false event involving being lost; none "remembered" the false event involving the enema. Furthermore, to the extent that memory can be manipulated by suggestion, this experiment may speak as much (or even more directly) to the influence that older family members may have in influencing dependent younger family members (Freyd, 1996) than on the influence therapists have on clients. Finally, Leavitt (1997) found no evidence that people with recovered memories of childhood sexual abuse are more suggestible than comparison people. According to Leavitt, "patients who recover memories were remarkably less suggestible than the clinical field has been led to believe by advocates of false memory" (p. 265).

It is also inappropriate to exaggerate evidence for non-traumatic false memories. For example, Roediger and McDermott (1995) argued that falsely reporting remembered words as part of an experimental list made up of related words is evidence for the existence of false memories. Scientists and the courts must be extremely careful in how this

type of research is discussed and applied. There are critical differences between memory for word lists in an experimental setting and memories for childhood trauma (Freyd and Gleaves, 1996). If people can be led to misremember a relatively banal event that does not conflict with one's understanding of one's self, this is not evidence that people can be led to misremember a relatively traumatic event that causes someone to dramatically reevaluate essential relationships and understandings of self.

Currently there is much science cannot tell us. Some questions may be answered in time. For instance, we will likely be able to learn whether memories for traumatic events are somehow qualitatively different than memories for nontraumatic events, as some preliminary research suggests. We will gain further knowledge about the role of talking about the trauma and the cognitive mechanisms that are involved in forgetting and remembering (see Freyd 1996). However, there are likely to be some limits in what science can tell us even after more research. Most likely, psychological science will not ever definitively tell us whether an individual allegation of child sexual abuse is true.

A balanced approach to memories of sexual abuse requires an awareness of what science can and cannot tell us. A balance also requires that we be aware of the questions we ask and the scope of the conclusions we draw. Bowman and Mertz provide a foundation from which both legal and mental health professionals can further explore these issues.

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HOW SHOULD REPRESSED MEMORY CASES BE HANDLED?

A 37-year-old woman files suit in court, alleging that while she was a child her father sexually molested her repeatedly and told that she would be killed if she told anyone about what was happening. The woman further claims that she has had no memory for these events for her adult life and only recovered memories about being molested a number of times after entering therapy. Her father has responded to the lawsuit by denying the allegations and by filing a lawsuit against the therapist, claiming that the therapist implanted false memories about the alleged abuse. How should judges handle these lawsuits? The Bowman and Mertz¹ paper provides a scientifically accurate and policy-wise roadmap for answering this inquiry.

Five questions involving science and policy are involved in resolving this factual and legal dispute.

First and foremost is the scientific issue of whether repressed memories are real. (1) Are the memories real and not the product of suggestion and/or imagination? (2) According to the scientific literature, are these memories accurate? (3) What does science say about the ease and frequency of implanting false memories about severe and continuous traumatic events, such as childhood sexual molestation by family members? These three questions are frequently the subject of a *Frye*² or *Daubert*³ evidentiary hearing.

Once the science is established, two policy questions remain. (1) Should the statute of limitations be tolled during the period during which the memories were unavailable? (2) Should the concept of duty be extended to require a therapist to be answerable to third-party nonpatients under certain conditions?

The Science and Reality of Repressed Memory. Are repressed⁴ memories scientifically valid? Following the Pope and Hudson⁵ guidelines for determining what studies are

relevant to this issue, Schefflin and Brown⁶ found 25 studies directly on point. All 25 studies found repressed memory to be real. In other words, in every study in which sexual abuse can be proven, a subpopulation of the subjects reported that there was a substantial period of time during which they had no memory of continuous childhood sexual abuse. Brown, Schefflin, and Hammond⁷ found an additional five studies, all of which reach the same conclusion. Whitfield⁸ reported on two or three different studies, all of which reach the same conclusion. Thus, every relevant scientific study in the memory and trauma literature supports the reality of repressed memory. False memory advocates have been unable to cite a single study supporting their opinion that repressed memory does not exist.

Most of the major mental health organizations—the American Medical Association,⁹ the American Psychiatric Association,¹⁰ the American Psychological Association,¹¹ and the British Psychological Society¹²—have issued reports accepting the validity of repressed memory. In addition, as Bowman and Mertz correctly note, the evolving biochemical and neurological literatures on memory and the brain also support the reality of repression.¹³

The Pseudoscience. False memory proponents have argued that repressed memory is the psychiatric quackery of the twentieth century, and have compared it to lobotomies, to the Salem witch trials, and to Nazi extermination programs. What is their proof for such strong claims? As reflected in the False Memory Syndrome Foundation's prepared brief,¹⁴ which they advertise and sell for use as amicus curiae in cases around the country, false memory proponents rely on two documents: a book chapter by Holmes¹⁵ and two nearly identical papers by Pope and Hudson, mentioned above. Holmes wrote that he could find no laboratory proof of repression despite 60 years of experiments that had been conducted on the subject. Does this opinion represent the prevailing scientific viewpoint? The answer is clearly no. First, the other 17 chapters in the book disagree with Holmes and accept the legitimacy of repression. Second, Holmes himself acknowledges that his view is such a distinct minority that he wondered why he had been invited to present his opinion in the first place. Third, laboratory proof of repression would require traumatizing subjects for experimental purposes. Our laws and ethical rules do not permit sexually molesting children in the laboratory to see whether they remember the traumatization later. Fourth, Holmes's viewpoint has been effectively demolished in an important paper by Gleaves.¹⁶

With regard to the Pope and Hudson papers, they examined four studies, all of which demonstrated the reality of repression, and raised objections to the methodology employed in each study. Even assuming that their critique of the four studies is valid, their paper can only be cited for the proposition that repressed memory has not been proven. Their paper cannot logically be cited for the proposition that repressed memories do not exist. However, as noted above, there are now more than 30 studies, reflecting several different research designs or methods, and all of them reach the conclusion that repression exists. Thus, the Pope and Hud-