

FILED
Court of Appeals
Division II
State of Washington
12/23/2019 1:22 PM

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

JOSEPH LEROY FUGLE,

Petitioner.

NO. 54108-4

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. STATUS OF PETITIONER:

Defendant Joseph Fugle is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 14-1-04016-6. Brief of Petitioner, Appendix A.

B. INTRODUCTION:

For approximately a decade, the Defendant terrorized his stepson MG – hitting him and his bedridden mother, raping him hundreds of times, and silencing him by making threats to kill his loved ones and mutilate MG's genitalia and even preventing MG from breathing. MG was fatherless and has been diagnosed on the autism spectrum. When the rapes finally ended, MG's PTSD was crippling. He suffered gall bladder disease, chronic fatigue, and chronic pain.

After the Defendant separated from MG's mother and moved out of the house, MG was no longer able to push away the intrusive memories of abuse. They disrupted his sleep

and his day. Six months later, MG confided in his grandmother and mother that the Defendant had sexually abused him. Following his disclosures, MG began to experience seizures. When he recovered from his first five-hour seizure, MG had lost all his autobiographical memories, *except his memories of the Defendant's abuse*. He has never regained those former memories and he has never lost the latter.

In preparation for trial and upon the Defendant's demand, MG released his many patient records. He was forced to testify at length while the Defendant's family ridiculed him from the audience.

While several of MG's health providers testified at trial, none testified as an expert. Only the Defendant called an expert witness. Dr. Daniel Reisberg testified that scientists agree that traumatic memories cannot be forgotten and recovered. He testified that MG's treatment providers were ignorant of this science.

The Defendant's conviction and sentence became final with the mandate which issued last year. For the first time in this collateral attack, the Defendant challenges the admission of evidence which he failed to object to below. He argues that a diagnosis is impermissible opinion testimony. And he argues that Frye applies to testimony that is not novel and not presented as expert testimony.

The challenge to the absence of a Frye hearing is not a constitutional issue, therefore, it does not fall under the exception at RAP 2.5(a)(3). The challenge to opinion testimony is also not a constitutional issue where the Washington Supreme Court has held that a defendant's right to a jury trial is not violated by the expression of witness opinion, because the jury is not bound by it. *State v. Kirkman*, 159 Wn.2d 918, 155 P.3d 125 (2007).

The Defendant's challenges to his attorney's performance regard Mr. Fricke's strategic choices not to call every person listed on his witness list where the testimony was duplicative, unpersuasive, or excluded by orders in limine.

C. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. May a criminal defendant raise a claim of inadmissible opinion testimony for the first time in a personal restraint petition?
2. May a criminal defendant challenge the admission of testimony as inexpert for the first time in a personal restraint petition?
 - a. Is there any record for the premise of the Defendant's claim, i.e. did any witness testify that PTSD symptoms prove the existence of a prior traumatic event?
 - b. Where recovered memory is not novel and where the State's witnesses offered no expert testimony but only spoke about their diagnostic experience such that a Frye hearing is not required, can the Defendant establish that the absence of a Frye hearing was a fundamental defect resulting in a gross miscarriage of justice?
 - c. Where the only expert to testify, the Defendant's expert, was permitted to testify on a theory that is not generally accepted in the scientific community and to disparage the treatment providers' diagnoses as scientifically unsound, can the Defendant show that the absence of a Frye hearing on recovered memory, which likely would have excluded his entire defense, was a fundamental defect resulting in a gross miscarriage of justice?
3. Did the Defendant receive effective assistance of counsel?

D. STATEMENT OF THE CASE:

The Defendant Joseph Fugle has been convicted of various counts of child sexual abuse of his stepson MG. Brief of Petitioner (BOP) App. A.

MG has been diagnosed as being on the autism spectrum. RP 467, 632-33. His biological father is absent in MG's life. App. at 121. When MG was six years old, his mother and his two half-sisters moved in with his mother's new husband, the Defendant. RP 85-89, 190, 215-20. MG's mother Jana Fugle was frequently ill, even bedridden. RP 222, 225. MG witnessed the Defendant hit Jana while pinning her to the floor or wall, and he became afraid of his stepfather. RP 96-98, 183-84, 269.

Initially MG and his older half-sister AG shared a bedroom with MG sleeping in the lower bunk. RP 92-93, 190, 221. On two occasions when AG was not at home, the Defendant molested MG in this room. RP 99, 169, 191. The Defendant would wake early and leave for work often before his wife had gotten out of bed. RP 224. He entered in the early morning in the dark, whispered into MG's ear that they were going to have some fun, threatened that he would harm MG and his mother if MG told, and then fondled MG's genitals under the underwear while touching his own crotch area over his work clothes. RP 94-95, 98-99. MG was seven at the time. RP 93.

After seven or eight months, MG moved into his own bedroom. RP 91-93, 99. MG estimates that the Defendant molested him in this second bedroom between 30 and 60 times. RP 100-01. The Defendant would transfer MG from the top to the bottom bunk. RP 102. In this room, the Defendant began to remove his own pants and masturbate himself, and he digitally penetrated MG's rectum 10-20 times. RP 102-03. The Defendant threatened to hurt MG's sisters, to mutilate MG's genitalia, and to kill MG's mother if he told anyone about the abuse. RP 104-05. Sometimes the Defendant would prevent MG from breathing by holding his nose and mouth shut. RP 114.

A year later, MG moved into a third bedroom where he slept in a racecar bed until the age of 10. RP 92, 105-13. In this third room, the Defendant sexually abused MG “a few hundred” times, approximately once a week. *Id.* The Defendant began to perform oral sex on MG and require reciprocation. RP 108-10. He would threaten to hit MG if he did not swallow. RP 113. When MG was between the ages of 12 and 14, the Defendant began to rape him anally with his penis, doing so approximately 50 times, hitting him if he cried out. RP 115-17.

At one point, MG thought that he could make the abuse stop by changing the type of underwear that he wore. RP 575-76. His mother remembers that MG said he “needed” to switch from briefs to boxers. RP 238. It was a very abrupt request, and “he wouldn’t allow me to ask any questions.” *Id.* But the abuse did not stop. RP 576.

The abuse also occurred outside of the home. On three occasions, the Defendant took MG on bike rides to a coffee shop where he fondled MG in the restroom. RP 118-20. “There were signs.” RP 1002. When they returned from the bike rides, it was apparent to MG’s mother that something was wrong. RP 238. But he would tell her, “Leave me alone. Don’t ask me any questions.” RP 238, 1002.

Once the Defendant drove MG to a Christmas tree farm, parked on a side road, and fondled MG in the vehicle. RP 118, 121-22.

And on another occasion, when the extended family intended to caravan from Puyallup to Eastern Washington, the Defendant had MG and his four-year-old cousin J. in his truck. RP 123-126. When the other family members went on a detour, the Defendant told MG that they “were going to have some fun and that [J.] was going to join us this time.” RP 123. MG begged the Defendant not to touch or hurt J., so the Defendant forced the toddler to watch from the back seat as the Defendant orally raped and spat on MG in the front seat. RP 124-26 (directing the toddler to stand up from his car seat). The

Defendant told MG that he was responsible for keeping J. quiet, threatening to cut off MG's genitalia and hurt J.. *Id.*

The sexual abuse stopped when MG turned 14, although not the physical abuse. RP 127, 1001. For years, MG "locked it away," never talking about the sexual abuse. RP 128. [The Defendant characterizes this conscious act of choosing not to think about past abuse as equivalent to the complete loss of memories. Petition at 10-11. However, MG testified those memories always existed even as he avoided thinking about them to protect himself. RP 182, ll. 15-23.]

When MG was 16, he began to suffer acute upper gastric pain. RP 135, 228. He had a scarred esophagus and innumerable stomach ulcers, which doctors believed were related to an eosinophilic disease. RP 228, 314. After 18 weeks of acute symptoms, the doctors removed MG's gallbladder. RP 135, 228, 314-16. The next year, MG acquired chronic fatigue (small fiber neuropathy) and anxiety. RP 135-37, 158, 228-29. He was forced to withdraw from school. RP 135-36, 283. For these conditions, MG went to a counselor (Justin Steffener), a neurologist, and a geneticist. RP 136. Dr. Steffener helped MG develop mechanisms to cope with his illnesses. RP 152.

When MG was 18, Jana obtained a restraining order against the Defendant. RP 184, 283-84. The couple separated, seeing each other only in counseling to address the domestic violence. *Id.*

Very few people know the Joe that resided in our home, behind closed doors, in the car, at every holiday, on every vacation, and sometimes at family gatherings. That man was controlling, condescending, oppressive, angry, physically and emotionally abusive, tried to start altercations, and often times did.

The last few years, Joe became so scary ... his behavior had escalated. ... Our doctor, my parents, my children were concerned I was staying in the marriage too long ... he would not admit he had a problem, ever, he would never accept responsibility for his part, and it certainly did not add up to his anger and hatred towards [MG] or the escalation in

physical violence towards [MG], myself, and even towards Courtney in the end.

RP 1000-01 (victim statement).

With the Defendant out of the house, it was safe for MG to think about the sexual abuse. RP 128-29, 1002.

I'd just be going and doing whatever in the day, and I would just get overwhelmed with these memories. They would come up and just start playing in my head where I just – I couldn't stop them. I couldn't block them, and they just start playing and reliving and just take over.

RP 129. MG could not sleep. RP 129.

Six months later, MG confided in his grandmother that he was being plagued by intrusive memories. RP 128-32, 134, 317-18. Two weeks after that, MG told his mother. RP 134. He had been afraid that if he told her, she would disbelieve him, choosing her husband over her son. RP 1002. And she did not want to believe MG. *Id.*

In the spring of 2014, MG began to experience almost daily pseudoseizures¹ triggered by memories of abuse, including being touched by an adult male or viewing suggestive scenes on television. RP 139-40, 153, 157-58. The first seizure lasted for five hours and resulted in hospitalization and dissociative amnesia² where MG permanently lost his past autobiographical memory for everything but the abuse. RP 139-44, 150, 157, 172, 239-40. "I didn't know anyone else, but I did remember all of the sexual abuse." RP 143. The seizures continued for a year and a half. RP 157.

MG told his doctors about the sexual abuse to provide a complete medical history to assist in diagnosis and treatment. RP 138-39, 156. None of his treatment providers

¹ A pseudoseizure is a seizure without the typical neural activity of most epileptic seizures. RP 449-50, 482-83, 565-66.

² Dissociative amnesia is a psychiatric condition where extreme psychological trauma disrupts memory causing loss of identity. RP 459, 506, 545-47, 677.

requested MG recall or relive the details of his abuse. RP 139, 154-55. Their focus was on assisting MG with coping strategies. RP 154-55, 187.

With the support of advocates at Rebuilding Hope, MG reported the abuse to police, motivated by a desire to protect others from the Defendant. RP 159-61.

The Defendant's counsel Wayne Fricke requested the prosecutor assist in arranging interviews with MG's doctors. BOP App. G. At the suggestion of defense expert Mark Whitehill, Mr. Fricke also made a motion for MG's medical records. App. at 1-3. MG signed a medical release, and defense asked to continue both the trial date and the interviews. *Id.* The court reviewed the records in camera for relevancy and then distributed them to the parties four months before trial. App. at 4-5. Mr. Fricke believes he interviewed the doctors before trial and acknowledges he was not surprised by any of their testimony. BOP App. H, ¶9.

Mr. Fricke also filed a witness list with ten possible witnesses, including the Pagays (Dawn, Nina, and Robert) and Van Nattas³ (Mikkel, Kirk, and Lyn). App. at 6-7. In pretrial conference, the court granted Mr. Fricke's motion to exclude "any statements made from those providers that go to the credibility of whether something happened or didn't happen." RP 7-8. The court also granted the prosecutor's motion to exclude opinion testimony offered by any defense witnesses. RP 8-10, 16; App. at 22. And the defense agreed not to elicit character evidence. RP 10; App. at 13-17, 21-22.

At trial, MG testified at length. RP 85-214. His exhaustion was apparent. RP 85, 102, 149, 174, 189. While MG testified, the Defendant's parents made their disbelief apparent to the jury and were admonished. RP 149.

Dr. Joy Jones testified that after the initial seizure, she saw MG and diagnosed him with anxiety and likely post traumatic stress disorder. RP 46, 460-61. Dr. David Tauben diagnosed MG with PTSD. RP 719-20, 725-26. Dr. Susan Poole and Dr. John Daniel testified that fatigue, pain, and muscle weakness were consistent with a diagnosis of PTSD. RP 513-15, 554. Mr. Fricke elicited that the validity of these diagnoses depended upon the truthfulness of MG's self-report. RP 578-79, 722-24, 737-38, 755-56.

Defense expert Dr. Daniel Reisberg testified that scientists agree that traumatic memories cannot be repressed. RP 790-91, 798. When patients claim to recover a traumatic memory of abuse, generally it will be because a false memory has been implanted by a therapist. RP 839-41.

The Defendant was convicted. BOP at A. At sentencing, Jana Fugle expressed how hard the trial had been on the family. RP 1005 ("It's been a very, very long two years."). As much as she resented defense counsel for his part in their pain, she acknowledged the necessity of it.

I do appreciate you providing a good defense for Joe. I wanted him to have a good defense, and I do appreciate that.

RP 1006. The Defendant's convictions and sentence have been affirmed on appeal. BOP App. B and C.

E. ARGUMENT:

1. Legal Standards in a Personal Restraint Petition.

The courts' review of personal restraint petitions is constrained, and relief gained through collateral relief is extraordinary. *In re Fero*, 190 Wn. 2d 1, 14, 409 P.3d 214, 222

³ The court reporter heard Ms. Van Natta to spell her name "Van Netta." RP 862. However, her father spelled the family name differently in his email address and signature to the court. App. at 8-10. *See also* App. at 6.

(2018). In a personal restraint petition, the burden of proof shifts to the petitioner. *In re Cook*, 114 Wn.2d 802, 814, 792 P.2d 506 (1990); *Hews v. Evans*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). And there is a heightened showing of prejudice. *Fero*, 190 Wn.2d at 15.

If the challenge is in the context of constitutional error, petitioners have a threshold burden of demonstrating actual and substantial prejudice or the petition will be dismissed. *Cook*, 114 Wn.2d at 810. For non-constitutional claims, the preliminary showing is higher: the claimed error must constitute a fundamental defect which inherently results in a complete miscarriage of justice. *Cook*, 114 Wn.2d at 811.

Bald assertions and conclusory allegations will not support a personal restraint petition. *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, cert. denied 506 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992). If the petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate competent, admissible evidence to establish the facts that entitle him to relief. *Id.* If a party fails to support argument with citation to legal authority, the court is entitled to presume that none exists. *Oregon Mut. Ins. Co. v. Barton*, 109 Wn. App. 405, 418, 36 P.3d 1065, 1071 (2001).

2. A claim of improper opinion testimony does not constitute manifest constitutional error and may not be reviewed if not preserved below.

For the first time in this personal restraint petition, the Defendant alleges that MG's treatment providers provided inadmissible opinion testimony. BOP at 42. The claim is foreclosed by the Defendant's failure to preserve error.

The issue preservation rule encourages the efficient use of judicial resources by ensuring that the trial court has the opportunity to correct any errors, thereby avoiding unnecessary appeals. *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007); *State v. Hamilton*, 179 Wn. App. 870, 878, 320 P.3d 142 (2014). A retrial also has substantial consequences to other parties. *Kirkman*, 159 Wn.2d at 935. Where the failure to raise the

issue in the first trial is the Defendant's own, the damage that a retrial would pose to MG would be unconscionable. RP 925, 936.

The Defendant relies on cases in which the defendants made timely objections to expert testimony before the trial court and renewed their challenges in the direct appeal. BOP at 44 (citing *State v. Black*, 109 Wn.2d 336, 339, 745 P.2d 12 (1987) and *State v. Florczak*, 76 Wn. App. 55, 59, 62, 882 P.2d 199 (1994)). Those cases are distinguishable. Here the Defendant made no timely objection. In fact, many of the challenged statements were elicited by defense as a tactic. *State v. Curtiss*, 161 Wn. App. 673, 702, 250 P.3d 496, review denied 172 Wn.2d 1012, 259 P.3d 1109 (2011) (holding attempt to circumvent preservation requirement failed where trial counsel had a clear tactical plan).

a) The Defendant himself elicited much of the challenged testimony.

The Defendant complains that Dr. Tauben and Dr. Poole testified that they accepted the patient history. BOP at 25 (citing RP 578, 723-24), 49. He fails to observe that these statements were elicited by defense.

In cross-examining Dr. Poole, the Defendant emphasized that the diagnosis was only as valid as the patient was trustworthy.

Q. Okay. All right. Now, as a therapist, when you meet with your patients, I mean, you don't -- you're not there to question what they're telling you?

A. Correct.

Q. You accept what they say?

A. Uh-huh. (Witness answers affirmatively.)

Q. And you accept it as fact?

A. Correct.

Q. And in fact, one of [MG's] concerns with you was, not with you specifically, but expressed concern was some of the doctors, whether people were -- I don't know what his words were -- accepting of him, what he had to say; is that right?

A. That's common of all trauma people is whether they're going to be believed.

Q. And I think some of them had to do with his physical concerns as well, what was going on with him?

A. Right. Uh-huh. (Witness answers affirmatively.)

- Q. So you accept what they say, and you base your treatment based on what they're telling you?
- A. Right.
- Q. And that's how the relationship remains strong?
- A. Right.
- Q. It's a trusting relationship?
- A. Uh-huh. (Witness answers affirmatively.)
- Q. So -- and it's -- it's not your realm to question anything about that.
- A. Right.
- Q. Let me ask on this. In the context of doing a diagnosis of any patient, is it common to give them psychological testing?
- A. Not necessarily.
- Q. Okay. Is it -- does it happen?
- A. Some people do, but we also can just rely on a solid clinical interview.
- Q. And you didn't do one in this case, correct?
- A. Correct.
- Q. Have you ever done them?
- A. I rarely do them. Usually clinical interview is sufficient for the purpose of therapy.

RP 578-79.

The Defendant did the same in a voir dire of Dr. Tauben, which was made outside of the presence of the jury.

- Q. In your diagnosis of PTSD -- you did diagnose PTSD?
- A. Yes.
- Q. That is based on his history he gave you on that particular day?
- A. Yes, plus all the medical workup that had no other accounting for those symptoms.
- Q. Are you able to say that his pain that he's experienced all these years are related to PTSD?
- A. The pain presentation he presented to me with would certainly be fully accounted for that. I was not involved in the care of -- that led to his cholecystectomy or his much younger adult care and did not review those records.
- Q. Are you able to say the PTSD that you say he's been diagnosed with -- you diagnosed him with resulted in the pain he's been experiencing for all these years?
- A. On a more probable than not basis. yes.
- Q. Reasonable medical certainty?
- A. Yes.
- Q. Based on his saying he suffered from flashbacks and nightmares and avoidance?
- A. Yes, and now 32 years of practicing medicine.

- Q. How does the pain relate to the possibility or that he was diagnosed earlier with fibromyalgia?
- A. Fibromyalgia is one of the disorders on the spectrum of PTSD, adjacent to it, as is chronic fatigue, chronic abdominal pain.
- Q. You can be diagnosed with that and it can be unrelated to PTSD, too?
- A. That is correct.
- Q. You can't say the fibromyalgia is related to PTSD. It could be something totally separate and apart?
- A. I would say on a more probable than not basis, it is related based on my medical judgment.

RP 722-24. In cross-examination, the defense continued:

- Q. Doctor, your finding of PTSD from prolonged sexual abuse comes from him, correct, [MG]?
- A. That is correct.
- Q. That's the only place that you have information?
- A. That is correct.
- ...
- Q. As far as your interaction with [MG], you saw him on four separate occasions; is that correct?
- A. Three and a number of phone contacts.
- Q. Three occasions in 2014?
- A. That is correct.
- Q. So he, up until July 3rd, 2014, had not indicated any type of abuse; is that correct?
- A. That is correct.
- ...
- Q. You are not here to -- when you meet with a patient to contest what they are saying, correct?
- A. Sometimes.
- Q. Not as relates to this information?
- A. That is correct.
- Q. You accepted what he had to say?
- A. Yes, I did.

RP 737-38.

- Q. You just say secondary here based on his one statement to you in July of 2013, correct?
- A. Yes.
- Q. If he said his symptoms started developing in preschool, what trauma did he ex -- well, PTSD can be from a whole host of traumas, correct?
- A. That is correct.

...

Q. Did he experience any trauma to your knowledge in preschool?

A. I did not query.

Q. Wouldn't that be important to find out if PTSD, if it in fact exists, was from a trauma that he experienced in preschool?

A. It may well could have been. The issue is at this point to get to the bottom of that by the specialist he was not working on the PTSD to sort out.

RP 755-56.

Insofar as the challenged statements were elicited by the Defendant himself, review is additionally precluded under the invited error doctrine. The doctrine of invited error prohibits a party from setting up an error at trial and then complaining of it on appeal, even when the error involves constitutional rights. *State v. Studd*, 137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999) (error of whatever kind); *State v. Wakefield*, 130 Wn.2d 464, 475, 925 P.2d 183 (1996). A party invites error by affirmatively assenting to the error, materially contributing to it, or benefitting from it. *State v. Momah*, 167 Wash.2d 140, 154, 217 P.3d 321 (2009). Here the defense elicited the testimony at length in order to make the argument that these practitioners are not scientists and their diagnoses are unreliable insofar as they depend upon the trustworthiness of the patient's report. *See also* RP 578-79, 737-39, 941-45.

b) The Court must refuse to review the claim, consistent with *Kirkman*.

Courts will not review unpreserved claims of error raised for the first time on direct appeal, much less by way of collateral attack. RAP 2.5(a); *Kirkman*, 159 Wn.2d 918. In the consolidated direct appeals of *Kirkman* and *Candia*, the Washington Supreme Court affirmed the unrelated child sex abuse convictions of two defendants who raised unpreserved claims of improper opinion testimony. It held that opinion testimony claims do not constitute manifest constitutional error reviewable for the first time on appeal. *Kirkman*, 159 Wn.2d at 926-27, 936.

Notwithstanding this binding authority, the Defendant brings claims squarely decided in that case. He claims that the testimony violated his “constitutional right to trial by jury.” BOP at 42. Under RAP 2.5(a)(3), the court may consider a claim of manifest error affecting a constitutional right. However, a claim of improper opinion testimony does not amount to a constitutional claim under RAP 2.5(a)(3). *Kirkman* held that the claim that a witness’ opinion could invade the constitutional role of the jury was “simple rhetoric.” *Kirkman*, 159 Wn.2d at 928.

Cases involving alleged child sex abuse make the child’s credibility “an inevitable, central issue.” *Petrich*, 101 Wash.2d at 575, 683 P.2d 173. Where the child’s credibility is thus put in issue, a court has broad discretion to admit evidence corroborating the child’s testimony. *Id.* at 575, 683 P.2d 173.

Kirkman, 159 Wn.2d at 933. The jury is not bound by any one witness’ opinion, even where there is “uncontradicted testimony on a victim’s credibility.” *Kirkman*, 159 Wn.2d at 928. In fact, jurors are instructed that they are the sole judges of the credibility of each witness, an instruction they are presumed to follow. App. at 27; *Kirkman*, 159 Wn.2d at 928.

Testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

ER 704. Jurors are instructed that ^{they} are not bound even by the opinion of witness with special training, education, or experience. App. at 32.

In this case, only one witness was qualified as an expert. Dr. Daniel Reisberg. RP 772. In convicting the Defendant, the jury demonstrated that they were not bound by even his opinion.

The Defendant argues that *Kirkman* would find manifest error for a “nearly explicit statement” “that the witness believed the accusing victim.” BOP at 44 (citing *Kirkman*, 159 Wn.2d at 936). This argument is unavailing. First, this would not solve the

Defendant's problem that such a claim of error does not raise a *constitutional* question under RAP 2.5(a)(3). Second, the Washington Supreme Court has never seen such a case. It has never "held that a manifest error infringing a constitutional right necessarily exists where a witness expresses an opinion on an ultimate issue of fact that is not objected to at a trial." *Kirkman*, 159 Wn.2d at 935. And third, the challenged testimony is less explicit than that held to be proper in *Kirkman*.

There the doctor testified that, although the physical examination was inconclusive, the child victim displayed "appropriate affect" consistent with her report of sexual touching. *Kirkman*, 159 Wn.2d at 929-30. The court held this did "not constitute an opinion on her credibility." *Id.* at 930. An expert does not offer an improper opinion in acknowledging that observations are consistent with allegations. A patient's presentation may clearly and consistently provide an account that is false. *Id.*

The testimony in our own case is even less direct. The doctors only provided diagnoses based on the information available to them, that being the patient history. Dr. Joy Jones testified that, after reviewing the admitting doctor's note and other recorded medical history and obtaining MG's self-report, she diagnosed him with an anxiety disorder, likely PTSD, and possible somatoform disorder and recommended he follow up with outpatient mental health treatment. RP 456, 460-61. After MG endorsed the four cardinal symptoms (nightmares, avoidance, flashbacks, and dissociation), Dr. David Tauben diagnosed "post traumatic stress disorder from prolonged interval sexual abuse." RP 719-20, 725-26. Dr. Susan Poole also diagnosed PTSD, noting that a patient's report of fatigue and pain was consistent with the disorder. RP 554.

Their diagnoses were necessarily based on MG's self-report. This does not mean they believed MG. It means that this was the information they had.

Similarly, it was not error for Dr. Daniel to testify that chronic fatigue, pain, and weakness can co-occur with PTSD. RP 513-14. This is not an opinion on the veracity of the victim. It is an epistemological fact that these symptoms have been known to co-occur.

The Defendant argues that the sexual abuse is without corroboration. BOP at 52. This is inaccurate. Jana Fugle testified that she observed her son's discomfort and secrecy after bike rides with the Defendant. And she recalls MG's abrupt demand to change underwear style which he refused to allow her to question. RP 931. The prosecutor also noted that, while "any trauma can lead to PTSD," there was only evidence of one trauma, the prolonged childhood sexual abuse. RP 919. The PTSD then was circumstantial evidence tending to corroborate sexual abuse. *Id.* There was evidence tending to corroborate MG's testimony.

However, even in a case without corroborating evidence, a doctor's testimony that a patient history is consistent with abuse is not manifest error. At Candia's trial, the doctor testified that there was no physical evidence of sexual contact although the child said there had been anal and vaginal penetration. *Kirkman*, 159 Wn.2d at 924, 931. He testified that, "to have no findings after receiving a history like that is actually the norm rather than the exception." *Id.* at 924, 932. The court found the testimony relevant and proper. *Id.* at 933.

... it has long been recognized that a qualified expert is competent to express an opinion on a proper subject even though he thereby expresses an opinion on the ultimate fact to be found by the trier of fact. *Gerberg v. Crosby*, 52 Wash.2d 792, 795-96, 329 P.2d 184 (1958); ER 704. The mere fact that the opinion of an expert covers an issue which the jury has to pass upon, does not call for automatic exclusion. *State v. Ring*, 54 Wash.2d 250, 255, 339 P.2d 461 (1959).

Kirkman, 159 Wn.2d at 929.

Insofar as the Defendant would interpret the witness testimony differently, this is what a timely objection is for – to clarify the record. The Defendant's failure to make the

record does not mean that he may mischaracterize the testimony on collateral attack. It means the issue is unreviewable.

The Defendant cannot distinguish his case from that in *Kirkman*. The result must be the same. This Court must find there is no manifest constitutional error and refuse to review the claim.

3. The Defendant may not make a *Frye* challenge for the first time after the mandate has issued.

The Defendant challenges the admission of testimony as being in violation of an evidentiary rule. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 586, 113 S. Ct. 2786, 2793, 125 L. Ed. 2d 469 (1993) (holding that the adoption of the Federal Rules of Evidence overruled the *Frye* test in federal cases). Again, the alleged error was not preserved by any objection.

It has long been the rule that an objection to the admission of evidence cannot be urged on appeal unless first raised below. *Sepich v. Dep't of Labor & Indus.*, 75 Wn.2d 312, 319, 450 P.2d 940, 945 (1969); *State v. Bezemer*, 169 Wash. 559, 568, 14 P.2d 460 (1932) (refusing to review challenge to the admission of tool expert's testimony where no objection had been made below); *State v. Scott*, 143 Wash. 166, 167, 254 P. 851 (1927); *State v. Downer*, 68 Wash. 672, 673, 123 P. 1073 (1912).

This Court must summarily refuse to review the claim pursuant to RAP 2.5(a)(3).

a) No witness testified that a diagnosis of PTSD can be reverse-engineered to prove childhood sexual abuse.

The Defendant asserts that MG's treatment providers testified that PTSD symptoms can prove the existence of the traumatic event. BOP at 56. This factual premise does not exist in the record.

In his argument, the Defendant provides no citation to the record in support of this premise. He argues this point in headings in his Statement of the Case. BOP at 10, 19. But no record is provided here either that any witness testified that a diagnosis of PTSD can be reverse-engineered to prove child sexual abuse.

Dr. Tauben testified that the disclosure of sexual abuse assisted him in diagnosing PTSD, not the other way around. RP 754. He explained that he was not concerned with identifying the traumatic event. RP 756. “It may well could have been” an entirely different trauma experienced in preschool, i.e. before MG met the Defendant. *Id.*

MG was referred to Dr. Tauben for unexplained widespread pain and associated neurological and endocrinological difficulties. RP 706-07. The doctor required multiple workups from different medical specialties. RP 709. MG received workups from a rheumatologist, an endocrinologist, and a bone specialist. RP 709-10. There was a genetics referral and some bone scans and a variety of medications. RP 710.

Pain physicians like Dr. Tauben focus on the biopsychosocial (the psychological interaction between the organic body and the social environment one lives in). RP 716. After considering MG’s family and school life and his psychological complaints, Dr. Tauben was concerned about MG’s degree of psychological distress. RP 711, 716. When MG felt comfortable enough to disclose his childhood sexual abuse, the doctor realized that PTSD could explain the symptoms. RP 717-21, 754.

To have post traumatic stress, there needs to be trauma. RP 704. Significant trauma such as traumatic brain injuries, “early life trauma, experiencing violence in the home, substance abuse addiction, sexual abuse, physical abuse of one’s self or family member” is associated with significant poor health outcomes. RP 704-05. The disorder “commonly presents in a chronic pain setting.” RP 704. Over 35% of patients at the pain

clinic met the diagnosis for PTSD. RP 705. “We are all well aware of that as an important part of the presentation of chronic pain.” *Id.*

Finding no other likely medical explanation for MG’s symptoms, Dr. Tauben diagnosed PTSD. RP 725-26. He testified that the patient report of sexual abuse assisted in the diagnosis. RP 754. He did not testify that the PTSD proved the sexual abuse.

Nor did the prosecutor conclude or argue that PTSD proved the abuse. Rather, she observed that “any trauma can lead to PTSD.” RP 919. Because prolonged sexual abuse was alleged, PTSD was circumstantial evidence, but not proof, of the allegation. RP 919. “The definitive evidence ... is [MG’s] description, his testimony.” *Id.*

Because there was no evidence or argument that a diagnosis of PTSD can be reverse-engineered to prove childhood sexual abuse, there would have been no call for a *Frye* hearing even with a timely objection.

b) The Defendant cannot show that the lack of a *Frye* hearing as to recovered memories was error or that he was prejudiced.

Even if the Defendant had made a timely objection to testimony regarding recovered memories, the Defendant cannot show error or prejudice.

A *Frye* hearing is only required if the expert medical testimony is novel. *Eakins v. Huber*, 154 Wn. App. 592, 598, 225 P.3d 1041, 1044 (2010). In this case, none of MG’s treatment providers were qualified as experts or provided expert testimony. Even if they had, recovered memory theory is far from novel. *See e.g. Woods v. Sinclair*, 764 F.3d 1109 (9th Cir. 2014); *In re Faircloth*, 177 Wn. App. 161, 311 P.3d 47 (2013); *Webb v. Neuroeducation Inc., P.C.*, 121 Wn. App. 336, 88 P.3d 417 (2004); *State v. Noah*, 103 Wn. App. 29, 9 P.3d 858 (2000); *L.H. v. Dep’t of Labor & Indus.*, 86 Wn. App. 512, 940 P.2d 657 (1996); *Franklin v. Duncan*, 884 F. Supp. 1435 (N.D. Cal. 1995), *aff’d*, 70 F.3d 75 (9th Cir. 1995). And in any case, an expert may offer an opinion based on the expert’s

own experience rather than on a scientific theory or principle. *In re Young*, 122 Wn.2d 1, 57, 857 P.2d 989 (1993), *superseded by statute on other grounds as stated in In re Detention of Thorell*, 149 Wn.2d 721, 72 P.3d 708 (2003).

The Defendant asserts that MG's treatment providers testified that memories of trauma can be repressed and recovered. BOP at 56. It is true that they did so. However, they did so in passing without objection and while describing their own clinical experience. They were not permitted to expound upon the subject as experts. *See* RP 731-36 (sustaining defense objection). Only defense witness Dr. Daniel Reisberg was permitted to discuss the subject at any length in the role of expert.

Dr. Reisberg had the last word on the subject, and he used his time to disparage MG's treatment providers as mere clinicians.

...the clinicians are just not in a position to ask, in any sort of serious way, whether repression is a phenomenon. ... It's not the case that one group of experts says one thing and one group of experts says the other thing. Instead, one group of experts has evidence on their side and the other group of experts just has their beliefs with no evidence to go with it. So it's not an even contest here.

RP 844.

I mean, I don't know how to say this politely. They're not scientists. They're really good at what they do and they do a wonderful job in diagnosis and therapy, but they're not scientists.

RP 794. This was inaccurate. Dr. Tauben is a professor and a researcher. RP 700-01, 703. He practices medicine at a university hospital. RP 697, 699. The hospital is part of the same university where Elizabeth Loftus⁴ began her false memory research. Dr. Tauben

⁴ Professor Loftus has been providing expert testimony on the suggestibility and unreliability of memory since the 1980's. *State v. Warren*, 134 Wn. App. 44, 52, 138 P.3d 1081 (2006); *State v. Jordan*, 39 Wn. App. 530, 542, 694 P.2d 47 (1985) (discussing published cases in which her testimony was excluded). Her research has been tarnished over time. Lynn S. Crook & Linda E. McEwen, Deconstructing the lost in the mall study, *J. of Child Custody*, 16(1) 7-19 (2019) (informing that 20 years after the study, Loftus testified that the results could not be replicated and she resigned from the APA following an ethics complaint).

is the Chief of the Division of Pain Medicine at the leading pain management institution in the nation where over a third of the clientele suffer PTSD. RP 697, 703, 705.

Dr. Tauben was prepared to explain how the scientific community has evolved in its discussion of false versus recovered memory. RP 703, 731.

It became relevant in my training about 20 years ago when there was a concern that people would be given suggestions about what might have happened and there was a regression back into childhood which was often coached. A lot of clinical concern, many articles, many discussions among experts which I was a participant as a learner. ***Subsequent research and publications that have indicated that is much less likely. In fact, it would be considered rare, as a risk –***

RP 731-32 (emphasis added). Because the State had not given the defense advance notice of the witness' expertise, the court did not permit Dr. Tauben to continue. RP 732-36.

Instead, Dr. Reisberg testified unrebutted that “the evidence that’s offered in favor of the repression idea is either non-existent or totally open to other interpretations.” RP 790-91. That is not the research.⁵ Michael Salter, Attacks on the credibility of abuse survivors are not justified by research, The Guardian (Oct. 1, 2017) (scientific studies find children are “far less suggestible than we have been led to believe”; “delayed disclosure and amnesia are now understood as normal coping mechanisms in response to abuse”). App. at 65-68.

Dr. Reisberg told the jury that clinicians and scientists disagree on whether traumatic memories can be suppressed. RP 790, 798. However, “I don’t think there’s

⁵ M. A. Epstein & B. L. Bottoms, Explaining the forgetting and recovery of abuse and trauma memories: possible mechanisms, Child Maltreatment, 7(3), 210-25 (2002) (survey of 1400 subjects found victims of childhood sexual abuse reported more forgetting using common mechanisms such as directed forgetting and relabeling); Ross E. Cheit, Consider This, Skeptics of Recovered Memory, Ethics and Behavior, 8(2), 141-160 (1998) (documenting the growing number of corroborated cases of recovered memory) (101 cases chronicled at <https://blogs.brown.edu/recoveredmemory/about/>).

much controversy among the scientific community.” RP 798. In fact, scientists disagree among themselves quite vociferously.⁶

Dr. Reisberg acknowledged that outside of a controlled study, researchers cannot say that a reported memory is false. RP 788. However, he claimed that scientists believe that people cannot lose traumatic memories. RP 791. In other words, they categorically disbelieve a recovered memory of abuse is a true memory. This claim is irrelevant to the facts of our own case, because MG did not lose his traumatic memories. He testified that he locked them away, but never lost them. When MG lost his memory after hours of seizures, the only autobiographical memories he retained were the very ones he had been trying to lock away – the abuse. The facts of his case are consistent with Dr. Reisberg’s assertion that the hardest memories to lose are the traumatic ones.

However, Dr. Reisberg’s skepticism of recovered memories is not generally accepted among the scientific community. App. at 69-104 (research compilation).

Dr. Reisberg explained that scientists disbelieve recovered abuse memories, because they have succeeded in implanting false memories in test subjects. RP 786-87, 828-29 (never of child abuse). In real life, he testified, it is the therapist who implants false memories of childhood abuse. RP 839-41.

But in this case, decades after false memory tales hit the media, there is no evidence to suggest that MG’s therapists were so inept as to implant false memories. RP 139, 154-55, 187, 513, 520, 840. The only counselor MG saw before he disclosed the abuse to his grandmother was Dr. Steffener, who only helped MG find ways to cope with

⁶ C.L. Whitfield, The “false memory” defense: Using disinformation and junk science in and out of court, J. of Child Sexual Abuse, 9(304), 53-78 (2001) (describing “the seemingly sophisticated but mostly contrived and often erroneous “false memory defense”); C.L. Whitfield et al., Introduction: Exposing misinformation concerning child sexual abuse and adult survivors, J. of Child Sexual Abuse, 9(3-4), 1-8 (2001) (addressing “controversial and unproven claims such as the ‘false memory syndrome’”).

his illnesses. RP 636. Dr. Steffener first learned about the abuse only after MG told his family, and even then MG was not comfortable discussing this topic with a male therapist. RP 158-59 (MG suffers from androphobia), 637-39. As MG testified, “nobody ever said, oh, you were sexually abused, you know, or did this happen, did this happen. Oh, this is real; this isn’t real. I -- everything came from me.” RP 207.

Professor Jennifer Freyd at the University of Oregon has explained that false memory theory as presented in criminal trials conflates memory accuracy with memory persistence, dimensions which are conceptually and empirically separate. App. at 108-09. *See also* C. Dalenberg, Recovered memory and the Daubert criteria: Recovered memory as professionally tested, peer reviewed, and accepted in the relevant scientific community. *Trauma, Violence, Abuse*, 7(4), 274-310 (Oct. 2006) (false memory is a largely orthogonal concept to recovered memory, one phenomenon largely irrelevant to the potential for the other) (concluding recovered memory evidence is admissible under Daubert). Continuity of memory is not linked to accuracy.

The fact of the matter is abuse victims regularly report forgetting. App. at 109-10. It is unclear whether they mean they were unable to access the memories at will or whether they simply successfully avoided thinking about abuse. R. Fivush & V. J. Edwards, Remembering and forgetting childhood sexual abuse. *J. of Child Sexual Abuse*, 13(2), 1-19 (2004) (most subjects claimed that they had not recalled their abuse for periods but also claimed they had never forgotten). Prof. Freyd’s Betrayal Trauma Theory explains that forgetting permits victims to stay attached to their caregiver abusers upon whom they depend. App. at 110-11. Dr. Poole’s testimony is consistent: a child who was “being taught and coerced into being silent” would develop a coping mechanism of suppressing memories “so he can go about his daily life.” RP 561, 563.

As MG testified, "I was threatened and I was frightened, and to continue living day in and day out, I had to be able to do something to help me cope with all of that." RP 182. He "filed away the sexual abuse memories so that I would be able to function and survive." RP 211. He pushed it out of his mind. RP 128, 171, 182. In the spring of 2014, MG was unable to force the memories out of his mind when they began to recur to him unbidden. RP 128-29, 169.

The Defendant cannot show that the lack of a Frye hearing was a fundamental defect which inherently results in a complete miscarriage of justice. Because the court did not qualify MG's treatment providers as experts, because they did not provide expert testimony, and because recovered memory is not a novel theory, a Frye hearing was not required. If there had been a Frye hearing, it is likely that Dr. Reisberg's testimony would have been excluded. Instead, the Defendant's expert was permitted to disparage the treatment providers as mere clinicians and to testify falsely that false memory theory (to the exclusion of recovered memory theory) is generally accepted in the scientific community.

Insofar as the Defendant may like to litigate either the novelty of recovered memory or the general acceptance of false memory, this is what a timely objection is for. The Defendant's failure to make the record below means the issue is unreviewable.

4. The Defendant received effective assistance of counsel

The Defendant claims he was denied effective assistance of counsel at trial and on appeal. Mr. Fricke represented him in both instances.

Legal standards: A petitioner asserting ineffective assistance of appellate counsel must establish both deficient performance and actual prejudice. *In re Morris*, 176 Wn.2d 157, 166, 288 P.3d 1140, 1144 (2012). Actual prejudice is "a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different."

Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Smith v. Murray*, 477 U.S. 527, 535–36, 106 S. Ct. 2661, 91 L. Ed. 2d 434 (1986) (applying the *Strickland* test to ineffective assistance of appellate counsel).

A defendant must show that counsel had no legitimate strategic or tactical reason for the challenged conduct. There is a strong presumption that counsel’s representation was effective. *State v. McFarland*, 127 Wn.2d 322, 336, 899 P.2d 1251, 1257 (1995). And there is a strong presumption that counsel’s performance was reasonable, legitimate, and tactical. *In re Morris*, 176 Wn.2d at 167; *McFarland*, 127 Wn.2d at 335.

Judicial scrutiny of counsel’s performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.

Strickland, 466 U.S. at 669.

The failure of a defendant’s counsel to obtain a successful result is not indicative of ineffective representation. *State v. Johnson*, 172 Wn. App. 112, 297 P.3d 710 (2012) (failure of counsel to predict outcome of undecided appellate case was not deficient performance), *aff’d in part, rev’d in part*, 180 Wn.2d 295, 325 P.3d 135 (2014). “While it is easy in retrospect to find fault with tactics and strategies that failed to gain an acquittal, the failure of what initially appeared to be a valid approach does not render the action of trial counsel reversible error.” *State v. Renfro*, 96 Wn.2d 902, 909, 639 P.2d 737 (1982).

An appellate attorney succeeds by selecting the strongest claims, rather than attempting every possible claim.

Failure to raise all possible nonfrivolous issues on appeal is not ineffective assistance, however. Rather, the exercise of independent judgment in deciding which issues may be the basis of a successful appeal is at the heart of the attorney’s role in our legal process.

Matter of Pers. Restraint of Lord, 123 Wn.2d 296, 314, 868 P.2d 835, 848 (1994).

Appellate counsel may consciously decide not to pursue a particular claim after deciding it would not succeed under the law in existence at that time. *Smith v. Murray*, 477 U.S. at 531. Such “a deliberate, tactical decision not to pursue a particular claim” will not support a later habeas petition reframed as ineffective assistance of appellate counsel. *Id.* at 534.

This process of “winnowing out weaker arguments on appeal and focusing on” those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy. *Jones v. Barnes*, 463 U.S. 745, 751-752, 103 S.Ct. 3308, 3312-3313, 77 L.Ed.2d 987 (1983). It will often be the case that even the most informed counsel will fail to anticipate a state appellate court’s willingness to reconsider a prior holding or will underestimate the likelihood that a federal habeas court will repudiate an established state rule. But, as *Strickland v. Washington* made clear, “[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” 466 U.S. at 689, 104 S.Ct. at 2065.

Id. at 536.

The Defendant claims his attorney should have objected to opinion testimony and on *Frye* grounds. BOP at 4 (C, D, G, H), 72, 74-75. These claims have been addressed *supra*. The objections would have been without merit.

The Defendant argues that, in cross-examining Dr. Poole and Dr. Tauben, his attorney should have challenged their testimony that childhood abuse could be proven by a PTSD diagnosis. BOP at 74-75. As explained above, neither doctor testified in this way. Therefore, if defense had made these arguments in cross-examination, it would have offered the witnesses an opportunity to correct the defense’s mischaracterization of their testimony and to challenge the defense’s theory of the case.

Mr. Fricke’s strategy was far superior. Counsel allowed his own expert to have the first and last word. In this way, Dr. Reisberg was able to set up the strawman (characterize

the testimony of the State's witnesses) and deride their testimony. RP 793-94, 798. Trial counsel is afforded the presumption of competence.

The Defendant argues that his attorney failed to prepare adequately for the testimony of MG's five treatment providers. BOP at 4 (B, I), 73-74. However, the facts he provides recommend the opposite conclusion. The emails show that Mr. Fricke requested interviews through the prosecutor. BOP App. F and G. And Mr. Fricke has advised the Petitioner that he believes he interviewed all of them and was not surprised by their testimony. BOP App. H, ¶9.

The Defendant does not argue that his attorney was not aware what the witnesses would testify to. Rather he argues that his attorney "did not anticipate how much emphasis the State was going to place on that testimony." BOP at 74. This not a cognizable claim. No attorney has the right to obtain the opponent's strategy. CR 26(b)(4); CrR 4.7; RCW 42.56.290; *Limstrom v. Ladenburg*, 136 Wn.2d 595, 609, 963 P.2d 869 (1998) (regarding work product).

The Defendant claims that his attorney was not aware that Dr. Tauben might offer expert testimony on the abuse of false memory theory in criminal cases. BOP at 74. But the court sustained Mr. Fricke's objection on this basis, excluding that testimony. Based on the State's representations, Mr. Fricke understood that Dr. Tauben would testify about his treatment of MG and not as an expert on false memories. RP 732-33 ("That goes far beyond what he has been designated to testify to."). The court agreed and sustained the objection. RP 735-36. Prevailing on an objection and successfully excluding the State's evidence demonstrates adroitness, not deficiency.

The Defendant thinks Mr. Fricke should have "explored" whether MG was malingering and or had factitious disorder. BOP at 75. *See also* BOP App. U at 3, ¶7(a) (recommending an independent evaluation to assess "the possible presence of malingered

of factitious symptoms”). However, he does not show that MG has these diagnoses. In other words, he can show no prejudice.

He also cannot show that the court would have required MG to sit for an evaluation. Dr. Whitehill’s recommendation to explore these diagnoses is predicated on false information. Dr. Whitehill says the testimony was that “after experiencing a ‘pseudo-seizure’ in March 2014, M.G. suddenly recognized that he had been raped.” BOP App. U at 3, ¶7(a). That was not the testimony. M.G. never forgot that he had been raped. He spoke to his grandmother and mother about the rapes prior to his seizure. After his seizure in March 2014, MG did not suddenly remember anything. Rather, he suddenly forgot all memories of everything but the rapes. He has never recovered these memories.

The Defendant argues that his attorney should have had his neighbors (the Van Nattas and the Pagays) testify. BOP at 76. But Mr. Fricke has explained, “they were all subpoenaed, but I made a decision during trial not to call them. It was a strategic decision.” BOP App. H at ¶13.

At trial, the Defendant called Mikkell Van Natta, who testified that it was her impression that MG’s seizures were performances for his mother’s benefit. RP 866. As the prosecutor pointed out, this lay witness had no medical training. RP 867-68. Actual medical professionals witnessed the seizures first hand. RP 448 (admitting doctor’s note); 663 (describing seizures occurring during EMDR treatment).

The Defendant argues that other lay witnesses could have reiterated Mikkell Van Natta’s testimony. BOP at 76. But courts will exclude the needless presentation of cumulative evidence. ER 403.

The Defendant argues that his attorney should have called witnesses to testify that MG was capable of walking. BOP at 76. But the evidence was not that MG was incapable

of walking. He suffered from chronic fatigue syndrome and fibromyalgia. In other words, he had muscle weakness and pain from which he easily tired.

The Defendant wishes that his mother Jackie Fugle had been called to testify so that she could have belittled her stepgrandson's pain. BOP at 76. Mr. Fricke is entitled to a presumption of effectiveness. His choice not to antagonize the jury by pointlessly attacking a sympathetic victim with these witnesses is a legitimate strategy or tactic. It is also the far better tactic.

On the prosecutor's motion, the court had excluded lay opinion and character testimony. Jackie Fugle, the Defendant's mother, has been critical of her daughter-in-law's parenting "[from] the first day Joe and Jana married." App. at 126. She cannot even bring herself to admit that there was domestic violence in the marriage. If Jackie Fugle's undisciplined testimony opened the door, the prosecutor could have called many more witnesses "that were aware of the domestic violence, that did witness Joe's bad behavior and that did see Joe exactly as we have testified he behaved so as to [] inundate the Court." App. at 121.

The testimony the Defendant proposes is objectively offensive, and the prosecutor could have made quick work of it. The hearsay would be inadmissible, and the bias is undeniable. Kirk Van Natta is a middle school counselor who calls himself a "Professional Chaplain." App. at 9-10. Despite these honorifics, he lacks any sympathy for MG and defames the victim as a sexual predator and manipulator. *Id.* So self-important is this counselor, that twice in his short email to the court, Mr. Van Natta takes umbrage that law enforcement did not consult him. *Id.* Mr. Van Natta acknowledges he does not know what the evidence was a trial, and yet is confident in his conclusion that the prosecutor's case was without merit. *Id.*

The Defendant poisoned these particular adults against MG with stories disparaging MG and ridiculing his ailments.

Joe's family [members] ... have such little knowledge of who my children really are that they don't even know after 14 years how to spell their names.

....

Not only did my son distance himself from all of these people that have written in against him, as he knew they favored Joe and acted as if they did not like him, but we all did because of Joe's position with them and their lack of interest in hearing what was actually going on. There were a few times in middle school when [MG] did speak to Kirk Van Natta but did not feel like Kirk was able to hear him because he was so biased towards Joe. I find it interesting that these few people who had minimal interaction with my son over the years say [MG] repeatedly told them he was going to get rid of Joe but yet he never spoke of his plans to me, his grandmother, aunts, uncles, cousins and friends that he did confide in about the abuse within our home. He would never have opened up to these people because he did not feel they were safe to talk to, these were all neighbors that Joe had a relationship with long before we ever moved in and were introduced to them.

App. at 122.

The Defendant argues that Dr. Whitehill found the statements of the lay witnesses "compelling and reasonable to rely on as a psychologist." BOP at 76. Dr. Whitehill made no such statement. He noted that MG's many medical appointments, the multiplicity of symptoms, and the general absence of medical findings "suggest[] the presence of a rival hypothesis ... of a factitious disorder." BOP App. U at 5. He claimed the witness statements also support the hypothesis. BOP App. U at 5-6. But he did not state that their testimony was compelling or reasonable to rely upon for diagnostic purposes.

The Defendant argues that his attorney should have offered testimony that MG wanted to break up his mother's marriage. BOP at 76. There are many justifiable, tactical reasons why his trial counsel would prefer not to go down this path. For one, when MG came forward, the couple was already separated for other reasons. That is, MG did not make these accusations to break up a marriage; it was already breaking up. Two, when MG came forward, he had no recollection of those statements or even of his mother.

Without a recollection, he could no longer be said to maintain this goal. Three, the witnesses who would provide this testimony lacked jury appeal and could result in even greater sympathy for the victim. *See also* RP 149 (court reprimanding Defendant's family for ridiculing MG while he was testifying). Four, it would be reasonable for MG to want to separate from the person who was raping and terrorizing him.

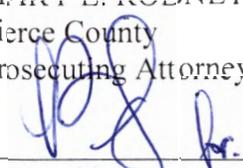
The Defendant's claims of ineffective assistance of counsel are without merit.

F. CONCLUSION:

Based on the foregoing, the State respectfully requests this Court dismiss the petition as frivolous.

DATED: 12/23/19

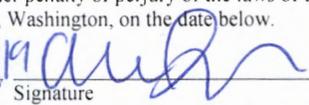
MARY E. ROBNETT
Pierce County
Prosecuting Attorney



Teresa Chen
Deputy Prosecuting Attorney
WSB # 31762

Certificate of Service:

The undersigned certifies that on this day she delivered by US mail or ABC-LMI delivery to the petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12/23/19
Date 
Signature

APPENDIX "A"

APPENDIX: TABLE OF CONTENTS

Declaration of Mark B. Whitehill	1
Stipulation and Agreed Protective Order Regarding Medical Records of M.G., Discovery pages 236-354.....	4
Defendant’s Witness List	6
Email from Kirk Van Natta	8
State’s Motions in Limine	11
Court’s Instructions to the Jury.....	25
Michael Salter article in The Guardian Attacks on the credibility of abuse survivors are not justified by the research	65
Research Compiled.....	69
The Recovered Memory Debate/“False Memory” theory.....	69
“Traumatic Memory”: Memory Disturbances and Dissociative Amnesia.....	72
Memory Disturbances and Dissociative Amnesia in Survivors of Childhood Abuse.....	88
Memory Disturbances and Dissociative Amnesia in Holocaust Survivors.....	98
Memory Disturbances and Dissociative Amnesia in War Veterans.....	102
Jennifer Freyd Powerpoint Misleading and Confusing Media Portrayals of Memory Research	105
Letter from Jana Fugle.....	120
Email from Jackie Fugle.....	125

September 03 2015 9:51 AM

KEVIN STOCK
COUNTY CLERK
NO: 14-1-04016-6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 14-1-04016-6
)	
v.)	DECLARATION OF
)	MARK B. WHITEHILL, Ph.D.
JOSEPH LEROY FUGLE,)	
)	
Defendant.)	
-----)	

I, Mark B. Whitehill, Ph.D., state as follows:

I am over the age of eighteen and competent to be a witness herein.

That the defense asked that I engage in a consultative review of materials relative to the case of State v. Fugle (Pierce County Cause No. 14-1-04016-6). Defendant Joseph Lee Fugle is charged in Pierce County Superior Court with Child Molestation in the First Degree, 2 counts of Rape of a Child in the First Degree, and Rape of a Child in the Second Degree. The alleged victim, M.G., is the defendant's stepson, now 20 (DOB: 07-14-95).

In the service of that request I examined the following documents:

1. Amended Information (10-08-14)
2. Declaration for Determination of Probable Cause (10-08-14)
3. Defense Investigative Interviews of:
 - a. Jeanette Ruth Jepson (06-15-15)

DECLARATION OF MARK B.
WHITEHILL, Ph.D. - 1

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

out” and/or reinforced his recollection of sexual abuse by the defendant, either implicitly or explicitly;

6) M.G. reported experiencing physical abuse by the defendant, as did the defendant’s estranged wife (M.G.’s mother); anger at such abuse may result in exaggerated or falsified claims of other abusive conduct.

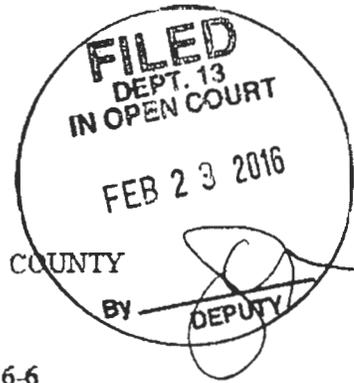
7) Because this case began based on a nightmare of an incident allegedly occurring many years prior, without any contemporaneous memories of the alleged event, it is important to have access to all of the counseling records surrounding the disclosures to determine whether they are truly memories or are based on falsely created recollections.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and information.

Signed at Lakewood, Washington this 2 day of September, 2015.



Mark B. Whitehill, Ph.D.
Licensed Psychologist
Certified Sex Offender Treatment Provider
Clinical & Forensic Psychology, Inc., P.S.



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 14-1-04016-6

vs. JOSEPH LEROY FUGLE,

STIPULATION AND AGREED PROTECTIVE ORDER REGARDING MEDICAL RECORDS OF M.G., DISCOVERY PAGES 236 THROUGH 354

Defendant.

The defendant, JOSEPH LEROY FUGLE, and the Pierce County Prosecuting Attorney, by and through their respective counsel, hereby stipulate to the entry of a Protective Order and regarding the use and distribution of the Medical Records of M.G. (DOB 7/14/1995) contained in discovery pages 236 through ~~354~~ 354, provided in the course of discovery in the above-entitled cause and agree to the following conditions, which apply to the defendant, both prosecution and defense counsel, and their respective employees and agents:

1. The evidence shall not be used for any purpose other than to prepare for the prosecution and/or defense of the named defendant in the above-entitled cause.
2. The evidence shall not be given, loaned, sold, or shown or in any other way provided to any member or associate of the media unless expressly permitted by court order.
3. The evidence shall not be exhibited, shown, displayed, or used in any fashion except in connection with judicial proceedings in the above-entitled cause. This provision is not meant to prohibit the defense or prosecution from exhibiting the evidence to any person(s) necessary to the preparation and/or presentation of the prosecution or defense case, such as expert witnesses.
4. The evidence shall not be duplicated, except as required in connection with the prosecution or defense of the above-entitled cause and each resulting copy shall be governed by this Order as if an original.
5. The defendant shall not, under any circumstances, be permitted to retain or possess the medical records of M.G. (DOB 7/14/1995) contained on discovery pages 236 through 354 and is only permitted to review the medical records of M.G. (DOB 7/14/1995) contained on discovery pages 236 through 354, in the presence of defense counsel, a defense investigator, or a defense expert. The defendant shall not be permitted to review the medical records of M.G. (DOB 7/14/1995) contained in discovery pages 236 through 354 alone.

(354)

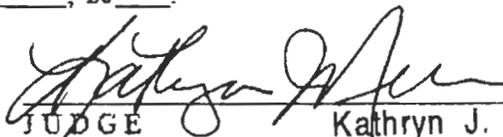
1
2 6. The medical records of M.G. (DOB 7/14/1995) contained in discovery pages 236 through 354, shall be maintained by defense counsel in a secure location.

3 7. Before either party provides the evidence to an expert witness, the party shall provide the expert
4 with a copy of this Order.

5 8. A copy of this Order shall be kept with the medical records of M.G. (DOB 7/14/1995) contained
6 in discovery pages 236 through 354 at all times.

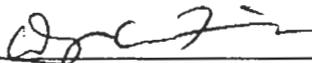
7 9. Any violation of this Order may be the subject of personal or professional sanction by the court
8 presiding over the proceedings for which the discovery/records are sought or may subject counsel to other
9 sanctions permitted by law.

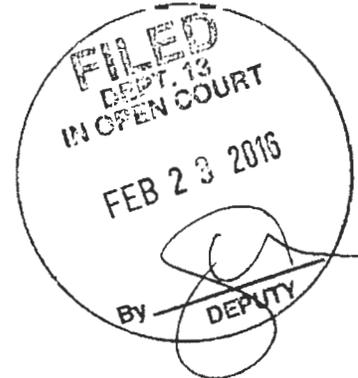
10 DATED this 23 day of Feb, 2016.

11 
12 JUDGE Kathryn J. Nelson

13 Presented by:

14 
15 KARA E. SANCHEZ
16 Deputy Prosecuting Attorney
17 WSBA #35503

18 
19 WAYNE FRICKE
20 Attorney for Defendant
21 WSBA # 20177
22 16557

23
24
25
26
27
28


May 25 2016 9:08 AM

KEVIN STOCK
COUNTY CLERK
NO: 14-1-04016-6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 14-1-04016-6
)	
v.)	DEFENDANT'S WITNESS LIST
)	
JOSEPH LEROY FUGLE,)	
)	
Defendant.)	

In the above-referenced case, the defendant, Joseph L. Fugle, may call as witnesses the following:

- 1) Jeremiah Croke
- 2) Heidi Lee-Gilbert
- 3) Dawn Pagay
- 4) Nina Pagay
- 5) Robert Pagay
- 6) Kyle Siguaw
- 7) Mikkel Van Natta
- 8) Kirk Van Natta
- 9) Lyn Van Natta

DEFENDANT'S LIST OF WITNESSES - 1

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

10) Daniel Reisberg, Department of Psychology, Reed College

The defendant reserves the right to call on behalf anyone appearing on the prosecuting attorney's witness list.

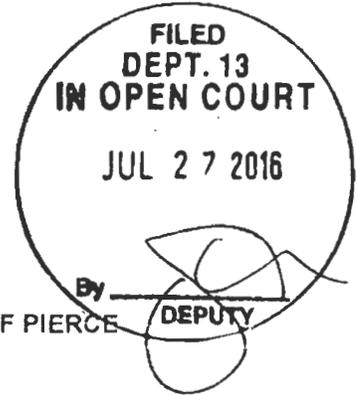
DATED this 19th day of May, 2016.

HESTER LAW GROUP, INC. P.S.
Attorneys for Defendant

By: 
Wayne C. Fricke
WSB #16550

0122

14-1-04016-6 47311108 LTRSUP 07-27-16



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON

Plaintiff

vs.

FUGLE, JOSEPH LEROY

Defendant

Cause No. 14-1-04016-6

EMAIL FROM KIRK VAN NATTA

13167

7/28/2016

Ginele Eilert

From: KIRK VAN NATTA <kirkvannatta@hotmail.com>
Sent: Tuesday, July 26, 2016 10:58 PM
To: SUPCRTDEPT13
Subject: Concern for Joe

Chaplain Kirk Van Natta

2012 105th St E

Tacoma, WA 98445

253-720-5462

Judge Katherine Nelson

Pierce County Building 315

Judge Nelson,

I am writing on behalf of Joseph Fugal and feel that you have to make an important decision Friday that will not only effect him but Jana, Mitchell and the entire family. I have lived next door to the Fugal's since 2001. I have never seen Joe get angry to the point of losing control and or even anger to the point of yelling. It is troubling in that we had an open door policy where we would enter each other's houses without knocking and in fact would kid each other when we did knock. My kids and his kids played together and Joe would take my son Connor to the store with him alone on several occasions. I have presented the situation to my soon Connor and Joe has always been like a second father to him with no improprieties or even a hint of them. The open door policy stopped when Jana forced Joe to move out of the house. Often times are families would share meals or have each other's kids eaten at our houses. The only child that did not do this often was Mitchell who as he got older stayed in his room.

I have not been a part of the trial and do not know what was and what was not presented. I have never been contacted by the prosecutor or police concerning the case and feel I should have been as a neighbor, Counselor for Mitchell when he was in Middle School, and Professional Chaplain. I do not feel that there is any evidence that any misconduct even occurred. I am not sure what Age Mitchell was when he alleged that this happened, but Joe has always been supportive of Jana's children and even refinanced his house so that Andrea could go to a special school. After being removed from his house he continued to support Jana and the rest of the family and has continued to support them until he was incarcerated. Joe has also been a rock in the neighborhood always reaching out to the neighbors and helping out when needed. Joe has been an upstanding neighbor, someone who I can trust with an open door, with taking care of my children and grandchildren.

0125

13167

7/28/2016

I am making a plea for Joe as I personally feel he is innocent. Mitchell is a very brilliant young man and was looking at going to Harvard until he made a big change. I am not sure what turned him but this change started late in his Junior year of high school when he stated that he was going to break up Joe and Jana and destroy Joe. I feel it is not a coincidence that he came up with these sexual accusations as Mitchell himself as a minor, was accused of sexually assaulting children that Joe and Jana were watching. Ever since that time Mitchell start secluding himself in his room and hardly ever came out. One Time when we were watching a movie over at Joe and Jana's house Mitchell texted her mom to cook him some food so she got up and made him something to eat. I feel sorry for Mitchell as he has physically deteriorated and there is no physical reason for it. He know needs 24 hour care which is what he wanted from Jana.

In conclusion, I feel Joe has been wrongly accused. He is and will always be someone who thinks of others before himself and takes care of his family. I am very disappointed in our justice system to not even contact anyone in my family as a neighbor to look into the situation. Please take into consideration the track record that Joe has as a neighbor, years of service working for Tacoma public utilities and clean record in consideration and find Joe innocent of these false accusations.

Sincerely,

Chaplain,

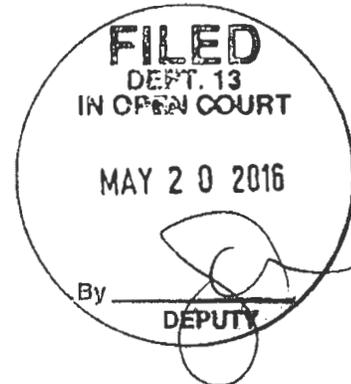
Kirk D Van Natta

253-720-5462

ORIGINAL



14-1-04016-6 46939953 MTL 05-23-16



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-04016-6

vs.

JOSEPH LEROY FUGLE,

Defendant.

STATE'S MOTIONS IN LIMINE

I. IDENTITY OF MOVING PARTY:

Plaintiff, State of Washington, requests the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT:

The State requests that this court grant the State's motions in limine set forth herein.

III. MOTIONS IN LIMINE

1) **Exclude argument as to punishment:** Exclude evidence or argument concerning defendant's potential term of confinement.

The jury will be instructed:

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

WPIC 1.02.

The defendant's potential punishment is not relevant to the jury decision as to whether or not the defendant is guilty or not guilty. Any evidence or argument concerning potential punishment

0079

12228

5/24/2016

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 would be irrelevant and prejudicial. The court should order that any and all evidence or
2 argument concerning potential length of punishment is excluded. The court should also exclude
3 any argument that is intended to urge the jury to decide the case based on passion or sympathy,
4 such as references to a conviction in this case would "ruin the defendant's life."

5 2) **Exclude undisclosed witnesses:** The State moves to exclude any defense witness or
6 evidence not already disclosed as required pursuant to Washington State Superior Court Criminal
7 Rules (CrR) 4.7(b). If the defense intends to call any witness or introduce any evidence not
8 already disclosed, the State moves this Court to compel production of such witnesses and/or
9 evidence pursuant to CrR 4.7(b)(2), including inspection of any physical or documentary
10 evidence.

11 3) **Statements for purposes of medical diagnosis or treatment:** The State will seek to
12 admit M.G.'s statements to various doctors, including counselors, on the State's witness list
13 about the abuse. M.G. has seen multiple doctors over the course of a few years, seeking
14 diagnosis for his pain, weakness and fatigue. M.G. has also seen multiple counselors and
15 psychologists, both before and after his disclosure of sexual abuse by the defendant.
16

17 ER 803(a)(4) provides that statements made for purposes of medical diagnosis or treatment
18 are not excluded by the hearsay rule. The rule applies equally to treating physicians and
19 physicians who are consulted for the purpose of enabling the physician to testify, as in forensic
20 examinations. *In re Dependency of Penelope B.*, 104 Wash. 2d 643, 655-656, 709 P.2d 1185
21 (1985). The rule also applies to more than physicians. Statements to an emergency room nurse,
22 who was employed by the hospital as a forensic nurse, by the victim in an assault and rape case,
23 were admissible pursuant to ER 803(a)(4). *State v. Williams*, 137 Wash.App. 736, 154 P.3d 322
24 (Div. 2, 2007). The statements of a child victim of indecent liberties to an emergency room
25

1000
1000
9105/2010

1 nurse and physician were admissible. *State v. Robinson*, 44 Wash.App. 611, 722, P.2d 1379
2 (Div. 3, 1986). M.G.'s statements to the doctors, counselors and psychologists are admissible
3 pursuant to ER 803(a)(4) as statements made for purposes of medical diagnosis or treatment.

4 4) **Character evidence of victim and witnesses:** The State moves to exclude inadmissible
5 character evidence of M.G., his mother Jana Fugle, or his grandmother, Jeannette Jepson.
6 Generally, a victim's character is admissible only in cases in which the defendant is claiming
7 self-defense (to show that defendant had reasonable apprehension of danger) or suicide. *See*
8 *State v. Walker*, 13 Wash.App. 545, 536 P.2d 657 (1975) and *State v. Stafford*, 24 Wash.App.
9 783, 604 P.2d 980 (1979)(*abrogated on other grounds*). "In criminal cases, character is rarely an
10 essential element of the charge, claim or defense." *State v. Kelly*, 102 Wash.2d 188, 196, 685
11 P.2d 564 (1984). Even in cases where the defendant is claiming self-defense, the victim's
12 character trait of violence is often not an essential element of the self-defense claim. *State v.*
13 *Hutchinson*, 135 Wash.2d 863, 887, 959 P.2d 1061 (1998), citing to *State v. Alexander*, 52
14 Wash.App. 897, 901, 765 P.2d 321. The *Hutchinson* Court noted that the *Alexander* Court
15 upheld the trial court's exclusion of specific acts of the victim, that the self-defense issue was
16 resolvable "without any evidence of, or reliance upon, a character trait of the victim, or the
17 defendant." *Id.* Evidence of the character trait alone does not satisfy an element of the charge or
18 defense and was therefore not essential, and the evidence was properly limited to opinion or
19 reputation. *Id.*

21 In this case, there is no pertinent character trait of M.G., Ms. Fugle or Ms. Jepson that is
22 even remotely pertinent to the elements of, or a defense to, the charges of child molestation and
23 rape of a child. The defendant's witness list is comprised mostly of friends and neighbors of the
24 defendant who, in the summaries provided by defense, claim that the defendant is good person
25

1 and M.G. has an "attitude problem." Any testimony about their opinion of M.G.'s character, or
2 that of Ms. Fugle or Ms. Jepson, would be improper opinion testimony. Such testimony is
3 merely an attempt at character assassination and would only serve to improperly appeal to the
4 sympathies of the jury.

5 As there is no pertinent character trait at issue, the admissibility of any character evidence
6 is governed solely by ER 608, which dictates that a witness's credibility may be attacked in the
7 form of reputation, subject to the limitation that the evidence admitted may refer only to
8 character for truthfulness or untruthfulness.

9 ER 608 further provides that specific instances of conduct may be explored on cross-
10 examination in the discretion of the court if probative of truthfulness or untruthfulness. Extrinsic
11 evidence is not permitted. *See also State v. Barnes*, 54 Wash.App. 536, 540, 774 P.2d 547
12 (1989)(pursuant to ER 607 and 608, if the witness admits to the specific act of misconduct on
13 cross-examination, extrinsic evidence is not necessary, and if the witness denies the act, the
14 inquiry is at an end and the cross-examiner must "take the answer of the witness and may not call
15 a second witness to contradict the first witness."). It would therefore be impermissible to elicit
16 evidence of any instance of the victim's "misconduct" through testimony of anyone but the
17 victim, in any event.

18 ER 608 explicitly provides:

19
20 (a) Reputation evidence of character - The credibility of a
21 witness may be attacked or supported by evidence in the form of
22 reputation, but subject to these limitations: (1) the evidence may
23 relate only to character for truthfulness or untruthfulness, and (2)
24 evidence of truthful character is admissible only after the character
25 of the witness for truthfulness has been attacked by reputation
evidence or otherwise.

(b) Specific Instances of Conduct - specific instances of the
conduct of a witness, for the purpose of attacking or supporting the
witness' credibility, other than conviction of crime as provided in

0082
12228
5/24/2016

1 Rule 609, may not be proved by extrinsic evidence. They may,
2 however, in the discretion of the court, if probative of truthfulness
3 or untruthfulness, be inquired into on cross-examination of the
4 witness, (1) concerning the witness' character for truthfulness or
5 untruthfulness, or (2) concerning the character for truthfulness or
6 untruthfulness of another witness as to which character the witness
7 being cross examined has testified.

8 Additionally, even where a specific instance of conduct demonstrates untruthfulness,
9 Washington courts have held such evidence inadmissible if it is not germane to the issue of the
10 defendant's guilt or innocence. *State v. Griswold*, 98 Wash.App. 817, 831, 991 P.2d 657 (2000)
11 (holding that even assuming prior false statement of victim in a child molestation trial was
12 relevant to her credibility, the statement was not germane to the issue of guilt and was clearly
13 collateral. The statement in question involved reasons why the victim was not able to continue
14 helping a friend deliver papers) (*abrogated on other grounds*). Thus, not every statement or act
15 that may be attributable to the victim in this case that may be relevant to her credibility is
16 necessarily admissible; it must not be collateral, it must be germane to the issue of guilt. In other
17 words, a party may not impeach a witness with every lie he or she has ever told. Washington
18 Courts have even held evidence that the victim has previously made false allegations of sexual
19 assault or abuse is inadmissible. *State v. Mendez*, 29 Wash.App. 610, 630 P.2d 476 (1981);
20 *State v. Harris*, 97 Wash.App. 865, 989 P.2d 553 (1999)(evidence that a rape victim has accused
21 others is irrelevant and not admissible, unless defendant can demonstrate that the accusation was
22 false).

23 Finally, in order for reputation for truthfulness or untruthfulness evidence to be
24 admissible, the reputation must be shown to exist in a neutral and generalized community. *State*
25 *v. Gregory*, 158 Wash.2d 759, 804, 147 P.3d 1201 (2006). In *Gregory*, the Court held that a rape
victim's family was neither sufficiently general nor neutral to allow reputation evidence. The

1 *Gregory* Court noted that “ ‘[t]o establish a valid community, the party seeking to admit the
2 reputation evidence must show that the community is both neutral and general.’ Relevant factors
3 include ‘the frequency of contact between members of the community, the amount of time a
4 person is known in the community, the role a person plays in the community and the number of
5 people in the community. *Id.* quoting *State v. Land*, 121 Wash.2d 494, 500, 851 P.2d 678
6 (1993). In addition, a party seeking to admit reputation evidence is limited to the following
7 inquiry:

- 8 1) Do you know the general reputation at the present time of (witness),
9 in the community in which he lives, for truth and veracity?
10 2) Is his reputation good or bad?

11 *Tegland*, (2000). Any deviation from this standard script is error. *State v. Maule*, 35 Wash.
12 App. 287, 667 P.2d 96 (1983).

13 As stated above, the defendant’s witness list is comprised of family and neighbors, who,
14 it is clear from the summaries defense provided of their interviews with the defense investigator,
15 that they are supportive of the defendant and not supportive of M.G. Their statements
16 demonstrate a clear bias in the defendant’s favor, and also demonstrate little to no personal
17 knowledge of any facts. Their statements are pure opinion about the defendant’s character and
18 M.G.’s character and their belief that the allegations are false. For example, one witness, Nina
19 Pagay, apparently told the defense investigator that M.G. is a “very dramatic kid,” who
20 exaggerates and needs to have “drama” in his life and she does not believe the allegations are
21 true. Another witness described M.G. as having an “attitude problem.” Another witness stated
22 that he has “serious doubts” about whether M.G. suffered amnesia and believes M.G. is lying
23 about the sexual abuse. Yet another witness told the defense investigator that M.G. “has not
24 been able to convince her that he suffered from amnesia, that the amnesia “is a joke...his way to
25

1 continue manipulating people.” It is shockingly clear that, if the defendant intends to have these
2 witnesses testify to the majority of what is in the summaries, the defendant wishes to turn this
3 trial into a trial centered around M.G.’s character, as seen by a number of clearly biased and very
4 opinionated people.

5 However, this is just the type of character evidence that is not permitted. Instead, the
6 defendant must be limited to evidence of M.G.’s reputation for truthfulness or untruthfulness in a
7 neutral and general community. It is clear that the defendant would not be able to establish a
8 neutral and general community. The proponent of the evidence must establish the proper
9 foundation for reputation evidence.

10 6) Testimony about delayed disclosure: the State will seek to admit expert testimony of
11 Keri Arnold, a forensic interviewer, regarding issues surrounding disclosure of sexual abuse by
12 children, pursuant to ER 702 and subject to proper foundation established at trial. Forensic
13 interviews are conducted where there has been an allegation of sexual abuse of a child, and, as
14 such, the interviewers have had extensive training and education regarding the issues that arise
15 when such allegations have been made, from interviewing techniques to how children “disclose,”
16 which includes children’s memories, knowledge bases, delayed disclosure and other related
17 subjects.
18

19 It is anticipated that at trial, the victims’ memories may not be as clear as they were at the
20 time of the forensic interviews, over a year ago, and also not as clear as an adult’s memory
21 would be. Based on recent defense interviews, it is also anticipated that some of the victims may
22 claim that they do not recall the abuse.

23 Washington case law has made it clear that this testimony is admissible in a prosecution
24 of sex offenses committed against children, and where the testimony is based on these
25

1 professional's training, experience and personal observations of a specific group and when it
2 "does not concern novel theories of sophisticated or technical matters, it need not meet the
3 stringent requirements for general scientific acceptance," also known as the *Frye* standard. *State*
4 *v. Jones*, 71 Wash.App. 798, 815-816, 863 P.2d 85 (1993), *State v. Graham*, 59 Wash.App. 418,
5 421-422, 798 P.2d 314 (1990), and *State v. Stevens*, 58 Wash.App. 478, 794 P.2d 38 (1990). In
6 *Jones, Graham, Stevens* and also in *Sate v. Petrich*, 101 Wash.2d 566, 683 P.2d 173 (1984), an
7 "expert" witness testified to the common phenomenon of delayed reporting or typical behaviors
8 exhibited by children who have been abused, such as, for example, nightmares and acting out
9 sexually. The expert witnesses in these cases were a counselor, a social CPS caseworker, a
10 doctor and an employee of the Harborview Sexual Assault Center.

11 In *Petrich*, the Supreme Court of Washington upheld the trials court's admission of
12 testimony by an employee of the Harborview Sexual Assault Center that delayed reporting
13 occurred in over 50 percent of child sexual abuse cases, that the delay could occur in terms of
14 years, and that in 85 to 90 percent of their cases the victim was abused by someone they knew.
15 101 Wash.2d at 569. The Court specifically noted that in prosecutions of crimes against children
16 the credibility of the complaining issue is by necessity put in issue, and is an inevitable, central
17 issue, "especially if defendant denies the acts charged and the child asserts their commission. An
18 attack on the credibility of these witnesses, however slight, may justify corroborating evidence."
19 *Id.* at 575. Once the credibility of the victim is in issue, as it must be in a he said/she said case,
20 testimony from an expert witness tending to corroborate the victim's testimony is admissible. *Id.*
21 at 575.

22
23 In *Graham*, Division 1 of the Court of Appeals upheld the trial court's admission of the
24 testimony of a counselor at a residential treatment center for adolescents that it is not uncommon
25

1000

0000

0000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for young women to delay in reporting sexual abuse. The counselor’s testimony was based upon her training and experience. The Court noted that the testimony was offered to explain that delayed reporting is not inconsistent with abuse, not to prove that the abuse occurred. 59 Wash.App. at 424. The Court noted that in an earlier case, *State v. Madison*, 53 Wash.App. 754, 770 P.2d 662 (1989) the Court discussed the “value of expert testimony concerning the delay in reporting sexual abuse,” and specifically quoted from *Madison*:

“To an average juror, it may appear that a delay in reporting [sexual abuse] by either an adult or a child, or a recantation of previous allegations, strongly indicates that the alleged event never happened. The testimony approved in ... [*State v. Petrich* 101 Wash.2d 566, 683 P.2d 173 (1984), and that presented in this case, ‘will assist the trier of fact to understand the evidence or to determine a fact in issue.’ ER 702.”

Id. at 425, quoting *Madison*, 53 Wash.App. at 765. The Court further stated: “[b]ecause Graham denied the acts charged, C.S.’s credibility was at issue during the trial.” *Id.* In rejecting defendant Graham’s claims that the counselor’s testimony was a comment on his guilt, the Court noted that the counselor’s testimony was admitted to assist the jury in understanding the evidence, as at no time did the witness offer any opinion, directly or indirectly, as to the truthfulness of the victim’s allegations. *Id.* The Court noted that the trial court considered the counselor’s testimony to be helpful to the jury as rebuttal to defendant Graham’s attack on the victim’s credibility and that “case law *expressly permits* expert testimony for that purpose.” *Id.* citing *Petrich*, 101 Wash.2d at 575 (emphasis added).

In a Division 2 case, *State v. Claflin*, 38 Wash.App. 847, 852, 690 P.2d 1186 (1984), the Court of Appeals held that it was not abuse of the trial court’s discretion to allow a social worker to testify that delayed reporting by a child victim of sexual abuse was “not unusual and that the length of delay correlates with the relationship between the abuser and child.” *Id.* at 852. The Court cited to *Petrich* in support of this holding.

0000

12223

5/24/2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In *Jones*, Division 1 of the Court of Appeals held that the testimony of a CPS caseworker regarding certain behaviors of the victim of sexual abuse such as sexual acting out was in rebuttal to the defense theory that the victim’s behaviors were inconsistent with being sexually abused. 71 Wash.App. at 820. The testimony exceeded the limitations of her personal experience and “included generalized assertions about common behaviors of sexually abused children,” but the Court noted that the testimony was still admissible to rebut the defense theory and implied that had the testimony been kept within the narrow questions posed by the prosecutor it would have been admissible regardless of the defense theory. *Id.*

In *Stevens*, the trial court permitted testimony of a doctor, who testified as a child sex abuse expert, that children who have been sexually abused often exhibited behaviors such as bedwetting, abdominal pain, headache, anger, tantrums, nightmares, “difficult behavior that children have that make their management complicated.” 58 Wash. App. 478, 496, 794 P.2d 38 (1990). The Court of Appeals upheld the trial court’s ruling, stating that:

“the expert did not testify that the victims fit any controversial ‘profile’ or ‘syndrome’ of abuse. Nor did she rely on any unusual technique or theory as a basis for her testimony. She only testified generally as to behaviors consistent in sexually abused children that she had observed in her own experience working in the field.”

Id. at 497.

This case presents precisely the issues that Washington Courts have recognized are particularly challenging in the prosecution of sex offenses committed against children. The six victims in this case range from four to nine years old. Such young children will, as the interviewers are expected to testify, have difficulty with dates, describing time frames, explaining why they did not immediately tell a parent on the days when the abuse occurred, and other such relevant issues that the jury will need to hear about in order to fully weigh each child

1 victim's credibility. In addition to the interviewers receiving copious amounts of education and
2 training on these issues, they have also encountered them personally in their experience: the
3 reasons that children do not disclose, especially immediately, the fact that they have a difficult
4 time with dates and times frames, etc. Washington Courts have repeatedly held that it is entirely
5 proper for a witness with this type of experience be allowed to testify as to what they have
6 encountered in their experience and that such testimony is helpful to the jury in these types of
7 cases.

8 7). **Defendant's character**: The State moves for an order limiting any "character
9 evidence" the defendant may present to that evidence that is pertinent to rebut the nature of the
10 charges. Evidence that the defendant is generally a "good guy" and therefore could not have
11 committed this crime is not relevant and therefore not admissible. *ER 404(a)(1)*. The only type
12 of character evidence relevant for the defendant in sexual abuse cases would be the defendant's
13 reputation for sexual morality, and is rarely, if ever, admissible. *State v. Griswold*, 98 Wash.
14 App. 817, 991 P.2d 657 (2000)(*abrogated on other grounds*), see also *State v. Harper*, 35
15 Wash.App. 855, 670 P.2d 296 (Div. 2, 1983).

17 Similarly, the defendant should be prohibited from attempting to introduce evidence
18 regarding the absence of other incidence or convictions of a similar nature. In *State v. Mercer-*
19 *Drummer*, Division 2 held that a defendant may not testify about his lack of prior criminal
20 history and that any evidence pertaining to the defendant being a "law abiding citizen" could
21 only be admitted as reputation evidence. 128 Wash. App. 625, 116 P.3d 454 (2005).

22 The summaries of witness interviews provided by defense are fraught with opinions that
23 the defendant is a "good citizen," and the "salt of the earth." Essentially, as set forth in the
24 argument above, and in number 8 below, the defendant's witnesses would be offered to turn the
25

1 trial into one that is focused solely on M.G.'s' character, in the opinion of the defendant's
2 witnesses, and the defendant's character, again, in the opinion of the defendant's witnesses,
3 rather than on whether the defendant committed these crimes. Any "character evidence" of the
4 defendant would have to be presented as reputation evidence, in a general and neutral
5 community, for a character trait that is pertinent to the charges; not whether he's "salt of the
6 earth."

7 8.) **Improper opinion testimony:** The State moves for an order in limine prohibiting
8 defense from eliciting opinion testimony from any witnesses regarding the credibility of any
9 other witness, pursuant to ER 608. Division II has held that it is improper opinion testimony in
10 violation of ER 608 to elicit testimony from one witness that they believed, or did not believe,
11 another witness. *State v. Thach*, 126 Wash.App. 297, 106 P.3d 782 (2005). Washington courts
12 have consistently held that it is improper for the State to elicit testimony that the victim of child
13 sexual abuse is being truthful, thus it is similarly improper for defense to elicit testimony that
14 certain witnesses do not believe the child. *State v. Sutherby*, 138 Wash.App. 609, 158 P.3d 91
15 (Div. II, 2007).
16

17 All of the summaries provided by defense of interviews with the defense witnesses
18 include a substantial amount of the witness's opinions that M.G. is fabricating the allegations.
19 Many of the summaries included statements such as "Dawn does not believe M.G.'s sexual
20 assault allegations against Joe. Dawn's younger sister was abused by their mother's boyfriend,
21 so Dawn does have some experience in recognizing signs of sexual abuse." This particular
22 summary went on to state "Dawn wholeheartedly supported Joe, commenting 'oh my gosh no
23 way,' referring to the idea that Joe could have been sexually abusing M.G. over a period of seven
24 years without Jana or one of the neighbors realizing it."
25

1 Yet another listed witness, Heidi Lee-Gilbert, is quoted as saying that while she does not
2 have any firsthand knowledge about the defendant's interactions with M.G. because she was
3 not around them, "she does have questions about M.G.'s allegations toward Joe." This particular
4 witness's testimony would be solely improper opinion testimony about her belief that M.G.'s
5 allegations are false. Thus, the State moves to exclude her testimony in its entirety. Another
6 witness, Nina Pagay, apparently told the defense investigator there is "not a chance that
7 happened. It is improper to elicit testimony from any witness that they do not believe another
8 witness. The summary of witness statements to the defense investigator are lengthy, multiple
9 pages for each witness, all containing improper opinion testimony that all essentially say one
10 thing: they believe M.G. is a manipulative, lying individual and that the defendant is a good
11 person who has never done anything wrong and none of them believe that the defendant sexually
12 abused M.G. The statements are extraordinarily blatant in their dislike of M.G. and their favor
13 for the defendant. In any event, such opinion testimony is prohibited by the rules of evidence.

14
15 The summaries of the defense witness's statements can be for the court's review, with the
16 victim's name redacted, as they are really too lengthy to accurately summarize them for purposes
17 of these motions in limine.

18 To the extent that the defendant's witness's testimony will consist of this improper
19 opinion testimony, the State also moves to exclude these witnesses.
20
21
22
23
24
25

0099

12228

5/24/2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

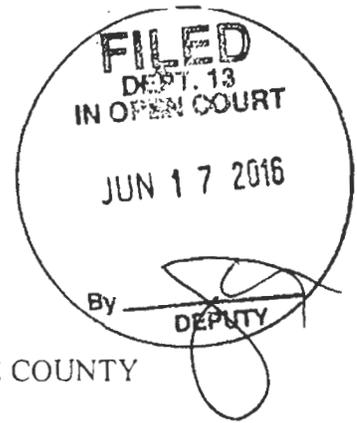
IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that the court grant the State's motions in limine.

RESPECTFULLY SUBMITTED this 20th day of May, 2016.

MARK LINDQUIST
Prosecuting Attorney

By: 
Kara E. Sanchez
Deputy Prosecuting Attorney
WSB #35502



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-04016-6

vs.

JOSEPH LEROY FUGLE,

Defendants.

COURT'S INSTRUCTIONS TO THE JURY

DATED this 14 day of June, 2016.

Kathryn J. Nelson
JUDGE Kathryn J. Nelson

ORIGINAL

0268
12616
6/20/2016

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

555
12515
9/20/2016

6/20/2016 12:16 0270

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

028
10/20/2019

INSTRUCTION NO. 2

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

6/20/2016 12:16 0273

INSTRUCTION NO. 3

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

0274

12616

6/20/2016

INSTRUCTION NO. 4

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

INSTRUCTION NO. 5

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

5/20/2016 12:16

0276

12616

6/20/2016

INSTRUCTION NO. 6

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. 7

A person commits the crime of child molestation in the first degree when the person has sexual contact with a child who is less than twelve years old, who is not married to the person, and who is at least thirty-six months younger than the person.

0279

12616

6/20/2016

INSTRUCTION NO. 8

To convict the defendant of the crime of child molestation in the first degree as charged in count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the period between July 14, 2002 and July 13, 2003 the defendant had sexual contact with M.G.;
- (2) That M.G. was less than twelve years old at the time of the sexual contact and was not married to the defendant;
- (3) That M.G. was at least thirty-six months younger than the defendant; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

0279

12616

6/20/2016

INSTRUCTION NO. 9

Sexual contact means any touching of the sexual or other inmate parts of a person done for the purpose of gratifying sexual desires of either party.

6/20/2016 12616 0280

INSTRUCTION NO. 10

Married means one who is legally married to another or who is in a registered domestic partnership, but does not include a person who is living separate and apart from his or her spouse or registered domestic partner and who has filed in court for legal separation or for dissolution of the marriage or for termination of the registered domestic partnership.

0281

12616

6/20/2016

INSTRUCTION NO. 11

A person commits the crime of rape of a child in the first degree when the person has sexual intercourse with a child who is less than twelve years old, who is not married to the person and who is at least twenty-four months younger than the person.

INSTRUCTION NO. 12

To convict the defendant of the crime of rape of a child in the first degree, as charged in count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the period between July 14, 2003 and July 13, 2007, the defendant had sexual intercourse with M.G., separate and distinct from those acts alleged in count III;
- (2) That M.G. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That M.G. was at least twenty-four months younger than the defendant; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

0282

12616

6/20/2016

INSTRUCTION NO. 13

To convict the defendant of the crime of rape of a child in the first degree, as charged in count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the period between July 14, 2003 and July 13, 2007, the defendant had sexual intercourse with M.G., separate and distinct from those acts alleged in count II;
- (2) That M.G. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That M.G. was at least twenty-four months younger than the defendant; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 14

A person commits the crime of rape of a child in the second degree when the person has sexual intercourse with a child who is at least twelve years old but less than fourteen years old, who is not married to the person, and who is at least thirty-six months younger than the person.

0284

12616

6/20/2016

JURY INSTRUCTION NO. 15

To convict the defendant of the crime of rape of a child in the second degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the period between the 14th day of July, 2007 and the 13th day of July, 2009, the defendant had sexual intercourse with M.G.;

(2) That M.G. was at least twelve years old but was less than fourteen years old at the time of the sexual intercourse and was not married to the defendant;

(3) That M.G. was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

Sexual intercourse means that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight, or any penetration of the vagina or anus however slight, by an object, including a body part, when committed on one person by another, whether such persons are of the same or opposite sex or any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

0286
12516
6/20/2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

b. M.G. (06-15-15)

c. Jana Lee Fugle (06-15-15)

4. Police Investigative Reports (Pierce County Sheriff's Office No. 14-112-0495)

5. Medical Records of M.G (Franciscan Health System): 03-31-14 to 04-01-14

Several aspects of these materials raise concern:

- 1) M.G. claims that the abuse occurred when he was between the ages of 7-14, yet he only "recalled" the abuse when he was 18 years of age (early March 2014). It is highly unusual for a teenager not to recall abuse that occurred in the mid-teen years;
- 2) M.G. reported experiencing hallucinations, which speaks to the presence of a severe mental health condition that raises questions about his capacity to differentiate fact from fantasy. Indeed, during a hospital admission on 03-31-14 following reported memory loss and seizures, he was administered Haldol (haloperidol) -- an antipsychotic -- subsequent to which he was described as being "much improved."
- 3) Likewise, M.G.'s report of "amnesia," "confusion," and a medical diagnosis of "pseudo-seizures" raises questions about the reliability of his memories.
- 4) The first "memories" of M.G. experienced of the alleged sexual abuse occurred during nightmares, which is highly unusual for someone of his age, and may have been affected by the medication he was taking at that time (possibly morphine or Ativan). It is noteworthy that M.G. appears to have difficulty distinguishing between nightmares and actual memories;
- 5) M.G. has reported seeing a host of counselors (i.e., Justin Stephener, Susan Poole, Dana Harding) who have helped him "figure out" that he was abused. It is important to determine how his counselors may have helped him "figure

DECLARATION OF MARK B. WHITEHILL, Ph.D. - 2

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

INSTRUCTION NO. 17

The State alleges that the defendant committed acts of child molestation in the first degree, rape of a child in the first degree and rape of a child in the second degree on multiple occasions. To convict the defendant on any count of any of these crimes, one particular act of child molestation in the first degree and/or rape of a child in the first degree and/or rape of a child in the second degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of child molestation in the first degree, rape of a child in the first degree and rape of a child in the second degree.

0287
12016
5/20/2016

INSTRUCTION NO. 18

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the judicial assistant. The judicial assistant will bring you into court to declare your verdict.

You will also be given special verdict forms for the crimes charged in each count. If you find the defendant not guilty of any of the crimes, do not use the special verdict forms. If you find the defendant guilty of any or all of the crimes, you will then use the corresponding special verdict forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict form "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously agree that the answer to the question is "no," you must fill in the blank with the answer "no." If after full and fair consideration of the evidence you are not in agreement as to the answer, then do not fill in the blank for that question.

INSTRUCTION NO. 19

The State has the burden of proving the existence of each aggravating circumstance beyond a reasonable doubt. In order for you to find the existence of an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt.

Multiple aggravating circumstances have been alleged. You should consider each of the allegations separately. Your verdict on one allegation should not control your verdict on any other allegation.

INSTRUCTION NO. 20

A defendant uses a position of trust to facilitate a crime when the defendant gains access to the victim of the offense because of the trust relationship.

In determining whether there was a position of trust, you should consider the length of the relationship between the defendant and the victim, the nature of the defendant's relationship to the victim, and the vulnerability of the victim because of age or other circumstance.

0292

12616

6/20/2016

INSTRUCTION NO. 21

An "ongoing pattern of sexual abuse" means multiple incidents of abuse over a prolonged period of time.

INSTRUCTION NO. 22

For purposes of this case, “family or household members” means persons who have a biological or legal parent-child relationship, including stepparents and stepchildren, and grandparents and grandchildren.

0293

12616

5/20/2016

0294
12616
6/20/2016

INSTRUCTION NO. 23

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-04016-6

vs.

JOSEPH LEROY FUGLE,

VERDICT FORM I

Defendant.

We, the jury, find the defendant _____ (Not Guilty or Guilty)
of the crime of Child Molestation in the First Degree as charged in Count I.

DATE

PRESIDING JUROR

0295
12616
6/20/2016

0295
12616
6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
JOSEPH LEROY FUGLE,
Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IA
(applies to Count I)

We, the jury, having found the defendant guilty of child molestation in the first degree, return a special verdict by answering as follows:

Question:

Did the defendant use his position of trust, confidence or fiduciary responsibility to facilitate the commission of the crime:

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

0297
12616
6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
JOSEPH LEROY FUGLE,
Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IB
(applies to Count I)

We, the jury, having found the defendant guilty of child molestation in the first degree, return a special verdict by answering as follows:

Question:

Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-04016-6

vs.

JOSEPH LEROY FUGLE,

VERDICT FORM II

Defendant.

We, the jury, find the defendant _____ (Not Guilty or Guilty)
of the crime of Rape of a Child in the First Degree as charged in Count II.

DATE

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH LEROY FUGLE,

Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IIA
(applies to Count II)

We, the jury, having found the defendant guilty of rape of a child in the first degree, return a special verdict by answering as follows:

Question:

Did the defendant use his position of trust, confidence or fiduciary responsibility to facilitate the commission of the crime:

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH LEROY FUGLE,

Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IIB
(applies to Count II)

We, the jury, having found the defendant guilty of rape of a child in the first degree, return a special verdict by answering as follows:

Question:

Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

0300
12616
5/20/2016

0301

12616

6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-04016-6

vs.

JOSEPH LEROY FUGLE,

VERDICT FORM III

Defendant.

We, the jury, find the defendant _____ (Not Guilty or Guilty)
of the crime of Rape of a Child in the First Degree as charged in Count III.

DATE

PRESIDING JUROR

0302
12616
6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
JOSEPH LEROY FUGLE,
Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IIIA
(applies to Count III)

We, the jury, having found the defendant guilty of rape of a child in the first degree, return a special verdict by answering as follows:

Question:

Did the defendant use his position of trust, confidence or fiduciary responsibility to facilitate the commission of the crime:

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

0303

12616

6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH LEROY FUGLE,

Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IIIB
(applies to Count III)

We, the jury, having found the defendant guilty of rape of a child in the first degree, return a special verdict by answering as follows:

Question:

Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH LEROY FUGLE,

Defendant.

CAUSE NO. 14-1-04016-6

VERDICT FORM IV

We, the jury, find the defendant _____ (Not Guilty or Guilty)
of the crime of Rape of a Child in the Second Degree as charged in Count IV.

DATE

PRESIDING JUROR

0304
12616
5/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 14-1-04016-6

vs.

JOSEPH LEROY FUGLE,

SPECIAL VERDICT FORM IVA
(applies to Count IV)

Defendant.

We, the jury, having found the defendant guilty of rape of a child in the second degree, return a special verdict by answering as follows:

Question:

Did the defendant use his position of trust, confidence or fiduciary responsibility to facilitate the commission of the crime:

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

0305

12616

6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH LEROY FUGLE,

Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM IVB
(applies to Count IV)

We, the jury, having found the defendant guilty of rape of a child in the second degree, return a special verdict by answering as follows:

Question:

Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

Answer: _____ (Write "yes," "no," or that the form has been intentionally left blank)

DATE

PRESIDING JUROR

0306
12619
6/20/2016

0307

12616

6/20/2016

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH LEROY FUGLE,

Defendant.

CAUSE NO. 14-1-04016-6

SPECIAL VERDICT FORM A
(applies to all counts)

We, the jury, answer the question submitted by the court as follows:

QUESTION: Were Joseph Leroy Fugle and M.G. members of the same family or household?

ANSWER: _____ (Write "yes" or "no.")

DATE

PRESIDING JUROR

The Guardian

Attacks on the credibility of abuse survivors are not justified by research

Michael Salter

New science of trauma and memory has shown that the assertions of 'false memory' advocates are exaggerated

Sun 1 Oct 2017 22.18 EDT



For a quarter of a century, the concept of “false memories” has provided a scientific fig leaf for sceptics of child sexual abuse allegations.

The “false memory” argument is deceptively simple: children and adults are prone to invent false memories of child sexual abuse that never occurred, particularly if encouraged by a therapist or some other authority figure.

So-called “recovered memories”, in which adults recall sexual abuse in childhood after a period of amnesia, have been a particular focus of disbelief.

In fact, scientific studies find that children are far less suggestible than we have been led to believe. Brain imaging studies have identified the neurological mechanisms involved in the process of forgetting and then recalling sexual abuse as an adult.

Delayed disclosure and amnesia are now understood as normal coping mechanisms in response to abuse.

However, for those uncomfortable with the social and legal reforms required to address child sexual abuse, the idea that large numbers of allegations are the product of “false memories” remains attractive.

This argument underpins recent reporting in the Australian, which has called into question the findings of the royal commission into institutional responses to child sexual abuse, on the basis that sexual abuse survivor testimony cannot be trusted.

Two lengthy articles have raised doubts about the recent prosecution of a mother and father for the prolonged sadistic abuse of their daughter, and challenged the trauma history of anti-abuse campaigner Dr Cathy Kezelman.

This reporting links therapy to the spectres of false memories and false allegations. The implication is that any child or adult who makes allegations of abuse after receiving mental health care may be suffering from therapy-induced delusions.

The “false memory” argument arose in the early 1990s. During this period, adults began pursuing criminal and civil actions for sexual abuse in childhood in large numbers. These legal proceedings were complex, since the alleged offences had often taken place decades ago. Many adults had sought mental health care for the effects of abuse prior to court action.

In response, people accused of abuse claimed that therapy was the *cause* of the abuse allegations. They paid psychology academics to testify in court about the fallibility and suggestibility of memory. Their theories of “false memories” were widely covered in the mass media by journalists who were dubious of the sudden increase in reports and prosecution of sexual abuse.

Of course, no memory is a pristine record of facts. From the moment it is produced, memory is shaped by interpretation as much as experience, and the meaning and availability of any given memory changes over time.

However, the new science of trauma and memory has shown that the assertions of “false memory” advocates were exaggerated.

Overwhelming experiences of abuse are encoded differently in the brain than other memories, and can produce amnesia and forgetting. My research has found that many perpetrators of severe abuse deliberately traumatise children in order to take advantage of this mechanism and prevent victims from disclosing.

It is vital that abused children and adults receive therapeutic support to address the psychological changes caused by sexual abuse, and their testimony should be taken seriously by law enforcement and the criminal courts.

Nonetheless, the imperative to deny and suppress these allegations is as strong as ever. Sexual abuse is a crime of the status quo. Offenders get away with abuse because they are camouflaged

within their legitimate roles (as parents, relatives, friends, clergy, teachers and so on) in the lives of children.

As a result, allegations of sexual abuse are always a challenge to authority, revealing the weaknesses and failings of treasured social institutions.

In response, many are driven to reject the allegations outright, rather than examine the uncomfortable truths they reveal. For instance, church representatives have accused journalists of pursuing clergy abuse as part of a secular attack on Christianity.

Conservatives are suspicious that feminists and the state have exaggerated the problem of sexual abuse to expand control over the family and intimate life. Many progressives frame public concern over sexual abuse as a “moral panic” driven by unfounded anxiety over child safety.

For those who see hidden agendas driving abuse allegations, the “false memory” theory remains as compelling as ever. They find their suspicions reaffirmed by those academics who earn significant sums promoting “false memory” theories in court on behalf of men accused of sexual abuse.

This practice has been criticised as a “conflict of interest”, since objectivity is compromised when academics have such a large financial stake in interpreting research findings in specific ways.

In this light, attacks on the credibility of abuse survivors and advocates, and on the findings of the royal commission, need to be placed in political context. Despite their appeals to scientific expertise, such attacks are not justified by research on sexual abuse and traumatic memory; far from it.

The royal commission has revealed the pervasiveness of sexual abuse in child-focused institutions. Recent prosecutions, and the brave testimony of survivors such as Cathy Kezelman, highlights how family dynamics are manipulated by perpetrators of incest, to the point where non-abused siblings may be entirely unaware of the plight of the victim and groomed to disbelieve them if they disclose.

Perpetrators have many ways of drawing naive bystanders into a position of collusion or collaboration. Responding to the needs and rights of sexual abuse survivors will always prompt resistance from those wedded to the status quo, whether for personal, financial or ideological reasons.

The success of this resistance is evident in ongoing epidemic levels of abuse, and low rates of reporting and prosecution. Abuse needs our complicity. Due process and fair treatment of survivors, as well as the accused, requires a clear minded assessment of how facts and science are often distorted by the relations of power that make abuse possible.

Michael Salter is senior lecturer in criminology at the Western Sydney University

On a historic day for America ...

In a matter of hours, Donald Trump faces an impeachment vote in the House. Today's vote marks the latest twist in one of the most turbulent presidencies in US history. If the House votes to impeach him, he'll be only the third president in history to face this sanction.

But the challenges to American democracy do not end today. Over the last three years, much of what we hold dear has been threatened - democracy, civility, truth. This US administration is

establishing new norms of behaviour. Anger and cruelty disfigure public discourse and lying is commonplace. Truth is being chased away. The need for a robust, independent press has never been greater, and with your help we can continue to provide fact-based reporting that offers public scrutiny and oversight.

Our journalism is made possible thanks to the support we receive from readers like you across America in all 50 states. This generosity helps protect our independence and it allows us to keep delivering quality reporting that's accessible to everyone.

2020 promises to be an epic year - and could define the country for a generation. In addition to the impeachment proceedings, many other vital aspects of American public life are in play - the supreme court, abortion rights, climate policy, wealth inequality, Big Tech and much more.

We are asking our readers help to prepare for 2020. Please consider supporting us today with a year-end gift. **Contribute from as little as \$1 and help us reach our goal.**

Scholarly Resources assembled by Professor Ross E. Cheit at <http://blogs.brown.edu/recoveredmemory/>

THE RECOVERED MEMORY DEBATE/"FALSE MEMORY" THEORY

The following articles provide critical analyses of the debate over recovered memory, integrating scientific research, addressing the misnomer "false memory," and exploring the role of the debate in science and law.

Bremner, J. D., Krystal, J. H., Charney, D. S., & Southwick, S. M. (1996). Neural mechanisms in dissociative amnesia for childhood abuse: Relevance to the current controversy surrounding the "false memory syndrome." *The American Journal of Psychiatry*, 153, 71-82. (Department of Psychiatry, Yale University School of Medicine, New Haven, CT.)

Abstract: OBJECTIVE: There is considerable controversy about delayed recall of childhood abuse. Some authors have claimed that there is a "false memory syndrome," in which therapists suggest to patients events that never actually occurred. These authors point to findings that suggest that memory traces are susceptible to modification. The purpose of this paper is to review the literature on the potential vulnerability of memory traces to modification and on the effects of stress on the neurobiology of memory. METHOD: The authors review findings on mechanisms involved in normal memory function, effects of stress on memory in normal persons, children's memory of stressful events, and alterations of memory function in psychiatric disorders. The effects of stress on specific brain regions and brain chemistry are also examined. RESULTS: Neuropeptides and neurotransmitters released during stress can modulate memory function, acting at the level of the hippocampus, amygdala, and other brain regions involved in memory. Such release may interfere with the laying down of memory traces for incidents of childhood abuse. Also, childhood abuse may result in long-term alterations in the function of these neuromodulators. CONCLUSIONS: John Nemiah pointed out several years ago that alterations in memory in the form of dissociative amnesia are an important part of exposure to traumatic stressors, such as childhood abuse. The studies reviewed here show that extreme stress has long-term effects on memory. These findings may provide a model for understanding the mechanisms involved in dissociative amnesia, as well as a rationale for phenomena such as delayed recall of childhood abuse.

Brown, D. (2000). (Mis) representations of the long-term effects of childhood sexual abuse in the courts. *Journal of Child Sexual Abuse*, 9(3-4), 79-107. (Cornell University, Ithaca, NY.)

Abstract: This study addresses the (mis) representations made by pro-false memory attorneys and expert witnesses in court regarding the long-term effects of childhood sexual abuse (CSA). Five pro-false memory positions were identified: (1) there is no causal connection between CSA and adult psychopathology; (2) the evidence is insufficient; (3) CSA does not cause specific trauma-related outcomes like borderline and dissociative identity disorder; (4) other variables than CSA explain the variance of adult psychopathology; and (5) the long-term effects of CSA are general and non-specific. Examining the testimony revealed that such pro-false memory testimony was based solely on a partial understanding of retrospective data and that pro-false memory experts do not cite the more recent prospective data. Reviewing the totality of the scientific evidence demonstrates that such pro-false memory testimony is inaccurate and has the potential of misleading the jury. Prospective studies provide sufficient evidence to causally link CSA to a number of areas of adult psychopathology including multiple, co-morbid psychiatric conditions, and possibly to link early parent-infant attachment pathology to the development of borderline and dissociative identity disorder.

Colangelo, J. J. (2009, January-February). The recovered memory controversy: A representative case study. *Journal of Child Sexual Abuse*, 18(1), 103-121. (Long Island University, Fresh Meadows, NY.)

Abstract: The recovered memory controversy has been an ongoing debate within the mental health profession for the past two decades. Disagreement remains in the field over the veracity of "forgotten" memories of childhood sexual abuse that are recalled or recovered during therapy. At the heart of the controversy are the concepts of repression and dissociation as well as the impact traumatizing events have on the encoding of memory. This article provides an overview of the central factors in the longstanding debate and presents a detailed clinical case study involving independent corroboration of

memories of childhood sexual abuse recovered during treatment, which the author believes provides additional support for the potential veracity of recovered memories.

Dalenberg, C. (2006, October). Recovered memory and the Daubert criteria: Recovered memory as professionally tested, peer reviewed, and accepted in the relevant scientific community. *Trauma, Violence, & Abuse, 7(4), 274-310.* (Alliant International University.)

Abstract: Research during the past two decades has firmly established the reliability of the phenomenon of recovered memory. This review first highlights the strongest evidence for the phenomenon itself and discusses the survey, experimental, and biological evidence for the varying mechanisms that may underlie the phenomenon. Routes to traumatic amnesia from dissociative detachment (loss of emotional content leading to loss of factual content) and from dissociative compartmentalization (failure in integration) are discussed. Next, an argument is made that false memory is a largely orthogonal concept to recovered memory; the possibility of one phenomena is largely irrelevant to the potential for the other. Furthermore, some aspects of the false memory research offer supportive data for the recovered memory researcher. Finally, the issue of error rates in making the Daubert case is explored. It is concluded that the weight of the evidence should allow the recovered memory victim to come before the court.

Dallam, S. J. (2001). Crisis or creation? A systematic examination of False Memory Syndrome. *Journal of Child Sexual Abuse, 9(3/4), 9-36.* (Cynwyd, PA.)

Abstract: In 1992, the False Memory Syndrome Foundation (FMSF), an advocacy organization for people claiming to be falsely accused of sexual abuse, announced the discovery of a new syndrome involving iatrogenically created false memories of childhood sexual abuse. This article critically examines the assumptions underlying "False Memory Syndrome" to determine whether there is sufficient empirical evidence to support it as a valid diagnostic construct. Epidemiological evidence is also examined to determine whether there is data to support its advocates' claim of a public health crisis or epidemic. A review of the relevant literature demonstrates that the existence of such a syndrome lacks general acceptance in the mental health field, and that the construct is based on a series of faulty assumptions, many of which have been scientifically disproven. There is a similar lack of empirical validation for claims of a "false memory" epidemic. It is concluded that in the absence of any substantive scientific support, "False Memory Syndrome" is best characterized as a pseudoscientific syndrome that was developed to defend against claims of child abuse.

Hovdestad, W. E., & Kristiansen, C. M. (1996, Summer). A field study of "false memory syndrome": Construct validity and incidence. *Journal of Psychiatry & Law, 24(2), 299-338.* (Carleton University, Department of Psychology, Ottawa, ON, Canada.)

Abstract: False memory syndrome (FMS) is described as a serious form of psychopathology characterized by strongly believed pseudomemories of childhood sexual abuse. A literature review revealed four clusters of symptoms underlying the syndrome regarding victims' belief in their memories of abuse and their identity as survivors, their current interpersonal relationships, their trauma symptoms across the lifespan, and the characteristics of their therapy experiences. The validity of these clusters was examined using data from a community sample of 113 women who identified themselves as survivors of girlhood sexual abuse. Examining the discriminant validity of these criteria revealed that participants who had recovered memories of their abuse ($n = 51$), and who could therefore potentially have FMS, generally did not differ from participants with continuous memories ($n = 49$) on indicators of these criteria. Correlational analyses also indicated that these criteria typically failed to converge. Further, despite frequent claims that FMS is occurring in epidemic proportions, only 3.9%-13.6% of the women with a recovered memory satisfied the diagnostic criteria, and women with continuous memories were equally unlikely to meet these criteria. The implications of these findings for FMS theory and the delayed-memory debate more generally are discussed.

Leavitt, F. (1999). Suggestibility and treatment as key variables in the recovered memory debate. *American Journal of Forensic Psychology, 17, 5-18.*

Abstract: Alleged inducement of sexual trauma memory was studied from the perspective of suggestibility as embodied in false memory theory. The controversial assumption that therapeutic suggestion operates to cause events to be falsely remembered was tested using a sample drawn from

practices that contained patients who did, as well as those who did not, recover memories while in treatment. Following two years of treatment, the most suggestible of the patients did not recover memories. Paradoxically, those with the weakest levels of suggestibility recovered memories from the same practices. Since it is not logically conceivable that therapeutic suggestion operates only in the nonsuggestible, the assumptions of false memory theory were interpreted as not relevant for understanding the emergence of memories of childhood sexual trauma. Claims involving simple cause and effect relationships between treatment and memory recovery are not viable.

Whitfield, C. L. (2001). The "false memory" defense: Using disinformation and junk science in and out of court. *Journal of Child Sexual Abuse, 9*(3-4), 53-78. (Atlanta, GA.)

Abstract: This article describes a seemingly sophisticated, but mostly contrived and often erroneous "false memory" defense, and compares it in a brief review to what the science says about the effect of trauma on memory. Child sexual abuse is widespread and dissociative/traumatic amnesia for it is common. Accused, convicted and self-confessed child molesters and their advocates have crafted a strategy that tries to negate their abusive, criminal behavior, which we can call a "false memory" defense. Each of 22 of the more commonly used components of this defense is described and discussed with respect to what the science says about them. Armed with this knowledge, survivors, their clinicians, and their attorneys will be better able to refute this defense of disinformation.

Whitfield, C. L., Silberg, J., & Fink, P. J. (2001). Introduction: Exposing misinformation concerning child sexual abuse and adult survivors. *Journal of Child Sexual Abuse, 9*(3-4), 1-8. (Atlanta, GA.)

Abstract: This article introduces a special volume on misinformation about child sexual abuse. Despite extensive research findings on the long-term effects and consequences of child sexual abuse, misinformation on this topic is widespread. Several forces have worked to support and disseminate this erroneous information. Because it is difficult to comprehend the horror of sexual crimes against children, society's denial and disbelief have often unwittingly supported the agendas of those who want to discount or minimize the impact of these crimes. The media has also contributed to the aura of skepticism surrounding claims of sexual abuse and its mental health impact, and has reported favorably on controversial and unproven claims such as the "false memory syndrome." In the hope of countering misinformation and thus raising the level of discourse to the engagement of real scientific issues, a number of well known and respected researchers and clinicians examine various facets of the problem.

Scholarly Resources assembled by Professor Ross E. Cheit at <http://blogs.brown.edu/recoveredmemory/>

"TRAUMATIC MEMORY": MEMORY DISTURBANCES AND DISSOCIATIVE AMNESIA

The following articles provide compelling scientific evidence in support of the phenomena of dissociation and recovered memory. Included are cases involving survivors of childhood abuse, survivors of the Holocaust, and war veterans. In addition to supporting the phenomenon in general, these articles also counter the argument that recovered memory is (a) no more than a recent cultural "fad" and (b) specific to false accusers of sexual abuse.

Berliner, L., Hyman, I., Thomas, A., & Fitzgerald, M. (2003, June 16). Children's memory for trauma and positive experiences. *Journal of Traumatic Stress, 16*(3), 229-236. (University of Washington, Seattle, WA.)

Abstract: Characteristics of children's memory for a trauma and for a positive event were compared and relationships of memory characteristics to trauma symptoms examined in 30 children who experienced a traumatic event. Results revealed that memories for trauma tended to have less sensory detail and coherence, yet have more meaning and impact than did memories for positive experiences. Sexual traumas, offender relationship, and perceived life threat were associated with memory characteristics. Few relationships between memory characteristics and trauma symptoms were found. Therapist ratings of child memory characteristics were correlated with some child trauma memory characteristic reports. These results are consistent with other studies. Possible explanations include divided attention during the traumatic event and cognitive avoidance occurring after the event.

Bremner, J. D., Krystal, J. H., Charney, D. S., & Southwick, S. M. (1996). Neural mechanisms in dissociative amnesia for childhood abuse: Relevance to the current controversy surrounding the "false memory syndrome." *The American Journal of Psychiatry, 153*, 71-82. (Department of Psychiatry, Yale University School of Medicine, New Haven, CT.)

Abstract: **OBJECTIVE**: There is considerable controversy about delayed recall of childhood abuse. Some authors have claimed that there is a "false memory syndrome," in which therapists suggest to patients events that never actually occurred. These authors point to findings that suggest that memory traces are susceptible to modification. The purpose of this paper is to review the literature on the potential vulnerability of memory traces to modification and on the effects of stress on the neurobiology of memory. **METHOD**: The authors review findings on mechanisms involved in normal memory function, effects of stress on memory in normal persons, children's memory of stressful events, and alterations of memory function in psychiatric disorders. The effects of stress on specific brain regions and brain chemistry are also examined. **RESULTS**: Neuropeptides and neurotransmitters released during stress can modulate memory function, acting at the level of the hippocampus, amygdala, and other brain regions involved in memory. Such release may interfere with the laying down of memory traces for incidents of childhood abuse. Also, childhood abuse may result in long-term alterations in the function of these neuromodulators. **CONCLUSIONS**: John Nemiah pointed out several years ago that alterations in memory in the form of dissociative amnesia are an important part of exposure to traumatic stressors, such as childhood abuse. The studies reviewed here show that extreme stress has long-term effects on memory. These findings may provide a model for understanding the mechanisms involved in dissociative amnesia, as well as a rationale for phenomena such as delayed recall of childhood abuse.

Brewin, C. R., & Andrews, B. (1998, December). Recovered memories of trauma: Phenomenology and cognitive mechanisms. *Clinical Psychology Review, 18*(8), 949-970. (Department of Psychology, University of London, Surrey, UK.)

Abstract: We outline four current explanations for the reported forgetting of traumatic events, namely repression, dissociation, ordinary forgetting, and false memory. We then review the clinical and survey evidence on recovered memories, and consider experimental evidence that a variety of inhibitory processes are involved in everyday cognitive activity including forgetting. The data currently available do not allow any of the four explanations to be rejected, and strongly support the likelihood that some recovered memories correspond to actual experiences. We propose replacing the terms repression and dissociation as explanations of forgetting with an account based on cognitive science.

Briere, J., & Conte, J. R. (1993, January). Self-reported amnesia for abuse in adults molested as children. *Journal of Traumatic Stress, 6*(1), 21-31.

Abstract: A sample of 450 adult clinical subjects reporting sexual abuse histories were studied regarding their repression of sexual abuse incidents. A total of 267 subjects (59.3%) identified some period in their lives, before age 18, when they had no memory of their abuse. Variables most predictive of abuse-related amnesia were greater current psychological symptoms, molestation at an early age, extended abuse, and variables reflecting especially violent abuse (e.g., victimization by multiple perpetrators, having been physically injured as a result of the abuse, victim fears of death if she or he disclosed the abuse to others). In contrast, abuse characteristics more likely to produce psychological conflict (e.g., enjoyment of the abuse, acceptance of bribes, feelings of guilt or shame) were not associated with abuse-related amnesia. The results of this study are interpreted as supporting Freud's initial "seduction hypothesis," as well as more recent theories of post-traumatic dissociation.

Burgess, A. W., Hartman, C. R., & Baker, T. (1995, September). Memory presentations of childhood sexual abuse. *Journal of Psychosocial Nursing & Mental Health Services, 33*(9), 9-16. (University of Pennsylvania, School of Nursing, Philadelphia, PA.)

Abstract: Questions are continually raised about the accuracy and validity of very young children's memories of traumatic events. Out of 19 children, where the median age was 2 1/2 at time of disclosure, 11 had full verbal memory, five had fragmented verbal memory traces, and three had no memory 5 to 10 years following day care sexual abuse. Data from this clinical study suggest the nature of children's memory is four-dimensional: somatic, behavioral, verbal, and visual. Efforts need to continue to document the nonverbal components for assessment and treatment purposes.

Cameron, C. (1994). Women survivors confronting their abusers: Issues, decisions, and outcomes. *Journal of Child Sexual Abuse, 3*(1), 7-35. (U La Verne, Behavioral Science Dept, CA.)

Abstract: Surveyed 72 women who entered therapy in the mid-1980s to deal with the long-term consequences of childhood sexual abuse. 51 Ss were surveyed again in 1988 and 1992. In general, responses to the 1st survey were characterized by a desire to confront without the readiness to do so, responses to Survey 2 by completed confrontations, and responses to Survey 3 by reconfrontations. Findings support recommendations regarding helping clients to plan, practice, and carry out confrontations safely. More recognition should be given to the aftermath of confrontation, debriefing, and reconfrontation, and to survivors with specialized needs, such as women formerly amnesic to their abuse.

Chu, J. A., Frey, L. M., Ganzel, B. L., & Matthews, J. A. (1999, May). Memories of childhood abuse: Dissociation, amnesia, and corroboration. *The American Journal of Psychiatry, 156*(5), 749-755. (Dissociative Disorders and Trauma Program, McLean Hospital, Belmont, MA.)

Abstract: **OBJECTIVE**: This study investigated the relationship between self-reported childhood abuse and dissociative symptoms and amnesia. The presence or absence of corroboration of recovered memories of childhood abuse was also studied. **METHOD**: Participants were 90 female patients admitted to a unit specializing in the treatment of trauma-related disorders. Participants completed instruments that measured dissociative symptoms and elicited details concerning childhood physical abuse, sexual abuse, and witnessing abuse. Participants also underwent a structured interview that asked about amnesia for traumatic experiences, the circumstances of recovered memory, the role of suggestion in recovered memories, and independent corroboration of the memories. **RESULTS**: Participants reporting any type of childhood abuse demonstrated elevated levels of dissociative symptoms that were significantly higher than those in subjects not reporting abuse. Higher dissociative symptoms were correlated with early age at onset of physical and sexual abuse and more frequent sexual abuse. A substantial proportion of participants with all types of abuse reported partial or complete amnesia for abuse memories. For physical and sexual abuse, early age at onset was correlated with greater levels of amnesia. Participants who reported recovering memories of abuse generally recalled these experiences while at home, alone, or with family or friends. Although some participants were in treatment at the time, very few were in therapy sessions during their first memory recovery. Suggestion was generally denied as a factor in memory recovery. A majority of

participants were able to find strong corroboration of their recovered memories. **CONCLUSIONS:** Childhood abuse, particularly chronic abuse beginning at early ages, is related to the development of high levels of dissociative symptoms including amnesia for abuse memories. This study strongly suggests that psychotherapy usually is not associated with memory recovery and that independent corroboration of recovered memories of abuse is often present.

Colangelo, J. J. (2009, January-February). The recovered memory controversy: A representative case study. *Journal of Child Sexual Abuse, 18(1), 103-121.* (Long Island University, Fresh Meadows, NY.)

Abstract: The recovered memory controversy has been an ongoing debate within the mental health profession for the past two decades. Disagreement remains in the field over the veracity of "forgotten" memories of childhood sexual abuse that are recalled or recovered during therapy. At the heart of the controversy are the concepts of repression and dissociation as well as the impact traumatizing events have on the encoding of memory. This article provides an overview of the central factors in the longstanding debate and presents a detailed clinical case study involving independent corroboration of memories of childhood sexual abuse recovered during treatment, which the author believes provides additional support for the potential veracity of recovered memories.

Dalenberg, C. J. (1996, Summer.) Accuracy, timing and circumstances of disclosure in therapy of recovered and continuous memories of abuse. *Journal of Psychiatry & Law, 24(2), 229-275.* (CSPP, Trauma Research Inst, San Diego, CA.)

Abstract: Seventeen patients who had recovered memories of abuse in therapy participated in a search for evidence confirming or refuting these memories. Memories of abuse were found to be equally accurate whether recovered or continuously remembered. Predictors of number of memory units for which evidence was uncovered included several measures of memory and perceptual accuracy. Recovered memories that were later supported arose in psychotherapy more typically during periods of positive rather than negative feelings toward the therapist, and they were more likely to be held with confidence by the abuse victim.

DeWind, E. (1968). The confrontation with death. *International Journal of Psychoanalysis, 49, 302-305.*

Excerpt: "Most former inmates of Nazi concentration camps could not remember anything of the first days of imprisonment because perception of reality was so overwhelming that it would lead to a mental chaos which implies a certain death."

Duggal, S., & Sroufe, L. A. (1998, April). Recovered memory of childhood sexual trauma: A documented case from a longitudinal study. *Journal of Traumatic Stress, 11(2), 301-321.* (Institute of Child Development, University of Minnesota, Minneapolis MN.)

Abstract: A case of recovered memory of childhood trauma is reported with documented sexual trauma in early childhood, chronic evidence of the absence of memory for traumatic experience over a period of time, and substantial evidence of 'spontaneous' recovery of memory. This account contains the first available prospective report of memory loss in a case in which there is both documented evidence of trauma and evidence of recovery of memory. The case emerged as part of a broadband, large-scale study of children followed closely from birth to adulthood which was not focused on memory for trauma. Prospective data gathered in a neutral research context, corroborated and supplemented by retrospective information, circumvent many limitations of previous retrospective accounts of recovered memories.

Durlacher, G. L. (1991). *De zoektocht [The search]. Amsterdam: Meulenhoff.*

Dutch sociologist Durlacher, a survivor of Birkenau, describes his search for and meetings with another 20 child survivors from this camp. **Excerpt:** "Misha....looks helplessly at me and admits hesitantly that the period in the camps is wiped out from his brain....With each question regarding the period between December 12, 1942 till May 7, 1945, he admits while feeling embarrassed that he cannot remember anything....Jindra...had to admit that he remembers almost nothing from his years in the camps....From the winter months of 1944 until just before the liberation in April 1945, only two words stayed with him: Dora and Nordhausen....In a flash I understand his amnesia, and shocked, I hold my tongue. Dora was the hell which almost nobody survived, was it not? Underground, without

fresh air or daylight, Hitler's secret weapon of destruction, the V-2 rocket, was made by prisoners. Only the dying or the dead came above the ground, and Kapos, and guards."

Edwards, V. J., Fivush, R., Anda, R. F., Felitti, V. J., & Nordenberg, D. F. (2001). Autobiographical memory disturbances in childhood abuse survivors. *Journal of Aggression, Maltreatment & Trauma, 1*(4), 247-263.

Abstract: There is growing recognition among trauma researchers, clinicians, and human rights activists of the need for greater understanding of the nature, impact, and mediators of traumatic exposure among trauma survivors from diverse cultures and contexts and a growing interest in the phenomenon of resiliency and the possibility of recovery in the aftermath of traumatic exposure. This introduction briefly describes the articles that comprise this volume, emphasizing their status both as individually unique and worthwhile contributions to this literature and as a collection of works that speak powerfully to the promise of multi-cultural research and practice and to the need for a theoretical framework able to account for wide variations in individual expressions of psychological trauma, trauma recovery, and resilience. For us as co-editors of this volume, that framework resides in the ecological perspective of community psychology and in the attention to culture and context inherent in ecological theory.

Elliott, D. M. (1997). Traumatic events: Prevalence and delayed recall in the general population. *Journal of Consulting and Clinical Psychology, 65*, 811-820. (UCLA Medical Center, Child Abuse Crisis Center, Torrance, CA.)

Abstract: A random sample of 724 individuals from across the United States were mailed a questionnaire containing demographic information, an abridged version of the Traumatic Events Survey (DM Elliott, 1992), and questions regarding memory for traumatic events. Of these, 505 (70%) completed the survey. Among respondents who reported some form of trauma (72%), delayed recall of the event was reported by 32%. This phenomenon was most common among individuals who observed the murder or suicide of a family member, sexual abuse survivors, and combat veterans. The severity of the trauma was predictive of memory status, but demographic variables were not. The most commonly reported trigger to recall of the trauma was some form of media presentation (i.e., television show, movie), whereas psychotherapy was the least commonly reported trigger.

Elliott, D. M., & Briere, J. (1995, October). Posttraumatic stress associated with delayed recall of sexual abuse: A general population study. *Journal of Traumatic Stress, 8*(4), 629-647. (Child Abuse Crisis Center, Harbor-UCLA Medical Center, Torrance, CA.)

Abstract: This study examined delayed recall of childhood sexual abuse in a stratified random sample of the general population (N = 505). Of participants who reported a history of sexual abuse, 42% described some period of time when they had less memory of the abuse than they did at the time of data collection. No demographic differences were found between subjects with continuous recall and those who reported delayed recall. However, delayed recall was associated with the use of threats at the time of the abuse. Subjects who had recently recalled aspects of their abuse reported particularly high levels of posttraumatic symptomatology and self difficulties (as measured by the IES, SCL, and TSI) at the time of data collection compared to other subjects.

Epstein, M. A., & Bottoms, B. L. (2002, August). Explaining the forgetting and recovery of abuse and trauma memories: possible mechanisms. *Child Maltreatment, 7*(3), 210-225.

Abstract: Much attention has been focused on memories of abuse that are allegedly forgotten or repressed then recovered. By retrospectively surveying more than 1,400 college women (aged 18-60 yrs), the authors investigated (a) the frequency with which temporary forgetting is reported for child sexual abuse experiences as opposed to other childhood abuse and traumas and (b) exactly how victims characterize their forgetting experiences in terms of various competing cognitive mechanisms. Rates of forgetting were similar among victims who experienced sexual abuse, physical abuse, and multiple types of traumas. Victims of other types of childhood traumas (e.g., car accidents) reported less forgetting than victims of childhood sexual abuse or multiple types of trauma. Most victims' characterizations of their forgetting experiences were not indicative of repression in the classic Freudian sense but instead suggested other more common mechanisms, such as directed forgetting and relabeling. The implications of these findings for psychological theory, clinical practice, and law are discussed.

Erdinç, I. B., Sengül, C. B., Dilbaz, N., & Bozkurt, S. (2004). A case of incest with dissociative amnesia and post traumatic stress disorder. *Turkish Journal of Psychiatry, 15*(2), 161-165. (Ankara Numune Eğitim ve Araştırma Hastanesi 2. Psikiyatri Kl., Ankara.)

Abstract: Incest is a kind of sexual abuse that causes serious disorders during childhood and adulthood. In order to overcome the trauma, abuse victims frequently use dissociative defence mechanisms. Post traumatic stress disorder, dissociative disorders, major depression and borderline personality disorder can be seen in the victims of childhood sexual abuse. In this article we present an adolescent who was found and brought to our clinic by the Children's Police Department while she was wandering around aimlessly. She could not remember anything about her identity or personal history. She had no apparent physical disturbances, marks of beating or wounds which could be seen externally. Her physical and neurological examinations were both normal. In her laboratory tests, there was nothing abnormal. No sign of intoxication or infection was detected. EEG and CT were also normal. After the family was found, we learned about the sexual and physical abuse and the patient was diagnosed with dissociative amnesia. The psychometric evaluations also supported our diagnosis. When the dissociation began to disappear, post traumatic stress disorder symptoms became more apparent. After she described her traumatic memories, PTSD symptoms began to recede. Through this case presentation we would like to emphasize the relationship between childhood physical and sexual abuse and dissociative disorders.

Feldman-Summers, S., Pope, K. S. (1994, June). The experience of "forgetting" childhood abuse: A national survey of psychologists. *Journal of Consulting and Clinical Psychology, 62*(3), 636-639.

Abstract: A national sample of psychologists were asked whether they had been abused as children and, if so, whether they had ever forgotten some or all of the abuse. Almost a quarter of the sample (23.9%) reported childhood abuse, and of those, approximately 40% reported a period of forgetting some or all of the abuse. The major findings were that (1) both sexual and nonsexual abuse were subject to periods of forgetting; (2) the most frequently reported factor related to recall was being in therapy; (3) approximately one half of those who reported forgetting also reported corroboration of the abuse [see comparable percentage in the Pope & Tabachnick (1995) study below]; and (4) reported forgetting was not related to gender or age of the respondent but was related to severity of the abuse.

Fish, V., & Scott, C. G. (1999, August). Childhood abuse recollections in a nonclinical population: Forgetting and secrecy. *Child Abuse & Neglect, 23*(8), 791-802. (Family Therapy Center of Madison, WI.)

Abstract: OBJECTIVE: This study investigated the relationship of interrupted memories of childhood abuse with the secrecy of the abuse. METHODOLOGY: Fifteen hundred people were randomly selected from the membership of the American Counseling Association and sent a questionnaire regarding childhood abuse history. Four hundred and twenty-three usable questionnaires were returned and analyzed. RESULTS: Thirty-two percent of the sample reported childhood abuse. Fifty-two percent of those reporting abuse also noted periods of forgetting some or all of the abuse. On the two survey items assessing secrecy, 76% of respondents reporting childhood abuse indicated there had been a time when no one but themselves and their abuser knew about the abuse; 47% indicated that an abuser tried to get them to keep the abuse secret. Forty percent endorsed both secrecy items. Respondents who reported forgetting abuse also reported one or both elements of secrecy more frequently than those who reported continuous memories of abuse. CONCLUSION: These findings are consistent with those of other studies that suggest that, among adults reporting childhood abuse, the experience of forgetting some or all abuse is common. Secrecy of the abuse appears to be associated with the experience of forgetting childhood abuse for many individuals.

Fivush, R., & Edwards, V. J. (2004). Remembering and forgetting childhood sexual abuse. *Journal of Child Sexual Abuse, 13*(2), 1-19.

Abstract: Twelve white middle-class women who had been severely sexually abused as children by a family member were asked to provide a narrative of their abuse and discuss their subsequent remembering and forgetting of these experiences. Most claimed they had undergone periods during which they had not recalled their abuse, but also claimed that they had never forgotten their experiences at another point during the interview. Nine of the women had actively tried to forget the

abusive experiences, although 8 still experienced recurrent and often relentless intrusive memories. Our findings suggest that women with continuous memories may have longer and more coherent narratives than women without continuous memories. Implications of these findings for understanding the phenomenology of memory experiences and the concept of “recovered” memories of childhood sexual abuse are discussed.

Geraerts, E., Schooler, J. W., Merckelbach, H., Jelicic, M., Hauer, B. J., & Ambadar, Z. (2007, July). The reality of recovered memories: corroborating continuous and discontinuous memories of childhood sexual abuse. *Psychological Science, 18*(7), 564-568.

Abstract: Although controversy surrounds the relative authenticity of discontinuous versus continuous memories of childhood sexual abuse (CSA), little is known about whether such memories differ in their likelihood of corroborative evidence. Individuals reporting CSA memories were interviewed, and two independent raters attempted to find corroborative information for the allegations. Continuous CSA memories and discontinuous memories that were unexpectedly recalled outside therapy were more likely to be corroborated than anticipated discontinuous memories recovered in therapy. Evidence that suggestion during therapy possibly mediates these differences comes from the additional finding that individuals who recalled the memories outside therapy were markedly more surprised at the existence of their memories than were individuals who initially recalled the memories in therapy. These results indicate that discontinuous CSA memories spontaneously received outside of therapy may be accurate, while implicating expectations arising from suggestions during therapy in producing false CSA memories.

Herman, J. L., & Harvey, M. R. (1997). Adult memories of childhood trauma: a naturalistic clinical study. *Journal of Traumatic Stress, 10*(4), 557-571.

Abstract: The clinical evaluations of 77 adult psychiatric outpatients reporting memories of childhood trauma were reviewed. A majority of patients reported some degree of continuous recall. Roughly half (53%) said they had never forgotten the traumatic events. Two smaller groups described a mixture of continuous and delayed recall (17%) or a period of complete amnesia followed by delayed recall (16%). Patients with and without delayed recall did not differ significantly in the proportions reporting corroboration of their memories from other sources. Idiosyncratic, trauma-specific reminders and recent life crises were most commonly cited as precipitants to delayed recall. A previous psychotherapy was cited as a factor in a minority (28%) of cases. By contrast, intrusion of new memories after a period of amnesia was frequently cited as a factor leading to the decision to seek psychotherapy. The implications of these findings are discussed with respect to the role of psychotherapy in the process of recovering traumatic memories.

Herman, J. L., & Schatzow, E. (1987, Winter). Recovery and verification of memories of childhood sexual trauma. *Psychoanalytic Psychology, 4*(1), 1-14. (Women’s Mental Health Collective, Somerville, MA.)

Abstract: 53 women outpatients (aged 15-53 yrs) participated in short-term therapy groups for incest survivors. This treatment modality proved to be a powerful stimulus for recovery of previously repressed traumatic memories. A relationship was observed between the age of onset, duration, and degree of violence of the abuse and the extent to which memory of the abuse had been repressed. 74% of Ss were able to validate their memories by obtaining corroborating evidence from other sources. The therapeutic function of recovering and validating traumatic memories is explored in relation to case material.

Hopper, J. W., & van der Kolk, B. A. (2001). Retrieving, assessing, and classifying traumatic memories: A preliminary report on three case studies of a new standardized method. *Journal of Aggression, Maltreatment, & Trauma, 4*, 33-71.

Abstract: The study of traumatic memories is still an emerging field, both methodologically and theoretically. Previous questionnaire and interview methods for studying traumatic memories have been limited in their ability to evoke and assess remembrances with the characteristics long observed by clinicians. In this paper, we introduce a new standardized method that incorporates a laboratory procedure for retrieving memories of traumatic events and a clinically informed measure for assessing these memories’ characteristics. We present three case studies to demonstrate the data yielded by script-driven remembering and the Traumatic Memory Inventory – Post-Script Version (TMI-PS). We

then discuss subjects' script-driven remembrances in terms of methodology, theoretical classification of traumatic memories, and the interplay between the two. Finally, we critique our method in detail and offer suggestions for future research. If validated as a method for evoking and assessing traumatic memories, and shown to yield reliable data, this integrative method shows great promise for advancing both clinical and cognitive research on traumatic memories.

Hovdestad, W. E., & Kristiansen, C. M. (1996, Summer). A field study of "false memory syndrome": Construct validity and incidence. *Journal of Psychiatry & Law, 24(2), 299-338.* (Carleton University, Department of Psychology, Ottawa, ON, Canada.)

Abstract: False memory syndrome (FMS) is described as a serious form of psychopathology characterized by strongly believed pseudomemories of childhood sexual abuse. A literature review revealed four clusters of symptoms underlying the syndrome regarding victims' belief in their memories of abuse and their identity as survivors, their current interpersonal relationships, their trauma symptoms across the lifespan, and the characteristics of their therapy experiences. The validity of these clusters was examined using data from a community sample of 113 women who identified themselves as survivors of girlhood sexual abuse. Examining the discriminant validity of these criteria revealed that participants who had recovered memories of their abuse ($n = 51$), and who could therefore potentially have FMS, generally did not differ from participants with continuous memories ($n = 49$) on indicators of these criteria. Correlational analyses also indicated that these criteria typically failed to converge. Further, despite frequent claims that FMS is occurring in epidemic proportions, only 3.9%-13.6% of the women with a recovered memory satisfied the diagnostic criteria, and women with continuous memories were equally unlikely to meet these criteria. The implications of these findings for FMS theory and the delayed-memory debate more generally are discussed.

Jaffe, R. (1968). Dissociative phenomena in former concentration camp inmates. *The International Journal of Psychoanalysis, 49(2), 310-312.*

Case descriptions include amnesia for traumatic events and subsequent twilight states in which events would be relived without conscious awareness. Excerpt: "The dissociative phenomena described here turn out not to be rare, once one is on the look out for them."

Keilson, H. (1992). Sequential traumatization in children. Jerusalem: The Magnes Press.

Amnesia in Jewish Dutch child survivors for the traumatic separation from their parents.

Krell, R. (1993). Child survivors of the Holocaust: Strategies of adaptation. *Canadian Journal of Psychiatry, 38, 384-389.*

Excerpt: "The most pervasive preoccupation of child survivors is the continuing struggle with memory, whether there is too much or too little....For a child survivor today, an even more vexing problem is the intrusion of fragments of memory—most are emotionally powerful and painful but make no sense. They seem to become more frequent with time and are triggered by thousands of subtle or not so subtle events....As children they were encouraged not to tell, but to lead normal lives and forget the past....Some are able to protect themselves by splitting time into past, present, and future....The interviewer can assist in sequencing fragments of memory, sometimes even filling in gaps with historical information and other data. Fragments of memory which made no sense had often been experienced as 'crazy' and never shared with anyone....To achieve relief for symptomatic child survivors, the knowledgeable therapist elicits memories, assists in their integration, makes sense of the sequence and encourages the child survivor to write their story, publish it, tape, or teach it."

Krystal, H., & Danieli, Y. (1994, Fall). Holocaust survivor studies in the context of PTSD. *PTSD Research Quarterly, 5(4), 1-5.*

Kuch, K., & Cox, B. J. (1992). Symptoms of PTSD in 124 survivors of the Holocaust. *American Journal of Psychiatry, 149, 337-340.*

Potential subjects with confirmed or suspected organicity, bipolar or obsessive compulsive disorder were excluded. One group ($N=78$) had been detained in various concentration camps for greater than 1 month. A second group ($N=20$) had been detained in Auschwitz and had been tattooed. A third group ($N=45$) had not been in labor camps, ghettos, or had hidden in the illegal underground.

Psychogenic amnesia was found in 3.2% of the total sample, in 3.8% of the general concentration camp survivors, and in 10% of tattooed survivors of Auschwitz. 17.7% (N=22) of the total sample had received psychotherapy. The tattooed survivors had a higher number of PTSD symptoms overall.

Lagnado, L. M., & Dekel, S. C. (1991). *Children of the flames: Dr. Josef Mengele and the untold story of the twins of Auschwitz*. New York: William and Morrow & Co.

Excerpt: "A few of the twins insisted that they had no memories of Auschwitz whatsoever. Instead, they dwelt on the sadness of their postwar adult lives — their emotional upheavals, physical breakdowns, and longings for the dead parents they had hardly known."

Laub, D., & Auerhahn, N. C. (1989). Failed empathy—A central theme in the survivor's Holocaust experience. *Psychoanalytic Psychology*, 6(4), 377-400.

Excerpt: "Holocaust survivors remember their experiences through a prism of fragmentation and usually recount them only in fragments....A curious blend often exists between almost polar experiences: Remembering minute details in their fullest color and subtlest tones, while being unable to place those details in their narrative context or specific situational reference."

Laub, D., & Auerhahn, N. C. (1993). Knowing and not knowing massive psychic trauma: Forms of traumatic memory. *American Journal of Psychoanalysis*, 74, 287-302.

Excerpt: "The knowledge of trauma is fiercely defended against, for it can be a momentous, threatening, cognitive and affective task, involving an unjaudiced appraisal of events and our own injuries, failures, conflicts, and losses....To protect ourselves from affect we must, at times, avoid knowledge....Situations of horror destroy the detached sensibility necessary for articulation, analysis, elaboration....Knowing...requires a capacity for metaphor which cannot withstand atrocity....Notwithstanding the difficulties around and the struggle against knowing, the reality of traumatic events is so compelling that knowledge prevails, despite its absence to consciousness and its incompleteness....The different forms of remembering trauma range from not knowing, fugue states, fragments, transference phenomena, overpowering narratives, life themes, witnessed narratives, metaphors....These vary in degree of encapsulation versus integration of the experience and in degree of ownership of the memory, i.e., the degree to which an experiencing 'I' is present as subject....Erecting barriers against knowing is often the first response to such trauma. Women in Nazi concentration camps dealt with difficult interrogation by the Gestapo by derealization, by asserting 'I did not go through it. Somebody else went through the experience.' A case study example is included of a man in therapy who wanted to capture an elusive memory. The only remaining trace was a sense of dread on hearing the phone click. Over time, he recollected a traumatic wartime experience as a child involving the death of a doctor whom he had loved, and for which he felt partly responsible. Having recovered the memory he had lost, its intrusive fragments no longer blocked him from pursuing his life. Many of his somatic symptoms receded at the time....Unintegrable memories endure as a split-off part, a cleavage in the ego....When the balance is such that the ego cannot deal with the experience, fragmentation occurs....Simply put, therapy with those impacted by trauma involves, in part, the reinstatement of the relationship between event, memory and personality."

Loftus, E. F., Polonsky, S., & Fullilove, M. T. (1994, March). Memories of childhood sexual abuse: Remembering and repressing. *Psychology of Women Quarterly*, 18(1), 67-84. (University of Washington, Psychology Department, Seattle, WA.)

Abstract: Women involved in outpatient treatment for substance abuse were interviewed to examine their recollections of childhood sexual abuse. Overall, 54% of the 105 women reported a history of childhood sexual abuse. Of these, the majority (81%) remembered all or part of the abuse their whole lives; 19% reported they forgot the abuse for a period of time, and later the memory returned. Women who remembered the abuse their whole lives reported a clearer memory, with a more detailed picture. They also reported greater intensity of feelings at the time the abuse happened. Women who remembered the abuse their whole lives did not differ from others in terms of the violence of the abuse or whether the violence was incestuous.

Marks, J. (1995). *The hidden children: The secret survivors of the Holocaust*. Toronto: Bantam Books.

Excerpt: "So much of my childhood between the ages of four and nine is blank....It's almost as if my life was smashed into little pieces....The trouble is, when I try to remember, I come up with so little. This ability to forget was probably my way of surviving emotionally as a child. Even now, whenever anything unpleasant happens to me, I have a mental garbage can in which I can put all the bad stuff and forget it....I'm still afraid of being hungry....I never leave my house without some food....Again, I don't remember being hungry. I asked my sister and she said that we were hungry. So I must have been! I just don't remember."

Mazor, A., Ganpel, Y., Enright, R. D., & Ornstein, R. (1990, January). Holocaust survivors: Coping with posttraumatic memories in childhood and 40 years later. *Journal of Traumatic Stress, 3*(1), 11-14.

Abstract: This essay deals with coping processes of childhood trauma of survivors who were children during World War II over the lifecycle in a nonclinical group. The main issues refer to: (1) responses to war memories immediately after the war and 40 years later; (2) dealing with memories and feelings at present; (3) victims' feelings and attitudes toward the persecutor; (4) attitudes of survivors' children to the war experience of their parents; and (5) coping styles immediately and 40 years after the war, including the survivors' responses at present. Using a semistructural interview and a qualitative content analysis of interviews, it is suggested that for most persons the reactivation of memories and the need to document their experiences enhances, in a limited scope, the recognition of their loss and brings some relief; it also discloses new ways for these adults to comprehend their traumatic past.

Mechanic, M. B., Resick, P. A., & Griffin, M. G. (1998, December). A comparison of normal forgetting, psychopathology, and information-processing models of reported amnesia for recent sexual trauma. *Journal of Consulting and Clinical Psychology, 66*(6), 948-957.

Abstract: This study assessed memories for sexual trauma in a nontreatment-seeking sample of recent rape victims and considered competing explanations for failed recall. Participants were 92 female rape victims assessed within 2 weeks of the rape; 62 were also assessed 3 months postassault. Memory deficits for parts of the rape were common 2 weeks postassault (37%) but improved over the 3 month window studied (16% still partially amnesic). Hypotheses evaluated competing models of explanation that may account for reported recall deficits. Results are most consistent with information processing models of traumatic memory.

Melchert, T. P. (1996, October). Childhood memory and a history of different forms of abuse. *Professional Psychology: Research & Practice, 27*(5), 438-446. (Texas Tech University, Department of Psychology, Lubbock, TX.)

Abstract: A widespread professional and public controversy has recently emerged regarding recovered memories of child sexual abuse, but the prevalence and nature of these memories have received limited empirical examination. This study (N = 553 nonclinical participants) found that very similar proportions of those with histories of physical, emotional, or sexual abuse reported that they had periods without memory of their abuse (21%, 18%, and 18%, respectively). The responses of approximately one half of these participants suggested that they lacked conscious access to their abuse memories, whereas the responses from the others suggested that they had conscious access to their memories. A great deal of variance was found in the reported quality of general childhood memory and the offset of infantile amnesia, and the findings also suggest that it is normative to recover memories of childhood. Each of these variables was also unrelated to the experience of child abuse.

Melchert, T. P. (1999, November). Relations among childhood memory, a history of abuse, dissociation, and repression. *Journal of Interpersonal Violence, 14*(1), 1172-1192.

Abstract: The author of this study investigated several questions regarding the relationships between a history of child abuse memories, childhood memory in general, repression, and dissociation. Of the total sample (n = 560 undergraduate students), one quarter reported a history of child abuse, and 18% of these reported a period when they lacked memories of their abuse. These participants endorsed a variety of descriptions of their recovered memories, many of which do not suggest a lack of conscious access to the memories. General quality of childhood memory was found to be unrelated to a history of abuse, and most participants, regardless of their abuse history, reported recovering

memories from their childhood in general. Repressive personality traits were found to be unrelated to recovering abuse memories, but dissociative traits were found to be weakly associated with recovering abuse memories.

Melchert, T. P., & Parker, R. L. (1997, February). Different forms of childhood abuse and memory. *Child Abuse & Neglect*, 21(2), 125-135. (Department of Psychology, Texas Tech University, Lubbock, TX.)

Abstract: Recently a heated controversy emerged regarding recovered memories of childhood sexual abuse, but the prevalence and nature of these memories as well as the relationship between a history of child abuse and childhood memory generally have received limited empirical examination. This study (N = 429 nonclinical participants) found that similar proportions of those reporting histories of sexual, emotional, and physical abuse reported that they had periods without memory for their abuse (19.8%, 11.5%, and 14.9%, respectively). These participants, however, appeared to be referring to both a lack of conscious access to their abuse memories as well as the intentional avoidance of the memories for some period. There was a great deal of variance found in the reported quality of general childhood memory, but this was unrelated to reporting a history of child abuse. In addition, it appears to be normative to recover previously forgotten childhood events, and this too was found to be unrelated to history of child abuse.

Milchman, M. S. (2008). Does psychotherapy recover or invent child sexual abuse memories? A case history. *Journal of Child Sexual Abuse*, 17(1), 20-37.

Abstract: This case describes bodily experiences that appeared to cue child sexual abuse memories during psychotherapy by a woman who was amnesic for her childhood and suffered from chronic dissociative states. Though corroboration was unavailable, she became increasingly confident about her returning memories. Special efforts were made to avoid making suggestions. The article proposes the theory that integrates the construct of the self with the relationship between bodily experiences and memory narratives. It suggests that: (1) amnesia and recovering memories involve normal and abnormal memory mechanisms; (2) remembering during psychotherapy is complex; (3) psychotherapy need not be suggestive; (4) inaccessible memories may act as constraints on suggestibility; and (5) narrative recall may depend on the connection of bodily experiences with self-reflection.

Modai, I. (1994). Forgetting childhood: A defense mechanism against psychosis in a Holocaust survivor. In T. L. Brink (Ed.), *Holocaust survivors' mental health*. New York: Haworth Press.

In a debate about uncovering painful memories of the Holocaust, Modai's case is of a 58 year old woman who is unable to remember her childhood.

Moskovitz, S., & Krell, R. (1990). Child survivors of the Holocaust: Psychological adaptations to survival. *Israel Journal of Psychiatry and Related Services*, 27(2), 81-91.

Excerpt: "Whatever the memories, much is repressed as too fearful for recall, or suppressed by well-meaning caretakers wishing the child to forget. Without confronting the fear and recapturing the fragments of memory, the survivor cannot make the necessary connections which allow reintegration of their whole life; neither can they obtain the peace of mind that comes with closure."

Musaph, H. (1993). Het post-concentratiekampsyndroom [The post-concentration camp syndrome]. *Maandblad Geestelijke volksgezondheid [Dutch Journal of Mental Health]*, 28(5), 207-217.

Amnesia exists for certain Holocaust experiences, while other experiences are extremely well remembered.

Niederland, W. G. (1968). Clinical observations on the "survivor syndrome." *International Journal of Psychoanalysis*, 49, 313-315.

Discusses memory disturbances such as amnesia and hypermnesia.

Palesh, O. G., & Dalenberg, C. J. (2006). Recovered Memory and Amnesia in Russian College Students. In M. V. Landow (Ed.), *College Students: Mental Health and Coping Strategies*. Nova Science Publishers. 153-165.

Three hundred and one participants from Moscow State Linguistics University participated in a survey. Two hundred and one participants completed a demographic questionnaire, the Dissociative Continuum Scale, Zung Self-Rating Depression Scale, the Traumatic Events Survey, the Violence History Questionnaire, questions regarding memory status and attitudes towards child abuse. An additional one hundred participants completed a demographic questionnaire, the Dissociative Continuum Scale and the Violence History Questionnaire. Among participants who reported child abuse experiences (n = 45), twenty-one reported partial or full amnesia of the abuse. The frightening and shameful parents factor generated from the Traumatic Events Scale was the most consistent predictor of amnesia and recovered memory. Subjective experience of fear and terror during trauma (Criterion A trauma of PTSD) and chronicity of trauma also accounted for a significant amount of variance in predicting amnesia and recovered memory. Participants' alcohol use and recency of trauma did not predict recovered memory. Participants in the study who reported trauma and history of child abuse had more dissociative symptoms and were more depressed than non-traumatized participants.

Pope, K. S., & Tabachnick, B. G. (1995). Recovered memories of abuse among therapy patients: A national survey. *Ethics & Behavior*, 5(3), 237-248. (Norwalk, CT.)

Abstract: A survey of 205 female and 173 male psychologists found that 73% of them had had at least 1 patient who claimed to recover previously forgotten memories of childhood sex abuse. There were gender differences regarding patients who claim to have recovered memories of abuse. Patients who are alleged to have sexually abused a child who recovered memories of the abuse after a period of being unable to remember it do not show such differences except that 3 times as many men were reported to have been the object of a civil or criminal complaint on the basis of the recovered memory. Data suggest that when recovered memories seem to implicate male and female patients as perpetrators or victims of childhood sex abuse, therapist's gender is a significant variable only for women patients who recover memories of having been abused. Therapists' theoretical orientation was not relevant. [Note: In this study, the therapists reported 2,452 patients (out of a total of 273,785 whom they had treated over the course of their career) who reported recovering memories of childhood abuse. This represents about 8 or 9 patients out of every 1,000. According to the therapists, about 50% of the patients who claimed to have recovered the memories had found external validation, a percentage that coincides with that obtained in the Feldman-Summers & Pope, 1994 study.]

Roe, C. M., & Schwartz, M. F. (1996, Summer). Characteristics of previously forgotten memories of sexual abuse: A descriptive study. *Journal of Psychiatry & Law*, 24(2), 189-206.

Abstract: Investigated the childhood sexual abuse memories of 52 women 21-55 yrs old who had been hospitalized for treatment of sexual trauma, been sexually abused prior to age 18, and reported a period of amnesia before recalling abuse memories. Ss completed a questionnaire about their first suspicions of having been sexually abused, their first memories of sexual abuse, other memories of abuse, and details of their abuse history. Ss were more likely to recall part of an abuse episode, as opposed to an entire abuse episode, following a period of no memory of the abuse. Additionally, first memories tended to be described as vivid rather than vague. Descriptive statistics are used to present and summarize additional findings.

Roesler, T. A., & Wind, T. W. (1994, September). Telling the secret: Adult women describe their disclosures of incest. *Journal of Interpersonal Violence*, 9(3), 327-338. (National Jewish Center for Immunology & Respiratory Medicine, Denver, CO.)

Abstract: A questionnaire survey of 755 adults sexually abused as children, asking about the circumstances of their disclosure to the 1st person they told, resulted in 286 responses (228 from female victims of incest). Ss were asked basic demographic information, details about their abuse, who they told first, the reaction of the 1st person told, and reasons why they delayed telling or finally did tell. The women telling their parents first were likely to tell in childhood. Those telling friends, other family members, or partners were more likely to tell in early adulthood. Survivors telling therapists revealed the abuse at a later age. Those revealing the incest to parents in childhood

received a worse reaction than did those waiting until adulthood. When women disclosed to parents prior to age 18, the incest continued for more than 1 yr after the disclosure in 52% of the cases. Women who disclosed as children were more often met with disbelief or blame.

Sargant, W., & Slater, E. (1941, June). Amnesic Syndromes in War. *Proceedings of the Royal Society of Medicine*, 34(12), 757-764.

Abstract: Loss of memory is much commoner in soldiers in wartime than in civilian practice in peace. From the previous records of our patients, it seems that the condition is often overlooked in civilian life; in the Army a stricter routine and discipline make this impossible. Attention in the past has been mainly directed to states of fugue, and civilian practice suggests that behind these there often lies a criminal act or a situation from which an immediate, even though an illusory, escape is desired. Cases occurring in war, however, indicate that other causes, such as terror, bomb blast and exhaustion, may produce not only fugues both at the time and subsequently, but also large gaps retrospectively in the patient's memory of the past.

Stein, A. (1994). *Hidden children: Forgotten survivors of the Holocaust*. Harmondsworth, Middlesex: Penguin Books.

A collection of interviews with child survivors who were hidden during the war. Excerpt: "Over the years I have been trying to re-experience those feelings, but they kept eluding me. I was cut off from most of my memories, and from relieving the anxiety of that time....I remember nothing about the time I spent with those people...not a face, not a voice, not a piece of furniture. As if the time I spent there had been a time out of my life....What is missing? Why can't I conjure up those memories? I am staring into the darkness with occasional flashes of light allowing me to unearth bits and pieces of life."

van der Hart, O., Bolt, H., & van der Kolk, B. A. (2005). Memory fragmentation in dissociative identity disorder. *Journal of Trauma & Dissociation*, 6(1), 55-70. (Department of Clinical Psychology, Utrecht University, the Netherlands.)

Abstract: This study examined the quality of self-reported memories of traumatic experiences in participants with dissociative identity disorder (DID) and compared them with their memories of non-traumatic, but emotionally significant life experiences. Systematic interview data were gathered from 30 DID patients in The Netherlands. All participants reported a history of severe childhood abuse; 93.3% reported some period of amnesia for the index traumatic event, and 33.3% reported periods of amnesia for significant non-traumatic childhood experiences. All participants who had been amnesic for their trauma reported that their memories were initially retrieved in the form of somatosensory flashbacks. This suggests that, like PTSD patients, DID patients at least initially recall their trauma not as a narrative, but as somatosensory re-experiencing. Surprisingly, however, DID participants also recalled emotionally charged non-traumatic life events with significant somatosensory components, a phenomenon that has not been previously reported. This finding raises important issues regarding basic memory processing abnormalities in DID patients.

van der Hart, O., Brown, P., & Graafland, M. (1999, February). Trauma-induced dissociative amnesia in World War I combat soldiers. *Australian and New Zealand Journal of Psychiatry*, 33(1), 37-46. (Department of Clinical Psychology and Health Psychology, Utrecht University, the Netherlands.)

Abstract: **OBJECTIVE**: This study relates trauma-induced dissociative amnesia reported in World War I (WW I) studies of war trauma to contemporary findings of dissociative amnesia in victims of childhood sexual abuse. **METHOD**: Key diagnostic studies of post-traumatic amnesia in WW I combatants are surveyed. These cover phenomenology and the psychological dynamics of dissociation vis-à-vis repression. **RESULTS**: Descriptive evidence is cited for war trauma-induced dissociative amnesia. **CONCLUSION**: Posttraumatic amnesia extends beyond the experience of sexual and combat trauma and is a protean symptom, which reflects responses to the gamut of traumatic events.

van der Hart, O., & Nijenhuis, E. (2001, October). Generalized dissociative amnesia: Episodic, semantic and procedural memories lost and found. *Australian and New Zealand Journal of Psychiatry*, 35(5), 589-600. (Department of Clinical Psychology, Utrecht University, Utrecht, the Netherlands.)

Abstract: OBJECTIVE: This review tests Ribot's classic twofold categorization of generalized amnesia (GA) into Type I, total loss of episodic memory, and Type II, additional more or less extensive loss of semantic and/or procedural memory. It also explores his law of regression, according to which, cast in modern terms, recovery of lost procedural and semantic memories precedes recovery of episodic memory, as well as reported aetiological factors. METHOD: Clinically and formally assessed cases of GA, published since 1845, were surveyed and further analysed. RESULTS: Over and above authentic episodic memory loss, cases differed widely in the extent of impairment of semantic and procedural memory. Recovery of semantic and procedural memory often preceded recovery of episodic memory. This particularly applied to authenticated trauma memories. To an extent, lost memories affected current functioning, and in some cases were associated with alternating dissociative personalities. Severe memory distortions upon memory recovery were not reported. Most cases were trauma or stress related, while in some cases the aetiology remained unknown. CONCLUSIONS: Contrary to the view expressed in DSM-IV, which states that dissociative amnesia pertains to an inability to recall personal information, GA may also involve loss and recovery of semantic and procedural memories. Since the loss of various memory types in GA is dimensional rather than categorical, Ribot's typological distinction does not hold. Some of the reviewed cases suggest a trauma-related aetiology. Generalized amnesia of varying degrees of severity can involve delayed retrieval of trauma memories, as well as the loss and delayed retrieval of the premorbid personality.

van der Kolk, B. A. (1996). Trauma and memory. In B. A. van der Kolk, A. C. McFarlane, & L. Leisaeth, (Eds.), *Traumatic stress: The effects of overwhelming experience on mind, body, and society* (pp. 279-302). New York: The Guilford Press.

van der Kolk, B. A., & Fisler, R. (1995, October). Dissociation and the fragmentary nature of traumatic memories: Overview and exploratory study. *Journal of Traumatic Stress, 8(4), 505-525.* (HRI Trauma Center, Brookline, MA.)

Abstract: Since trauma arises from an inescapable stressful event that overwhelms people's coping mechanisms, it is uncertain to what degree the results of laboratory studies of ordinary events are relevant to the understanding of traumatic memories. This paper reviews the literature on differences between recollections of stressful and of traumatic events. It then reviews the evidence implicating dissociation as the central pathogenic mechanism that gives rise to posttraumatic stress disorder (PTSD). A systematic exploratory study of 46 subjects with PTSD indicated that traumatic memories were retrieved, at least initially, in the form of dissociated mental imprints of sensory and affective elements of the traumatic experience: as visual, olfactory, affective, auditory, and kinesthetic experiences. Over time, subjects reported the gradual emergence of a personal narrative that can be properly referred to as "explicit memory." The implications of these findings for understanding the nature of traumatic memories are discussed.

van der Kolk, B. A., Hopper, J. W., & Osterman, J. E. (2001). Exploring the nature of traumatic memory: Combining clinical knowledge with laboratory methods. *Journal of Aggression, Maltreatment, & Trauma, 4, 9-31.*

Abstract: For over 100 years clinicians have observed and described the unusual nature of traumatic memories. It has been repeatedly and consistently observed that these memories are characterized by fragmentary and intense sensations and affects, often with little or no verbal narrative content. Yet, possibly because traumatic memories cannot be precipitated under laboratory conditions, the organization of traumatic memories has received little systematic scientific investigation. In our laboratory we have developed an instrument, the Traumatic Memory Inventory (TMI), which systematically assesses the ways that memories of traumatic experience are organized and retrieved over time. In this paper we report findings from our third study using the TMI, of 16 subjects who had the traumatic experience of awakening from general anesthesia during surgery. We assessed changes in traumatic memory characteristics over time and differences between memories of subjects with and without current Posttraumatic Stress Disorder. Our findings suggest the need for more rigorous methods for the assessment of the evolution of traumatic memories. In order to develop a comprehensive and integrated understanding of the nature of traumatic memory, we need to combine careful clinical observations with replicable laboratory methods, including those of cognitive science and neuroscience.

van der Kolk, B. A., Pelcovitz, D., Roth, S., Mandel, F. S., McFarlane, A., & Herman, J. L. (1996, July). Dissociation, somatization, and affect dysregulation: The complexity of

adaptation of trauma. *The American Journal of Psychiatry*, 153(7 Suppl), 83-93. (Harvard Medical School, Boston, MA.)

Abstract: OBJECTIVE: A century of clinical research has noted a range of trauma-related psychological problems that are not captured in the DSM-IV framework of posttraumatic stress disorder (PTSD). This study investigated the relationships between exposure to extreme stress, the emergence of PTSD, and symptoms traditionally associated with "hysteria," which can be understood as problems with stimulus discrimination, self-regulation, and cognitive integration of experience. METHOD: The DSM-IV field trial for PTSD studied 395 traumatized treatment-seeking subjects and 125 non-treatment-seeking subjects who had also been exposed to traumatic experiences. Data on age at onset, the nature of the trauma, PTSD, dissociation, somatization, and affect dysregulation were collected. RESULTS: PTSD, dissociation, somatization, and affect dysregulation were highly interrelated. The subjects meeting the criteria for lifetime (but not current) PTSD scored significantly lower on these disorders than those with current PTSD, but significantly higher than those who never had PTSD. Subjects who developed PTSD after interpersonal trauma as adults had significantly fewer symptoms than those with childhood trauma, but significantly more than victims of disasters. CONCLUSIONS: PTSD, dissociation, somatization, and affect dysregulation represent a spectrum of adaptations to trauma. They often occur together, but traumatized individuals may suffer from various combinations of symptoms over time. In treating these patients, it is critical to attend to the relative contributions of loss of stimulus discrimination, self-regulation, and cognitive integration of experience to overall impairment and provide systematic treatment that addresses both unbidden intrusive recollections and these other symptoms associated with having been overwhelmed by exposure to traumatic experiences.

van der Kolk, B. A., van der Hart, O., & Marmar, C. (1996). Dissociation and information processing in posttraumatic stress disorder. In B. A. van der Kolk, A. C. McFarlane, & L. Weisaeth (Eds.), *Traumatic stress: The effects of overwhelming experience on mind, body, and society* (pp. 303-322). New York: Guilford.

van Ravesteijn, L. (1976). Gelaagdheid van herinneringen [Layering of memories]. *Tijdschrift voor Psychotherapie*, 5(1), 195-205.

Excerpt: "A smell, a sound, an image evoke fragments of images or emotions, more compelling than current reality, fragments to which all experience pain, anger, fear, shame, and powerlessness have attached themselves. Must a coherent account be given, then it is often painfully apparent that this is impossible. Most often, the person is unable to present an overview of this period."

Wagenaar, W. A., & Groeneweg, J. (1990). The memory of concentration camp survivors. *Applied Cognitive Psychology*, 4, 77-87.

Abstract: This study is concerned with the question whether extremely emotional experiences, such as being the victim of Nazi concentration camps, leave traces in memory that cannot be extinguished. Relevant data were obtained from testimony by 78 witnesses in a case against Marinus De Rijke, who was accused of Nazi crimes in Camp Erika in The Netherlands. The testimonies were collected in the periods 1943-1947 and 1984-1987. A comparison between these two periods reveals the amount of forgetting that occurred in 40 years. Results show that camp experiences were generally well-remembered, although specific but essential details were forgotten. Among these were forgetting being maltreated, forgetting names and appearance of the torturers, and forgetting being a witness to murder. Apparently intensity of experiences is not a sufficient safeguard against forgetting. This conclusion has consequences for the forensic use of testimony by witnesses who were victims of violent crimes.

Widom, C. S., & Shepard, R. L. (1996, December). Accuracy of adult recollections of childhood victimization: Part 1. Childhood physical abuse. *Psychological Assessment*, 8(4), 412-421. (State University of New York, School of Criminal Justice, Albany, NY.)

Abstract: Using data from a study with prospective-cohorts design in which children who were physically abused, sexually abused, or neglected about 20 years ago were followed up along with a matched control group, accuracy of adult recollections of childhood physical abuse was assessed. Two-hour in-person interviews were conducted in young adulthood with 1,196 of the original 1,575 participants. Two measures (including the Conflict Tactics Scale) were used to assess histories of

childhood physical abuse. Results indicate good discriminant validity and predictive efficiency of the self-report measures, despite substantial underreporting by physically abused respondents. Tests of construct validity reveal shared method variance, with self-report measures predicting self-reported violence and official reports of physical abuse predicting arrests for violence. Findings are discussed in the context of other research on the accuracy of adult recollections of childhood experiences.

Williams, L. M. (1994, December). Recall of childhood trauma: A prospective study of women's memories of child sexual abuse. *Journal of Consulting and Clinical Psychology, 62*(6), 1167-1176. (University of New Hampshire, Family Research Lab, Durham, NH.)

Abstract: One hundred twenty-nine women with previously documented histories of sexual victimization in childhood were interviewed and asked detailed questions about their abuse histories to answer the question "Do people actually forget traumatic events such as child sexual abuse, and if so, how common is such forgetting?" A large proportion of the women (38%) did not recall the abuse that had been reported 17 years earlier. Women who were younger at the time of the abuse and those who were molested by someone they knew were more likely to have no recall of the abuse. The implications for research and practice are discussed. Long periods with no memory of abuse should not be regarded as evidence that the abuse did not occur.

Williams, L. M. (1995, October). Recovered memories of abuse in women with documented child sexual victimization histories. *Journal of Traumatic Stress, 8*(4), 649-673.

Abstract: This study provides evidence that some adults who claim to have recovered memories of sexual abuse recall actual events that occur in childhood. One hundred twenty-nine women with documented histories of sexual victimization in childhood were interviewed and asked about their abuse history. Seventeen years following the initial report of the abuse, 80 of the women recalled the victimization. One in 10 women (16% of those who recalled the abuse) reported that at some time in the past they had forgotten about the abuse. Those with a prior period of forgetting – the women with "recovered memories" – were younger at the time of abuse and were less likely to have received support from their mothers than the women who reported that they had always remembered their victimization. The women who had recovered memories and those who had always remembered had the same number of discrepancies when their accounts of the abuse were compared to the reports from the early 1970s.

Wilsnack, S. C., Wonderlich, S. A., Kristjanson, A. F., Vogeltanz-Holm, N. D., & Wilsnack, R. W. (2002, February). Self-reports of forgetting and remembering childhood sexual abuse in a nationally representative sample of US women. *Child Abuse & Neglect, 26*(2), 139-147.

Abstract: Objective: The purpose of this article is to describe patterns of forgetting and remembering childhood sexual abuse (CSA) in a nationally representative sample of US adult women. Method: The respondents were a national probability sample of 711 women, aged 26 to 54 years, residing in noninstitutional settings in the contiguous 48 states. In a 1996 face-to-face interview study, trained female interviewers asked each respondent whether she had experienced any sexual coercion by family members or nonfamily members while growing up; whether she believed that she had been sexually abused (by family members or others); and whether she had ever forgotten the CSA experiences and, if so, how she had subsequently remembered them. Results: Twenty-one and six-tenths percent of respondents reported having sexually coercive experiences while growing up; of these, 69.0% indicated that they felt they had been sexually abused. More than one-fourth of respondents who felt sexually abused reported that they had forgotten the abuse for some period of time but later remembered it on their own. Only 1.8% of women self-described as sexually abused reported remembering the abuse with the help of a therapist or other professional person. Conclusions: The findings indicate that, among women who report CSA, forgetting and subsequently remembering abuse experiences is not uncommon. According to the women surveyed, however, very few (1.8%) of those who felt abused recovered memories recovered memories of CSA with help from therapists or other professionals. As one of the few studies of CSA memories in a nationally representative sample, this study suggests that therapist-assisted recall is not a major source of CSA memories among women in the US general population.

Wilson, J., Harel, Z., & Kahana, B. (1988). *Human adaptation to extreme stress: From the Holocaust to Vietnam*. New York: Plenum Press.

Yehuda, R., Elkin, A., Binder-Brynes, K., Kahana, B., Southwick, S. M., Schmeidler, J., & Giller, E. R., Jr. (1996, July). Dissociation in aging Holocaust survivors. *American Journal of Psychiatry*, 153(7), 935-940.

Abstract: OBJECTIVE: This study explored relationships among dissociation, trauma, and posttraumatic stress disorder (PTSD) in elderly Holocaust survivors with and without PTSD and in a demographically comparable group of nontraumatized subjects. METHOD: Holocaust survivors with PTSD (N = 35) and without PTSD (N = 25) who had been recruited from the community and a comparison group (N = 16) were studied. Dissociation was evaluated with the Dissociative Experiences Scale. Past cumulative trauma and recent stress were evaluated with the Antonovsky Life Crises Scale and the Elderly Care Research Center Recent Life Events Scale, respectively. PTSD symptoms were assessed with the Clinician- Administered PTSD Scale. RESULTS: The Holocaust survivors with PTSD showed significantly higher levels of current dissociative experiences than did the other groups. However, the extent of dissociation was substantially less than that which has been observed in other trauma survivors with PTSD. Dissociative Experiences Scale scores were significantly associated with PTSD symptom severity, but the relation between Dissociative Experiences Scale scores and exposure to trauma was not significant. CONCLUSIONS: Possible explanations for this finding include the age of the survivors, the length of time since the traumatic event, and possible unique features of the Holocaust survivor population. Nevertheless, the findings call into question the current notion that PTSD and dissociative experiences represent the same phenomenon. The findings suggest that the relationships among dissociation, trauma, and PTSD can be further clarified by longitudinal studies of trauma survivors.

Yehuda, R., Schmeidler, J., Siever, L. J., Binder-Brynes, K., & Elkin, A. (1997). Individual differences in posttraumatic stress disorder symptom profiles in Holocaust survivors in concentration camps or in hiding. *Journal of Traumatic Stress*, 10, 453-465.

46% of 100 survivors report amnesia on PTSD measures.

Yovell, Y., Barnett, Y., & Shalev, A. Y. (2003, September). Amnesia for traumatic events among recent survivors: A pilot study. *CNS Spectrums*, 8(9), 676-685.

Abstract: Objective: Traumatic amnesia has been amply documented in the psychoanalytic literature but inconsistently in the research literature. Method: Six trauma patients were followed prospectively. Survivors were interviewed 7, 30, and 120 days following the traumatic event. Each interview each interview documented in detail their recollections on the day of the trauma. Results: In four subjects who did not develop posttraumatic stress disorder (PTSD), we found brief, stable, and persistent memory gaps, which coincided with the moment of greatest emotional intensity. In two subjects who developed PTSD, we found, in addition to the previous form of amnesia, longer, progressive, and unstable memory gaps. Discussion: Neurobiological research offers two explanatory mechanisms for the observations: A failure of acquisition of episodic memories may account for the stable deficits seen in all subjects. This could coincide with stress-induced malfunction of the hippocampal declarative memory system. A failure of spontaneous recall may account for the more extended traumatic amnesia that was observed in PTSD patients. This resembles the psychoanalytic description of repression. Conclusion: These preliminary findings suggest that brief, irreversible memory gaps are common in trauma survivors, whereas longer, progressive and potentially reversible amnesia occurs among survivors who develop PTSD.

Scholarly Resources assembled by Professor Ross E. Cheit at <http://blogs.brown.edu/recoveredmemory/about/>

MEMORY DISTURBANCES AND DISSOCIATIVE AMNESIA IN SURVIVORS OF CHILDHOOD ABUSE

The following articles provide compelling scientific evidence in support of the phenomena of dissociation and recovered memory in survivors of childhood abuse.

Berliner, L., Hyman, I., Thomas, A., & Fitzgerald, M. (2003, June 16). Children's memory for trauma and positive experiences. *Journal of Traumatic Stress, 16(3)*, 229-236. (University of Washington, Seattle, WA.)

Abstract: Characteristics of children's memory for a trauma and for a positive event were compared and relationships of memory characteristics to trauma symptoms examined in 30 children who experienced a traumatic event. Results revealed that memories for trauma tended to have less sensory detail and coherence, yet have more meaning and impact than did memories for positive experiences. Sexual traumas, offender relationship, and perceived life threat were associated with memory characteristics. Few relationships between memory characteristics and trauma symptoms were found. Therapist ratings of child memory characteristics were correlated with some child trauma memory characteristic reports. These results are consistent with other studies. Possible explanations include divided attention during the traumatic event and cognitive avoidance occurring after the event.

Bremner, J. D., Krystal, J. H., Charney, D. S., & Southwick, S. M. (1996). Neural mechanisms in dissociative amnesia for childhood abuse: Relevance to the current controversy surrounding the "false memory syndrome." *The American Journal of Psychiatry, 153*, 71-82. (Department of Psychiatry, Yale University School of Medicine, New Haven, CT.)

Abstract: OBJECTIVE: There is considerable controversy about delayed recall of childhood abuse. Some authors have claimed that there is a "false memory syndrome," in which therapists suggest to patients events that never actually occurred. These authors point to findings that suggest that memory traces are susceptible to modification. The purpose of this paper is to review the literature on the potential vulnerability of memory traces to modification and on the effects of stress on the neurobiology of memory. METHOD: The authors review findings on mechanisms involved in normal memory function, effects of stress on memory in normal persons, children's memory of stressful events, and alterations of memory function in psychiatric disorders. The effects of stress on specific brain regions and brain chemistry are also examined. RESULTS: Neuropeptides and neurotransmitters released during stress can modulate memory function, acting at the level of the hippocampus, amygdala, and other brain regions involved in memory. Such release may interfere with the laying down of memory traces for incidents of childhood abuse. Also, childhood abuse may result in long-term alterations in the function of these neuromodulators. CONCLUSIONS: John Nemiah pointed out several years ago that alterations in memory in the form of dissociative amnesia are an important part of exposure to traumatic stressors, such as childhood abuse. The studies reviewed here show that extreme stress has long-term effects on memory. These findings may provide a model for understanding the mechanisms involved in dissociative amnesia, as well as a rationale for phenomena such as delayed recall of childhood abuse.

Briere, J., & Conte, J. R. (1993, January). Self-reported amnesia for abuse in adults molested as children. *Journal of Traumatic Stress, 6(1)*, 21-31.

Abstract: A sample of 450 adult clinical subjects reporting sexual abuse histories were studied regarding their repression of sexual abuse incidents. A total of 267 subjects (59.3%) identified some period in their lives, before age 18, when they had no memory of their abuse. Variables most predictive of abuse-related amnesia were greater current psychological symptoms, molestation at an early age, extended abuse, and variables reflecting especially violent abuse (e.g., victimization by multiple perpetrators, having been physically injured as a result of the abuse, victim fears of death if she or he disclosed the abuse to others). In contrast, abuse characteristics more likely to produce psychological conflict (e.g., enjoyment of the abuse, acceptance of bribes, feelings of guilt or shame) were not associated with abuse-related amnesia. The results of this study are interpreted as supporting Freud's initial "seduction hypothesis," as well as more recent theories of post-traumatic dissociation.

Burgess, A. W., Hartman, C. R., & Baker, T. (1995, September). Memory presentations of childhood sexual abuse. *Journal of Psychosocial Nursing & Mental Health Services*, 33(9), 9-16. (University of Pennsylvania, School of Nursing, Philadelphia, PA.)

Abstract: Questions are continually raised about the accuracy and validity of very young children's memories of traumatic events. Out of 19 children, where the median age was 2 1/2 at time of disclosure, 11 had full verbal memory, five had fragmented verbal memory traces, and three had no memory 5 to 10 years following day care sexual abuse. Data from this clinical study suggest the nature of children's memory is four-dimensional: somatic, behavioral, verbal, and visual. Efforts need to continue to document the nonverbal components for assessment and treatment purposes.

Cameron, C. (1994). Women survivors confronting their abusers: Issues, decisions, and outcomes. *Journal of Child Sexual Abuse*, 3(1), 7-35. (U La Verne, Behavioral Science Dept, CA.)

Abstract: Surveyed 72 women who entered therapy in the mid-1980s to deal with the long-term consequences of childhood sexual abuse. 51 Ss were surveyed again in 1988 and 1992. In general, responses to the 1st survey were characterized by a desire to confront without the readiness to do so, responses to Survey 2 by completed confrontations, and responses to Survey 3 by reconfrontations. Findings support recommendations regarding helping clients to plan, practice, and carry out confrontations safely. More recognition should be given to the aftermath of confrontation, debriefing, and reconfrontation, and to survivors with specialized needs, such as women formerly amnesic to their abuse.

Chu, J. A., Frey, L. M., Ganzel, B. L., & Matthews, J. A. (1999, May). Memories of childhood abuse: Dissociation, amnesia, and corroboration. *The American Journal of Psychiatry*, 156(5), 749-755. (Dissociative Disorders and Trauma Program, McLean Hospital, Belmont, MA.)

Abstract: OBJECTIVE: This study investigated the relationship between self-reported childhood abuse and dissociative symptoms and amnesia. The presence or absence of corroboration of recovered memories of childhood abuse was also studied. METHOD: Participants were 90 female patients admitted to a unit specializing in the treatment of trauma-related disorders. Participants completed instruments that measured dissociative symptoms and elicited details concerning childhood physical abuse, sexual abuse, and witnessing abuse. Participants also underwent a structured interview that asked about amnesia for traumatic experiences, the circumstances of recovered memory, the role of suggestion in recovered memories, and independent corroboration of the memories. RESULTS: Participants reporting any type of childhood abuse demonstrated elevated levels of dissociative symptoms that were significantly higher than those in subjects not reporting abuse. Higher dissociative symptoms were correlated with early age at onset of physical and sexual abuse and more frequent sexual abuse. A substantial proportion of participants with all types of abuse reported partial or complete amnesia for abuse memories. For physical and sexual abuse, early age at onset was correlated with greater levels of amnesia. Participants who reported recovering memories of abuse generally recalled these experiences while at home, alone, or with family or friends. Although some participants were in treatment at the time, very few were in therapy sessions during their first memory recovery. Suggestion was generally denied as a factor in memory recovery. A majority of participants were able to find strong corroboration of their recovered memories. CONCLUSIONS: Childhood abuse, particularly chronic abuse beginning at early ages, is related to the development of high levels of dissociative symptoms including amnesia for abuse memories. This study strongly suggests that psychotherapy usually is not associated with memory recovery and that independent corroboration of recovered memories of abuse is often present.

Colangelo, J. J. (2009, January-February). The recovered memory controversy: A representative case study. *Journal of Child Sexual Abuse*, 18(1), 103-121. (Long Island University, Fresh Meadows, NY.)

Abstract: The recovered memory controversy has been an ongoing debate within the mental health profession for the past two decades. Disagreement remains in the field over the veracity of "forgotten" memories of childhood sexual abuse that are recalled or recovered during therapy. At the heart of the controversy are the concepts of repression and dissociation as well as the impact traumatizing events have on the encoding of memory. This article provides an overview of the central factors in the

longstanding debate and presents a detailed clinical case study involving independent corroboration of memories of childhood sexual abuse recovered during treatment, which the author believes provides additional support for the potential veracity of recovered memories.

Dalenberg, C. J. (1996, Summer.) Accuracy, timing and circumstances of disclosure in therapy of recovered and continuous memories of abuse. *Journal of Psychiatry & Law*, 24(2), 229-275. (CSPP, Trauma Research Inst, San Diego, CA.)

Abstract: Seventeen patients who had recovered memories of abuse in therapy participated in a search for evidence confirming or refuting these memories. Memories of abuse were found to be equally accurate whether recovered or continuously remembered. Predictors of number of memory units for which evidence was uncovered included several measures of memory and perceptual accuracy. Recovered memories that were later supported arose in psychotherapy more typically during periods of positive rather than negative feelings toward the therapist, and they were more likely to be held with confidence by the abuse victim.

Duggal, S., & Sroufe, L. A. (1998, April). Recovered memory of childhood sexual trauma: A documented case from a longitudinal study. *Journal of Traumatic Stress*, 11(2), 301-321. (Institute of Child Development, University of Minnesota, Minneapolis MN.)

Abstract: A case of recovered memory of childhood trauma is reported with documented sexual trauma in early childhood, chronicled evidence of the absence of memory for traumatic experience over a period of time, and substantial evidence of 'spontaneous' recovery of memory. This account contains the first available prospective report of memory loss in a case in which there is both documented evidence of trauma and evidence of recovery of memory. The case emerged as part of a broadband, large-scale study of children followed closely from birth to adulthood which was not focused on memory for trauma. Prospective data gathered in a neutral research context, corroborated and supplemented by retrospective information, circumvent many limitations of previous retrospective accounts of recovered memories.

Edwards, V. J., Fivush, R., Anda, R. F., Felitti, V. J., & Nordenberg, D. F. (2001). Autobiographical memory disturbances in childhood abuse survivors. *Journal of Aggression, Maltreatment & Trauma*, 1(4), 247-263.

Abstract: There is growing recognition among trauma researchers, clinicians, and human rights activists of the need for greater understanding of the nature, impact, and mediators of traumatic exposure among trauma survivors from diverse cultures and contexts and a growing interest in the phenomenon of resiliency and the possibility of recovery in the aftermath of traumatic exposure. This introduction briefly describes the articles that comprise this volume, emphasizing their status both as individually unique and worthwhile contributions to this literature and as a collection of works that speak powerfully to the promise of multi-cultural research and practice and to the need for a theoretical framework able to account for wide variations in individual expressions of psychological trauma, trauma recovery, and resilience. For us as co-editors of this volume, that framework resides in the ecological perspective of community psychology and in the attention to culture and context inherent in ecological theory.

Elliott, D. M. (1997). Traumatic events: Prevalence and delayed recall in the general population. *Journal of Consulting and Clinical Psychology*, 65, 811-820. (UCLA Medical Center, Child Abuse Crisis Center, Torrance, CA.)

Abstract: A random sample of 724 individuals from across the United States were mailed a questionnaire containing demographic information, an abridged version of the Traumatic Events Survey (DM Elliott, 1992), and questions regarding memory for traumatic events. Of these, 505 (70%) completed the survey. Among respondents who reported some form of trauma (72%), delayed recall of the event was reported by 32%. This phenomenon was most common among individuals who observed the murder or suicide of a family member, sexual abuse survivors, and combat veterans. The severity of the trauma was predictive of memory status, but demographic variables were not. The most commonly reported trigger to recall of the trauma was some form of media presentation (i.e., television show, movie), whereas psychotherapy was the least commonly reported trigger.

Elliott, D. M., & Briere, J. (1995, October). Posttraumatic stress associated with delayed recall of sexual abuse: A general population study. *Journal of Traumatic Stress, 8(4)*, 629-647. (Child Abuse Crisis Center, Harbor-UCLA Medical Center, Torrance, CA.)

Abstract: This study examined delayed recall of childhood sexual abuse in a stratified random sample of the general population (N = 505). Of participants who reported a history of sexual abuse, 42% described some period of time when they had less memory of the abuse than they did at the time of data collection. No demographic differences were found between subjects with continuous recall and those who reported delayed recall. However, delayed recall was associated with the use of threats at the time of the abuse. Subjects who had recently recalled aspects of their abuse reported particularly high levels of posttraumatic symptomatology and self difficulties (as measured by the IES, SCL, and TSI) at the time of data collection compared to other subjects.

Epstein, M. A., & Bottoms, B. L. (2002, August). Explaining the forgetting and recovery of abuse and trauma memories: possible mechanisms. *Child Maltreatment, 7(3)*, 210-225.

Abstract: Much attention has been focused on memories of abuse that are allegedly forgotten or repressed then recovered. By retrospectively surveying more than 1,400 college women (aged 18-60 yrs), the authors investigated (a) the frequency with which temporary forgetting is reported for child sexual abuse experiences as opposed to other childhood abuse and traumas and (b) exactly how victims characterize their forgetting experiences in terms of various competing cognitive mechanisms. Rates of forgetting were similar among victims who experienced sexual abuse, physical abuse, and multiple types of traumas. Victims of other types of childhood traumas (e.g., car accidents) reported less forgetting than victims of childhood sexual abuse or multiple types of trauma. Most victims' characterizations of their forgetting experiences were not indicative of repression in the classic Freudian sense but instead suggested other more common mechanisms, such as directed forgetting and relabeling. The implications of these findings for psychological theory, clinical practice, and law are discussed.

Erdinç, I. B., Sengül, C. B., Dilbaz, N., & Bozkurt, S. (2004). A case of incest with dissociative amnesia and post traumatic stress disorder. *Turkish Journal of Psychiatry, 15(2)*, 161-165. (Ankara Numune Eğitim ve Araştırma Hastanesi 2. Psikiyatri Kl., Ankara.)

Abstract: Incest is a kind of sexual abuse that causes serious disorders during childhood and adulthood. In order to overcome the trauma, abuse victims frequently use dissociative defence mechanisms. Post traumatic stress disorder, dissociative disorders, major depression and borderline personality disorder can be seen in the victims of childhood sexual abuse. In this article we present an adolescent who was found and brought to our clinic by the Children's Police Department while she was wandering around aimlessly. She could not remember anything about her identity or personal history. She had no apparent physical disturbances, marks of beating or wounds which could be seen externally. Her physical and neurological examinations were both normal. In her laboratory tests, there was nothing abnormal. No sign of intoxication or infection was detected. EEG and CT were also normal. After the family was found, we learned about the sexual and physical abuse and the patient was diagnosed with dissociative amnesia. The psychometric evaluations also supported our diagnosis. When the dissociation began to disappear, post traumatic stress disorder symptoms became more apparent. After she described her traumatic memories, PTSD symptoms began to recede. Through this case presentation we would like to emphasize the relationship between childhood physical and sexual abuse and dissociative disorders.

Feldman-Summers, S., Pope, K. S. (1994, June). The experience of "forgetting" childhood abuse: A national survey of psychologists. *Journal of Consulting and Clinical Psychology, 62(3)*, 636-639.

Abstract: A national sample of psychologists were asked whether they had been abused as children and, if so, whether they had ever forgotten some or all of the abuse. Almost a quarter of the sample (23.9%) reported childhood abuse, and of those, approximately 40% reported a period of forgetting some or all of the abuse. The major findings were that (1) both sexual and nonsexual abuse were subject to periods of forgetting; (2) the most frequently reported factor related to recall was being in therapy; (3) approximately one half of those who reported forgetting also reported corroboration of the abuse [see comparable percentage in the Pope & Tabachnick (1995) study below]; and (4)

reported forgetting was not related to gender or age of the respondent but was related to severity of the abuse.

Fish, V., & Scott, C. G. (1999, August). Childhood abuse recollections in a nonclinical population: Forgetting and secrecy. *Child Abuse & Neglect, 23*(8), 791-802. (Family Therapy Center of Madison, WI.)

Abstract: OBJECTIVE: This study investigated the relationship of interrupted memories of childhood abuse with the secrecy of the abuse. METHODOLOGY: Fifteen hundred people were randomly selected from the membership of the American Counseling Association and sent a questionnaire regarding childhood abuse history. Four hundred and twenty-three usable questionnaires were returned and analyzed. RESULTS: Thirty-two percent of the sample reported childhood abuse. Fifty-two percent of those reporting abuse also noted periods of forgetting some or all of the abuse. On the two survey items assessing secrecy, 76% of respondents reporting childhood abuse indicated there had been a time when no one but themselves and their abuser knew about the abuse; 47% indicated that an abuser tried to get them to keep the abuse secret. Forty percent endorsed both secrecy items. Respondents who reported forgetting abuse also reported one or both elements of secrecy more frequently than those who reported continuous memories of abuse. CONCLUSION: These findings are consistent with those of other studies that suggest that, among adults reporting childhood abuse, the experience of forgetting some or all abuse is common. Secrecy of the abuse appears to be associated with the experience of forgetting childhood abuse for many individuals.

Fivush, R., & Edwards, V. J. (2004). Remembering and forgetting childhood sexual abuse. *Journal of Child Sexual Abuse, 13*(2), 1-19.

Abstract: Twelve white middle-class women who had been severely sexually abused as children by a family member were asked to provide a narrative of their abuse and discuss their subsequent remembering and forgetting of these experiences. Most claimed they had undergone periods during which they had not recalled their abuse, but also claimed that they had never forgotten their experiences at another point during the interview. Nine of the women had actively tried to forget the abusive experiences, although 8 still experienced recurrent and often relentless intrusive memories. Our findings suggest that women with continuous memories may have longer and more coherent narratives than women without continuous memories. Implications of these findings for understanding the phenomenology of memory experiences and the concept of "recovered" memories of childhood sexual abuse are discussed.

Geraerts, E., Schooler, J. W., Merckelbach, H., Jelicic, M., Hauer, B. J., & Ambadar, Z. (2007, July). The reality of recovered memories: corroborating continuous and discontinuous memories of childhood sexual abuse. *Psychological Science, 18*(7), 564-568.

Abstract: Although controversy surrounds the relative authenticity of discontinuous versus continuous memories of childhood sexual abuse (CSA), little is known about whether such memories differ in their likelihood of corroborative evidence. Individuals reporting CSA memories were interviewed, and two independent raters attempted to find corroborative information for the allegations. Continuous CSA memories and discontinuous memories that were unexpectedly recalled outside therapy were more likely to be corroborated than anticipated discontinuous memories recovered in therapy. Evidence that suggestion during therapy possibly mediates these differences comes from the additional finding that individuals who recalled the memories outside therapy were markedly more surprised at the existence of their memories than were individuals who initially recalled the memories in therapy. These results indicate that discontinuous CSA memories spontaneously received outside of therapy may be accurate, while implicating expectations arising from suggestions during therapy in producing false CSA memories.

Herman, J. L., & Harvey, M. R. (1997). Adult memories of childhood trauma: a naturalistic clinical study. *Journal of Traumatic Stress, 10*(4), 557-571.

Abstract: The clinical evaluations of 77 adult psychiatric outpatients reporting memories of childhood trauma were reviewed. A majority of patients reported some degree of continuous recall. Roughly half (53%) said they had never forgotten the traumatic events. Two smaller groups described a mixture of continuous and delayed recall (17%) or a period of complete amnesia followed by delayed recall (16%). Patients with and without delayed recall did not differ significantly in the proportions reporting

corroboration of their memories from other sources. Idiosyncratic, trauma-specific reminders and recent life crises were most commonly cited as precipitants to delayed recall. A previous psychotherapy was cited as a factor in a minority (28%) of cases. By contrast, intrusion of new memories after a period of amnesia was frequently cited as a factor leading to the decision to seek psychotherapy. The implications of these findings are discussed with respect to the role of psychotherapy in the process of recovering traumatic memories.

Herman, J. L., & Schatzow, E. (1987, Winter). Recovery and verification of memories of childhood sexual trauma. *Psychoanalytic Psychology*, 4(1), 1-14. (Women's Mental Health Collective, Somerville, MA.)

Abstract: 53 women outpatients (aged 15-53 yrs) participated in short-term therapy groups for incest survivors. This treatment modality proved to be a powerful stimulus for recovery of previously repressed traumatic memories. A relationship was observed between the age of onset, duration, and degree of violence of the abuse and the extent to which memory of the abuse had been repressed. 74% of Ss were able to validate their memories by obtaining corroborating evidence from other sources. The therapeutic function of recovering and validating traumatic memories is explored in relation to case material.

Hovdestad, W. E., & Kristiansen, C. M. (1996, Summer). A field study of "false memory syndrome": Construct validity and incidence. *Journal of Psychiatry & Law*, 24(2), 299-338. (Carleton University, Department of Psychology, Ottawa, ON, Canada.)

Abstract: False memory syndrome (FMS) is described as a serious form of psychopathology characterized by strongly believed pseudomemories of childhood sexual abuse. A literature review revealed four clusters of symptoms underlying the syndrome regarding victims' belief in their memories of abuse and their identity as survivors, their current interpersonal relationships, their trauma symptoms across the lifespan, and the characteristics of their therapy experiences. The validity of these clusters was examined using data from a community sample of 113 women who identified themselves as survivors of girlhood sexual abuse. Examining the discriminant validity of these criteria revealed that participants who had recovered memories of their abuse (n = 51), and who could therefore potentially have FMS, generally did not differ from participants with continuous memories (n = 49) on indicators of these criteria. Correlational analyses also indicated that these criteria typically failed to converge. Further, despite frequent claims that FMS is occurring in epidemic proportions, only 3.9%-13.6% of the women with a recovered memory satisfied the diagnostic criteria, and women with continuous memories were equally unlikely to meet these criteria. The implications of these findings for FMS theory and the delayed-memory debate more generally are discussed.

Loftus, E. F., Polonsky, S., & Fullilove, M. T. (1994, March). Memories of childhood sexual abuse: Remembering and repressing. *Psychology of Women Quarterly*, 18(1), 67-84. (University of Washington, Psychology Department, Seattle, WA.)

Abstract: Women involved in outpatient treatment for substance abuse were interviewed to examine their recollections of childhood sexual abuse. Overall, 54% of the 105 women reported a history of childhood sexual abuse. Of these, the majority (81%) remembered all or part of the abuse their whole lives; 19% reported they forgot the abuse for a period of time, and later the memory returned. Women who remembered the abuse their whole lives reported a clearer memory, with a more detailed picture. They also reported greater intensity of feelings at the time the abuse happened. Women who remembered the abuse their whole lives did not differ from others in terms of the violence of the abuse or whether the violence was incestuous.

Melchert, T. P. (1996, October). Childhood memory and a history of different forms of abuse. *Professional Psychology: Research & Practice*, 27(5), 438-446. (Texas Tech University, Department of Psychology, Lubbock, TX.)

Abstract: A widespread professional and public controversy has recently emerged regarding recovered memories of child sexual abuse, but the prevalence and nature of these memories have received limited empirical examination. This study (N = 553 nonclinical participants) found that very similar proportions of those with histories of physical, emotional, or sexual abuse reported that they had periods without memory of their abuse (21%, 18%, and 18%, respectively). The responses of

approximately one half of these participants suggested that they lacked conscious access to their abuse memories, whereas the responses from the others suggested that they had conscious access to their memories. A great deal of variance was found in the reported quality of general childhood memory and the offset of infantile amnesia, and the findings also suggest that it is normative to recover memories of childhood. Each of these variables was also unrelated to the experience of child abuse.

Melchert, T. P. (1999, November). Relations among childhood memory, a history of abuse, dissociation, and repression. *Journal of Interpersonal Violence, 14*(1), 1172-1192.

Abstract: The author of this study investigated several questions regarding the relationships between a history of child abuse memories, childhood memory in general, repression, and dissociation. Of the total sample (n = 560 undergraduate students), one quarter reported a history of child abuse, and 18% of these reported a period when they lacked memories of their abuse. These participants endorsed a variety of descriptions of their recovered memories, many of which do not suggest a lack of conscious access to the memories. General quality of childhood memory was found to be unrelated to a history of abuse, and most participants, regardless of their abuse history, reported recovering memories from their childhood in general. Repressive personality traits were found to be unrelated to recovering abuse memories, but dissociative traits were found to be weakly associated with recovering abuse memories.

Melchert, T. P., & Parker, R. L. (1997, February). Different forms of childhood abuse and memory. *Child Abuse & Neglect, 21*(2), 125-135. (Department of Psychology, Texas Tech University, Lubbock, TX.)

Abstract: Recently a heated controversy emerged regarding recovered memories of childhood sexual abuse, but the prevalence and nature of these memories as well as the relationship between a history of child abuse and childhood memory generally have received limited empirical examination. This study (N = 429 nonclinical participants) found that similar proportions of those reporting histories of sexual, emotional, and physical abuse reported that they had periods without memory for their abuse (19.8%, 11.5%, and 14.9%, respectively). These participants, however, appeared to be referring to both a lack of conscious access to their abuse memories as well as the intentional avoidance of the memories for some period. There was a great deal of variance found in the reported quality of general childhood memory, but this was unrelated to reporting a history of child abuse. In addition, it appears to be normative to recover previously forgotten childhood events, and this too was found to be unrelated to history of child abuse.

Milchman, M. S. (2008). Does psychotherapy recover or invent child sexual abuse memories? A case history. *Journal of Child Sexual Abuse, 17*(1), 20-37.

Abstract: This case describes bodily experiences that appeared to cue child sexual abuse memories during psychotherapy by a woman who was amnesic for her childhood and suffered from chronic dissociative states. Though corroboration was unavailable, she became increasingly confident about her returning memories. Special efforts were made to avoid making suggestions. The article proposes the theory that integrates the construct of the self with the relationship between bodily experiences and memory narratives. It suggests that: (1) amnesia and recovering memories involve normal and abnormal memory mechanisms; (2) remembering during psychotherapy is complex; (3) psychotherapy need not be suggestive; (4) inaccessible memories may act as constraints on suggestibility; and (5) narrative recall may depend on the connection of bodily experiences with self-reflection.

Palesh, O. G., & Dalenberg, C. J. (2006). Recovered Memory and Amnesia in Russian College Students. In M. V. Landow (Ed.), *College Students: Mental Health and Coping Strategies*. Nova Science Publishers. 153-165.

Three hundred and one participants from Moscow State Linguistics University participated in a survey. Two hundred and one participants completed a demographic questionnaire, the Dissociative Continuum Scale, Zung Self-Rating Depression Scale, the Traumatic Events Survey, the Violence History Questionnaire, questions regarding memory status and attitudes towards child abuse. An additional one hundred participants completed a demographic questionnaire, the Dissociative Continuum Scale and the Violence History Questionnaire. Among participants who reported child abuse

experiences (n = 45), twenty-one reported partial or full amnesia of the abuse. The frightening and shameful parents factor generated from the Traumatic Events Scale was the most consistent predictor of amnesia and recovered memory. Subjective experience of fear and terror during trauma (Criterion A trauma of PTSD) and chronicity of trauma also accounted for a significant amount of variance in predicting amnesia and recovered memory. Participants' alcohol use and recency of trauma did not predict recovered memory. Participants in the study who reported trauma and history of child abuse had more dissociative symptoms and were more depressed than non-traumatized participants.

Pope, K. S., & Tabachnick, B. G. (1995). Recovered memories of abuse among therapy patients: A national survey. *Ethics & Behavior*, 5(3), 237-248. (Norwalk, CT.)

Abstract: A survey of 205 female and 173 male psychologists found that 73% of them had had at least 1 patient who claimed to recover previously forgotten memories of childhood sex abuse. There were gender differences regarding patients who claim to have recovered memories of abuse. Patients who are alleged to have sexually abused a child who recovered memories of the abuse after a period of being unable to remember it do not show such differences except that 3 times as many men were reported to have been the object of a civil or criminal complaint on the basis of the recovered memory. Data suggest that when recovered memories seem to implicate male and female patients as perpetrators or victims of childhood sex abuse, therapist's gender is a significant variable only for women patients who recover memories of having been abused. Therapists' theoretical orientation was not relevant. [Note: In this study, the therapists reported 2,452 patients (out of a total of 273,785 whom they had treated over the course of their career) who reported recovering memories of childhood abuse. This represents about 8 or 9 patients out of every 1,000. According to the therapists, about 50% of the patients who claimed to have recovered the memories had found external validation, a percentage that coincides with that obtained in the Feldman-Summers & Pope, 1994 study.]

Roe, C. M., & Schwartz, M. F. (1996, Summer). Characteristics of previously forgotten memories of sexual abuse: A descriptive study. *Journal of Psychiatry & Law*, 24(2), 189-206.

Abstract: Investigated the childhood sexual abuse memories of 52 women 21-55 yrs old who had been hospitalized for treatment of sexual trauma, been sexually abused prior to age 18, and reported a period of amnesia before recalling abuse memories. Ss completed a questionnaire about their first suspicions of having been sexually abused, their first memories of sexual abuse, other memories of abuse, and details of their abuse history. Ss were more likely to recall part of an abuse episode, as opposed to an entire abuse episode, following a period of no memory of the abuse. Additionally, first memories tended to be described as vivid rather than vague. Descriptive statistics are used to present and summarize additional findings.

Roesler, T. A., & Wind, T. W. (1994, September). Telling the secret: Adult women describe their disclosures of incest. *Journal of Interpersonal Violence*, 9(3), 327-338. (National Jewish Center for Immunology & Respiratory Medicine, Denver, CO.)

Abstract: A questionnaire survey of 755 adults sexually abused as children, asking about the circumstances of their disclosure to the 1st person they told, resulted in 286 responses (228 from female victims of incest). Ss were asked basic demographic information, details about their abuse, who they told first, the reaction of the 1st person told, and reasons why they delayed telling or finally did tell. The women telling their parents first were likely to tell in childhood. Those telling friends, other family members, or partners were more likely to tell in early adulthood. Survivors telling therapists revealed the abuse at a later age. Those revealing the incest to parents in childhood received a worse reaction than did those waiting until adulthood. When women disclosed to parents prior to age 18, the incest continued for more than 1 yr after the disclosure in 52% of the cases. Women who disclosed as children were more often met with disbelief or blame.

van der Hart, O., Bolt, H., & van der Kolk, B. A. (2005). Memory fragmentation in dissociative identity disorder. *Journal of Trauma & Dissociation*, 6(1), 55-70. (Department of Clinical Psychology, Utrecht University, the Netherlands.)

Abstract: This study examined the quality of self-reported memories of traumatic experiences in participants with dissociative identity disorder (DID) and compared them with their memories of non-

traumatic, but emotionally significant life experiences. Systematic interview data were gathered from 30 DID patients in The Netherlands. All participants reported a history of severe childhood abuse; 93.3% reported some period of amnesia for the index traumatic event, and 33.3% reported periods of amnesia for significant non-traumatic childhood experiences. All participants who had been amnesic for their trauma reported that their memories were initially retrieved in the form of somatosensory flashbacks. This suggests that, like PTSD patients, DID patients at least initially recall their trauma not as a narrative, but as somatosensory re-experiencing. Surprisingly, however, DID participants also recalled emotionally charged non-traumatic life events with significant somatosensory components, a phenomenon that has not been previously reported. This finding raises important issues regarding basic memory processing abnormalities in DID patients.

Widom, C. S., & Shepard, R. L. (1996, December). Accuracy of adult recollections of childhood victimization: Part 1. Childhood physical abuse. *Psychological Assessment*, 8(4), 412-421. (State University of New York, School of Criminal Justice, Albany, NY.)

Abstract: Using data from a study with prospective-cohorts design in which children who were physically abused, sexually abused, or neglected about 20 years ago were followed up along with a matched control group, accuracy of adult recollections of childhood physical abuse was assessed. Two-hour in-person interviews were conducted in young adulthood with 1,196 of the original 1,575 participants. Two measures (including the Conflict Tactics Scale) were used to assess histories of childhood physical abuse. Results indicate good discriminant validity and predictive efficiency of the self-report measures, despite substantial underreporting by physically abused respondents. Tests of construct validity reveal shared method variance, with self-report measures predicting self-reported violence and official reports of physical abuse predicting arrests for violence. Findings are discussed in the context of other research on the accuracy of adult recollections of childhood experiences.

Williams, L. M. (1994, December). Recall of childhood trauma: A prospective study of women's memories of child sexual abuse. *Journal of Consulting and Clinical Psychology*, 62(6), 1167-1176. (University of New Hampshire, Family Research Lab, Durham, NH.)

Abstract: One hundred twenty-nine women with previously documented histories of sexual victimization in childhood were interviewed and asked detailed questions about their abuse histories to answer the question "Do people actually forget traumatic events such as child sexual abuse, and if so, how common is such forgetting?" A large proportion of the women (38%) did not recall the abuse that had been reported 17 years earlier. Women who were younger at the time of the abuse and those who were molested by someone they knew were more likely to have no recall of the abuse. The implications for research and practice are discussed. Long periods with no memory of abuse should not be regarded as evidence that the abuse did not occur.

Williams, L. M. (1995, October). Recovered memories of abuse in women with documented child sexual victimization histories. *Journal of Traumatic Stress*, 8(4), 649-673.

Abstract: This study provides evidence that some adults who claim to have recovered memories of sexual abuse recall actual events that occur in childhood. One hundred twenty-nine women with documented histories of sexual victimization in childhood were interviewed and asked about their abuse history. Seventeen years following the initial report of the abuse, 80 of the women recalled the victimization. One in 10 women (16% of those who recalled the abuse) reported that at some time in the past they had forgotten about the abuse. Those with a prior period of forgetting – the women with "recovered memories" – were younger at the time of abuse and were less likely to have received support from their mothers than the women who reported that they had always remembered their victimization. The women who had recovered memories and those who had always remembered had the same number of discrepancies when their accounts of the abuse were compared to the reports from the early 1970s.

Wilsnack, S. C., Wonderlich, S. A., Kristjanson, A. F., Vogeltanz-Holm, N. D., & Wilsnack, R. W. (2002, February). Self-reports of forgetting and remembering childhood sexual abuse in a nationally representative sample of US women. *Child Abuse & Neglect*, 26(2), 139-147.

Abstract: Objective: The purpose of this article is to describe patterns of forgetting and remembering childhood sexual abuse (CSA) in a nationally representative sample of US adult women. Method: The respondents were a national probability sample of 711 women, aged 26 to 54 years, residing in

noninstitutional settings in the contiguous 48 states. In a 1996 face-to-face interview study, trained female interviewers asked each respondent whether she had experienced any sexual coercion by family members or nonfamily members while growing up; whether she believed that she had been sexually abused (by family members or others); and whether she had ever forgotten the CSA experiences and, if so, how she had subsequently remembered them. Results: Twenty-one and six-tenths percent of respondents reported having sexually coercive experiences while growing up; of these, 69.0% indicated that they felt they had been sexually abused. More than one-fourth of respondents who felt sexually abused reported that they had forgotten the abuse for some period of time but later remembered it on their own. Only 1.8% of women self-described as sexually abused reported remembering the abuse with the help of a therapist or other professional person. Conclusions: The findings indicate that, among women who report CSA, forgetting and subsequently remembering abuse experiences is not uncommon. According to the women surveyed, however, very few (1.8%) of those who felt abused recovered memories recovered memories of CSA with help from therapists or other professionals. As one of the few studies of CSA memories in a nationally representative sample, this study suggests that therapist-assisted recall is not a major source of CSA memories among women in the US general population.

Scholarly Resources assembled by Professor Ross E. Cheit at
<http://blogs.brown.edu/recoveredmemory/about/>

MEMORY DISTURBANCES AND DISSOCIATIVE AMNESIA IN HOLOCAUST SURVIVORS

The following articles provide compelling scientific evidence in support of the phenomena of dissociation and recovered memory in Holocaust survivors. In addition to supporting the phenomenon in general, these articles also counter the argument that recovered memory is (a) no more than a recent cultural "fad" and (b) specific to false accusers of sexual abuse.

DeWind, E. (1968). The confrontation with death. *International Journal of Psychoanalysis*, 49, 302-305.

Excerpt: "Most former inmates of Nazi concentration camps could not remember anything of the first days of imprisonment because perception of reality was so overwhelming that it would lead to a mental chaos which implies a certain death."

Durlacher, G. L. (1991). *De zoektocht [The search]*. Amsterdam: Meulenhoff.

Dutch sociologist Durlacher, a survivor of Birkenau, describes his search for and meetings with another 20 child survivors from this camp. Excerpt: "Misha...looks helplessly at me and admits hesitantly that the period in the camps is wiped out from his brain....With each question regarding the period between December 12, 1942 till May 7, 1945, he admits while feeling embarrassed that he cannot remember anything....Jindra...had to admit that he remembers almost nothing from his years in the camps....From the winter months of 1944 until just before the liberation in April 1945, only two words stayed with him: Dora and Nordhausen....In a flash I understand his amnesia, and shocked, I hold my tongue. Dora was the hell which almost nobody survived, was it not? Underground, without fresh air or daylight, Hitler's secret weapon of destruction, the V-2 rocket, was made by prisoners. Only the dying or the dead came above the ground, and Kapos, and guards."

Jaffe, R. (1968). Dissociative phenomena in former concentration camp inmates. *The International Journal of Psychoanalysis*, 49(2), 310-312.

Case descriptions include amnesia for traumatic events and subsequent twilight states in which events would be relived without conscious awareness. Excerpt: "The dissociative phenomena described here turn out not to be rare, once one is on the look out for them."

Keilson, H. (1992). *Sequential traumatization in children*. Jerusalem: The Magnes Press.

Amnesia in Jewish Dutch child survivors for the traumatic separation from their parents.

Krell, R. (1993). *Child survivors of the Holocaust: Strategies of adaptation*. *Canadian Journal of Psychiatry*, 38, 384-389.

Excerpt: "The most pervasive preoccupation of child survivors is the continuing struggle with memory, whether there is too much or too little....For a child survivor today, an even more vexing problem is the intrusion of fragments of memory—most are emotionally powerful and painful but make no sense. They seem to become more frequent with time and are triggered by thousands of subtle or not so subtle events....As children they were encouraged not to tell, but to lead normal lives and forget the past....Some are able to protect themselves by splitting time into past, present, and future....The interviewer can assist in sequencing fragments of memory, sometimes even filling in gaps with historical information and other data. Fragments of memory which made no sense had often been experienced as 'crazy' and never shared with anyone....To achieve relief for symptomatic child survivors, the knowledgeable therapist elicits memories, assists in their integration, makes sense of the sequence and encourages the child survivor to write their story, publish it, tape, or teach it."

Krystal, H., & Danieli, Y. (1994, Fall). Holocaust survivor studies in the context of PTSD. *PTSD Research Quarterly*, 5(4), 1-5.

Kuch, K., & Cox, B. J. (1992). Symptoms of PTSD in 124 survivors of the Holocaust. *American Journal of Psychiatry*, 149, 337-340.

Potential subjects with confirmed or suspected organicity, bipolar or obsessive compulsive disorder were excluded. One group (N=78) had been detained in various concentration camps for greater than 1 month. A second group (N=20) had been detained in Auschwitz and had been tattooed. A third group (N=45) had not been in labor camps, ghettos, or had hidden in the illegal underground. Psychogenic amnesia was found in 3.2% of the total sample, in 3.8% of the general concentration camp survivors, and in 10% of tattooed survivors of Auschwitz. 17.7% (N=22) of the total sample had received psychotherapy. The tattooed survivors had a higher number of PTSD symptoms overall.

Lagnado, L. M., & Dekel, S. C. (1991). *Children of the flames: Dr. Josef Mengele and the untold story of the twins of Auschwitz*. New York: William and Morrow & Co.

Excerpt: "A few of the twins insisted that they had no memories of Auschwitz whatsoever. Instead, they dwelt on the sadness of their postwar adult lives — their emotional upheavals, physical breakdowns, and longings for the dead parents they had hardly known."

Laub, D., & Auerhahn, N. C. (1989). Failed empathy—A central theme in the survivor's Holocaust experience. *Psychoanalytic Psychology*, 6(4), 377-400.

Excerpt: "Holocaust survivors remember their experiences through a prism of fragmentation and usually recount them only in fragments....A curious blend often exists between almost polar experiences: Remembering minute details in their fullest color and subtlest tones, while being unable to place those details in their narrative context or specific situational reference."

Laub, D., & Auerhahn, N. C. (1993). Knowing and not knowing massive psychic trauma: Forms of traumatic memory. *American Journal of Psychoanalysis*, 74, 287-302.

Excerpt: "The knowledge of trauma is fiercely defended against, for it can be a momentous, threatening, cognitive and affective task, involving an unjaundiced appraisal of events and our own injuries, failures, conflicts, and losses....To protect ourselves from affect we must, at times, avoid knowledge....Situations of horror destroy the detached sensibility necessary for articulation, analysis, elaboration....Knowing...requires a capacity for metaphor which cannot withstand atrocity....Notwithstanding the difficulties around and the struggle against knowing, the reality of traumatic events is so compelling that knowledge prevails, despite its absence to consciousness and its incompleteness....The different forms of remembering trauma range from not knowing, fugue states, fragments, transference phenomena, overpowering narratives, life themes, witnessed narratives, metaphors....These vary in degree of encapsulation versus integration of the experience and in degree of ownership of the memory, i.e., the degree to which an experiencing 'I' is present as subject....Erecting barriers against knowing is often the first response to such trauma. Women in Nazi concentration camps dealt with difficult interrogation by the Gestapo by derealization, by asserting 'I did not go through it. Somebody else went through the experience.' A case study example is included of a man in therapy who wanted to capture an elusive memory. The only remaining trace was a sense of dread on hearing the phone click. Over time, he recollected a traumatic wartime experience as a child involving the death of a doctor whom he had loved, and for which he felt partly responsible. Having recovered the memory he had lost, its intrusive fragments no longer blocked him from pursuing his life. Many of his somatic symptoms receded at the time....Unintegrable memories endure as a split-off part, a cleavage in the ego....When the balance is such that the ego cannot deal with the experience, fragmentation occurs....Simply put, therapy with those impacted by trauma involves, in part, the reinstatement of the relationship between event, memory and personality."

Marks, J. (1995). *The hidden children: The secret survivors of the Holocaust*. Toronto: Bantam Books.

Excerpt: "So much of my childhood between the ages of four and nine is blank....It's almost as if my life was smashed into little pieces....The trouble is, when I try to remember, I come up with so little. This ability to forget was probably my way of surviving emotionally as a child. Even now, whenever anything unpleasant happens to me, I have a mental garbage can in which I can put all the bad stuff and forget it....I'm still afraid of being hungry....I never leave my house without some food....Again, I don't remember being hungry. I asked my sister and she said that we were hungry. So I must have been! I just don't remember."

Mazor, A., Ganpel, Y., Enright, R. D., & Ornstein, R. (1990, January). Holocaust survivors: Coping with posttraumatic memories in childhood and 40 years later. *Journal of Traumatic Stress, 3*(1), 11-14.

Abstract: This essay deals with coping processes of childhood trauma of survivors who were children during World War II over the lifecycle in a nonclinical group. The main issues refer to: (1) responses to war memories immediately after the war and 40 years later; (2) dealing with memories and feelings at present; (3) victims' feelings and attitudes toward the persecutor; (4) attitudes of survivors' children to the war experience of their parents; and (5) coping styles immediately and 40 years after the war, including the survivors' responses at present. Using a semistructural interview and a qualitative content analysis of interviews, it is suggested that for most persons the reactivation of memories and the need to document their experiences enhances, in a limited scope, the recognition of their loss and brings some relief; it also discloses new ways for these adults to comprehend their traumatic past.

Modai, I. (1994). Forgetting childhood: A defense mechanism against psychosis in a Holocaust survivor. In T. L. Brink (Ed.), *Holocaust survivors' mental health*. New York: Haworth Press.

In a debate about uncovering painful memories of the Holocaust, Modai's case is of a 58 year old woman who is unable to remember her childhood.

Moskovitz, S., & Krell, R. (1990). Child survivors of the Holocaust: Psychological adaptations to survival. *Israel Journal of Psychiatry and Related Services, 27*(2), 81-91.

Excerpt: "Whatever the memories, much is repressed as too fearful for recall, or suppressed by well-meaning caretakers wishing the child to forget. Without confronting the fear and recapturing the fragments of memory, the survivor cannot make the necessary connections which allow reintegration of their whole life; neither can they obtain the peace of mind that comes with closure."

Musaph, H. (1993). Het post-concentratiekampsyndroom [The post-concentration camp syndrome]. *Maandblad Geestelijke volksgezondheid [Dutch Journal of Mental Health], 28*(5), 207-217.

Amnesia exists for certain Holocaust experiences, while other experiences are extremely well remembered.

Niederland, W. G. (1968). Clinical observations on the "survivor syndrome." *International Journal of Psychoanalysis, 49*, 313-315.

Discusses memory disturbances such as amnesia and hypermnesia.

Stein, A. (1994). *Hidden children: Forgotten survivors of the Holocaust*. Harmondsworth, Middlesex: Penguin Books.

A collection of interviews with child survivors who were hidden during the war. Excerpt: "Over the years I have been trying to re-experience those feelings, but they kept eluding me. I was cut off from most of my memories, and from relieving the anxiety of that time...I remember nothing about the time I spent with those people...not a face, not a voice, not a piece of furniture. As if the time I spent there had been a time out of my life...What is missing? Why can't I conjure up those memories? I am staring into the darkness with occasional flashes of light allowing me to unearth bits and pieces of life."

van Ravesteijn, L. (1976). Gelaagdheid van herinneringen [Layering of memories]. *Tijdschrift voor Psychotherapie, 5*(1), 195-205.

Excerpt: "A smell, a sound, an image evoke fragments of images or emotions, more compelling than current reality, fragments to which all experience pain, anger, fear, shame, and powerlessness have attached themselves. Must a coherent account be given, then it is often painfully apparent that this is impossible. Most often, the person is unable to present an overview of this period."

Wagenaar, W. A., & Groeneweg, J. (1990). The memory of concentration camp survivors. *Applied Cognitive Psychology, 4*, 77-87.

Abstract: This study is concerned with the question whether extremely emotional experiences, such as being the victim of Nazi concentration camps, leave traces in memory that cannot be extinguished. Relevant data were obtained from testimony by 78 witnesses in a case against Marinus De Rijke, who was accused of Nazi crimes in Camp Erika in The Netherlands. The testimonies were collected in the periods 1943–1947 and 1984–1987. A comparison between these two periods reveals the amount of forgetting that occurred in 40 years. Results show that camp experiences were generally well-remembered, although specific but essential details were forgotten. Among these were forgetting being maltreated, forgetting names and appearance of the torturers, and forgetting being a witness to murder. Apparently intensity of experiences is not a sufficient safeguard against forgetting. This conclusion has consequences for the forensic use of testimony by witnesses who were victims of violent crimes.

Wilson, J., Harel, Z., & Kahana, B. (1988). *Human adaptation to extreme stress: From the Holocaust to Vietnam*. New York: Plenum Press.

Yehuda, R., Elkin, A., Binder-Brynes, K., Kahana, B., Southwick, S. M., Schmeidler, J., & Giller, E. R., Jr. (1996, July). Dissociation in aging Holocaust survivors. *American Journal of Psychiatry, 153*(7), 935-940.

Abstract: OBJECTIVE: This study explored relationships among dissociation, trauma, and posttraumatic stress disorder (PTSD) in elderly Holocaust survivors with and without PTSD and in a demographically comparable group of nontraumatized subjects. METHOD: Holocaust survivors with PTSD (N = 35) and without PTSD (N = 25) who had been recruited from the community and a comparison group (N = 16) were studied. Dissociation was evaluated with the Dissociative Experiences Scale. Past cumulative trauma and recent stress were evaluated with the Antonovsky Life Crises Scale and the Elderly Care Research Center Recent Life Events Scale, respectively. PTSD symptoms were assessed with the Clinician- Administered PTSD Scale. RESULTS: The Holocaust survivors with PTSD showed significantly higher levels of current dissociative experiences than did the other groups. However, the extent of dissociation was substantially less than that which has been observed in other trauma survivors with PTSD. Dissociative Experiences Scale scores were significantly associated with PTSD symptom severity, but the relation between Dissociative Experiences Scale scores and exposure to trauma was not significant. CONCLUSIONS: Possible explanations for this finding include the age of the survivors, the length of time since the traumatic event, and possible unique features of the Holocaust survivor population. Nevertheless, the findings call into question the current notion that PTSD and dissociative experiences represent the same phenomenon. The findings suggest that the relationships among dissociation, trauma, and PTSD can be further clarified by longitudinal studies of trauma survivors.

Yehuda, R., Schmeidler, J., Siever, L. J., Binder-Brynes, K., & Elkin, A. (1997). Individual differences in posttraumatic stress disorder symptom profiles in Holocaust survivors in concentration camps or in hiding. *Journal of Traumatic Stress, 10*, 453-465.

46% of 100 survivors report amnesia on PTSD measures.

Scholarly Resources assembled by Professor Ross E. Cheit at <http://blogs.brown.edu/recoveredmemory/>

MEMORY DISTURBANCES AND DISSOCIATIVE AMNESIA IN WAR VETERANS

The following articles provide compelling scientific evidence in support of the phenomena of dissociation and recovered memory in war veterans. In addition to supporting the phenomenon in general, these articles also counter the argument that recovered memory is (a) no more than a recent cultural "fad" and (b) specific to false accusers of sexual abuse.

Elliott, D. M. (1997). Traumatic events: Prevalence and delayed recall in the general population. *Journal of Consulting and Clinical Psychology, 65*, 811-820. (UCLA Medical Center, Child Abuse Crisis Center, Torrance, CA.)

Abstract: A random sample of 724 individuals from across the United States were mailed a questionnaire containing demographic information, an abridged version of the Traumatic Events Survey (DM Elliott, 1992), and questions regarding memory for traumatic events. Of these, 505 (70%) completed the survey. Among respondents who reported some form of trauma (72%), delayed recall of the event was reported by 32%. This phenomenon was most common among individuals who observed the murder or suicide of a family member, sexual abuse survivors, and combat veterans. The severity of the trauma was predictive of memory status, but demographic variables were not. The most commonly reported trigger to recall of the trauma was some form of media presentation (i.e., television show, movie), whereas psychotherapy was the least commonly reported trigger.

Sargant, W., & Slater, E. (1941, June). Amnesic Syndromes in War. *Proceedings of the Royal Society of Medicine, 34*(12), 757-764.

Abstract: Loss of memory is much commoner in soldiers in wartime than in civilian practice in peace. From the previous records of our patients, it seems that the condition is often overlooked in civilian life; in the Army a stricter routine and discipline make this impossible. Attention in the past has been mainly directed to states of fugue, and civilian practice suggests that behind these there often lies a criminal act or a situation from which an immediate, even though an illusory, escape is desired. Cases occurring in war, however, indicate that other causes, such as terror, bomb blast and exhaustion, may produce not only fugues both at the time and subsequently, but also large gaps retrospectively in the patient's memory of the past.

van der Hart, O., Brown, P., & Graafland, M. (1999, February). Trauma-induced dissociative amnesia in World War I combat soldiers. *Australian and New Zealand Journal of Psychiatry, 33*(1), 37-46. (Department of Clinical Psychology and Health Psychology, Utrecht University, the Netherlands.)

Abstract: **OBJECTIVE**: This study relates trauma-induced dissociative amnesia reported in World War I (WW I) studies of war trauma to contemporary findings of dissociative amnesia in victims of childhood sexual abuse. **METHOD**: Key diagnostic studies of post-traumatic amnesia in WW I combatants are surveyed. These cover phenomenology and the psychological dynamics of dissociation vis-à-vis repression. **RESULTS**: Descriptive evidence is cited for war trauma-induced dissociative amnesia. **CONCLUSION**: Posttraumatic amnesia extends beyond the experience of sexual and combat trauma and is a protean symptom, which reflects responses to the gamut of traumatic events.

Scholarly Resources assembled by Professor Ross E. Cheit at <http://blogs.brown.edu/recoveredmemory/>

NEUROBIOLOGY OF TRAUMATIC MEMORY

Much of the criticism surrounding the idea of recovered memory is that the theory cannot be grounded in scientific or neurological evidence. The following studies address potential neurobiological bases of traumatic memory and symptoms thereof.

Bremner, J. D., Krystal, J. H., Charney, D. S., & Southwick, S. M. (1996). Neural mechanisms in dissociative amnesia for childhood abuse: Relevance to the current controversy surrounding the "false memory syndrome." *The American Journal of Psychiatry*, 153, 71-82. (Department of Psychiatry, Yale University School of Medicine, New Haven, CT.)

Abstract: OBJECTIVE: There is considerable controversy about delayed recall of childhood abuse. Some authors have claimed that there is a "false memory syndrome," in which therapists suggest to patients events that never actually occurred. These authors point to findings that suggest that memory traces are susceptible to modification. The purpose of this paper is to review the literature on the potential vulnerability of memory traces to modification and on the effects of stress on the neurobiology of memory. METHOD: The authors review findings on mechanisms involved in normal memory function, effects of stress on memory in normal persons, children's memory of stressful events, and alterations of memory function in psychiatric disorders. The effects of stress on specific brain regions and brain chemistry are also examined. RESULTS: Neuropeptides and neurotransmitters released during stress can modulate memory function, acting at the level of the hippocampus, amygdala, and other brain regions involved in memory. Such release may interfere with the laying down of memory traces for incidents of childhood abuse. Also, childhood abuse may result in long-term alterations in the function of these neuromodulators. CONCLUSIONS: John Nemiah pointed out several years ago that alterations in memory in the form of dissociative amnesia are an important part of exposure to traumatic stressors, such as childhood abuse. The studies reviewed here show that extreme stress has long-term effects on memory. These findings may provide a model for understanding the mechanisms involved in dissociative amnesia, as well as a rationale for phenomena such as delayed recall of childhood abuse.

Joseph, R. (1999, August). The neurology of traumatic "dissociative" amnesia: commentary and literature review. *Child Abuse & Neglect*, 23(8), 715-727. (Brain Research Laboratory, San Jose, CA.)

Abstract: BACKGROUND: The relationship between traumatic emotional stress, hippocampal injury, memory loss, and traumatic ("dissociative") amnesia was examined. METHOD: A survey of the research on emotional trauma, learning, memory loss, glucocorticoid stress hormones, and the hippocampus was conducted, and animal and human studies were reviewed. RESULTS: It is well documented and has been experimentally demonstrated in animals and humans that prolonged and high levels of stress, fear, and arousal commonly induce learning deficits and memory loss ranging from the minimal to the profound. As stress and arousal levels dramatically increase, learning and memory deteriorate in accordance with the classic inverse U-shaped curve. These memory deficits are due to disturbances in hippocampal activation and arousal, and the corticosteroid secretion which can suppress neural activity associated with learning and memory and induce hippocampal atrophy. Risk and predisposing factors include a history of previous emotional trauma or neurological injury involving the temporal lobe and hippocampus, the repetitive and prolonged nature of the trauma, and age and individual differences in baseline arousal and level of cortisol. CONCLUSIONS: Although some victims may be unable to forget, amnesia or partial memory loss is not uncommon following severe stress and emotional trauma. Even well publicized national traumas may induce significant forgetting. Memory loss is a consequence of glucocorticoids and stress-induced disturbances involving the hippocampus, a structure which normally plays an important role in the storage of various events in long-term memory.

Zola, S. M. (1997, Summer). The neurobiology of recovery memory. *The Journal of Neuropsychiatry and Clinical Neurosciences*, 9(3), 449-459. (San Diego Veterans Affairs Medical Center, San Diego, CA.)

Abstract: The so-called recovery memory syndrome—reports by adults of recovered memories of childhood sexual abuse and trauma that were allegedly “repressed” for many years—has become an important issue in the field of mental health. In particular, there is debate about the credibility of recovered memories. The author describes findings in several fields of brain science about the way memory works and how memory is organized in the brain. These findings clarify aspects of normal memory function and the process of memory distortion, and they provide a neurobiological perspective from which to approach the topic of recovered memory.

Misleading and Confusing Media Portrayals of Memory Research

Jennifer J. Freyd
University of Oregon

<http://dynamic.uoregon.edu>

Fitzpatrick's memory of James Porter: A documented case of recovered memory

Frank Fitzpatrick... began remembering having been sexually molested by a parish priest at age 12. ... Mr. Fitzpatrick's retrieval of the repressed memories began, he said, when "I was feeling a great mental pain..."

Mr. Fitzpatrick... slowly realized that the mental pain was due to a "betrayal of some kind," and remembered the sound of heavy breathing. "Then I realized I had been sexually abused by someone I loved," said Mr. Fitzpatrick.

But it was not until two weeks later that he suddenly remembered the priest, the Rev. James R. Porter.

The New York Times, 21 July 1992

Jennifer Freyd, Copyright 2004

My initial research question

- Why and how would individuals remain unaware of (or forget) traumas they had experienced?
 - Proposed answer: Betrayal Trauma theory (Freyd, 1991, 1994, 1996, 1999, 2001)
 - See <http://dynamic.uoregon.edu/~jif/defineBT.html>

Jennifer Freyd, Copyright 2004

A different question often asked in the media:

"Are recovered memories accurate?"

Jennifer Freyd, Copyright 2004

Frank Fitzpatrick's memory of prolonged child sexual abuse by Father James Porter was corroborated

- Fitzpatrick's personal investigation resulted in tape-recorded incriminatory statements by Porter
- Eventual identification of dozens of others victims
- Porter was prosecuted criminally in Fall River, Massachusetts, and he pled guilty.
- For an archive of this and other documented cases see: www.RecoveredMemory.org

Jennifer Freyd, Copyright 2004

Confusing Controversy in the early 1990s

- In the early 1990s we lacked knowledge:
 - Fitzpatrick's and other's memories were corroborated
 - But in other cases there was little or no corroboration
- However, a decade later we now know a lot about these issues
 - For scientific analysis see:
 - Sivers, H., Schooler, J. , Freyd, J. J. (2002) Recovered memories. In V.S. Ramachandran (Ed.) *Encyclopedia of the Human Brain*, Volume 4. (pp 169-184). Academic Press.
 - Available at:
<http://dynamic.uoregon.edu/~jjf/articles/recoveredmemories.pdf>

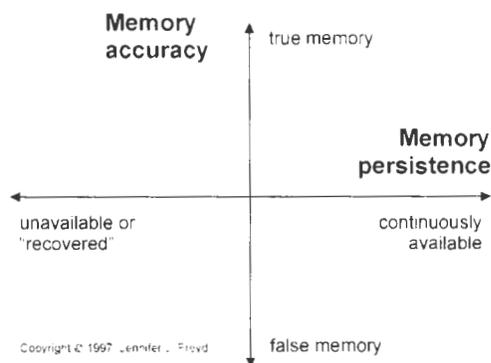
Jennifer Freyd, Copyright 2004

Why is there still so much confusion and misinformation about memory for abuse?

- One problem is the conflating of 2 separate issues

Jennifer Freyd, Copyright 2004

Memory accuracy vs. memory persistence



- Common conflation of memory accuracy with memory persistence
- But, these are separate dimensions (Freyd, 1998)

Copyright © 1997 Jennifer J. Freyd

Jennifer Freyd, Copyright 2004

"False versus Recovered Memories" is a False Dichotomy

Copyright © 1997 Jennifer J. Freyd

- **Dimensions are conceptually separate**
- **Empirically separate**
- Mental events occur in all 4 quadrants
- We can have memories that are largely true or false whether recovered or continuous

Jennifer Freyd, Copyright 2004

A substantial minority of abuse victims report some forgetting

Herman and Shatzow (1987)
women in short-term inpatient therapy groups

Feldman-Summers and Pope (1994)
psychologists who reported childhood physical or sexual abuse

Loftus, Poitonsky, and Fullilove (1994)
substance abuse treatment clients reporting child sexual abuse

Williams (1994a, 1994b, 1995)
women previously hospitalized for abuse

Rates of forgetting sexual abuse from three retrospective studies and one prospective study.

04

Forgetting occurs for many different types of trauma

- Elliot (1997)
 - Delayed recall reported by 32% of those who reported some form of trauma.
- Complete memory loss most common for:
 - victims of child sexual abuse (20%)
 - witnesses of combat injury (16%)
 - victims of adult rape (13%)
 - witnesses of domestic violence as a child (13%)

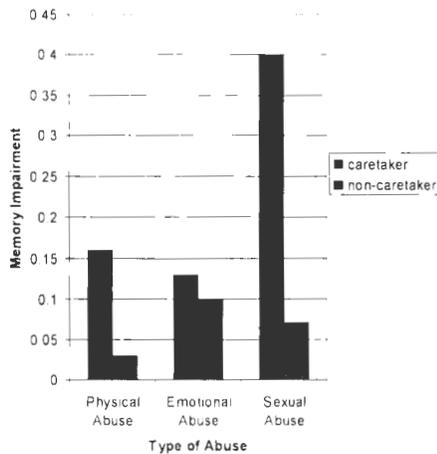
Jennifer Freyd, Copyright 2004

What causes forgetting?

- According to Betrayal Trauma Theory (Freyd, 1996, 2001), an important reason people forget abuse is that it helps them stay attached to their abusive caregivers – and they need to be attached if they are dependent upon that person.
- Empirical tests of betrayal trauma theory include comparing memory for abuse perpetrated by a caregiver versus abuse perpetrated by a non-caregiver.
- See <http://dynamic.uoregon.edu/~jjf/defineBT.html>

Jennifer Freyd, Copyright 2004

Memory Impairment related to Victim-Perpetrator Relationship (Freyd, DePrince, & Zurbriggen, 2001)



- College student population of 202 participants.
- Abuse perpetrated by a caregiver is related to less persistent memories of abuse.
- Caretaker status significant for sexual and physical abuse.
- Follow-up regression analyses: Age and duration of abuse did not account for findings.

Jennifer Freyd, Copyright 2004

So we know

- Memory persistence is separate from memory accuracy
- Some recovered memories are corroborated
- A substantial minority of abuse victims report some forgetting
- Forgetting is related to victim-perpetrator relationship
- Why the continued confusion?
 - Overgeneralization of research results
 - Misleading and confusing term: "False Memory"

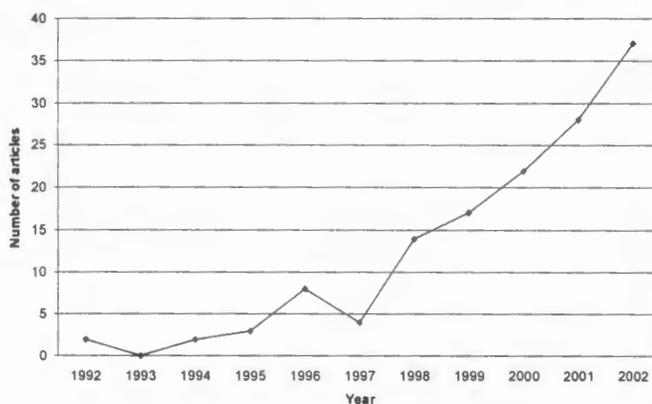
Jennifer Freyd, Copyright 2004

"False memory" is not scientifically derived

- The phrase "false memory syndrome" had its origins in a social movement that questions the veracity of memories for childhood sexual abuse
- Shortly after the term "false memory" gained prominence in the popular media, the term was introduced to the scientific research literature to describe fairly subtle errors in memory:
 - Participants learned a list of words (e.g., bed, tired) and later were tested. Results: participants sometimes remembered a related, but not presented, item "sleep"
 - Originally Deese (1959) called this an "intrusion"
 - Roediger and McDermott (1995) renamed it "false memory"
- This use of the term has become very popular...

Jennifer Freyd, Copyright 2004

Number of articles per year (1992-2002) from selected memory/cognitive journals that used the term "false memory/ies" to refer to subtle errors in memory (DePrince, Allard, Oh, & Freyd, tentatively accepted for publication pending acceptance of revisions)



Jennifer Freyd, Copyright 2004

Critique of "false memory" term use in cognitive word-learning tasks (Freyd & Gleaves, 1996)

- It is predictable that participants who memorize a list with words such as: shoe, hand, toe, kick, sandals might think that foot was on the list
- But what does this really imply regarding the idea that people fabricate memories of *abusive events that never happened?*

Jennifer Freyd, Copyright 2004

Bugs Bunny to "false memories": over-generalization (see <http://dynamic.uoregon.edu/~jjf/bugs.html>)

- Last year at AAAS meeting it was reported that some participants can be led to believe they saw Bugs Bunny at Disneyland
- This finding was reported very widely and almost always in the context of "false memories"
- By implying a connection between misremembering a cartoon character and situations of child abuse, and using the term "false memories" the issues are distorted
- Let's not trivialize memory for child abuse

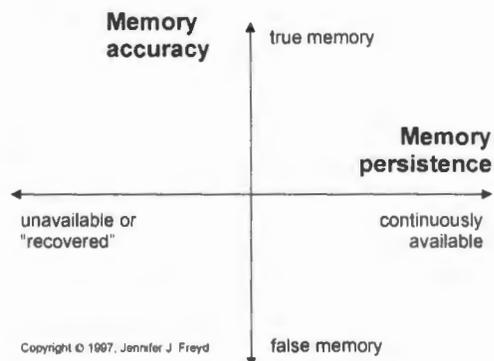
Jennifer Freyd, Copyright 2004

Does this over generalization and
imprecise use of language matter?



Jennifer Freyd, Copyright 2004

New Study (Cromer & Freyd, in prep):
Believability of Abuse Disclosures as a function
of type of memory



- Remember: The scientific research provides no indication that memory accuracy is correlated with memory persistence
- Are people biased in their acceptance of abuse disclosures as a function of the type of memory?

Jennifer Freyd, Copyright 2004

Cromer & Freyd (in prep)

- 327 undergraduates read vignettes
- Vignettes described a disclosure of childhood abuse
- 2 x 2 x 2 x 2 design: gender of victim x type of memory x type of abuse x closeness of perpetrator
- Each participant saw only one type of memory and one gender of victim
- Participants rated each vignette on judged accuracy and believability of victim's disclosure

Jennifer Freyd, Copyright 2004

- None of the 4 factors we varied has been empirically related to the actual veracity of abuse claims
- But would these factors bias willingness to believe abuse disclosures?

Jennifer Freyd, Copyright 2004

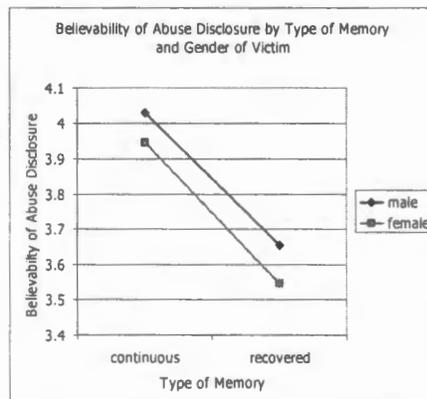
Example Vignettes

- Continuous Memory:
 - A college friend, David, confides in you that he was forced by his father to have sex with him when he was 9 years old. David tells you that he has always remembered this aspect of his childhood, but he has never told anyone until now.
- Recovered Memory:
 - A college friend, David, confides in you that he was forced by his father to have sex with him when he was 9 years old. David tells you that he has only recently remembered this aspect of his childhood, and also that he has never told anyone until now.
- Participants rated believability of David's report

Jennifer Freyd, Copyright 2004

Cromer & Freyd (in prep) Results

- Type of Memory significantly predicted belief ratings
- Participants rated continuous memories as more believable than recovered memories ($p < .0001$)
- This bias suggests ignorance and confusion about memory for abuse



Jennifer Freyd, Copyright 2004

In Conclusion: What we know so far

- Abuse and interpersonal victimization is a staggering problem
- Some people forget the abuse
- Forgetting is more likely when the perpetrator was a care giver
- Memory accuracy is separate from memory persistence
- People have unscientific and biased ideas about these issues

Jennifer Freyd, Copyright 2004

Recommendations

- Our duty as scientists is to provide accurate information so we focus on the real problems – e.g. the devastation of child abuse
- The media has a duty to disseminate accurate information to the public

Jennifer Freyd, Copyright 2004

What needs to change?

- We need to stop confusing the persistence of a memory with its accuracy
 - There is no compelling evidence that a memory is more or less accurate if it is continuous compared with recovered
 - There *is* evidence that memories are more likely to be forgotten if the perpetrator is a care giver

Jennifer Freyd, Copyright 2004

Being responsible

- We need to resist sensationalizing research in order to make headlines
 - A subject misremembering the word "shoe" after seeing similar words, does not suggest that she would falsely remember being raped
 - The Bugs Bunny in Disneyland research is about an innocuous event, where subjects confuse which cartoon character they met when visiting a theme park
 - We sensationalize this interesting research when we generalize it to salient, personal, often painful betrayals such as child abuse

Jennifer Freyd, Copyright 2004

In conclusion

- Let's keep doing good research
- Let's disseminate it responsibly
- Let's not sensationalize it or take it out of context
- Let's educate the public about the profound problem of child abuse, including its causes & consequences
- Let's not hurt victims more by not believing them just because they forgot for some period of time

Slides posted at my lab website:
<http://dynamic.uoregon.edu>

Jennifer Freyd, Copyright 2004

0031



14-1-04016-6 47440245 LTR 08-19-16



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON

Plaintiff

vs.

FUGLE, JOSEPH LEROY

Defendant

Cause No. 14-1-04016-6

LETTER FROM JANA FUGLE*

*This letter was emailed from Jana Fugle to SUPCRTDEPT13 on Wednesday, 8/17/16 at 10:16 PM. The email was identified only by a cause number, but not a defendant name. The email was opened by Department 13 Judicial Assistant Ginele Eilert on 8/18/16 after the Joseph Fugle sentencing hearing (which was held on 8/18/16 at 9:00 AM). The letter was not reviewed by Judge Nelson prior to the 8/18/16 sentencing hearing.

8/22/2016 13531

8/22/2016 13531 0032

Dear Judge Nelson,

A longtime friend has paid the fee to change my and MG's airline tickets so I can be at Sentencing. I was not certain whether or not I would attend sentencing but have decided just tonight that I will attend.

I chose not to have my family and friends write in that were aware of the domestic violence, that did witness Joe's bad behavior and that did see Joe exactly as we have testified he behaved so as to not inundate the Court more than it already has been with his character emails.

While I do not plan to ask to speak again I do feel it necessary to give additional information regarding a few things in some of the emails that have come in in support of Joe and in the Pre-Sentencing Information Report.

First I'd like to speak to the many allegations that MG had vowed to break Joe and I up at all cost, from the time we were married, and that he doesn't want to share me with any man. MG one time, when he was 12 years old, after Joe had pulled him down the stairs by his leg, held him down physically and refused to put MG on the phone with me while he was yelling for help at the top of his lungs in the background, said he was going to find a way to break up our marriage, something which wouldn't be out of the ordinary for any 12-year-old boy to say in that kind of a situation, even though MG obviously did not have the power to do so.

Prior to that, especially in the first year of our marriage, MG tried hard to create a relationship with Joe but Joe was disconnected and didn't act like he liked MG. MG was a very cuddly and affectionate little boy who would sit on my lap sometimes and would beg Joe for a hug or a kiss goodnight but Joe would not allow it. He badly wanted a dad that was present, as his own dad chose not to see him and his older sister very often and was absent much of the time. MG would tell the rest of us to "give Joe a break, he's never had kids before" and to "be patient with Joe". Like no child I have ever seen before, MG could see both sides of an incident, taking responsibility for his side, while asking for understanding for Joe's side even though Joe never took responsibility for the things he did wrong.

MG **did not continuously** go around stating that he was trying to get rid of Joe or break up our marriage, but as time went on he did have a hatred towards Joe because of the bullying towards MG and DV in our home. By age 16 MG made up his mind that once he left our home, Joe would be excluded from his life, he would not ever set foot in a house that Joe resided in, not even to see or visit with me, he would never allow his children near Joe nor allow them to call him grandpa. I did not understand, at that time, the depth of his hatred for Joe but accepted his choice to exclude Joe from his life as I knew some of the bullying both passive and aggressive that Joe showed towards my son. I did not understand at that time the amount of fear my son had of Joe and why he feared that Joe could pick him up and throw him out of the house, Joe's house, anytime he wished. At no time, however, did MG have the power to break up my marriage to Joe. He was university bound and in no way did he sabotage that which he had worked so hard for from the 5th grade on to get rid of Joe. When his illness caused him to give up the idea of an Ivy League School straight from high school MG contacted the admissions office at the UW and spoke extensively to them about his situation. They were very interested in him and he had resolved to doing his undergrad there in East Asian Studies with a minor in Japanese. After which he would apply to Harvard for his MBA and JD concurrently so he could work for American companies, overseas, as a corporate attorney. He would cut Joe out of his life and I accepted that with the hope in my heart that after some years had gone by things might level off and he might change his mind. This was prior to the remembrances of the vile and reprehensible things Joe had done to him:

Joe's family came to our home a handful of times, at most, throughout our 12 years of marriage, prior to the separation, but never for a long period of time nor often enough to get a feeling for the goings on in our home. They have such little knowledge of who my children really are that they don't even know after 14 years how to spell their names. At no time did we ever ask anyone to stay away from our home during the times that I was ill. As a matter of fact, my family managed to visit on a regular basis and spend enough time in our home to see what was going on, which made them visit more often out of concern. The open door policy was never revoked, the neighbors quit coming over after the restraining order and almost never after Mitchell fell ill. If they felt they needed to knock, that is on them. For as many people as have written in about Joe being such a great neighbor, coworker and friend I could inundate the court with letters from neighbors, family and friends that found him to be pompous, arrogant, curt and unhelpful.

Not only did my son distance himself from all of these people that have written in against him, as he knew they favored Joe and acted as if they did not like him, but we all did because of Joe's position with them and their lack of interest in hearing what was actually going on. There were a few times in middle school when Mitchell did speak to Kirk Van Natta but did not feel like Kirk was able to hear him because he was so biased towards Joe. I find it interesting that these few people who had minimal interaction with my son over the years say MG repeatedly told them he was going to get rid of Joe but yet he never spoke of his plans to me, his grandmother, aunts, uncles, cousins and friends that he did confide in about the abuse within our home. He would have never opened up to these people because he did not feel they were safe to talk to, these were all neighbors that Joe had a relationship with long before we ever moved in and were introduced to them. As to the accusation that MG was accused of sexually touching children we were babysitting in our home, that is a flat out LIE and NEVER happened. None of us have ANY idea what Kirk is talking about.

While I do not recall the situation Jackie is referring to where MG lied and wasn't disciplined, I cannot say whether or not it happened but I can tell you that Jackie never liked either of my older children often referring to them as brats and saying how sorry she felt for Joe that he had to live with them. I tried, carefully, on a few occasions to broach the subject of the abuse and DV in our home with Jackie, and once with Joyce, but neither of them were open to hearing any wrong doing by Joe and so I stopped the conversation and did not try to speak with them about it again, I knew they wouldn't believe me, but that didn't mean it wasn't happening.

My oldest daughter, Andrea, had to be put into a residential treatment center for troubled teens, in part, due to the emotional abuse and neglect that Joe inflicted upon her while she lived in our home from 2002-2008, and for his continued absence during the weekly 2 hr family sessions and 1 hr counseling appointments held via phone and a skype type program. Joe refused to take part in looking at his behavior and his involvement in the decline in this child's life, as we were instructed week after week, with assignments to do. She was a 99% on the Depression Scale per her psychological evaluation after entering into the program. We were told that they never get kids in there that rate that high and were asked if we knew why that was, and I did, it's because they have already taken their own lives. I wasn't going to bury my child and told Joe he had a hand in it and we needed to figure out how to save her and keep her in her program. Joe did not refinance the house out of the goodness of his heart, and he does not have a good relationship with that child today. She tolerates him for the limited interactions she needs to have with him as a landlord, but there is no relationship.

CF, my youngest daughter, felt sexualized by Joe's remarks about her developing body, felt afraid of him to the point that she refused to come home from a trip with our friends if she wasn't included on the Restraining Order, wrote a declaration and insisted that it be included in the order. The Pre-Sentencing Investigator included her declaration and I have included the letter written by her counselor, at the time. The last two years Joe was in the house this child became extremely terrified of Joe and tried to do things not to rock the

boat which included going along with him on errands because he threatened not to buy milk, cereal or whatever else was needed in the house if she did not accompany him. I have had to force her to stay home and not attend this trial or be a part of these proceedings because she feels so strongly about being there in support of her brother but I don't feel that it is a healthy place for her to be as a 17 yr old young woman. She has had a physical and emotional breakdown and has been unable to attend school the past 2 years. We are now working on her GED due to her trauma and secondary PTSD from Joe and the things he has done to her brother, and this family. She has been greatly impacted!

As to Joe being sexually abused: I have merely stated that after years of trying to understand him, after working with multiple counselors and talking to multiple psychiatrists and doctors, that is the only conclusion that makes sense as to why he would commit these egregious acts. I do not know this to be a fact and Joe himself has denied it, but so did my son in his early years.

I have spoken to Joe's first wife on multiple occasions to try and find answers for my marriage. That marriage ended in divorce after 5 years because there was no emotional connection between them and she often felt he was manipulative and going through the motions of something, as if someone had told him that's what he should do, but without any connection or feeling to the behavior or her. She does care about Joe, as a person, and wishes him well, but their life together was not a happy one, and hers is a very different story from the one that Joe tells.

I have also spoken to Joe's nephew's several times where they confided things to me about Joe, such as: "He was mean so our dad had to take us outside to walk the property at grandma and grandpa's because we were so scared of him. That's why a tv got put in the rec room, so we didn't have to be out where he was." "Until you came along he never bought us Christmas presents or came to our events except when he was married to Carol." "Since marrying you uncle Joe has actually become a little bit nice." "We were very scared of him growing up." He was not a loving, doting uncle as described by Gene Walsworth. During both marriages the wives bought gifts for Joe's nephew's, made sure events were attended, and tried to facilitate a relationship which was very distant at best. We saw those boys on Thanksgiving, Christmas, a few family events, graduation and weddings but never attended a birthday party or sporting event during our marriage as we were not invited or if we were, Joe did not inform me. I love both of those boys and would do anything in this world for them!

As far as Bob Pagay, Dawn Montgomery and Matt Wolford's statements go I am not surprised that they did not include that Matt's wife Ashley along with Bob and Dawn's other daughter Nina were both "creeped out and very uncomfortable with the way Joe touched and flirted with their mom" and that "Ashley felt creeped out that Joe would pull up the blinds and watch her in our hot tub."

As for Dr. Dave Montgomery's claim that one of MG's sister's said his allegations towards Joe was "Bullshit" that is a complete fabrication and has no merit what so ever. This man doesn't even know my children and has only met us on a very few occasions.

It is very apparent that Joe has been busy telling people a story and as is typical for him, he garners support where he has falsely built up alleys. None of these people were in court to hear the facts in the case, have asked myself or my family for any details and most of them have spent limited time with our family or in our home.

I have to live with the fact that I chose to stay in a marriage that wasn't healthy because I wanted to teach my children that when you make a commitment, you do everything possible to make it work, that we don't throw people away because they are different or because they haven't had the experience in life to allow them to

handle a family the way they should. I believed that with enough love Joe could learn to love my children, would emotionally connect to me, that he would be able to be the person that other's saw in him but that wasn't the case because Joe was living a lie, manipulating everyone around him, including me, and had no intention of being true to the promises he made to me when we were dating. Had I left him when I said that I would if there was another physical altercation, early on in the marriage, we would not be where we are today but I have no doubt that someone would be, it just wouldn't be us.

Lastly, it has been asked that Joe not have any contact with myself or my children. Originally I was on board with that but would like to ask the Court that I be able to have contact with Joe as we have assets and liabilities for which I am needing to get things taken care of and he has all of the knowledge, paperwork, bank accounts, account numbers, emails, etc and it is inhibiting my being able to take care of these things. His father is currently his power of attorney but the family considers me to be the enemy here and so I need to be able to converse with or write to Joe to find out how to handle many of these situations.

I apologize for the lateness of this letter and appreciate your time and attention to this case.

Respectfully,

Jana L Fugle

0121



14-1-04016-6 47311105 LTRSUP 07-27-16



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON

Plaintiff

vs.

FUGLE, JOSEPH LEROY

Defendant

Cause No. 14-1-04016-6

EMAIL FROM JACKIE FUGLE

13167

7/28/2016

Ginele Eilert

From: Eugene Walsworth <walsworther@hotmail.com>
Sent: Tuesday, July 26, 2016 10:20 PM
To: SUPCRTDEPT13
Subject: FUGLE JOSEPH L CAUSE# 14-1-04016-6

Dear Judge Kathryn Nelson,

My name is Jackie Fugle, I am Joseph Fugle's mother. (and very proud of it by the way)

From the first day Joe and Jana married, Jana has babied her son. Mitchell would crawl up in Jana's lap and she would cradle him like if he were a baby and he was over 12 yrs old. Mitchell has always tried to break them up from day one, he never wanted to share his mom with Joe or any other man for that matter, this is her third marriage. I witnessed Mitchell lying, get caught in a lie and Jana would never correct him, no wonder he still lies. Mitchell is a very smart person, so smart that he found a sure way to get his mom back to himself AND to get rid of Joe. Mitchell also has been heard saying that he would do anything to get rid of Joe, guess he found a way to do that.

It was said that Courtney, who Joe adopted soon after Joe and Jana were married, was afraid of Joe. They would come over to my house together all the time or even just go shopping at Costco together and never once did I think Courtney was afraid of Joe.

I'm surprised that Jana would say so many lies, mom like son I guess.

Joe is a very easy going person, always has been and I have never heard him even raise his voice or yell at anyone. As for being molested as a child, I have no idea where Jana came up with that, he was never molested, just more of her lies.

Friends and family would have liked to visit Joe & Jana at their home more often however, Jana was either sick, not feeling well or in the hospital, so people stayed away to not disturb her not because Joe was volatile.

I have 5 fractures in my back and very limited in what I can do along with digestive issues, and my husbands eyes are going bad. Joe lived close enough to us that we could depend on him as we are growing older. It is heart breaking knowing my son is locked up for something he did not do and is there due to another persons lies.

I am having my daughter put this letter in her computer and email it to you as I have nothing to do with computers.

Thank you for your time,
Jackie Fugle

PIERCE COUNTY PROSECUTING ATTORNEY

December 23, 2019 - 1:22 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 54108-4
Appellate Court Case Title: Personal Restraint Petition of Joseph Leroy Fugle
Superior Court Case Number: 14-1-04016-6

The following documents have been uploaded:

- 541084_Personal_Restraint_Petition_20191223131735D2619910_8732.pdf
This File Contains:
Personal Restraint Petition - Response to PRP/PSP
The Original File Name was FUGLE PRP.pdf

A copy of the uploaded files will be sent to:

- ian@gordonsaunderslaw.com
- jason@gordonsaunderslaw.com
- kim@gordonsaunderslaw.com
- mick@gordonsaunderslaw.com

Comments:

Sender Name: Aeriele Johnson - Email: aeriele.johnson@piercecountywa.gov

Filing on Behalf of: Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7400

Note: The Filing Id is 20191223131735D2619910