THE FALSE MEMORY SYNDROME: CLINICAL/LEGAL ISSUES FOR THE PROSECUTION

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Early trauma, especially alleged recollected sexual or ritualistic abuse, has dominated both the clinical and legal systems recently. The clinical/legal challenge is to discern between true abuse and false memories. Modern medical technology has provided new insights into the operation of the brain along with the central and peripheral nervous systems and their relationship to the endocrine system. We now have a better understanding of how our system processes trauma and severe anxiety. An understanding of trauma recollection and client’s susceptibility to causal suggestions from the neuropsychological perspective is crucial when these types of abuses are alleged.

INTRODUCTION

The fallacy of hypnosis and lie detector tests is well known within the Criminal Justice System. Memory recollection falls into this same category of unreliable evidence and for the same reason – that the cognitive interpretations of the emotional/autonomic aspects of the central nervous (CNS) and peripheral nervous systems are not “true” indicators of “reality.” The issue of the reality of repressed memories is well articulated in the May 1993 issue of the American Psychologist, where Loftus (1993) stated that repression is one of the most haunting concepts in psychology: “Something shocking happens, and the mind pushes it into some inaccessible corner of the unconscious. Later, the memory may emerge into consciousness.” She goes on to claim that repression is one of the foundation stones upon which the structure of psychoanalysis rests. Recently there has been a rise in reported memories of childhood sexual abuse that were allegedly repressed for many years with people now suing alleged perpetrators for events that happened decades earlier. Loftus feels that these new developments give rise to a number of questions: (A) How common is it for memories of child abuse to be repressed? (B) How are jurors and judges likely to react to these repressed memory claims? (C) When the memories surface, what are they like? And (D) How authentic are the memories?

It is also widely recognized that jurors can be easily swayed by emotional testimony without realizing the impact of distortions or reality which the “alleged victim” may very well believe as being true, factual and actual. This situation is further complicated by expert witnesses who validate the alleged victim of abuse’s recollections. To make matters worse, many such clinical experts help their alleged victims of abuse by “suggestive recollections.” This process is usually done under hypnosis or a similar clinically created dissociative state. The end result is that the client (alleged victim of abuse) often comes away from this therapy believing what the therapist has suggested is the reality of the situation. The same neuropsychological and neurophysiological process operate here that do regarding memory recollection in general (Calef, 1993; Carlton, 1993; Peck, 1993; Robbins & Tanuck, 1988-89; Scheler, 1993; Tarpale, 1991; Wylie, 1993; Yapko, 1993).

The events that led to the current controversy over “false memories” and the efficacy of therapists aiding in the reconstruction of memories is rooted mainly in the interpretations of Freud, Jung and other early psychoanalysts and their interpretation of dreams (dream analysis). Two factors need to be considered when looking at dream analysis. First, Freud, Jung, Adler, and others offered their conceptual models without the benefit of the advanced neurophysiological technology which exists today. Secondly, considerable controversy exists regarding seemingly
contravening interpretations of these early psychoanalysts and their interpretation of dreams. The first part of this debate is discussed later when we address the neuropsychiatry and neurophysiology of memory. The latter part—thathconcerning the interpretation of classical psychoanalysis—is a good starting point for looking at the current clinical/legal controversy (Freud, 1979; Grunbaum, 1984; Jung, 1973).

Perhaps the single most cited reference for “therapy induced memory recollection” is that of Bass and Davis (1988) and their book, The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse. In their work, the authors suggest a check list for potential sexual abuse:

- Touched in sexual areas?
- Shown sexual movies or forced to listen to sexual talk?
- Made to pose for seductive or sexual photographs?
- Subjected to unnecessary medical treatment?
- Forced to perform oral sex on an adult or sibling?
- Raped or otherwise penetrated?
- Fondled, kissed, or held in a way that made you uncomfortable?
- Forced to take part in a ritualized abuse in which you were physically or sexually tortured?
- Made to watch sexual acts or look at sexual parts?
- Bathed in a way that felt intrusive to you?
- Objectified and ridiculed about your body?
- Encouraged or goaded into sex you didn’t really want?
- Told all you were good for was sex?
- Involved in child prostitution or pornography?

Bass and Davis strongly suggest that if any of these events occurred during young childhood or during the teen years then you are a victim of sexual abuse. Moreover, they go on to state that if you are unable to remember any specific instances of sexual abuse but have a feeling that something abusive happened to you, it probably did... (Bass & Davis, 1988; 20-22). Herein lies the trap for stimulating false memories in susceptible clients. Bass and Davis work on the premise that a lack of memories of sexual abuse is due to the repression of memories and that psychoanalysis needs to be used to probe the unconscious. The appeal to the client, who very likely suffers from some clinical syndrome (basically generalized anxiety – GAD), is that these new “unlocked” memories provides a logical explanation of their clinical suffering. Moreover, this cathartic relief also gives them a new found status—that of a “survivor of abuse.” This, in turn, allows them membership into the selective support group—“adult children of sexual abuse.”

THE SIGMUND FREUD INFLUENCE

Dream analysis is rooted in Freudian psychoanalytic theory. The Freudian concept links three components of “psychoanalysis”—free association, dream analysis and catharsis. According to scholars of Freud, some patients disclosed their dreams in the course of free association (a technique whereby the client says whatever comes to mind, ostensibly releasing repressed events). Freudian analysis views dreams as having two elements: their manifest content (the actual events recorded in the dreams) and their latent content (the symbolic content). Regarding the latter, Freud warned that the hidden, symbolic content had to be client-specific. Part of the problem with this individualized focus, many feminists contended, was that it allowed Freud to dismiss the “recall” of female clients alleging “abuse,” especially between fathers and daughters.

Masson (1990), who had access to Freud’s notes, discovered evidence of Freud’s awareness of “real” child sexual abuse of females at the hands of their daughters. However, Freud was also aware of the role of distortion during periods of extreme anxiety. Perhaps this awareness led Freud to be cautious in stating a clear cause-and-effect relationship between “recollections” of sexual abuse and the actual incidents of abuse.

Grunbaum (1993), a noted scholar of psychoanalysis, questioned the Freudian interpretation of repressed memory arguing that Freud, or the neo-Freudians, ever established a scientific, cause-and-effect relationship between repressed memories and later clinical syndromes or, for that fact, a retrieved memory and a subsequent cure. And it was Freud (1939) himself who warned about the pervasive Western cultural distortion which places an artificial