

Wrongful Conviction and the Moral Panic About Organized Child Abuse: National and International Perspectives

Randall Grometstein, J.D., Ph.D.
Fitchburg State College
Fitchburg, Massachusetts 01420

January 15, 2005

Revised December 19, 2005

Accepted 8/1/06 for publication in *Wrongful Conviction: International Perspectives on Miscarriages of Justice*, ed. C. Ronald Huff and Martin Kiliyas, forthcoming from Temple University Press.

Final version submitted September 15, 2006.

Abstract

In North America, a moral panic about daycare workers and other caregivers engaging in ritual abuse and sexual abuse of children began in the early 1980s and quickly spread to the rest of the United States and Canada. By 1986 the organized abuse moral panic had crossed the Atlantic to the United Kingdom and the Netherlands, and affected Australia and New Zealand as well. Western Europe has been troubled by stories of sexual and satanic danger to children since the 1990s, and in 2004, seventeen people were tried on charges of organized abuse in Outreau, France, a trial that led to an official apology to the accused and a governmental inquiry into the prosecution. This chapter argues that the moral panic about organized child abuse resulted in the wrongful conviction of many defendants. I also examine factors found by C. Ronald Huff and his colleagues (Huff, Rattner et al. 1996; Huff 2004) to contribute to wrongful conviction. Four of those factors – overzealousness by police and prosecutors; false and coerced confessions and improper interrogations; forensic errors, incompetence and fraud; and the adversary system itself – played a role in the organized abuse cases. Additionally, the moral panic concept suggests another source of error, namely, the weakening of traditional legal safeguards due to the perceived magnitude of the danger threatening society. Like Huff and his colleagues, I conclude that the organized abuse cases support the argument in favor of innocence commissions, due to limitations on the scope of appellate review. Thus, the theory of moral panic helps us understand both how the organized child abuse cases could lead to wrongful conviction and, more generally, highlights some vulnerable points of the legal system.

Introduction

The study of wrongful conviction has focused on the conviction of individuals in spite of evidence that casts serious doubt on the defendant's guilt. This paper examines a different type of case, in which several defendants may be convicted but in which doubt exists as to whether any crime was committed at all. The moral panic about organized abuse of children began in North America in the early 1980s, spread to other English-speaking countries, and is currently afflicting western Europe. In this chapter I argue that the organized child abuse cases shed light on some weaknesses of western legal systems that render them vulnerable to wrongful conviction. The structure of this chapter is as follows. I first discuss moral panic theory and the moral panic about organized child abuse. Then, using factors found by C. Ronald Huff (Huff, Rattner et al. 1996; Huff 2004) to contribute to wrongful conviction, I discuss the role played by four of those factors – overzealousness by police and prosecutors; false and coerced confessions and improper interrogations; forensic errors, incompetence and fraud; and the adversary system itself – in the organized abuse cases. Additionally, the moral panic concept suggests another source of error, namely, the weakening of traditional legal safeguards due to the perceived urgency of the danger threatening society. In conclusion, I recommend, as does Huff (2004), the establishing of criminal case review commissions, or “innocence commissions”. In my view, the organized abuse cases demonstrate the need for such commissions.

The moral panic about organized child abuse began in the early 1980s in the United States and Canada, spread to the United Kingdom, the Netherlands, Australia,

New Zealand, and more recently to France in the case in Outreau (Associated Press 2004, May 21) and led to the arrest and charging of hundreds of defendants with serious crimes. Some of these were convicted and sentenced to severe punishment; others, though exonerated, found their lives and their businesses in ruins. In each jurisdiction, as the fear subsided, and many convicted defendants won new trials, the public was puzzled to find that so many defendants were acquitted upon retrial or the charges against them were dropped altogether, although some defendants remain behind bars to this day. In each country, the cases occurred in a pattern of bizarre charges made against an expanding number of adults, based on therapists' interviews with child victims that have been criticized as unduly suggestive and coercive. Each case inspired controversy from the moment suspicions were first voiced, with the result that communities split between supporters of the prosecution and supporters of the accused. Regardless of outcome, the controversy continued to the level of the appellate courts, with whom convicted defendants have filed criminal appeals and exonerated defendants have filed civil suits seeking compensation for the loss of their reputations and livelihoods. There have been a number of governmental commissions of inquiry, which have criticized the prosecutions in question. Supporters of the prosecutions, however, remain convinced of the validity of the charges filed (see, for example, the Project Truth case in Cornwall, Ontario, described below).

Moral panic theory

The term "moral panic" was introduced by British sociologist Stanley Cohen in a study of how British society responded to confrontations between youth on motorcycles and the police (Cohen 1972, 2002).¹ Historian Philip Jenkins explains that "[t]he word

panic...implies not only fear but fear that is wildly exaggerated and wrongly directed...” (Jenkins 1998, pp. 6-7). “Moral” indicates the evocation of deeply-held beliefs about right and wrong. Moral panic theory is a branch of social construction theory, according to which, from time to time, societies “discover” social problems that are brought to collective attention by activists called claims-makers. A claims-maker presents assertions (“claims”) about the nature and extent of the problem; these are phrased in non-neutral terms that link them to important values or other well-established social problems, e.g., the newly-coined “lawsuit abuse.” The definition of the problem is usually implied in the name, e.g., “throwaway children” (cf. Best 1987).

Moral panics are a particular type of social problem. What distinguishes them from the general category, according to other sociologists (e.g., Goode and Ben-Yehuda 1994; Victor 1998), is that, in a moral panic, blame for the problem is attributed to deviant persons that Cohen (1972, 2002) called *folk-devils*. Blaming deviant people implies its own remedy, and, during a moral panic, claims-makers turn to social control authorities with demands that the deviants be dealt with. A second distinction is that, due to the urgent nature of the danger about which claims-makers warn, claims often outstrip the ability of scientific or law enforcement authorities to verify them. As a result, claims-makers themselves are acknowledged to be the experts in detecting the deviant individuals thought to be causing the problem. Claims-makers, therefore, although personally sincere, display a confirmatory bias due to their stake in having society take their claims – and their expertise – seriously.

A third distinction between ordinary social problems and moral panics is that frequently, during a moral panic, claims-makers demand a modification of traditional

procedures or practices that are said to get in the way of dealing with the newly-perceived problem. For example, the legal system may modify its rules of evidence and procedure in order to prosecute persons perceived to be so dangerous. With the subsiding of the moral panic, the modified investigative and legal procedures may remain in place, to affect future cases. This chapter argues that these modified investigative and legal procedures are important for understanding some types of wrongful convictions.

Organized abuse

Critics of the organized abuse cases often compared them to a witch-hunt, a charge that claims-makers rejected indignantly. However, in the moral panic about organized child abuse, claims-makers' assertions about dangerous people operating in secret to harm vulnerable and innocent victims – while the authorities were helpless to halt these activities – persuaded many people that immediate action was necessary. Further, it was obvious that anyone who would conspire to commit these crimes must be evil, whether evil be understood in religious or secular terms. Fundamentalist Protestants and conservative Catholics viewed these cases in terms of satanic ritual abuse, satanic abuse or ritual abuse, while simultaneously secular claims-makers such as feminists explained the very same cases as revealing evidence of an organized criminal activity, such as a ring – a homosexual ring, pornography ring, prostitution ring, or pedophile ring. Fears of organized criminal rings found a ready audience, despite periodic official inquiries that failed to find supporting evidence. Along with the general public, therapists and child abuse professionals who specialized in the treatment of abused adults and children were similarly divided between those comfortable with the term “satanic ritual abuse” and those with a more secular frame of reference, who preferred either the

term “sexual abuse” or the compromise term “ritual abuse”. In this chapter, *organized abuse* will be used to denote both these beliefs, whether couched in religious or secular terms.²

Other scares about children’s safety

Philip Jenkins argues that “panics emerge in groups rather than singly” (Jenkins 1992, p. 12).³ In North America in the 1980s, the moral panic about organized child abuse arose in a context that included the following scares: a moral panic about satanic activity (Victor 1998); a scare about missing and murdered children (Best 1987); great public anxiety about incest, redefined as child sexual abuse during the 1970s (Hacking 1991); a wave of disputed custody cases in which women accused their former husbands of sexually abusing children during court-ordered visitations (Horner and Guyer 1991a, b); self-help books by women claiming to be “survivors” of incest and ritual abuse (e.g., Bass and Thornton 1983, 1988); and therapists’ claims that many of their adult women patients suffered from multiple-personality disorder as a result of severe childhood sexual and ritual abuse (Acocella 1998, April 6). Of particular importance were claims that society was in denial about widespread child sexual abuse, and that any man could be guilty of such an offense. Thus, claims about organized child abuse by caregivers were made in a context of claims about similar issues, and the effect of claims in one panic was to reinforce claims in another.

The moral panic in North America

The organized abuse cases began in California, where a network of child abuse professionals and prosecutors met monthly in the early 1980s to discuss the ways in which the criminal justice system should respond to cases of incest, which was said to be

a widespread but hidden problem. In the early months of 1984, the moral panic intensified when a reporter for a Los Angeles television station broke the story of the investigation into the McMartin Preschool case; he charged that adults at the school had engaged in rape, pornographic photography and animal killing (Nathan and Snedeker 1995, p. 87). One month later, reports on the burgeoning charges in the Jordan, Minnesota, case appeared in the national press. Following these sensational charges, a wave of cases broke across North America during the rest of 1984 (Nathan and Snedeker 1995). In succeeding months and years, the number of new cases filed subsided quickly to a much lower level (Grometstein 2001). The McMartin case has been extensively covered, so I give a brief summary of the Jordan, Minnesota, case.

Jordan, Minnesota

Although the Jordan case began at almost the same time as the McMartin case, it occupied national attention only for about six months, until a jury acquitted the first two of twenty-four defendants in September 1984. Despite its brief existence, the Jordan case was similar to many of the others that followed. After a woman living in a trailer park complained to police that her children had been molested by a young man who also lived in the trailer park, the children were interviewed and the young man was arrested. However, continued questioning of the four children, aged under ten, and of the young man as well, resulted in accusations against many other residents of the trailer park, male and female, as well as a growing list of victims, who were questioned in their turn. Eventually, the list of accused included people with little or no connection to the inhabitants of the trailer park. Interestingly, the initial complainant was the fourth person arrested, and shortly thereafter her sister and brother-in-law were arrested as well, on the

basis of their own children's testimony.⁴ Authorities believed that the twenty-four accused were operating at least two child sex rings, that the children had witnessed the ritual slaying of babies, and that the children were forced to participate in child pornography (Malan 1984, August 19; Rutchik 1984, October 19). The twenty-four defendants were charged with hundreds of counts of abusing children.

In court, prosecutors concealed the satanic allegations and pursued the sexual abuse charges (Humes 1999, p. 325). After the acquittal of the first couple, but before the trial of a second couple, the trial judge ordered the prosecution to turn over 100 pages of police notes on a homicide investigation concerning whether some children had been murdered in sexual orgies. Rather than reveal the police notes, the prosecutor dismissed the charges against the remaining twenty-two defendants (Shipp 1985, August 20). Even after the charges were dismissed, state authorities announced plans to drag the Minnesota River in order to find the bodies of murdered children (Associated Press 1984, October 30). The case collapsed shortly thereafter, frustrating both supporters and critics of the prosecutor, who was investigated by a commission appointed by the governor, and later defeated at the polls (Crewdson 1988, p. 18).

In the ten years following the end of the Jordan case, organized abuse cases were filed in almost all of the fifty states and several Canadian provinces, with one of the largest occurring near the end of that period (i.e., Wenatchee, Washington, 1993-1994). Although some defendants in these cases were acquitted at trial and others had their convictions overturned, nearly two dozen defendants remain in prison as of this writing.⁵ In the meantime, however, the moral panic had spread to other countries.

Canadian cases: Ontario and Saskatchewan

A number of important cases occurred in southern Ontario. For example, there were at least two large organized abuse cases, Project Jericho in Prescott (1989-1995) and Project Truth in Cornwall (1996-2001).⁶ In Project Jericho, fifty-two people were tried for sexually abusing children, and most of them were convicted. Social workers suspected satanic abuse, an idea that received support from the fact that one suspect was charged with the murder of an unidentified infant whose body was never found (Wilkes 1990, March 8). Others, including the Ontario Provincial Police, rejected the satanic ritual abuse interpretation (Brent 1991, January 23). Newspapers continued to describe the arrests in Prescott as being part of a child-sex ring (CP 1991, September 9). Project Jericho ended its six-year run in the summer of 1995, and it was considered such a success that “area police forces and the Children’s Aid are considering setting up a permanent joint unit to investigate child sexual and physical abuse cases in Leeds-Grenville county” (Miller 1995, March 25).

By contrast, a second large organized abuse case that began fifty miles away in Cornwall, Ontario, as the Prescott case was coming to an end, had a different outcome. Project Truth was initiated to investigate allegations that a multi-generational “pedophile clan” had been operating in and around Cornwall for decades (Leroux 1997, July 26). Fifteen men, including two priests, a doctor and a lawyer, were arrested and charged in connection with Project Truth. In the meantime, a provincial legislator, unconvinced that all members of the pedophile clan had been identified and arrested, collected what he said were boxes of affidavits from victims and witnesses and threatened to name names on the parliamentary floor if his request for a public inquiry was not met (Ottawa Citizen 2001, October 25). At least some of this material consisted of testimony about satanic ritual

abuse (Rupert 2001, May 29). Project Truth came to an end in August 2001 with the Ontario Provincial Police's announcement that they "found no evidence to substantiate allegations from at least 69 complainants that prominent members of the Cornwall community conspired to sexually prey on young boys over four decades" (Sands and Campbell 2001, August 24). Of the fifteen men against whom charges had been laid, four men died before their cases went to trial, four were acquitted, three had charges against them withdrawn, two had charges stayed, one was deemed mentally unfit to stand trial, and one entered a guilty plea (CP 2002, June 18). Police found no evidence of a pedophile ring and no evidence of a high-level cover-up. However, in response to calls from victim groups and other claims-makers, the Attorney General of Ontario promised to convene early in 2005 a commission of inquiry to examine, for the fourth time, whether Project Truth was properly conducted (Lajoie 2004, November 30). Thus, the earlier Project Jericho did not challenge the existence of organized abuse, while Project Truth did – and that may explain the controversy at the latter's ending.

The capital of Saskatchewan province, Saskatoon, was the site of at least two important cases of organized child abuse that began at about the same time in 1991, the Sterling/Martensville case and the foster children case. The first involved a family daycare home run by Ron and Linda Sterling and their 22-year-old son Travis in Martensville, a suburb of Saskatoon, in which the family, a female juvenile, and several members of the Martensville police force were accused of ritually abusing the children at the daycare. Ron and Linda Sterling were acquitted at trial, but their son Travis and the young woman were convicted, although the latter's conviction was overturned shortly

thereafter. Charges against the police were dropped after the Sterlings' trial, but the Martensville police force was disbanded.

The Saskatchewan foster children case involved the children's accusations of extreme sexual and ritual abuse committed against them by the members of their extended foster family and another family. In 1991, an investigatory team of a police officer, a therapist, and two Crown prosecutors arrested sixteen adults. Eighteen months later, all charges were stayed against the defendants (except for one who entered a guilty plea), on the grounds that the children were too traumatized to undergo a trial. In 1994, the defendants, unable to clear their names, filed suit for malicious prosecution against the members of the investigatory team, and, in 2003, nearly twenty years after the case began, in a landmark decision, the Saskatchewan Court of Queen's Bench found on behalf of the sixteen people accused of abusing the children (*D.K. v. Miazga* 2003). The court found that the investigatory team had no reasonable basis for pursuing charges against the accused (Grometstein forthcoming). Justice Baynton's exhaustive and carefully-reasoned critique of the investigation conducted in this case should have far-reaching effects on this type of prosecution – unless the Crown's appeal is successful.⁷

England and the Netherlands

By 1986, England was experiencing a moral panic about organized child abuse similar to that in North America (cf. Jenkins 1992). After pediatricians in Leeds began applying the new reflex anal dilation test (cf. Nathan and Snedeker 1995, chap. 9), the number of children suspected of being sexually abused grew at an alarming rate, and in 1986 Leeds became "the first British community to experience a child abuse crisis on a pattern that would shortly be experienced in other areas" (Jenkins 1992, p. 135). By the

spring of 1987, pediatricians in Middlesbrough, county of Cleveland, employed the same test and discovered startling numbers of sexually abused children, whom social services agencies then removed from their parents' custody. A series of "little Clevelands" followed (Jenkins 1992, p. 148), many of which involved allegations of satanic ritual abuse. Examples in 1990 include the Rochdale case, the Manchester case, the Nottingham case, and the Orkney case, which culminated in the infamous dawn raids by social workers in February 1991 to remove children from their parents' care (Jenkins 1992, chap. 8). The public uproar over the Orkney raid ended the raids and led to an official inquiry in July 1991, and in 1994 a comprehensive official study by anthropologist J. S. La Fontaine found that there was no basis for believing in the satanic ritual abuse of children in Britain (La Fontaine 1994; cf. also La Fontaine 1998). Although the moral panic appeared to subside, it flared up again in 2000 following the murder of an 8-year-old girl named Sarah Payne. For several weeks during that summer, the tabloid *News of the World* published the names and addresses of people it said were pedophiles, and mobs around the country stoned the houses of people whose name appeared on the list, or who had the same name as someone on the list (Cullen 2000, August 13).

As pediatricians in Middlesbrough, Cleveland, were discovering a sexual abuse crisis in 1987, the moral panic spread to the Netherlands, where organized abuse was discovered in the village of Oude Pekela (Jonker and Jonker-Bakker 1991), as well as to Australia and New Zealand.

Australia

The state of New South Wales made combating child sexual abuse a priority in 1984 (Jenkins 1992, p. 230 n. 1). In November 1988, the “Mr. Bubbles” case began in New South Wales with the arrest of the owners of a kindergarten and two of their assistants on charges of sexual and ritual abuse of 17 children said to have taken place over eleven months. After a six-week committal hearing, the magistrate dismissed the charges when experts testified that the testimony of the children had likely been contaminated by repeated, suggestive and coercive questioning. While the parents of the alleged victims called for a commission of inquiry, the husband and wife who owned the kindergarten were awarded \$227,000 in costs by the magistrate who had freed them. Some years later, in response to criticism from claims-makers who feared a cover-up had taken place, the Wood Commission conducted an inquiry, finding in August 1997 that the trail was “too old” and the evidence of the children “too contaminated” to ever establish what really happened in the Mr. Bubbles case. The kindergarten owners then sued the state of New South Wales for defamation based on statements made to the press by police during the investigation of the case. A jury awarded the couple \$750,000 in damages, but an appeals court ordered a new trial of the husband’s defamation case.

New Zealand

In 1992, in New Zealand, Peter Ellis and four female childcare workers at the Christchurch Civic Crèche (childcare center) were charged with abusing children in bizarre fashion, although only Ellis was tried. He was convicted in June 1993 on 16 counts of indecency with young children. In September 1994 he appealed, and three counts on which he had been convicted were overturned, due to the recantation of the child witness, but 13 counts were affirmed. Two further appeals were unsuccessful (Ellis

v. R. 1998) (Ellis v. R. 1999). The 1999 appeal specifically raised the issue of organized abuse prosecutions (using the term “mass allegations”) and their flaws, but the court declared that it was not the forum in which to address these issues.

France: l’affaire d’Outreau⁸

In recent years, Europe has been inundated by charges of sex rings, pornography rings, Satanism, and sex crimes committed against children.⁹ During the 1990s, “internationally-linked child abuse networks have been uncovered in France, Spain, Italy, Britain, Germany, Austria and Poland” (Pinon 1997, August 10). In 1991, a young judge-magistrate in the northern French town of Outreau began investigating allegations that some children had been sexually abused. His inquiries led to charges of rape, torture and bestiality from 1996 to 2000 in the home of a family named Delay in a housing project in Outreau, accompanied by the confessions of Thierry and Myriam Badoui Delay and a couple who were their neighbors (Smith 2004, May 20). The four confessed abusers were arrested, along with thirteen other suspects who protested their innocence, including a neighborhood priest. Many of the seventeen accused were held before trial for three years, during which time one committed suicide. When the case finally came to trial in May 2004, the principal accused, Mme. Delay and her neighbor, Aurélie Grenon, stunned the courtroom when they recanted their accusations against their thirteen co-defendants. One defendant was released provisionally, but, despite public criticism, the presiding judge refused to release the other seven who had maintained their innocence. A week later, after indignant editorials in both left-wing and right-wing newspapers, the seven defendants were released, even though Mme. Delay then renewed her original accusations, including a statement that she had abused her own children, and accused her

husband of murdering a young Moroccan girl (Agence-France-Presse 2004, May 24). The psychologists who had questioned the children were examined in court, as was the judge-magistrate who had begun the investigation. In early July 2004, the jury convicted ten people, including the two couples who had confessed and six of the defendants who had been released a few weeks earlier. Seven defendants (including the suicide) were acquitted. This result satisfied neither supporters nor critics of the prosecution. A day later, the French justice minister, promising a commission of inquiry, apologized to the exonerated defendants and stated, “This must not happen again” (The Independent (London) 2004, July 3). More than a year later, as the appeal by the convicted defendants opened in November 2005, Thierry and Myriam Badoui Delay (now serving sentences of 20 years and 15 years, respectively) reiterated that only they and their two neighbors were guilty; the other six had “done absolutely nothing” (Agence-France-Presse 2005, November 18). At the appeal hearing the state “deliberately failed to renew its case [against the six defendants] – a clear act of recognition that the six were victims of a miscarriage of justice” (Agence-France-Presse 2005, Dec. 1). The senior prosecutor expressed his regrets to the convicted six. On December 7, 2005, French lawmakers voted to open a parliamentary inquiry into the Outreau case, to answer questions about “the willingness of social services and psychiatric experts to accept uncorroborated allegations made by young children, and about the power given to lone examining magistrates under the French system” (Agence-France-Presse 2005, Dec. 7).

Contributing factor (1): overzealousness by police and prosecutors

Several of the factors identified by Huff and his colleagues (Huff, Rattner et al. 1996) as contributing to wrongful convictions were important in the organized abuse

cases. First, and most importantly, the organized abuse cases were characterized by a marked degree of police and prosecutorial overzealousness. For example, in a number of cases, prosecutors concealed the most bizarre charges of satanic ritual abuse from the defense, choosing instead to focus on the allegations of sexual abuse. In other cases, evidence disappeared, e.g., therapists' notes, as well as audiotaped or videotaped interviews by therapists with the children. Additionally, investigators were given manuals to follow, such as *Investigation and Prosecution of Child Abuse*, published by the National District Attorneys Association and the National Center for the Prosecution of Child Abuse (1987), in which the claims about organized abuse were fully set out, including a copy of the seminal paper by psychiatrist Roland Summit (1983) (discussed below). Three appellate court opinions detail this overzealousness: *California v. Pitts* (California Court of Appeal, 1990), *D.K. v. Miazga* (Sask. Court of Queen's Bench, 2003), and *Valentin v. Los Angeles* (California Court of Appeal, 2000) (cf. Grometstein forthcoming). In general, police and prosecutors displayed a confirmatory bias that derived from their acceptance of the claims on which the moral panic was based.

Contributing factor (2): false and coerced confessions and improper interrogations

Almost from the beginning of the moral panic, critics questioned the methods used to question the child victims (cf., e.g., *New Jersey v. Michaels* 1993, 1994). Recent research has supported the critics (Ceci and Bruck 1995; Nathan and Snedeker 1995). Although a number of suspects confessed initially to the accusations against them, these confessions were not supported by evidence. There are many reasons why suspects might confess falsely to a crime they did not commit. These reasons can include torture, brutality, threats, fear, fatigue, and deception by the interrogator (Huff, Rattner et al.

1996; Huff 2004). The chances of a false confession are increased when there is great community pressure for the solving of a crime (Huff, Rattner et al. 1996); in a moral panic, the concept of “innocent until proven guilty” is often suspended. To this we may add that defendants who demand a trial of the charges against them may suffer the so-called trial penalty, in which a convicted defendant is sentenced more harshly because he or she is viewed as refusing to take responsibility through a plea of guilty (Givelber 2000). In the organized abuse cases, convicted defendants in the United States were sentenced to such long sentences (e.g., 165 years in the case of Frank Fuster, Country Walk Babysitting, in Miami, Florida), that other defense lawyers routinely urged their clients to plead guilty. In the climate of public opinion prevailing during a moral panic, even an upright citizen with an unblemished record facing such heinous charges can expect a harsh response from judge and jury.

Contributing factor (3): forensic errors, incompetence and fraud

The organized abuse cases are replete with innovative investigative techniques that were developed under the perceived emergency conditions created by the moral panic. Subsequent research has established the weaknesses of the interviewing techniques used with young children who were believed (Summit 1983) to be reluctant or afraid to disclose abuse (cf. review by Ceci and Bruck 1995). Similarly, claims that sexual abuse could be diagnosed from children’s drawings (Burgess, McCausland et al. 1981), from children’s play with anatomically-correct dolls (Leventhal, Hamilton et al. 1989; Realmuto, Jensen et al. 1990), and from examination of a child’s hymen with a colposcope or from the reflex anal dilation test (McCann, Voris et al. 1989; McCann, Wells et al. 1990; Nathan and Snedeker 1995), proved untenable. Additionally,

laboratory tests for sexually transmitted diseases such as gonorrhea were criticized by the Centers for Disease Control.¹⁰ Other than these unreliable forensic techniques, prosecutors only had testimonial evidence—from the very young victims or from a child abuse professional who had examined the children. We turn next to these two forms of evidence.

Contributing factor (4): legal innovations

One of the claims of a moral panic is that existing lines of defense against danger are inadequate and new weapons are needed. This was true of the organized child abuse cases. First, and most important, was the fact that prosecutors and police were dependent upon a finding by a child abuse professional that a child had been sexually abused. It often required months of therapy before the therapist determined to his/her satisfaction how and by whom the child had been abused, months during which police officers were assigned to look for corroborative evidence. By the time it became clear that no such evidence could be found (no pornographic pictures, no witnesses, no documents, and no other physical evidence was found to support the charges), police and prosecutors had become emotionally invested in the truth of the charges, and the lack of corroboration could be interpreted as evidence of the cunning of ruthless criminals. Lacking physical evidence of the crime, and aware that not only did parents not want their children to take the stand, but were eager to take the stand themselves, prosecutors turned to new procedural weapons that legislatures had recently created.

Modified legal rules included two exceptions to the general prohibition on hearsay testimony – the fresh complaint/spontaneous declaration rule and an expanded definition of when a child witness is “unavailable” to testify – as well as rules permitting

children to testify from behind a screen or outside the courtroom via closed circuit television. These modified rules resulted from the erosion of a longstanding skepticism about children's capacity to testify as witnesses, as well as the belief that child witnesses required special accommodation. Most importantly, it was necessary to explain to the judge and jury the prevailing claims about child sexual abuse, such as the claims in psychiatrist Roland Summit's seminal paper *The Child Sexual Abuse Accommodation Syndrome* (Summit 1983), e.g., that children are reluctant to disclose sexual abuse, and thus a child might not disclose abuse until months or years after its occurrence, and that children do not lie about these matters. Once these claims were accepted by courts, parents and therapists could be trusted to repeat in court what the children had told them because such statements were understood to be particularly reliable. A further claim in Summit's paper, that anyone who questioned a charge of sexual abuse risked re-victimizing the victim, who was entitled to support and encouragement instead of skepticism, served to justify rules that permitted children not to face the accused caregivers directly in court but instead to testify via closed-circuit television or from behind a screen – if they testified at all.¹¹ In many states, judges were given great latitude in ruling that the child was “unavailable” to testify and thus permitting a parent and therapist to testify in the child's stead.

A long-standing evidentiary rule allows a party to present testimony from any expert concerning matters outside the ordinary knowledge of jurors. In the organized abuse cases, child abuse professionals explained to jurors how they used checklists of behaviors that sexually abused children were thought to display – checklists of ordinary behaviors, like difficulty falling asleep and reluctance to go to preschool – in order to

diagnose sexual abuse.¹² Psychiatrists, psychologists, and even social workers were allowed to testify about the general characteristics of a sexually abused child, and then to continue testifying as to why, in their opinion, this particular child had been sexually abused – a practice which, as several appeals courts pointed out, invaded the province of the jury as fact-finder. The organized abuse cases represent an enormous expansion of the use of expert testimony in order to establish the *corpus delicti*, i.e., the fact that a crime had occurred, as well as, in many cases, the guilt of the defendant.¹³ The central role of expert witnesses is the feature of the organized abuse cases that calls to mind most strongly Elliott Currie's (1968) description of witch-finders in Renaissance Europe.

The adversary system

Trial courts were as likely as prosecutors and police to be caught up in the moral panic about organized abuse. The severe sentences handed down to convicted defendants support this assertion, as do the criticisms of some of the appellate courts that overturned convictions. Furthermore, some appellate courts rebuffed numerous appeals of defendants in the organized abuse cases, e.g., courts in Massachusetts,¹⁴ Florida,¹⁵ New York,¹⁶ and North Carolina.¹⁷ These courts retreated behind the traditionally narrow scope of appellate review,¹⁸ and, in some cases, it is clear from the court's language that the appellate court itself believed the claim that the child victims had been abused.¹⁹ By contrast, a few appellate courts faced up to the possibility that something can go fundamentally wrong in these types of prosecutions; cf., e.g., the New Jersey Supreme Court,²⁰ the Nevada Supreme Court,²¹ the Ohio Court of Appeals,²² the Utah Supreme Court,²³ and some of the judges of the Ninth Circuit Court of Appeals.²⁴ The Saskatchewan Court of Queen's Bench, as noted earlier in this chapter, wrote a

particularly trenchant analysis of an organized abuse prosecution (D.K. v. Miazga 2003). The organized abuse cases underscore the limitations of appellate review in criminal cases, in light of the likelihood that no crimes were committed at all. The establishment, therefore, of criminal case review commissions, or “innocence commissions” (Huff 2004), empowered to examine actual innocence and not just procedural violations, could provide protection for defendants caught up in a moral panic.

Conclusions

The organized child sexual abuse cases demonstrate that the Anglo-American and European legal systems are vulnerable to claims-makers advancing new and untested claims against those identified as deviants in an atmosphere of urgency and danger. In addition to the wider society, all participants in the court process – prosecutors, judges, and especially jurors – are vulnerable to being swept up in the moral panic. Claims-makers come forward with claims of special expertise and offer their guidance to the criminal justice system. As a result, they may be allowed to go beyond the traditional scope of expert testimony and testify that a crime was committed by the defendant on trial. Legislatures may weaken or eliminate time-tested legal safeguards, e.g., California’s retroactive extension of the statute of limitations for molestation in 1994, passed at a time when claims of “repressed memory” seemed compelling; however, the measure was recently struck down by the California Supreme Court (Finz 2003, June 29).²⁵ Fortunately, as a moral panic subsides, it becomes possible for dissenting voices to make themselves heard, and for authorities to scrutinize closely the claims that have been made. However, whether or not claims-makers lose a particular case, they may still win the war. For example, innovative legal procedures may not be re-examined, and

limitations on the scope of appellate review, as we have seen, may prevent an appellate court from correcting mistakes made at the trial level.

Moral panics are a useful tool for understanding how some situations are conducive to wrongful conviction. For example, Huff and his colleagues have identified a number of historical *causes célèbres* that may fit the moral panic model, e.g., the cases of Leo Frank, the Scottsboro boys, and possibly the Lindbergh baby kidnapping (Huff, Rattner et al. 1996, pp. 27-32); they also identify community pressure for conviction (p. 75) as a cause of wrongful conviction, and certainly community pressure is a feature of a moral panic. Furthermore, if police and prosecutorial misconduct is a cause of many wrongful convictions, as argued by Huff and his colleagues, as well as Humphrey and Westervelt 2002, that misconduct may be more readily understandable under moral panic conditions (cf. Grometstein forthcoming). The theory of moral panic suggests a new avenue of inquiry into the subject of wrongful conviction, and the organized child abuse cases suggest that the incidence of wrongful convictions taking place in our system is not trivial.

[End of text]

CASES CITED

California v. Pitts (1990). 223 Cal. App. 3d 606; 1990 Cal. App. Lexis 1004 (California Court of Appeal).

D.K. v. Miazga (2003). 2003 SKQB 559; 2003 SK.C.Lexis 1696 (Saskatchewan Court of Queen's Bench).

Devereaux v. Abbey (2001). 263 F.3d 1070; 2001 U.S. App. Lexis 19674 (Ninth Circuit Court of Appeals).

Ellis v. R. (1998). [1988] 3 NZLR 555; 1998 NZLR Lexis 580 (Court of Appeal, Wellington, NZ).

Felix and Ontiveros v. Nevada (1993). 109 Nev. 151; 849 P.2d 220; 1993 Nev. Lexis 27 (Supreme Court of Nevada).

Grady v. Artuz (1996). 931 F. Supp. 1048; 1996 U.S. Dist. Lexis 8761 (U.S. District Court, S. D. N. Y.).

Grady v. New York (2004). 6 A.D.3d 308; 775 N.Y.S.2d 141; 2004 N.Y.App.Div. Lexis 4762 (New York Appellate Division).

Maryland v. Craig (1990). 497 U.S. 836; 110 S.Ct. 3157; 1990 U.S. Lexis 3457 (U.S. Supreme Court).

Massachusetts v. Cheryl Amirault LeFave (1999). 430 Mass. 169; 714 N.E.2d 805; 1999 Mass. Lexis 555 (Massachusetts Supreme Judicial Court).

Massachusetts v. Violet Amirault (1997). 424 Mass. 618; 677 N.E.2d 652; 1997 Mass. Lexis 74 (Massachusetts Supreme Judicial Court).

- Moriarty v. Garden Sanctuary Church of God (2000). 341 S.C. 320; 534 S.E.2d 672; 2000 S.C. Lexis 149 (Supreme Court of South Carolina).
- Nevada v. Babayan (1990). 106 Nev. 155; 787 P.2d 805; 1990 Nev. Lexis 28 (Supreme Court of Nevada).
- New Jersey v. Michaels (1993). 264 N.J. Super. 579, 625 A.2d 489, 1993 N.J. Super. Lexis 174 (New Jersey Appellate Division).
- New Jersey v. Michaels (1994). 136 N.J. 299, 1994 N.J. Lexis 504 (Supreme Court of New Jersey).
- New York v. Grady (1997). 1997 N.Y. App. Div. Lexis 10026 (New York Appellate Division).
- New York v. Watt (1992). 179 A.D.2d 697; 579 N.Y.S.2d 429; 1992 N.Y. App. Div. Lexis 218 (New York Appellate Division).
- New York v. Watt (1993a). 192 A.D.2d 65; 600 NYS2d 714; 1993 N.Y. App. Div. Lexis 6999 (New York Appellate Division).
- New York v. Watt (1993b). 81 N.Y.2d 772; 609 N.E.2d 135; 593 N.Y.S.2d 782; 1993 N.Y. Lexis 2 (Court of Appeals of New York).
- New York v. Watt (1994). 84 N.Y.2d 948; 644 N.E.2d 1373; 620 N.Y.S.2d 817; 1994 N.Y. Lexis 4116 (Court of Appeals of New York).
- North Carolina v. Parker (1995). 119 N.C. App. 328; 459 S.E.2d 9; 1995 N.C. App. Lexis 523 (North Carolina Court of Appeals).
- North Carolina v. Patrick S. Figured (1994). 116 N.C. App.1; 446 S.E.2d 838; 1994 N.C. App. Lexis 868 (North Carolina Court of Appeals).

Ohio v. Aldridge and Wilcox (1997). 120 Ohio App. 3d 122; 697 N.E.2d 228; 1997 Ohio App. Lexis 891 (Court of Appeals of Ohio).

Ortiz v. Georgia (1988). 188 Ga. App. 532; 374 S.E.2d 92; 1988 Ga. App. Lexis 1125 (Georgia Court of Appeals).

R. v. Ellis (1999). [2000] 1 NZLR 513; 1999 NZLR Lexis 41 (Court of Appeal, Wellington, NZ).

R. v. Sterling (1995). 102 C.C.C. (3d) 481; 1995 Lexis 2487 (Saskatchewan Court of Appeal).

Snowden v. Singletary (1998). 135 F. 3d 732; 1998 U.S. App. Lexis 2624 (Eleventh Circuit Court of Appeals).

Utah v. Hadfield (1990). 788 P.2d 506; 1990 Utah Lexis 14 (Supreme Court of Utah).

Valentin v. Los Angeles (2000). 78 Ca. App. 4th 212; 2000 Cal. App. Lexis 94 (California Court of Appeal).

[End of cases cited]

REFERENCES

Acocella, J. (1998, April 6). The politics of hysteria: over the past twenty years, multiple-personality disorder has been used to explain the behavior of thousands of American women. How was it allowed to happen? *The New Yorker*, April 6, 1998, pp. 64-79.

Agence-France-Presse (2002, Oct. 16). Italians arrested for Satanism and child abuse. Rome.

Agence-France-Presse (2004, Dec. 15). Belgium's top court throws out Dutroux appeal. Brussels.

Agence-France-Presse (2004, May 24). French child sex trial turns confused after accusations repeated. Saint-Omer.

Agence-France-Presse (2005, Dec. 1). Six cleared of child sex charges in France after judicial fiasco. Paris.

Agence-France-Presse (2005, Dec. 7). French parliament backs inquiry into child sex legal fiasco. Paris.

Agence-France-Presse (2005, November 18). Charges collapse in French child sex trial. Paris.

Associated Press (1984, October 30). Officials to drag river for bodies in child abuse probe. *San Diego Union-Tribune*, p. A8.

Associated Press (1985, May 19). Two children say they fabricated sex abuse stories. *Los Angeles Times*, p. 25.

Associated Press (2004, May 21). Pedophile case shakes system: About-turn by accuser in France leads to a judicial shipwreck: lawyer. *(Montreal) Gazette*, p. A19.

Bass, E. and L. Thornton (1983). *I Never Told Anyone: Writings by Women Survivors of Child Sexual Abuse*. New York: Harper and Row.

Bass, E. and L. Thornton (1988). *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*. New York: Perennial Library.

Best, J. (1987). Rhetoric in claims-making: constructing the missing child problem. *Social Problems*, vol. 34, no. 2, pp. 101-121.

Brent, B. (1991, January 23). Rising number of abuse cases has town baffled. *Toronto Star*.

Burgess, A. W., M. P. McCausland, et al. (1981). Children's drawings as indicators of sexual trauma. *Perspectives in Psychiatric Care*, vol. 19, no. 2, pp. 50-58.

Ceci, S. J. and M. Bruck (1995). *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*. Washington, D.C.: American Psychological Association.

Cohen, S. (1972). *Folk Devils and Moral Panics*. Oxford: Blackwell.

Cohen, S. (2002). *Folk Devils and Moral Panics*. London and New York: Routledge.

Cornwell, B. and A. Linders (2002). The myth of "moral panic": an alternate account of LSD prohibition. *Deviant Behavior*, vol. 23, pp. 307-330.

CP (1991, September 9). Sex trial charges stayed over delay. *Toronto Star*.

CP (2002, June 18). Last charges withdrawn in Project Truth probe. *Ottawa Citizen*, p. D8.

Crowdson, J. (1988). *By Silence Betrayed: Sexual Abuse of Children in America*. Boston and Toronto: Little, Brown & Co.

Cullen, K. (2000, August 13). Gossip fuels a mob's fury; Britons rage against suspected pedophiles. *Boston Globe*, p. A1.

Currie, E. P. (1968). Crimes without criminals: witchcraft and its control in Renaissance Europe. *Law and Society Review*, vol. 3, pp. 7-32.

EuroNews (2005, May 2). Alleged victims testify in Portugal's Casa Pia trial.

Finz, S. (2003, June 29). Repressed memory hysteria prompted molestation ruling; defense lawyers have high praise for court decision. *San Francisco Chronicle*, p. A7.

Frontline (1998, October 27). *The Child Terror*. Frontline. PBS. Accessed 9/1/06 at <http://www.pbs.org/wgbh/pages/frontline/shows/terror/etc/script.html>.

Frontline (2002, April 25). *Did Daddy Do It?* Frontline. PBS. Accessed 9/1/06 at <http://www.pbs.org/wgbh/pages/frontline/shows/fuster/>.

Givelber, D. (2000). Punishing protestations of innocence: denying responsibility and its consequences. *American Criminal Law Review*, vol. 37, p. 1363.

Goode, E. and N. Ben-Yehuda (1994). *Moral Panics: The Social Construction of Deviance*. Oxford, UK, and Cambridge, Mass.: Blackwell.

Grometstein, R. (2001). *The Activity and Validity of Claims-Making During a Moral Panic: The Example of the Daycare Center Cases, 1983-1995*. Unpublished Ph.D.

dissertation. Law, Policy and Society Program, Graduate School of Arts and Sciences. Boston, Massachusetts: Northeastern University.

Grometstein, R. (forthcoming, 2007). Prosecutorial misconduct and noble-cause corruption. *Criminal Law Bulletin*.

Hacking, I. (1991). The making and molding of child abuse. *Critical Inquiry*, vol. 17 (winter 1991), pp. 253-288.

Horner, T. M. and M. J. Guyer (1991a). Prediction, prevention and clinical expertise in child custody cases in which allegations of child sexual abuse have been made: (I) Predictable rates of diagnostic error in relation to various clinical decisionmaking strategies. *Family Law Quarterly*, vol. XXV, no. 2, pp. 217-251.

Horner, T. M. and M. J. Guyer (1991b). Prediction, prevention, and clinical expertise in child custody cases in which allegations of child sexual abuse have been made: (II) Prevalence rates of child sexual abuse and the precision of "tests" constructed to diagnose it. *Family Law Quarterly*, vol. XXV, no. 3, pp. 381-409.

Huff, C. R. (2004). Wrongful conviction: the American experience. *Canadian Journal of Criminology*, vol. 46, no. 2, pp. 107-120.

Huff, C. R., A. Rattner, et al. (1996). *Convicted But Innocent: Wrongful Conviction and Public Policy*. Thousand Oaks, California: Sage Publications.

Humes, E. (1999). *Mean Justice: A Town's Terror, A Prosecutor's Power, A Betrayal of Innocence*. New York: Pocket Books.

Humphrey, J. A. and S. D. Westervelt (2002). Introduction. In *Wrongly Convicted: Perspectives on Failed Justice*, ed. S. D. Westervelt and J. A. Humphrey. New Brunswick, New Jersey, and London: Rutgers University Press.

Jenkins, P. (1992). *Intimate Enemies: Moral Panics in Contemporary Great Britain*. New York: Aldine de Gruyter.

Jenkins, P. (1998). *Moral Panic: Changing Concepts of the Child Molester in Modern America*. New Haven: Yale University Press.

Jonker, F. and I. Jonker-Bakker (1991). Experiences with ritualistic child sexual abuse: a case study from the Netherlands. *Child Abuse and Neglect*, vol. 15, pp. 191-196.

La Fontaine, J. S. (1994). *The Extent and Nature of Organised and Ritual Abuse: Research Findings*. London: Her Majesty's Stationery Office.

La Fontaine, J. S. (1998). *Speak of the Devil: Tales of Satanic Abuse in Contemporary England*. Cambridge and New York: Cambridge University Press.

- Lajoie, K. (2004, November 30). Project Truth inquiry to be convened very soon. Brockville Recorder and Times (Brockville, Ontario).
- Leroux, J. (1997, July 26). OPP probes Cornwall sex “clan”; town cop alleges clergy, public officials involved in child abuse. Toronto Sun, p. 2.
- Leventhal, J. M., J. Hamilton, et al. (1989). Anatomically correct dolls used in interviews of young children suspected of having been sexually abused. *Pediatrics*, vol. 84, pp. 900-906.
- Lichfield, J. (2003, Oct. 31). French baby murders lead to macabre rumours of satanic ritual abuse. *The Independent* (London).
- The Independent (London) (2004, July 3). Minister apologises after child sex trial ends in farce.
- Malan, M. (1984, August 19). First trial set to begin in child abuse cases. Associated Press.
- McCann, J., J. Voris, et al. (1989). Perianal findings in prepubertal children selected for nonabuse: a descriptive study. *Child Abuse and Neglect*, vol. 13, pp. 179-193.
- McCann, J., R. Wells, et al. (1990). Genital findings in prepubertal girls selected for nonabuse: a descriptive study. *Pediatrics*, vol. 86, pp. 428-439.
- Miller, J. (1995, March 25). Walls come down on child abuse; social workers, police work together to seal convictions. *Ottawa Citizen*, p. B2.
- Nathan, D. and M. Snedeker (1995). *Satan’s Silence: Ritual Abuse and The Making of a Modern American Witch Hunt*. New York: BasicBooks.
- Ottawa Citizen (2001, October 25). Ontario tries to block probe into Project Truth case.
- Pinon, B. (1997, August 10). Pedophilia. Agence-France-Presse. Brussels.
- Ranalli, R. (2004, May 1). Amirault is freed from prison; conviction stands in day-care abuse. *Boston Globe*, p. A1.
- Realmuto, G. M., J. B. Jensen, et al. (1990). Specificity and sensitivity of sexually anatomically correct dolls in substantiating abuse: a pilot study. *Journal of the American Academy of Child and Adolescent Psychiatry*, vol. 29, no. 5, pp. 743-750.
- Rupert, J. (2001, May 29). What Guzzo’s got: MPP Garry Guzzo has amassed boxes of affidavits testifying to the existence of a pedophile “clan” in the Cornwall area. *Ottawa Citizen*, p. A1.

Rutchik, J. (1984, October 19). State takes over child porn probe. U.P.I.

Sands, A. and D. Campbell (2001, August 24). Project Truth cover-up “continues”; Ex-officer: End of investigation a “great win for the pedophiles”. Ottawa Citizen, p. C1.

Shipp, E. R. (1985, August 20). County prosecutor defends dropping sex abuse cases. New York Times, p. A12.

Smith, C. S. (2004, May 20). French pedophilia case falls apart when main suspect recants. New York Times.

Summit, R. C. (1983). The child sexual abuse accommodation syndrome. *Child Abuse and Neglect*, vol. 7, pp. 177-193.

Taylor, J. (2002, July 25). Molester denied release from treatment center. Palm Beach (Florida) Post, p. 1B.

Victor, J. S. (1998). Moral panics and the social construction of deviant behavior: a theory and application to the case of ritual child abuse. *Sociological Perspectives*, vol. 41, no. 3, p. 541.

Warick, J. (2004, Feb. 20). Calvert apologizes to families: but won't discuss early settlement with wrongly accused. The Star Phoenix (Saskatoon, Saskatchewan), p. A3.

Warick, J. (2004, Sept. 11). Klassens, Kvellos declared innocent in writing. The Leader-Post (Regina, Saskatchewan), p. B1.

Wilkes, J. (1990, March 8). Prescott child sex inquiry extended. Toronto Star.

Wood, J. (2004, Dec. 15). Province must contribute to abuse case: Quennell. The Leader-Post (Regina, Saskatchewan), p. A7.

[End of references]

NOTES

¹ “Moral panic” is not a completely satisfactory term; it has generated criticism by scholars (e.g., Cornwell and Linders 2002) and offended social actors in a moral panic with the implication that they acted blindly or irresponsibly. Despite these caveats, however, it has become a well-established term.

² British anthropologist J.S. La Fontaine, who studied the moral panic about organized child abuse in the United Kingdom (La Fontaine 1994), explains the origin of the term “organized abuse” as follows: “This term was adopted to cover paedophile rings and other cases...in which large numbers of abusers were identified, together with cases in which satanic abuse was alleged....By using a neutral term both organizations hoped to avoid a damaging split in their ranks between those who believed the allegations of

‘satanic’ or ‘ritual’ abuse and those who did not” (La Fontaine 1998, p. 11). La Fontaine herself uses “organized abuse” thus: “Defined as cases involving multiple perpetrators collaborating to abuse children” (La Fontaine 1998, p. 196 n. 4). Other analysts have used other terms. For example, in his book on the moral panic in Britain, Philip Jenkins refers to the panic as one of “mass abuse” and “mass organized abuse” (Jenkins 1992). In the United States, FBI behavioral specialist Kenneth Lanning used the term “multi-victim, multiple perpetrator” (MVMP) cases. This chapter uses the term “organized abuse.”

³ Jenkins further explains: “Problem construction is a cumulative or incremental process, in which each issue is to some extent built upon its predecessors, in the context of a steadily developing fund of ‘socially available knowledge’” (Jenkins 1992, p. 13).

⁴ In a later televised interview, these two children described the grueling questioning they had undergone: “‘They questioned us one time from 6 o’clock in the morning until 10 o’clock at night,’ the girl told a reporter. ‘I told them what they wanted to hear. I told them lies’” (Associated Press 1985, May 19).

⁵ For example, James Toward of the Glendale Montessori School in Stuart, Florida; Bernard Baran of Pittsfield, Mass.; Frank Fuster of Miami; Robert Halsey of Lanesborough, Mass.; Daniel and Frances Keller of Austin, Texas; Marilyn Malcom of Vancouver, Washington; Michael Alan Parker and Mildred Parker of Hendersonville, North Carolina; James Watt of Mount Vernon, New York; Debbie Runyan of Bainbridge Island, Washington; Michael Joseph Schildmeyer of Edgewood, Iowa; Nancy Smith of Lorain, Ohio; Stephen Boatwright of Reno, Nevada; the Rev. Lonnie Fawbush of Lower Brule, South Dakota; Walter West, Jr., of Hapeville, Georgia; Kenneth Holloway of North Little Rock, Arkansas; John E. “Red” Baine of Clarksdale, Mississippi.

⁶ Prescott and Cornwall are located along the St. Lawrence Seaway, about fifty miles apart. Ottawa is about fifty miles northeast and northwest of the two towns, respectively.

⁷ The plaintiffs in the defamation case have received apologies from the provincial premier (Warick 2004, Feb. 20) and from the three officials criticized in Justice Baynton’s ruling, i.e., the crown prosecutor, the police officer and the therapist (Warick 2004, Sept. 11). The province agreed to pay CAN \$1.5 million to the twelve plaintiffs in June 2004 and made an interim payment, despite the fact that the Justice Minister and Attorney General of the province has applied for intervenor status in the appeal of the defamation case (Wood 2004, Dec. 15).

⁸ This phrase recalls *l’affaire Dreyfus*, a case of wrongful conviction discussed by Huff, Rattner et al. 1996.

⁹ See “Italians arrested for Satanism and child abuse,” Agence-France-Presse 2002, Oct. 16; the Casa Pia trial in Portugal, which appears to resemble strongly the Outreau case (EuroNews 2005, May 2); and the Marc Dutroux case in Belgium (Agence-France-Presse 2004, Dec. 15). When the bodies of four newborn babies were discovered in a French village near Mulhouse, in Alsace, some people blamed “Satanists, gypsies, and the eastern European prostitution rings which have colonized many French cities in the past five years” (Lichfield 2003, Oct. 31).

¹⁰ Cf. www.pbs.org/wgbh/pages/frontline/shows/terror/cases/medical.html, and sources cited therein. Accessed Aug. 4, 2006.

¹¹ In *Ortiz v. Georgia* (1988), the Georgia Court of Appeals asked: “Would the [child] victim be more likely to tell the truth if forced to stare the defendant in the face? Certainly not as a matter of law and certainly not as a matter of fact. We have no information as to such a proposition and only superstition would suggest it.” By contrast, most other courts conceded the importance of the right of confrontation but found reasons to override it. Cf. *Maryland v. Craig* (1990).

¹² Cf. the case of Kelly Michaels/Wee Care, Maplewood, New Jersey (*New Jersey v. Michaels* 1993), in which a social worker listed thirty-two items on a behavioral checklist and stated that “clusters” of five to 15 symptoms allowed her to diagnose sexual abuse (1993 N.J. Super. Lexis at 186).

¹³ In the French case in Outreau, for example, the court heard testimony from the psychologists who had interviewed the child victims, but not from the children themselves. The psychologists’ belief that the children were credible witnesses sufficed.

¹⁴ Massachusetts cases include Bernard Baran of Pittsfield, Robert Halsey of Lanesborough, and the Amirault family of the Fells Acres Day School. Baran and Halsey remain in prison as of this writing. In refusing motions for new trials for Violet Amirault and her daughter, Cheryl Amirault LeFave, after their release from prison, the Supreme Judicial Court cited concerns for finality of judgment (*Mass. v. Violet Amirault* 1997, *Mass. v. Cheryl Amirault LeFave* 1999). Gerald Amirault was released on parole in May 2004 after spending eighteen years in prison (Ranalli 2004, May 1).

¹⁵ Two of the Florida cases have been the subjects of documentaries by the Public Broadcasting System show *Frontline*: the Frank Fuster/Country Walk case (*Frontline* 2002, April 25) and the Harold Grant Snowden case (*Frontline* 1998, October 27). Snowden was released following a habeas corpus appeal to the Eleventh Circuit Court of Appeals (*Snowden v. Singletary* 1998). In Stuart, Florida, James Toward of the Glendale Montessori School served a ten-year sentence and then was civilly committed as a violent sexual offender (Taylor 2002, July 25).

¹⁶ In 1984, five cases in the Bronx resulted in long sentences for Alberto Algarin, Jesus Torres, Franklin Beauchamp, Alberto Ramos, and the Rev. Nathaniel Grady. The minister was the last to obtain his release. In 1996 a federal district court granted Grady's petition for habeas corpus and ordered a new state appeal (*Grady v. Artuz* 1996). The New York Appellate Division reversed his conviction in one sentence (*New York v. Grady* 1997). The prosecution declined to retry him. In 2004, the Appellate Division affirmed the Court of Claims' dismissal of Grady's claim for unjust conviction and imprisonment (*Grady v. New York* 2004).

Another New York case is that of James Watt of Mt. Vernon, Westchester County. In 1987 he was convicted, largely on the testimony of a social worker named Eileen Treacy who had interviewed the child victims and determined that they had been sexually abused. Ms. Treacy played a similar role in the well-known New Jersey case of Kelly Michaels/Wee Care Nursery School (*New Jersey v. Michaels* 1993, 1994), and the two New Jersey courts were critical of her role in that case, overturning Michaels' conviction and ruling that in the future a pretrial hearing would be required to show that the children's testimony had not been tainted by coercive and/or suggestive questioning. In the James Watt case, the New York courts did not share the skepticism of the New Jersey courts concerning Ms. Treacy's ability to diagnose child sexual abuse. Instead, in 1992 the New York Appellate Division reversed Watt's conviction on the grounds that the indictment had lacked specificity by stating that the children had been assaulted over a five-month period (*New York v. Watt* 1992). The Appellate Division also noted in passing that the prosecution had violated discovery rules by not providing the defense with any information about what the children had told the social worker until after they had taken the stand. The Appellate Division was overruled by the Court of Appeals (*New York v. Watt* 1993a), whereupon the Appellate Division dutifully agreed that five months did not constitute a lack of specificity (*New York v. Watt* 1993b). Finally, the Court of Appeals affirmed Watt's conviction (*New York v. Watt* 1994).

¹⁷ Cf., e.g., the case of Patrick Figured of Smithfield (*North Carolina v. Patrick S. Figured* 1994) and Michael Alan Parker of Henderson (*North Carolina v. Parker* 1995).

¹⁸ Cf., e.g., the Saskatchewan Court of Appeal (*R. v. Sterling* 1995) and the Court of Appeal, Wellington, NZ (*R. v. Ellis* 1999). In the latter case, the court noted (paragraph 27) that the defense had supplied it with the *Report of the Inquiry into Child Abuse in Cleveland 1987*, the *Report of the Inquiry into the Removal of Children from Orkney in February 1991*, and the *Royal Commission into the New South Wales Police Service Final Report* of August 1997 (vol IV *The Paedophile Inquiry*). The court stated: "It is impossible, and in our view it would be inappropriate, to attempt to undertake a comprehensive analysis of it with a view to reaching a conclusion on some particular aspect of relevance to the present appeal. Such an exercise is more the function of a formal commission, which is empowered to inquire into and report upon certain defined matters. This Court is not the forum for reviewing or evaluating the conclusions reached by the various authors, some of which understandably in these difficult and constantly developing areas are conflicting" (*R. v. Ellis* 1999, par. 27).

¹⁹ In *Maryland v. Craig* (1990), the U.S. Supreme Court affirmed a Maryland statute permitting child witnesses to present their testimony by closed-circuit testimony, thus weakening the accused's Sixth Amendment right to confront the witnesses against him or her. Justice O'Connor, writing for the court, cited authorities for the proposition that testifying in court could be stressful for children.

²⁰ *New Jersey v. Michaels* 1994, as well as the New Jersey Appellate Division in *New Jersey v. Michaels* 1993.

²¹ *Nevada v. Babyan* 1990 and *Felix and Ontiveros v. Nevada* 1993. The Nevada Supreme Court, in the later case, specifically noted the influence of both the McMartin Preschool case in Los Angeles and the Babyan case in Nevada on the conduct of the Felix and Ontiveros case.

²² *Ohio v. Aldridge and Wilcox* 1997.

²³ *Utah v. Hadfield* 1990.

²⁴ *Devereaux v. Abbey* 2001, Kleinfeld, J., dissenting. This was the unsuccessful civil suit brought by a wrongfully convicted defendant in the Wenatchee, Washington, case, against the various law enforcement and social workers who had participated in the criminal case.

²⁵ The Supreme Court of South Carolina reached the opposite result in *Moriarty v. Garden Sanctuary Church of God* (2000). The court stated that the repressed memory syndrome is valid in South Carolina, and a plaintiff may bring a timely cause of action under the discovery rule after recovering the memories. The plaintiff in this case attended the church's daycare center from 1973 to 1976, and stated that she recovered memories of abuse while receiving mental health counseling in 1992.

[End of notes]