



February 9, 1990

Lessons from the McMartin Case

By DOUGLAS J. BESHAROV

RAYMOND BUCKEY and his 63-year-old mother were acquitted of sexually abusing the children in the McMartin Preschool because the jury could not tell whether the children had actually gone through the horrible things they described - or imagined them following the unintentional prompting of adult investigators and therapists.

The Buckey's actual guilt or innocence will long be debated, but even now, the case offers important lessons which might prevent a replay of this tragedy.

1. Parents and other adults must be alert to the possibility of child abuse, but the threat should not be exaggerated. The sexual abuse of children is a serious national problem. But the danger needs to be kept in perspective. According to a study conducted for the US National Center on Child Abuse and Neglect, children are much less likely to be abused in day care than by their own parents.

2. Children must be encouraged to tell about being sexually abused, but inappropriate interviewing techniques can undermine the credibility of their statements. In cases of sexual abuse, where there are often no witnesses and only ambiguous physical indicators, the child's statements may be the only evidence. A child's description of being abused should be pursued vigorously - but with an open mind.

It is not true, as some experts assert, that "children never lie." As the McMartin case demonstrates, for young children the basic issue is whether an interviewer has used suggestive techniques to implant a distorted or untrue idea in the child's mind.

3. Horrifying tales of widespread sexual abuse and satanic rituals should make us skeptical, even if they make titillating reading. Initial reports about McMartin highlighted disgusting tales of animal murder and bizarre behavior which, for months, were reported as true, not only by the supermarket tabloids, but by our most respected news organizations. One child, for example, testified in the preliminary hearing that he was taken to a cemetery, where he was forced to help dig up a coffin and watch as the body was cut up with knives. Even when the investigation failed to corroborate the children's most grizzly allegations, few asked whether the assumptions underlying the entire case should be re-examined.

4. The McMartin acquittals do not mean that we have to abandon due process of law and the presumption of innocence in order to protect children. As a former prosecutor in the New York City Family Court, I know how excruciatingly hard it can be to prove child sexual abuse. The real need, however, is not legal shortcuts but, rather, well-handled investigations and trials. The McMartin case serves as a primer of how not to investigate child abuse.

The legal case was compromised at the onset - when the police, after receiving the first report of possible abuse at the preschool, sent a letter to the families of 200 current and former students that read: "Please question your child to see if he or she has been a witness to any crime or if he or she has been a victim.

The letter went on to say that sexual abuse may have taken place under "the pretense of 'taking the child's temperature.'" It also implied that Ray Buckey was the perpetrator.

5. The American jury is our best protection against overzealous law enforcement. It is hard to imagine a case in which untried defendants were more unequivocally convicted by the media and the public. A "lynch-mob syndrome" is what the Los Angeles Times called it.

Our jury system has recently been much criticized for being old-fashioned and inefficient. But in watching juries decide controversial cases like McMartin, one cannot help being impressed by their ability to avoid passions of the day and to weigh evidence fairly.

6. There must be greater accountability for abuses of prosecutorial discretion. In order to insure that prosecutors exercise their discretion free from fear of lawsuits, they have absolute legal immunity for their decisions. Yet, Peggy Buckey spent two years in jail; her son nearly five years. And there have been suggestions that electoral politics played a role in the DA's decisions. Whatever happened in this particular case, these days prosecutors are too easily tempted to overreach when a case may make the evening news. State attorneys general, appellate courts, and bar associations should be more receptive to citizen complaints of bad faith prosecution.

Protecting children from sexual abuse requires more than good intentions. It requires skilled professional intervention, attention to due process, and common sense. For the sake of all, let's hope that lesson has been learned.

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