

Generating Votes and Victims

The McMartin PreSchool Case

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Abstract:

Until 1961, when the medical field first recognized the “Battered Child Syndrome,” child sexual abuse was a relatively silent issue in American society. Paradoxically, by the late 1970’s almost anything was considered a sign of abuse and medical opinions were of no great importance. The McMartin Pre-School case typifies how such an atmosphere can encourage allegations of non-existent child sexual abuse.

The Atmosphere:

In 1974 the passage of the Child Abuse Prevention and Treatment Act (Federal law, P.L. 93-247) established a National Center on Child Abuse and Neglect (NCCAN). The main purpose, in addition to research of repressed memories, satanic ritual abuse, multiple personality disorder and other issues possibly related to child abuse, was to begin child maltreatment programs and establish standards by which states could become eligible for federal money to help them establish their own child abuse agencies.

In 1986 Dr. Douglas Besharov, the first director of NCCAN (1975-1979,) addressed the issue of unfounded allegations in an article that broadly outlined the escalation of the issue of child abuse. That article included: “We now face an imminent social tragedy: the nationwide collapse of child protective efforts caused by a flood of unfounded reports.” In testimony before Congress in 1987, Dr. Besharov stated: “The current flood of unfounded reports is overwhelming . . . For fear of missing even one abused child, workers perform extensive investigations of vague and apparently unsupported reports . . . As a result; children in real danger are getting lost in the press of inappropriate cases.”

In 1987 a talk show host portrayed the prevailing attitude during the McMartin Trials; “Show me a man who is accused of child abuse, and I’ll show you a child abuser” (Donahue.)

Allegation to Trial:

Located in the affluent neighborhood of Manhattan Beach, California, Virginia McMartin founded the “McMartin Pre-School” in 1958. Twenty-five years later her daughter Peggy McMartin Buckey was the school administrator and Virginia’s grandchildren, Ray and Peggy Ann Buckey, helped their mother and grandmother.

Peggy Ann Buckey was a single, special education teacher with six years of college who worked at the school five weeks in 1978, and Ray Buckey had dropped out of college and started as an aide. After taking more college courses Ray Buckey had become a teacher at the school. He was 25, single, athletic, and lived with his parents, Charles and Peggy Buckey.

On May 12, 1983 a two-and-one-half-year-old boy was abandoned at the pre-school. The child was pre-verbal and the teachers at McMartin protected him, hoping the mother would come back. When 40 year-old Judy Johnson did return for Malcolm, whom she called “Billy”, she talked with the school administrator, Peggy Buckey. Judy Johnson was understandably depressed; she had another son who was 13 and had inoperable brain cancer, she had been separated from her husband for two months and

her only income came from selling lamps. Although the prestigious school had a long waiting list for new students, Peggy McMartin Buckey made an exception she will regret for the rest of her life -- she allowed Malcolm to enroll in June.

The Investigation:

On July 11, 1983 Judy Johnson visited a health care clinic. According to medical reports, she told a physician that Billy's anus was "itchy." Believing the problem was with the mother, the doctor didn't feel it was necessary to examine the boy. A month later, on August 11, Johnson's son returned to the McMartin Pre-School for what was his fourteenth day. The teacher supervising the afternoon play session that day, Ray Buckey, had never taught Malcolm. Malcolm's parents were still separated and he spent that night with his father.

On August 12, Judy Johnson complained to the Manhattan Beach Police that "Billy (Malcolm) had a red bottom" and had "blurted something about a man named Ray at the McMartin Pre-School." Detective Jane Hoag told Johnson to have her son examined at a health clinic. A doctor there noted redness around the boy's anus, but was unable to determine the cause. Five days later Det. Hoag sent Johnson to the UCLA Medical Center. Two doctors, one an intern, determined that the boy's condition was "consistent" with being sodomized. Later, the intern confided with an LA detective that she "didn't know anything about sexual abuse."

Detective Hoag visited the Johnson's home three times in August to interview Malcolm and according to court reports he never spoke to the detective. When she couldn't get him to talk, Hoag concluded "he didn't understand the concept of the word 'name'" and showed Malcolm class photos that included Buckey. Malcolm was still unable to identify Ray Buckey. Between August 17 and September 7 Det. Hoag questioned 12 other families about Ray Buckey and found no incriminating evidence.

Hoag then obtained a search warrant for child pornography and found a picture in his bedroom - a torn picture from a Playboy magazine of two adults having oral sex. On September 7 Ray was arrested on three counts of child molestation. The District Attorney's Office did not contest bail and soon told Hoag that they would not be prosecuting Ray Buckey due to a lack of evidence.

The day after Ray Buckey's arrest the Manhattan Beach Chief of Police circulated a "strictly confidential" letter to approximately 200 parents of current or past McMartin students. This letter included:

"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. Our investigation indicates that possible acts include: oral sex, fondling of genitals, buttocks or chest area, and sodomy, possibly committed under pretense of taking the child's temperature. Also, photos may have been taken of the children without clothing. Any information from your child regarding having ever observed Ray Buckey to leave the classroom alone with a child during any nap period or if they have ever observed Ray Buckey tie up a child is important."

Chief Kuhlmeier's letter ended by asking parents "to please keep this investigation strictly confidential because of the nature of the charges and the highly emotional effect it could have on our community. Please

do not discuss this investigation with anyone outside your immediate family.” Needless to say, it wasn’t long before everyone connected with the McMartin Preschool and indeed almost everyone in the Los Angeles metropolitan area knew of the ongoing investigation of Ray Buckey.

LA District Attorney John Van de Kamp was elected as state attorney general in 1982 and Robert Philibosian was appointed to fill his seat. Philibosian expected to face the LA City Attorney Ira Reiner in the upcoming 1984 election and needed a campaign strategy. He commissioned a public opinion poll in September 1983 that showed that child abuse was the number one voter concern. Factors like the ongoing investigation of sex-rings in nearby Bakersfield, California and Harry L. Kuhlmeier’s letter are likely to have affected the result.

After the initial investigation of Ray Buckey he was the only suspect and all but one child had denied being molested at the school. That one child’s claim was disregarded because her allegations were considered too bizarre. Now under pressure from concerned parents, Philibosian and Kuhlmeier, the District Attorney’s Child Abuse Unit, reopened the investigation. A major portion of the continuing investigation was then referred to Kathleen “Kee” MacFarlane at Children’s Institute International (CII) in Los Angeles, an agency that treated abused and neglected children. An unlicensed social worker, she was new at CII and grant writing was her forte.

Kee MacFarlane earned a master’s degree in social work from the University of Maryland in 1974 and then worked as a “psychotherapist” at a child abuse center in New Jersey. From 1976-1982 she worked in Washington, D.C. for the National Center on Child Abuse and Neglect (NCCAN) under the title of “Child Sexual Abuse Specialist” and for the Department of Justice as a grant reviewer. MacFarlane’s dual role as a CII grant writer and as the District Attorney’s primary investigator posed a potential conflict of interest that would soon bring her and her struggling agency fame and fortune.

Although the Child Abuse Unit referred 15 alleged victims of Ray Buckey, MacFarlane wanted to write a book and needed to see more children. CII medical consultant Dr. Astrid Heger worked with MacFarlane, encouraging parents to send their children to CII. By the date of the first interview on November 1, 1983, they had generated ten times the original number of appointments and by March 1984, 400 former McMartin students had been interviewed at CII.

The children denied being abused when they were first interviewed at CII, but to MacFarlane and the rest of the CII staff this was an indication of “denial syndrome.” As MacFarlane, Heger and others at CII interviewed the children they typically used hand puppets and anatomical dolls as they encouraged children to talk. Dr. Heger’s medical examination of 150 of the children was based on unsubstantiated medical histories and her own interviewing of the children using hand puppets and dolls. Prior to the McMartin case Heger had written “any medical conclusion should validate the child’s history and state clearly that the presence or absence of physical findings is consistent with the history of sexual abuse.”

Interviews of the children were comparatively long because of a “let’s have fun and play with the puppets and dolls” atmosphere. The interviews were highly suggestive with techniques that included (1) introduction of new suggestive information (2) reinforcement - praise and positive responses to disclosures, and disbelief and displeasure if the child denied being abused (3) urging the children to

conform to what others had said, (4) repeating questions that had been answered with unambiguous answers, and (5) inviting the children to speculate or pretend.

The children eventually played along with the adult, copied what they did and repeated what they were told. One of the recordings shown in Court included MacFarlane's video operator-turned therapist Shawn Connerly telling a denying child that "183 kids had already revealed yucky secrets" and that all the McMartin teachers were "sick in the head and deserved to be beaten up." Connerly then encouraged the child to slam the puppet representing Peggy McMartin against a table. The subsequent dreams and nightmares about the teachers were then taken as manifestations of abuse.

The children were hearing unfamiliar words in their interviews and using them in bizarre contexts -- they didn't know what they meant, but they repeated what they were told. Just the fact that they were now talking about nipples, vaginas and penises told the adults, who had supplied these words while using anatomically correct dolls, that the children had been sexually abused.

Social Contagion:

Parents were notified and shown selected parts of the videotaped interviews. MacFarlane told the parents that it was imperative that they support their child's disclosures. She even gave the parents lists of addresses in the community and encouraged them to investigate them with their children. The social contagion or "cross-germination" -- as CII told children what other students had said and parents communicated with other parents and then with their children -- is likely to have directly influenced children and increased their susceptibility to suggestive interviewing techniques.

By March 1984 the CII interviews had now generated accusations of molestation by Ray Buckey and six others. There were now 384 "victims." Soon known as the "McMartin Seven," Virginia McMartin, Peggy McMartin Buckey, Peggy Ann Buckey, Ray Buckey; and three McMartin teachers, Bette Raider, MaryAnn Jackson, and Babette Spitzler, were now implicated.

On January 13, 1984 Virginia and her daughter voluntarily closed the school as the Manhattan Beach community became increasingly hostile towards them. Peggy Buckey was physically assaulted (stabbed) and Peggy, Ray and Virginia were sued by their neighbors Bob Currie and his wife. The Currie children denied being molested at the school, but their parents asked for \$1 million dollars in punitive damages for assault and battery and intentional infliction of emotional distress.

On February 2, 1984 the greater public was shocked when LA reporter Wayne Satz aired an exclusive report on the McMartin story. In his first report, Satz said more than 60 children "have now each told authorities that he or she had been keeping a grotesque secret of being sexually abused and made to appear in pornographic films while in the preschool's care, and of having been forced to witness the mutilation and killing of animals to scare the kids into staying silent." Satz, who was involved in a secret relationship with Kee MacFarlane, stated that he withheld the disclosures for three weeks at the request of the DA and the timing of the release, sweep month, was coincidental.

The resulting social uproar was incredible. Another LA reporter, Ross Becker, has since reflected on the news coverage: "There was hysteria in the newsroom . . . I remember the news director . . . sitting there watching . . . Satz and coming to me and saying, 'Ross, we got killed again.' . . . The story took on a life of its own . . . We didn't even think at the time . . . about what we were doing. . . . It was 'We gotta get something new on McMartin; look how big this thing is getting' . . ."

1984 was an election year and politicians constantly weighed in on the issues of Ray Buckey and child abuse. Robert Philibosian was quoted as saying "the true purpose of the McMartin School was to procure young children for adult pleasures." Los Angeles County Sheriff Sherman Block stated on television that he was "certain that over 1200 children had been molested by and swapped amongst these groups."

The original complainant, Judy Johnson, constantly contacted the District Attorney's Office and the following comes from notes taken by an assistant district attorney:

February 15-16, 1984

(Johnson) "Billy [Malcolm] describes having communion in a church. A prayer similar in sound to the Lord's Prayer was recited. A goat climbed up higher, higher, higher. Then a bad man threw it down the stairs. It woke up later. Ray poked Peggy at the altar. Lots of candles; they were black. Ray picked his rt. pointer finger. It bled. Ray put it in the goat's anus. Nobody had clothes on under the robes. Billy had a robe on too. They put a band aide on his finger. Old Grandma played the piano. Lots of threats were made against Billy and his family. It is unclear whether it was a doll or real baby (Billy says real baby) but the head was chopped off and the brains were burned. Billy said Peggy killed the baby. Peggy had scissors in the church and she cut Billy's hair. Billy had to drink the babies [sic] blood. Ray wanted Billy's spit. He put it on the altar. The baby was big like Billy. It screamed. When Billy's bottom was bleeding Ray put a tampax in his bottom to stop the bleeding, then he took it out. The red circled people in this ad [referring to a newspaper ad for a local health club] are all familiar to Billy. The 3 women are witches. The man poked them. Peggy, Babs, and Betty [the preschool owner and two teachers] dressed up as witches too. The person who buried Billy is Miss Betty. There were no holes in the coffin. Babs went with him on a train with another girl where he was hurt by men in suits. Ray waved good bye. The train moved fast. It had lights. Ray took him back to school. Possibly [location of organization] Big Brothers. Peggy gave Billy an enema before he was taken away (from McMartin sch.) Staples were put in Billy's ears, nipples & tongue. Babs put scissors in his eyes. She hit him a lot. She chopped up animals and said she would come in the night and take away. She pushed his stomach and threw him against the wall. He has extreme fear regarding Babs. Also something awful would come in the window. Ray made small babies cry. Billy was hurt by a lion. An elephant played with the lion, squirted H₂O. Then the lion didn't move. Billy was on his back. Ray let him pull the lion's tail. The lion roared but didn't' move. Betty was there, and other people. One lady took pictures."

February 22, 1984

(Johnson) “Billy feels that he left LAX in an airplane and flew to Palm Springs area. Described the airplane as one like used by federal express only it had windows. Billy went to armory located behind Judy (?) residence. Ray drove there in his VW bus. Billy went with Peggy who drove a red and white VW bus, at the armory there were some people there wearing army uniforms. The goat man was there. After going to the armory, Billy was taken to Sand Dune Park, at the armory it was a ritual type atmosphere. When Billy was taken to a church, Judy believes it was the Church of Religious Science [address]. At the church Peggy drilled a child under the arms (arm pits.) Atmosphere was that of magic acts. (Ray flew through the air.) ”

Parental concern manifested itself in many ways, and Bob Currie’s zeal was not uncommon. A real estate agent by profession, he now described himself as “child molestation expert” of Manhattan Beach. Currie often appeared on television as a spokesperson for other McMMartin parents. He offered a \$10,000 reward for information about child pornography, dug under the McMMartin school looking for secret tunnels, suggested that the Anaheim Angels baseball team was involved in a child molestation ring, and frequently took children on the road looking for clues and then reported them to the FBI; he even attracted media attention to the case by telling local news that certain policemen with the Manhattan Beach PD were involved in a sex ring.

By March 1984, CII had interviewed 400 former McMMartin students and 384 were diagnosed by CII as sexually abused. The local and national media reported that the preschool might be linked to child pornography rings and various sex industries in nearby Los Angeles. Resultant stories told of child abuse in other locations: St. Cross Episcopal Church in Hermosa Beach, CA and eight other Manhattan Beach schools. Conspiracy among day care centers was suspected and on March 11 a number of other schools were raided. No incriminating evidence was found in these raids.

On the basis of testimony from 18 children and Dr. Heger’s testimony of physical results of abuse a grand jury indicted Ray, Peggy Ann and Peggy Buckey, Virginia McMMartin, Betty Raidor, Babette Spitler and Mary Ann Jackson. They were initially charged with a total of 115 counts (later expanded to 321 counts involving 48 children).

All seven defendants were taken into custody that same date (March 22, 1984.)

Virginia McMMartin and her granddaughter Peggy Ann Buckey were released on bail before the end of the month. Then, on April 6 the prosecutor announced that parents and children had been threatened by the defendants and everyone but Virginia McMMartin was denied bail. It was June 8, 1984 before Peggy Ann was granted bail for the second time and by January 1985 Ray and his mother Peggy Buckey were the only defendants still in jail.

On April 12, 1984 CII started a campaign for donations. MacFarlane was now a celebrity who lectured frequently and on September 17, 1984 testified before Congress:

“I believe we’re dealing with an organized operation of child predators designed to prevent detection... The preschool, in such a case, serves as a ruse for a larger, unthinkable network of crimes against

children. If such an operation involves child pornography or the selling of children, as is frequently alleged, it may have greater financial, legal and community resources at its disposal than those attempting to expose it.”

By 1989 CII had received over \$11 million in government grants and MacFarlane was on television talk shows daily.

Preliminary Hearings:

Forty-one McMartin students who claimed to have been abused were picked to testify at the preliminary hearings. By the onset of the preliminary hearings in June 1984 lead prosecutor, Assistant District Attorney Lael Rubin, had announced that the seven defendants committed 397 sexual crimes, 30 additional individuals were under investigation, and “there are millions of child pornography pictures.” There were, in fact, no more charges, no more defendants and no child pornography was found during the investigation.

Lael Rubin’s team, which included ADA’s Glenn Stevens and Christine Johnston, had seen Johnson’s bizarre accusations and they were concerned whether discovery protocol was being followed. Two weeks before the preliminary hearings started Malcolm Johnson told Stevens that his father had sodomized him the night before Ray Buckey did the same. Charges were never filed against the father, defense attorneys were not notified, and neither Judy nor Malcolm Johnson testified during the preliminary hearings.

On March 6, 1985 Judy Johnson threatened her brother with a shotgun and was hospitalized due to paranoid schizophrenia and alcohol abuse. It was not until then that the defense team knew of Johnson’s condition.

Robert Philibosian lost his seat as District Attorney and Ira Reiner, the newly elected DA, inherited the case in January 1985. On March 16 Reiner questioned his staff and Rubin’s team acknowledged that the charges were weak -- there was no medical evidence from anyone outside of CII and the tapes from CII were unreliable. Prosecution had been relying on an indexed log of the tapes that showed when an allegation was made, not how it was obtained. Only a few tapes had actually been reviewed and Christine Johnston was quoted as saying “Kee MacFarlane could make a six month-old baby say he was molested.”

Fed up with the way the prosecution had withheld from the defense, Stevens anonymously revealed to the media that the District Attorney’s Office had serious doubts about the McMartin cases. In October 1985, after over two years on the case, he resigned in disgust. Johnston also withdrew from the case before the trials began.

On January 9, 1986, the preliminary hearings ended after 18 months with the Judge ordering all seven defendants to trial on a total of 135 counts. Seven days later, Reiner dropped charges against all but Raymond and Peggy Buckey, saying the evidence against the five other defendants was “incredibly

weak.” Peggy Buckey was finally granted bail and her son remained in jail. When Mike Wallace of 60 Minutes asked Ira Reiner how many of the videotapes of the children had been viewed by his predecessor’s office prior to indictment, Reiner said, “In round figures, zero.”

More evidence about Judy Johnson -- her mental condition and fantastic statements -- was revealed and Daniel Davis, Ray Buckey’s attorney, filed charges of prosecutorial misconduct against Lael Rubin. Judge Pounders dismissed those charges, accepting Rubin’s explanation that her office had only given the defense a typed summary about Johnson because they had been overwhelmed with paperwork. Judge Pounders granted Davis’ request for a psychological evaluation of Judy Johnson, but it was never conducted; she died of an alcohol overdose on December 19, 1986.

The Trial:

Jury selection for the trial of Peggy and Ray Buckey took two weeks and opening statements began on July 14, 1987. The lead prosecutor was Lael Rubin, and Peggy Buckey and Ray Buckey were represented by Dean Gits and Daniel Davis, respectively.

In his opening statement Dean Gits summarized the investigation with: “The people interviewed included 450 children and 150 adults. Also, 49 photo lineups were prepared; bank account records were seized and examined. Eighty-two locations were photographed, one church was investigated. Three churches were implicated, two food markets, two car washes, two airports, and one national park.

Thousands of pornographic photographs and movies, confiscated by police, were examined in a search for pictures of the McMartin children. Laboratory tests were conducted of 20 blankets from the school, children’s clothing, sheets, rags, and a long list of other items, including mops, kitchen rags, notebooks, soil samples, sponges, animal bones, quilts, and underwear, and an archeological dig was conducted. All of these investigations came up negative. They were looking for secret tunnels, trap doors. They conducted surveillance of Ray Buckey, his family, and friends, which consumed 135 hours. They consulted with a satanic expert, U.S. Customs agents. They contacted pedophiles; they checked real estate records, utilities records, relatives, friends, associates of the Buckey family, other possible offenders, vehicles, uncharged suspects.

They attempted a pornography buy. All of this cost more than one million dollars. The results? Zero! We believe the money was well spent. It was well worth it. Everything they investigated and found nothing-- [this is] defense evidence! It was well worth it.”

Lael Rubin’s opening statement was similar to the above, except she did not concede nothing was found during these investigations.

In his opening statement Daniel Davis said: “The D.A. sent [the families] to CII. CII said they were molested and referred them to therapists. . . . They were directed to Manhattan Beach Police Department and made statements . . . and parents were told to go to an agency that provides funds for victims. That led to payments to CII and therapists. . . . Witnesses were generated. The D.A. is putting

on his case with witnesses almost entirely from CII. CII provided the witnesses . . . We were told that they were experts, that they had expert credentials. . . . Kee MacFarlane's only credentials were a driver's license and a welder's license."

Rubin's key witness, Kee MacFarlane, spent five weeks on the witness stand. MacFarlane's lack of a license, her relationship with Wayne Satz, and an obvious lack of objectivity in her interviewing of the alleged victims made her less than impressive. When Davis cross-examined MacFarlane he asked about the use of hand puppets and anatomical dolls during the interviews:

(Davis) "And when you did that, did it occur to you that you might be creating a sort of realm of fantasy in which children might make false accusations in which they believe they're just pretending?"

(MacFarlane) "No. It's a major issue because there's not any data to show that has ever happened. Any! But because it is consistently raised, all of the studies with the use of anatomical dolls have shown that the use of those dolls does not in any way lead to false reports about abuse, and there are now, because of this case and the many other cases in which these issues have been repeatedly raised in court, we now have research that looks into issues of suggestibility. There are five or six articles which address these exact issues which you are raising. And they are debunking the idea that by suggesting to children even leading and misleading questions suggestive of child sexual abuse they are debunking the idea that children just pick up and just repeat it. It's information that I didn't have when I did these interviews. Now, five years later, the research is out there. Numerous studies . . . and the resistance of children to these questions is in the ninety-three to ninety-nine percentile. . . . There is now research on the subject."

(Davis) "My gosh! It sounds like there have been a lot of current studies that really back up your techniques. . . . Could you be a little more specific please? The name of the author, the title, the date of publication . . .?"

(MacFarlane) "I can't recite that off the top of my head..."

Davis later questioned MacFarlane about her training;

(Davis) "You indicated you had training from the FBI."

(MacFarlane) "No, I was the trainer."

(Davis) "And who trained you before you trained the FBI?"

(MacFarlane) "I attended numerous workshops."

Before MacFarlane finished her lengthy testimony, Judge Pounders declared "In my view, her credibility is becoming more of an issue as she testifies here."

A medical witness for the prosecution, Dr. Bruce Woodling, was cross-examined by Daniel Davis:

(Davis) "Do you believe a child can believe they [sic] were molested because of statements of adults?"

(Woodling) "I've never seen a child that, to my knowledge, wasn't molested that's been convinced that he was. I've never had that experience."

(Davis) "Did your medical findings corroborate sodomy?"

(Woodling) "There was no evidence on my examination of scarring but . . . the fact that I found no findings, in the sense of scarring, does not mean to me that sodomy did not occur, only that no scarring did occur from the sodomy"

(Davis) "Do you feel, as a general principle, that children don't lie about molestation, and that they should be believed?"

"Objection."

"Sustained."

(Davis) "The exhortation that children don't lie about molestation and that you should believe them . . . is that something you say every time you speak to your peers about evaluating child molestation?"

(Woodling) "I make that statement."

(Davis) "When you say that, do you place any limitation on that premise?"

(Woodling) "I usually have explanations I give . . . but I do make that statement that children, when they make disclosures, should be believed. . . ."

(Davis) "Do you think your belief that children never lie might have something to do with the low incidence of your findings of false reports?"

(Woodling) "I don't believe so."

When under direct-examination by Dean Gits, defense expert Dr. Michael Maloney, professor of psychiatry at USC, stated that MacFarlane's methods contaminated the interview and prevented spontaneous information.

(Gits) "Was it your conclusion that the numbers of words used by the interviewer were too many?"

(Maloney) "Yes, definitely. . . . I'm really talking about the ratio of words between the interviewer and the interviewee, the child. Given the premise that the goal of this kind of interview is to get information from a child, to learn about their experiences, their memories, what has been done with them, then we want to hear the child talk. And if the child is able to talk and is willing to talk, the interviewer's job is to facilitate that and get them to talk."

(Gits) "Doctor, would it be fair to say that you are going to find children who are too scared to talk, so the interviewer has to talk more?"

(Maloney) "They were verbal kids. They seemed relaxed. They were talking. So there did not appear to be any basis for taking over the interview."

(Gits) “So the interviewer spoke more. What’s wrong with that?”

(Maloney) “There are many things. One is that you are presenting a template, or a design for what’s going to happen. You’re communicating to the child: ‘I’m gonna talk. I’m gonna ask questions. Your job is to sit back and follow my lead. . . .’ “

(Gits) “Why is that wrong?”

(Maloney) “Because you avoid being able to learn from the child, in the child’s own language, what their experience is, how they organize their own history, their own memories.”

(Gits) “Why is that bad?”

(Maloney) “Because your task really is to find out that information. What is this child saying? What does the child remember? The more you use an interviewer to affect that, or provide them with information, that could contaminate them, the less you can rely on anything you get out of them. . . . These interviews did not flow in the direction of the child. In other words, typical child evaluation interview, you let the child talk, and you follow their lead. You keep them speaking. In these interviews the kids all were machined through the exact same process. Toward the end of that process they were being asked very direct and almost coercive questions about sexual behavior. At those times some of the children became fairly nonverbal and were simply pointing and did so in a somewhat passive way and sometimes even in a questioning way.”

(Gits) “Did you form any opinion as to whether these children were such that numerous questions by the interviewer were inappropriate?”

(Maloney) “In all cases, yes. . . . As I was saying previously, one of the first observations I made was that the interviewers were doing the vast majority of verbal output. And there are reasons why that could be very problematical in an evaluation interview.”

(Gits) “Without knowing anything about the children . . . would you be able to come to any conclusion, based on the numbers alone, as to whether or not the interview techniques were proper?”

(Maloney) “I would have to integrate one premise which I’ve already measured that the children were willing to talk. They did talk. . . . If you gave me a random sample of children, nine children roughly aged four and a half to nine, and I knew they were picked out of some kind of normal population, I would say that it was backwards, and it would be wrong.”

(Gits) “Can you tell us what else you did with respect to your analysis of the interview techniques of the CII tape?”

(Maloney) “The next step I took was to categorize various aspects of these interviews and classify the type of behavior that was occurring, the type of inter-change between the interviewer and the child.”

(Gits) “Can you tell us how you went about that?”

(Maloney) “Several different ways. My first impression when I watched the very first tapes was that these were done in some systematic way. These were not interviews that followed the lead of the child. I watched probably forty or fifty tapes of different children and developed what I have referred to as a script. And what I was trying to do in reviewing those tapes was to isolate out certain kinds of activities, behaviors, statements made by the examiners to all or most of the children.”

(Gits) “Why do you call it a script?”

(Maloney) “The reason I called it a script is that in interviewing children the focus is on the child. The opposite of following the child is following some kind of predetermined program. I used the word, ‘script,’ for that, to refer to that program, but I also use the word, ‘script’ because even word usage by the various examiners with the various children was very close. It was if they were reading a script. . . .”

(Gits) “Can you tell us, doctor, what’s wrong with the script?”

(Maloney) “The very concept of using a program or a script in an interview of a child is wrong in the sense that it is putting in the interview situation material from the interviewer rather than obtaining spontaneous information from the child. The more that’s done the less you will be able to conclude about the child’s behavior and statements.”

(Gits) “But doesn’t that depend, doctor, on the particular child at hand?”

(Maloney) “It certainly depends on the particular child. . . . Generally the same script was used for all the children. That simply underscores that it was programmed that way. It was planned that way.”

(Gits) “Is there something wrong with using the same methodology or script with children throughout that age range?”

(Maloney) “There’s something basically and inherently wrong with using a script in any type of evaluation interview.”

(Gits) “What’s wrong with it? Why is it wrong?”

(Maloney) “Several things. First is that there does not appear to have been any consideration from the cognitive development of the children. Second, there is no consideration of the relative brightness of the children and the relative fluency of the children, the sex of the children. They are all considered, at least by implication, as a homogenous mass that you must treat the same way. . . .”

(Gits) “Doctor, do you believe you have the ability, from looking at the CII tapes . . . to come to a conclusion of the cognitive development level of any given child?”

(Maloney) “Other than in a very general sense, without a complete evaluation of the child, it is very difficult to say. We don’t have enough data in terms of their own responses on those tapes,

to make that kind of a conclusion.”

(Gits) “Would it be improper in your opinion to conduct an interview of a child for child sexual abuse without doing some kind of analysis as to the cognitive development of the child?”

(Maloney) “I believe it generally would because the cognitive evaluation provides you the additional data to assess what a child is saying. The bottom line of all this is: the child is saying something. How would we know why they’re saying it? Is it their own experience or did it occur some other way?”

Nineteen months into the trial, on February 15, 1989, Ray Buckey was released into the personal custody of Daniel Davis. The high point of the trial, from the standpoint of media attention, came with the testimony of the defendants themselves. Peggy Buckey was the first to testify, telling the jury “never” when asked whether “she ever molested those children.” She also told jurors that she never witnessed her son behaving in a sexually inappropriate way at the school. Ray Buckey also denied each and every prosecution charge, as well as the allegations made by jailhouse informant George Freeman, a nine-time felon. Ray testified that he was not even teaching at the school during many of the times in which he was accused of abusing children. During cross-examination, prosecutor Lael Rubin kept hammering Buckey with questions about two barely relevant facts uncovered during the investigation: that Buckey sometimes did not wear underwear and that he owned several sexually explicit adult magazines.

On November 2, 1989, after nearly 30 months of testimony, the jury went into deliberation on 65 charges. On January 18, 1990 the jury returned their verdict: Peggy Buckey was acquitted on all charges against her and Ray Buckey was acquitted on all but 13 charges. On the 13 remaining charges against Ray Buckey, the jury announced that it was hopelessly deadlocked.

The jury foreperson explained the vote: “The interview tapes were too biased; too leading. That’s the main crux of it.” Another juror told reporters, “Whether I believe he did it and whether it was proven are very different.” Judge Pounders offered his own appraisal of the verdict: “I was not surprised by the verdicts. I would not have been surprised at any decision the jury made.”

Child protection groups and parents pressured prosecutors to retry Ray Buckey on the charges on which the first jury deadlocked. Five hundred people, including many McMMartin parents, marched through the streets of Manhattan Beach carrying signs such as “We believe the children.” One McMMartin parent called the verdict in the first trial “a crime...almost equal to the crime that occurred outside the courtroom.” A television poll showed 87% of respondents thought the defendants were guilty.

District Attorney Ira Reiner was running for California Attorney General and tried to appease the public by offering a nolo contendere plea. Lael Rubin insisted on a re-trial and she was removed from the case. Two new prosecutors were assigned to the case and Ray Buckey refused their offer of a plea. The second trial also saw a new judge, following a successful motion by defense attorney Daniel Davis to have Judge Pounders removed from the case. Pounders expressed relief at the development: “I’m finally free after three years and three months. I was honestly afraid I couldn’t live through it.” Superior Court Judge Stanley Weisberg was assigned to replace Pounders.

The second trial was much more focused, involving only eight counts of molestation and three children. The prosecution presented its entire case in just thirteen days (compared to fifteen months in the first trial) and offered only eleven witnesses. The prosecution did not call Kee MacFarlane; instead, MacFarlane was called as a defense witness.

Jury deliberations after the three-month trial were described by one juror as “excruciating.” The verdict was returned on July 27, 1990. Deadlocked on all eight counts the jury leaned toward acquittal on six of the counts and leaned toward conviction on only one count. Following the mistrial, District Attorney Reiner chose not to retry Buckley a third time and all charges against him were dismissed.

The first retraction of allegations came from a McMartin student who was eight years of age when he made his disclosures. He said his accusations were made because of pressure from his family, the community and the interviewers at CII, “Anytime I would give them an answer that they didn’t like, they would ask again and encourage me to give them the answer they were looking for. It was really obvious what they wanted . . . “I think I got the satanic details by picturing our church . . . and if the investigators said, ‘Describe an altar,’ I would describe the one in our church . . .

From going to church you know that God is good, and the devil is bad and has horns and is about evil and red and blood. I’d just throw a twist in there with Satan and devil-worshipping.” (October 30, 2005 Los Angeles Times)

Conclusion:

Ray Buckley in a CBS interview after his second trial said: “Those poor children went through hell...but I’m not the cause of their hell and neither is my mother . . . The cause of their hell is the . . . adults who took this case and made it what it was.” The McMartin Trial was costly in many other ways. In monetary terms, it cost taxpayers over \$15 million dollars. For the defendants, the costs of the trial included long terms in jail, loss of homes, loss of jobs, loss of life savings, and a stigma that will never vanish.

An ongoing phenomena, America’s inquisition against sex offenses and offenders cannot be identified with a single incident or date. The McMartin Trial only symbolizes its strength -- it was the longest and most expensive criminal trial in American history. Today’s inquisition against sexual offenders is constantly fueled with real events that are broadcast at light speed and mythical fears that are fanned by power hungry officials.

The same attitude prevails today and the possibility of false allegations of child abuse increases daily. The McMartin Trial should remind us that social and political influences often supersede the need for evidence and the possibility of false allegations of child abuse increases daily.

About the Author:

Mr. Blackstone is recognized as an expert in the fields of sexual offense investigation, proper forensic interviewing techniques and pre and post conviction testing of alleged offenders. He is a polygraph examiner, forensic consultant and expert witness regarding the proper use of polygraph in civil, clinical and criminal testing settings with a focus on child molestation and child abuse. With over twenty-seven years of experience, over fifteen thousand examinations and more than one hundred court appearances as an expert witness, Mr. Blackstone's expertise is well respected.