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Two Decades After McMartin: A Follow-up of 22 Convicted Day Care Employees

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It has been more than two decades since the notorious McMartin Preschool case created a day care ritual abuse master-narrative that recruited many social workers into becoming involved in case-finding, investigations, interviewing and advocacy. The purpose of this article is threefold: it introduces a sample of 22 day care employees who were convicted in day care ritual abuse cases; it updates their current legal status; and it discusses the relevance of these cases to social workers who currently are being recruited by today's new master narratives about extrafamilial sexual threats to children, whether from neighborhood pedophiles, child pornographers, parish priests or internet predators.

Keywords: day care, ritual abuse, social work

It has been more than two decades since the notorious McMartin Preschool case came to public attention. At the "Nightmare Nursery," as the Manhattan Beach, California preschool was quickly tagged by the popular press (Green, 1984), more than 350 past and present enrollees accused their providers of sexually abusing them in rituals that included such acts as blood-drinking, cannibalism and infant sacrifice.

The appalling nature of the allegations in the McMartin Preschool case not only contributed to that era's rising social anxiety about the sexual abuse of children (Best, 1990), but

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necessitated the coinage of a new term for talking about it. "Ritual abuse" was that term, and although there has never been a consensus definition of it, generally it is understood to refer to sexual abuse that is systematic, stylized and terrorizing, and that is carried out in the context of satanic, occult or magical rituals (APSAC, 1996).

Just as the earlier "discovery" of incest had created what Davis (2005, p. 28) describes as a "socially recognized story of victimization" that led to a "massive outpouring of victim testimonies," so the McMartin Preschool case created an "archetypically familiar plot," or master-narrative, of day care ritual abuse that led to aggressive case-finding by child protectionists, many of whom were social workers (deYoung, 2004, p. 25). As bizarre, improbable and wholly unsubstantiated as that master-narrative was, it was repeated over the ensuing decade in the investigations of as many as 100 day care centers in large cities and small towns across the country.

From its creation in the McMartin Preschool case, the master-narrative was a profoundly moral story. The alleged offender was depicted not just as a person who intends harm, but as evil; the alleged victim was seen not just as naïve, but as innocent and thoroughly traumatized, and thus worthy of more than just sympathy and support, but of rescue and protection. This moral framing ideologically and materially recruited many social workers, that is, it influenced them to think and to act in ways that reified the narrative and constructed day care ritual abuse into an urgent social problem (deYoung, 2000; Victor, 1988).

It is important to emphasize that not all social workers were persuaded by this narrative. The profession was, and remains to this day, deeply divided over whether the allegations in these cases are credible accounts of ritual abuse, symbolic representations of some other form of abuse or trauma, or imaginative stories formed in conversational partnership with zealous interviewers and investigators. Those who were persuaded, however, often became involved in local case-finding, investigation, interviewing and/or advocacy. Thus, their recruitment had legal consequences for those day care employees who came under suspicion as ritual abusers.

In 1990, after the longest and most expensive criminal trial

in U.S. history, Peggy McMartin Buckey was acquitted of all charges in the McMartin Preschool case. Her son, Raymond Buckey, was acquitted of all but 13 charges against him; retried on 8 of those charges, a mistrial was declared when the jury deadlocked, and all charges against him then were dismissed (Butler, Fukurai, Dimitrius, & Krooth, 2001). By the time the two McMartin Preschool providers had finally come to trial, professional, public and media skepticism about the day care ritual abuse cases and the roles that social workers played in them had swelled. So did scientific skepticism, as well-designed and controlled empirical studies revealed just how easily young children can be led to make outrageously false allegations (Ceci & Bruck, 1995; Garven, Wood, Malpass, & Shaw, 1998; Poole & Lindsay, 1995), and sociological studies anatomized the cultural, ideological and professional forces that constructed an imaginary threat to children and then made acting on that threat not only possible, but exigent (deYoung, 2004; Frankfurter, 2006; Murray, 2001).

In the face of this "escalating chorus of criticism" (Myers, 1994, p. 17), often referred to as "the backlash," social workers' interest in day care ritual abuse waned. While the recent comment that they "ran for cover and stopped talking about it" after the last case was prosecuted in 1992 (Ross, 2003) is certainly hyperbolic, the fact remains that currently the cases are rarely the topic of discussion or analysis in the conferences, workshops and professional journals that link social workers across the country.

Analytic Strategy

This article seeks to redress the silence about the day care ritual abuse cases. The purpose of the article is threefold. First, given the fact that not all of these cases were the subjects of national news and therefore are not widely known, it introduces a sample of 22 employees who were criminally convicted in day care ritual abuse cases. Second, because much of the legal activity on behalf of these convicted day care employees post-dates the interest and involvement of social workers in these cases, it updates the current legal status of each of the sample employees. Third, the article discusses the relevance of these

cases to social workers who are currently being recruited by today's new narratives about extrafamilial sexual threats to children, whether from neighborhood pedophiles, child pornographers, parish priests or internet predators.

For the purposes of this article, a day care employee was included in the sample if all of the following criteria were met: (1) she or he was employed by, or otherwise affiliated with, a public or private day care center, nursery or preschool; (2) she or he was publicly accused of sexually abusing any or all of the young children in care during the performance of stylized and terrorizing rituals; (3) she or he was convicted in a court of law by a jury or judge; (4) her or his arrest, trial and sentencing occurred between 1984 and 1992; and (5) there are sufficient archival materials in the form of published legal decisions, interview and court transcripts, investigative reports, and local news articles to track her or his case from its beginning to the present.

Sample of 22 Convicted Day Care Employees

Table 1 presents the sample of 22 convicted day care employees. They ranged in age at the time of arrest from 19 to 62 years old; 18 are White, 3 are Hispanic, and 1 is African-American. All of the employees who were convicted in the Fells Acres and the Gallup Christian case are family members; the two convicted in the Fran's day care case are spouses.

As Table 1 reveals, the role responsibilities of the 22 convicted day care employees varied along gender lines. The women who owned their day care centers combined administrative work with the direct care of young children; the men who owned their centers, on the other hand, usually had other primary employment and therefore were not in daily contact with the young enrollees. In response to the "Baby Boom" generation's unprecedented need for childcare outside of the home (Waites, 2000), all of the employees in the sample, with the exception of the Amirault and Gallup families, had been in the day care business less than five years before arrest.

The settings in which the day care employees worked varied as well. Seven of them worked in or were affiliated with private home-based centers that enrolled from 3 to 12

children at any one time; 13 worked in or were affiliated with larger public day care centers, and the remaining two, Ballard and Rohde, worked in church-affiliated centers. With the

Table 1. Sample of 22 Criminally Convicted Day Care Employees

EMPLOYEE	AGE	RACE	ROLE	CENTER	YEAR
Frank Fuster	35	Hispanic	Owner	Country Walk, Miami, FL	1984
Violet Amirault Cheryl LeFave Gerald Amirault	60 29 31	White White White	Owner/Provider Provider Handyman	Fells Acres, Malden, MA	1984
Richard Barkman	27	White	Provider	Small World, Niles, MI	1984
Frances Ballard	56	White	Provider	Georgian Hills Baptist, Memphis, TN	1984
Sandra Craig	39	African- American	Owner/Provider	Craig's Country, Clarksville, MD	1985
Kelly Michaels	23	White	Provider	Wee Care, Maplewood, NJ	1985
Martha Felix Francisco Ontiveros	37 33	Hispanic Hispanic	Owner/Provider Provider	Felix's, Carson City, NV	1985
Michelle Noble Gayle Dove	36 41	White White	Provider Provider	East Valley YMCA, El Paso, TX	1985
Mary Lou Gallup Ed Gallup Sr. Ed Gallup Jr.	61 62 28	White White White	Owner/Provider Owner/Provider Owner/Provider	Gallup Christian, Roseburg, OR	1987
Marilynn Malcom	40	White	Owner/Provider	Rainbow Christian, Vancouver, WA	1987
Michael Schildmeyer	22	White	Owner/Provider	Sunshine, Edgewood, IA	1988
Robert Kelly Dawn Wilson	41 23	White White	Owner Cook/Provider	Little Rascals. Edenton, NC	1989
Lawrence Rohde	19	White	Provider	1st Presbyterian, Mansfield, OH	1991
Fran Keller Dan Keller	44 50	White White	Owner/Provider Owner	Fran's, Austin, TX	1991

exception of those church-affiliated centers that were exempt from state licensing and the unlicensed home-based centers run by Fuster, Felix and her nephew, Ontiveros, and Schildmeyer, all of the centers were state-licensed at the time of the employees' arrests.

Finally, Table 1 also reveals that the 22 convicted day care employees lived and worked in diverse communities. While the Country Walk, Georgian Hills, East Valley and Fran's day care cases occurred in major metropolitan areas with populations near or over 500,000, the majority of the cases occurred in much smaller cities with populations nearer to 50,000. Four of the cases—Craig's Country, Gallup Christian, Sunshine and Little Rascals—happened in small towns with populations of around 5,000.

Regardless of city size, however, the local impact of each of the cases was considerable. In some communities, property values decreased (Adams, 1996; *Sanchez v. Guerrero*, 1994), and the rumors and fears that always surrounded these cases took their tolls in friendships, sociability and daily commerce (Hobbs, 1992; Leeson, 1985; Leonnig, 1995; Taylor, 1986). Other costs were calculable. Insurance rates for day care centers in the communities where the alleged ritual abuse cases occurred skyrocketed an average of 1500%, forcing many centers to close and many others to raise their rates, thus making local affordable day care even more difficult to find (Wickenden, 1985). The costs of investigating the day care employees strained local and state budgets, and their resulting criminal trials were often the longest and most expensive in the history of the respective community, or even the state (Granberry, 1983; Morrow, 1988; Rosenthal, 1985; Thompson, 1991).

Legal Update

Table 2 updates the current legal status of each of the 22 convicted day care employees in the sample. As it indicates, three of those employees—Frank Fuster and Fran and Dan Keller—remain incarcerated; an additional 6 served at least their minimum prison sentences and were paroled into their communities. The remaining 13 day care employees

successfully appealed their convictions.

Table 2. Verdict, Sentence, Legal Update and Bases for Affirmed Appeals for the Sample of 22 Day Care Employees (continues next page)

EMPLOYEE	SENTENCE	LEGAL UPDATE	BASES FOR AFFIRMED APPEAL
Frank Fuster	6 life terms + 65 years	Incarcerated	_____
Violet Amirault	8-20 years	Conviction overturned 2x; sentence reinstated 1x; charges posthumously dismissed	Violation of 6th Amendment Confrontation Clause
Cheryl LeFave	8-20 years	Conviction overturned 2x; sentence reinstated 2x; credit for 8 years served; probation	Violation of 6th Amendment Confrontation Clause
Gerald Amirault	30-40 years	Served 19 years; paroled	_____
Richard Barkman	50-75 years	Conviction overturned; pled guilty to 1 charge in lieu of re-trial; probation	Erroneous exclusion of exculpatory evidence
Frances Ballard	5-35 years	Conviction overturned; charges dismissed; record expunged	Violation of Discovery Statute
Sandra Craig	10 years	Conviction overturned; charges dismissed	Violation of 6th Amendment Confrontation Clause
Kelly Michaels	47 years	Conviction overturned; charges dismissed	Violation of 6th Amendment Confrontation Clause; misuse of expert testimony
Martha Felix	3 life terms	Conviction overturned; charges dismissed	Violation of 6th Amendment Confrontation Clause; improper admission of hearsay testimony; improper admission of expert opinion
Francisco Ontiveros	Life	Conviction overturned; charges dismissed	Violation of 6th Amendment Confrontation Clause; improper admission of hearsay testimony; improper admission of expert opinion

Table 2. Verdict, Sentence, Legal Update and Bases for Affirmed Appeals for the Sample of 22 Day Care Employees (continued from previous page).

EMPLOYEE	SENTENCE	LEGAL UPDATE	BASES FOR AFFIRMED APPEAL
Michelle Noble	Life term +311 years	Conviction overturned; re-tried and acquitted on 11/11 counts	Violation of 6th Amendment Confrontation Clause
Gayle Dove	3 life terms +60 years 20 years	Mistrial declared 1st trial; retried and convicted. Conviction overturned 2nd trial; charges dismissed	Improper admission of hearsay evidence
Mary Lou Gallup	2 years	Conviction overturned; charge dismissed	Violation of Discovery Statute
Ed Gallup Sr.	20 years	Served 3 years; paroled	_____
Ed Gallup Jr.	10 years	Served 8 years; paroled	_____
Marilynn Malcom	18 years	Served 12 years; paroled	_____
Michael Schildmeyer	25 years	Served 10 years; paroled	_____
Robert Kelly	12 life terms	Conviction overturned; charges dismissed	Improper admission of hearsay testimony; improper admission of prejudicial testimony; failure to conduct <i>in camera</i> review of therapists' notes
Dawn Wilson	Life	Conviction overturned; charges dismissed	Violation of due process rights; improper admission of evidence; gross impropriety in closing argument
Lawrence Rohde	14 years	Served 9 years; paroled	_____
Fran Keller	48 years	Incarcerated	_____
Dan Keller	48 years	Incarcerated	_____

Before the bases for the successful appeals of those 13 day care employees are analyzed, it is important to note what Table 2 cannot convey, and that is the legal complexity of so many of these cases. Not only were the criminal trials of all of the day

care employees spectacles with “the crowds and the cameras, the scandalous revelations of unseemly private behavior, inevitably made into fodder for moralists; the legal maneuvering and posturing and the ensuing public skepticism of the law’s ability to do justice” (Umphrey, 1999, p. 393), but for some, the trial that resulted in conviction was not their first trial. For others it was not their last trial, and for others still, their overturned convictions were reinstated as their cases made their way through the complicated appellate system.

A couple of examples will illustrate this point. Edward Gallup, Jr. was convicted in his first trial, but two subsequent trials in two different venues resulted in acquittals. The first trial of his mother, Mary Lou Gallup, who was accused of inserting a carrot into the vagina of a child and slitting the throat of a pet rabbit to secure her silence, resulted in a mistrial, but her second trial in a different venue resulted in her conviction. The convictions of both Gayle Dove and Michelle Noble were overturned in the East Valley YMCA case, but each provider was retried. Dove was once again convicted and that conviction, once again, was overturned; Noble, however, was acquitted of all charges. Arguably, the most legally complicated of the sample cases was that of Gerald and Violet Amirault and Cheryl LeFave in the Fells Acres case. After serving eight years in prison, the mother and daughter were involved in legal actions that resulted in their convictions being overturned and then reinstated twice over the ensuing decade. Amirault died before the case finally was closed, and all charges against her were posthumously dismissed. Her bid for a new trial once again rejected, LeFave successfully petitioned the court to have her sentence reduced to time served and was paroled into the community as a convicted sex offender.

The cases of Amirault and LeFave are illustrative not only of legal complexity, but of the unevenness of media attention to the day care ritual abuse cases. Their case garnered not only local media attention, but national and international interest due to a series of *Wall Street Journal* commentaries that excoriated the legal system that convicted them (Rabinowitz, 1995), a plethora of advocacy web sites that declared their innocence (D’Entremont, n.d.; Harris, n.d.), prime time television news coverage (Collins, 1999) and internationally syndicated

newscasts (*CNN Live*, 2004). Only the cases of Kelly Michaels in the Wee Care case, and Robert Kelly and Dawn Wilson in the Little Rascals case attracted as much sustained media attention.

The Kellers were convicted and sentenced in 1992, and their case acts as a marker, of sorts, of the end of day care ritual abuse. While investigations of day care centers occurred sporadically over the next few years, none resulted in a criminal trial of a day care employee. Yet long after this last case, and long after social workers' interest and involvement in ritual abuse cases had waned, significant legal decisions were being rendered that not only overturned the convictions of 13 of the sample day care employees, but that impacted the social work profession, as well.

Successful Appeals

As Table 2 indicates, the convictions of three of the day care employees in the sample were overturned on legal technicalities. In Richard Barkman's case, the trial judge had erroneously excluded evidence that the only testifying child may have fabricated his allegations (*Michigan v. Barkman*, 1990). In Frances Ballard's case, the audiotapes of the children's early interviews in which they accused her of flying them by helicopter into the mountains to be sexually assaulted by robed and hooded adults, had been reused by social workers and investigators and therefore were not available for discovery by the defense (*Tennessee v. Ballard*, 1993). And in Mary Lou Gallup's case, the judge had erroneously ruled that the prosecutor's notes on his personal interviews with the accusing children were exempt from pretrial discovery by the defense (*Oregon v. Gallup*, 1991).

Shielding and the 6th Amendment

As Table 2 also indicates, the violation of the 6th Amendment Confrontation Clause was the basis for the successful appeals of seven of the day care employees in the sample. The Clause states that in all criminal prosecutions the accused have the right to confront the witnesses against them, a right that

historically has implied face-to-face confrontation in a court of law. In each of the successful appeals based on the Confrontation Clause, however, the testifying children had been shielded, that is, allowed to testify outside the presence of the accused day care employee.

The recent history of shielding is intertwined with the claims and activities of social workers. For much of American jurisprudence, children generally were considered too fanciful and forgetful to be competent witnesses, and were therefore deemed testimonially incompetent on the basis of age alone (Goodman, 2006). But with the "discovery" of incest, social workers advocated for a reexamination of this tradition that denied children access to justice and for new legislation that would make the courtroom friendlier to children. These new pieces of legislation allowed children to testify from pint-sized chairs rather than from witness stands, or from witness stands while holding testimonial aids such as stuffed animals, or even while sitting on the lap of a support person. In some states children were exempted from having to testify at grand jury proceedings, and in others the trial process was accelerated to reduce the stresses inherent with lengthy trials (Bulkley, 1988).

Social workers also advocated for additional prosecutorial innovations that would protect testifying children from the putative trauma of face-to-face confrontations with their alleged abusers (Berliner & Barbieri, 1984; Conte & Berliner, 1981). Considered necessary for the prosecution of "ordinary" cases of incest, shielding was deemed essential for prosecuting extraordinary cases of day care ritual abuse in which the testifying children were very young and had to face in court the day care employees they had accused not only of sexual abuse, but of terrorization and even torture. Thus many states passed shielding statutes that allowed children to testify outside of the presence of the accused.

Table 3 displays the methods of shielding used in the trials of the seven day care employees whose convictions were overturned on 6th Amendment grounds. As the Table indicates, both the type of testimony shielded and the method of shielding varied from one criminal trial to another.

Table 3. Shielding Method in the Criminal Trials of 7 Day Care Employees Whose Convictions Were Overturned on 6th Amendment Grounds

DAY CARE EMPLOYEE	DAY CARE CENTER	SHIELDING METHOD
Violet Amirault	Fells Acres	Small table facing jury; backs angled to defendants.
Cheryl LeFave	Fells Acres	Small table facing jury; backs angled to defendants.
Sandra Craig	Craig's Country	Closed-Circuit television
Kelly Michaels	Wee Care	Closed-Circuit television
Martha Felix	Felix's	Videotaped preliminary hearing testimony, and open court
Francisco Ontiveros	Felix's	Videotaped preliminary hearing testimony, and open court
Michelle Noble	East Valley YMCA	Videotaped investigative interviews

One of those successful appeals on 6th Amendment grounds deserves comment because it resulted in a landmark legal decision. In the Craig case, the accusing children's testimony that included allegations that the day care employee had sexually assaulted them after tying them to trees in the woods behind the day care center, was offered before a judge in a separate room and contemporaneously shown to Craig and the jury on closed-circuit television. Craig appealed her conviction on the ground that shielding had violated her 6th Amendment right to confront her accusers in court. Her conviction was overturned. Prosecutors immediately appealed that decision to the U.S. Supreme Court, attaching a brief from the American Psychological Association that asserts that sexually abused children often experience such emotional trauma as witnesses in courts of law that they cannot give reliable testimony, thus vitiating the very truth-finding intent of the 6th Amendment Confrontation Clause (American Psychological Association, 1990). In a controversial 5-4 decision, the U.S. Supreme Court agreed. It ruled that if the trial court makes "an adequate showing of necessity," testifying children can be shielded from

face-to-face confrontation with the defendant (*Maryland v. Craig*, 1990). It then directed the state appellate court to determine whether the trial court indeed had made that "adequate showing of necessity." The court ruled it had not, and Craig's conviction once again was overturned. Although she was remanded for a new trial, all charges against her were dismissed six years after her arrest.

As in the Craig trial, the shielding of the testifying children in the conjoined Amirault/LeFave trial (*Commonwealth v. Amirault*, 1997), as well as the Michaels' trial (*State v. Michaels*, 1994), resulted in their convictions being overturned on 6th Amendment grounds. But it was the type of testimony that was shielded that was at issue in the other successful appeals. In the conjoined Felix/Ontiveros trial, the accusing children testified in open court but, after being dismissed as witnesses, their preliminary hearing testimony, videotaped a year before and outside of the presence of the defendants, was shown to the jury. Upon appeal, the Nevada Supreme Court ruled that because the children had made allegations about sexual abuse in the context of rituals that involved blood-drinking and cannibalism in their videotaped testimony that they did not make in open court before being dismissed as witnesses, the day care employees' 6th Amendment right had been violated (*Felix v. State*, 1993). In Noble's first trial, on the other hand, none of the accusing children testified. Rather, videotapes of the children answering questions put to them by investigating detectives and state social workers were shown to the jury in lieu of testimony. Noble appealed her conviction on the ground that her 6th Amendment right to confront her accusers had been violated. The higher court agreed, overturned her conviction, and remanded her for a new trial in which the accusing children were required to testify in open court. Noble was acquitted in that trial of all charges (Nathan, 1987).

Hearsay Testimony

"Excited utterance or outcry hearsay testimony" was admitted in the trials of all of the day care employees in the sample, but was one of the grounds for the successful appeals of four of them. Simply defined, hearsay is secondhand

testimony which usually is inadmissible in court because it is considered less reliable than in-court testimony, and it jeopardizes the defendants' 14th Amendment right to due process and 6th Amendment right to confront accusers (Myers, 1992).

Exceptions to the hearsay rule, however, always have been recognized by the law, but it was not until the 1980s that the excited utterance or outcry hearsay exception was codified in the Federal Rules of Evidence. Rule 803(2) states that the hearsay rule does not exclude statements made about a startling event by a person who was under stress caused by the event. The assumption here is that such statements, made in the excitement of the moment, are likely to be true and not the product of fabrication or fantasy. This exception has three requirements: there must be a discernible exciting event, the statement must be related to the event, and must be made while the person is under the stress caused by the event (Myers, Cordon, Ghetti, & Goodman, 2002). If all three requirements are met, then testimony by the person to whom the statement was made is admissible in court.

The legal reasoning of that era determined that if there is little question that incest is just that kind of "exciting event" that triggers the hearsay exception, there is even less question that day care ritual abuse is also. The allegations made in these cases of sexual abuse in the context of bizarre rituals certainly exceed the threshold of an "exciting event," and the alleged terror, threats and torture that contextualize them certainly would create the requisite stress. Thus, excited utterance or outcry hearsay testimony was admitted into the trials of all of the 22 day care employees in the sample.

It was this hearsay exception that allowed parents to testify on behalf of their children. In many states this type of hearsay testimony is admitted only when the children also testify. Jurors, therefore, heard the parents expand and elaborate upon their children's often inconsistent and sometimes even incomprehensible testimony, rather than simply repeat it. In the Kelly trial, in which children described sexual abuse in rituals that included infant sacrifice and prayers to the devil, the testifying parents wove into their very personal testimony references to the vast "body of knowledge" about ritual abuse that was being put together and circulated by social workers. They used symptom lists to explain any changes in their children's

behavior as sequelae of abuse; they used the clinical language of the master-narrative—"repression," "accommodation," "dissociation," "mind control"—to explain why their children did not spontaneously disclose the alleged abuse. In doing so, the testifying parents assumed a role newly minted for the day care ritual abuse trials. This parent-expert role required that they testify with "the passion of a parent and the equanimity of an authority" (deYoung, 2004, p. 205), but in Kelly's appeal in the Little Rascals case, the higher court ruled that this type of hearsay testimony was, in fact, inadmissible, and overturned his conviction (*State v. Kelly*, 1995).

The improper admission of hearsay testimony was also the basis for Dove's successful appeal in the East Valley YMCA case. After her conviction in her first trial was voided because of juror misconduct, the day care employee was retried on a single charge of sexual abuse that involved inserting a pencil into a child's anus. The child did not testify, however the hearsay exception allowed his parents, three other children enrolled in the day care center and their parents to testify to this alleged act of abuse. When Dove took the stand in her own defense, she denied the charge against her, but was forced to also dispute the extraneous allegations about uncharged sexual acts with children who had not been identified as victims that had been made by the testifying parents and children. She was convicted and sentenced to 20 years. Upon appeal, however, the higher court ruled that the admission of hearsay testimony about acts of sexual abuse for which she was not currently standing trial was inflammatory and prejudicial (*Dove v. Texas*, 1989). Her conviction was overturned and all charges against her were subsequently dismissed.

One of the requirements for the admission of hearsay testimony is that statements must be made while the person is under the stress caused by the event. Spontaneously made statements, therefore, best fit the legal definition of excited utterance or outcry (Myers, Cordon, Ghetti, & Goodman, 2002). In the case of ritual abuse, courts often admitted hearsay testimony about statements made after considerable lapses of time because it was successfully argued that the very terrorizing, threatening and bewildering nature of day care ritual abuse worked not only to secure the silence of children, but to generate fear that disclosure would bring harm to the very people

they were most likely to tell.

That was the posture taken in the conjoined Felix/Ontiveros trial. They were convicted on charges involving three children, one of whom did not testify in either the preliminary hearing or the trial because her therapist had insisted that she would be irreparably psychologically traumatized if she were to do so. The child, who had never disclosed to her parents and had consistently told investigators she had never been abused by the day care employees, finally disclosed to her therapist after 98 separate interviews conducted over a year's period of time. Thus the therapist's hearsay testimony was admitted into the trial. Upon appeal, the higher court ruled that in light of the fact that the child had never testified in any legal hearing, the admission of hearsay statements made after such a considerable length of time constituted reversible error (*Felix v. State*, 1993).

Post-Script on Disclosure Interviewing

The most visible, albeit controversial, role social workers played in the cases of the 22 day care employees in the sample was that of interviewer. The interviews conducted with the children in these cases were a hybrid of therapy and investigation (Ceci & Bruck, 1995). The typical "disclosure interview," as this hybrid came to be called, was directed not only at the therapeutic goal of assisting the children in resolving the trauma of the alleged ritual abuse, but the forensic goal of collecting details from them about the perpetrators, other possible victims, and the nature of the ritual abuse, itself.

Disclosure interviewing is rooted in the child sexual-abuse-accommodation syndrome which states that because children "never ask and never tell," abuse has to be discovered (Summitt, 1983, p. 181). Interviewing social workers, then, must be persistent in that quest, leading and suggestive in their questioning, and accepting of the fact that the "more illogical and incredible" the disclosure, and the more often it is retracted, the more likely it is true (p. 183). Rated as a particularly influential theory in the field (Oates & Donnelly, 1993), despite the fact that it lacks empirical support (London, Bruck, Ceci, & Schuman, 2005), the syndrome and the style

of disclosure interviewing it encouraged, were hardly endorsed by social workers who were actively involved in ritual abuse case-finding, interviewing, investigation and advocacy (Abbott, 1994; Bybee & Mowbray, 1993; Kelley, Brandt, & Waterman, 1993; MacFarlane & Krebs, 1986; Waterman, Kelley, Oliveri, & McCord, 1993).

Although disclosure interviews were not the bases for any of the successful appeals of the 13 day care employees in the sample whose convictions were overturned, they were singled out for harsh criticism by the higher courts in four cases. In overturning the conviction of Felix and Ontiveros, who had been accused of sexually abusing children in rituals that included animal and human sacrifices, the higher court cited the leading, suggestive and sometimes coercive interviewing that had coaxed the master-narrative from the children as reason to question the reliability of both the children's testimony and the adults' hearsay testimony (*Felix v. State*, 1993).

In overturning Michael's conviction in the Wee Care case, the appellate court also determined that the interviews conducted by social workers were so leading and suggestive as to diminish the credibility of the children's testimony. It took a further step of ruling that if the trial court were to retry Michaels, it first would have to hold a pretrial taint hearing to assess the reliability of the children's disclosures. That requirement was upheld upon further appeal by the New Jersey Supreme Court that ruled that the "State must prove by clear and convincing evidence that the statements and testimony elicited by the improper interview techniques nonetheless retain a sufficient degree of reliability to warrant admission in trial" (*State v. Michaels*, 1994). Prosecutors declined to retry Michaels under this condition, and all charges against her were dismissed.

The issue of taint, however, was reiterated in the Amirault/LeFave case after their convictions were overturned and they were remanded for a new trial. Because prosecutors were determined to retry the day care employees, their attorney filed a motion for a pretrial hearing to introduce empirical evidence that the children in this case had been improperly interviewed. After taking extensive testimony from researchers, the court ruled in favor of the motion. Because Amirault had died before

the completion of the hearing, the court ordered a new trial for LeFave, stating that "Overzealous and inadequately trained investigators, perhaps unaware of the grave dangers of using improper interviewing and investigative techniques, questioned these children and parents in a climate of panic, if not hysteria, creating a highly prejudicial and irreparable set of mistakes. These grave errors led to the testimony of the children being forever tainted" (*Commonwealth v. LeFave*, 1999, pp. 6-7). The decision to grant LeFave a new trial was appealed, once again overturned, and she was remanded to prison to serve the remainder of her sentence. By this time, however, the tide of both public and legal opinion about day care ritual abuse and the role of social workers in these cases had taken a skeptical turn. In the face of mounting criticism, prosecutors granted LeFave credit for the eight years she had already served. She returned to the community under the agreement that she would not contact her alleged victims, have unsupervised contact with any children, profit from her notoriety, give television interviews, or engage in any legal challenges to clear her name (Rakowsky, 1999).

Relevance to Social Workers

It has been more than two decades since the notorious McMartin Preschool case created a ritual abuse master-narrative that recruited many social workers into case-finding, investigation, interviewing and/or advocacy. This article has focused on a sample of 22 day care employees who were criminally convicted of sexual crimes against young children. The convictions of many of them have recently been overturned, although in each case the reversal occurred after social workers' interest and involvement in these controversial cases already had waned. For that reason, it may be tempting to treat these cases as little more than footnotes in the history of the social work profession. This article's analysis of them, however, reveals two broad areas of relevance to social workers who currently are being recruited by today's new master-narratives about extra-familial sexual threats to children, whether from neighborhood pedophiles, child pornographers, parish priests

or internet predators.

First, given the fact that today's master-narratives about extrafamilial sexual threats to children are as compelling in their moral clarity as the ritual abuse master-narrative was two decades ago (deYoung, 1996; Miller, 2002, Ost, 2002), social workers' allegiance to the highest standards of practice is critical. This admonition is particularly important in regard to interviewing, a task for which social workers are routinely, and quite appropriately, recruited. Research shows that even interviewers who are familiar with best practice standards often drift from them when they seek to confirm their bias that abuse indeed has occurred in a particular case, or when they are pressured to determine if abuse has occurred (Warren, Woodall, Hunt, & Perry, 1996). The drift is usually in the direction dictated by the familiar, but empirically unsupported, child sexual-abuse-accommodation syndrome that encourages persistent, leading and suggestive questioning—the kind of questioning that made the disclosure interviews in the cases of the 22 day care employees in the sample so controversial (Lamb, *et al.*, 2003; London, Bruck, Ceci, & Schuman, 2005).

That drift toward the familiar very well may be consequential. As Wood and Garven (2000) point out, the kind of improperly zealous interviewing that occurred in so many of the day care cases in the sample increases the risk that children will be falsely identified as victims and adults falsely identified as perpetrators. Yet even "clumsy interviewing" (p. 100), as they refer to interviewing that lacks some of the requisite skills identified by the profession, risks legal challenges in taint hearing, reduces the credibility of testifying children, wastes the time and resources of the justice system, and fuels the backlash against social workers that fomented as a reaction to the day care ritual abuse cases.

Second, given the fact that today's master-narratives about extrafamilial sexual threats to children are as exigent as the day care ritual abuse master-narrative was two decades ago (Potter & Potter, 2001; Zgoba, 2004), social workers' pacing of advocacy and action with research findings, systematic data collection, controlled clinical observations, and reflexive theory-building is critical. The trial innovations in the cases of the 22 day care employees in the sample are instructive on this point.

Vigorously advocated for by social workers on the basis of a "clinical intuition" that children will be so traumatized by in-court testimony as to render their testimony unreliable (Myers, Cordon, Ghetti, & Goodman, 2002, p. 3), the innovations have mixed empirical support. Shielding is shown to slightly increase the reliability of children's testimony and does not significantly bias jurors against defendants (Goodman *et al.*, 1998; Nightingale, 1993; Saywitz & Nathanson, 1993); excited utterance or outcry hearsay testimony, on the other hand, is consistently shown to be unreliable, although jurors tend to assess it as more credible than in-court testimony by children (Bruck, Ceci, & Francoeur, 1999; Warren, Nunez, Keeney, Buck, & Smith, 2002; Warren & Woodall, 1999). Based as they are on mock trial scenarios in which children testify to rather innocuous "sexual" contacts, such as touches on bare skin, these studies do not, and ethically cannot, replicate the threatening, predatory and sometimes bizarre types of sexual abuse that not only were constitutive of the ritual abuse master-narrative but also are constitutive of today's new master-narratives about extrafamilial sexual threats to children. They leave unanswered the direction that social workers' advocacy for child witnesses should take in these cases.

Conclusion

Much of social workers' activity and advocacy on behalf of sexually abused children is being carried out in a climate of skepticism and criticism that began fomenting more than two decades ago as the day care ritual abuse cases became more controversial. This "backlash" has called into question the social work profession's stock of knowledge, ideological underpinnings and ethical foundation (Ceci & Bruck, 1995; Fisher, 1995; Nathan & Snedeker, 1995; Rabinowitz, 2003). While some of that criticism clearly is unwarranted in that it holds social workers, as well as the profession, solely responsible for complicated criminal investigations, trials and legal decisions, Myers (1994) concludes that a large part of it is warranted, that is, it is a "self-inflicted wound" (p. 23) that is the result of untested claims, zealous interventions, and uncritical advocacy.

The cases of the 22 convicted day care employees in this

article's sample can inform social workers who currently are being recruited to approach today's new master-narratives about extrafamilial sexual threats to children, whether by neighborhood pedophiles, child pornographers, parish priests or internet predators. Social workers certainly must be receptive to these new master-narratives, but as the day care ritual abuse cases reveal, that reception is best when it is critical and reflexive, and the response is most efficacious when it adheres to the highest standards of practice informed by research.

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