

FROM THE MOUTHS OF BABES TO A JAIL CELL

Child abuse and the abuse of justice: A case study
By Dorothy Rabinowitz

On August 2, 1988, Margaret Kelly Michaels, then twenty-six years old, was sentenced by a New Jersey judge to forty-seven years in prison. It was as harsh a sentence as any judge in this country is likely to mete out for a crime involving neither drugs nor murder, but it was not nearly harsh enough for most of those assembled in the courtroom that day at the Essex County Court House in Newark. She faced, according to those moved to carefully calculate such things (and there were many on hand), an imprisonment of no fewer than 730 years. Three months earlier, Michaels had been convicted on 115 (of an alleged 131) counts of sexual abuse against twenty children, ranging in age from three to five. Each of the children had been in her charge at the Wee Care Day Nursery, an exclusive preschool in the suburban community of Maplewood, New Jersey, about twenty miles from New York City; each of the crimes was said to have been committed during regular school hours at the nursery, essentially a few rented rooms in the basement and on the second and third floors of the town's large Episcopal church; each day during the seven months she worked as a teacher's aide and then as a teacher at Wee Care, from

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September 1984 to April 1985, Kelly Michaels, according to the prosecutors, raped and assaulted them with knives, forks, a wooden spoon, and Lego blocks. The prosecution maintained that she had been able to do all this unnoticed by her fellow teachers, by school administrators, by parents and other visitors to the school, and unnoticed as well by anyone working for the church or attending services at the church—that is to say, unnoticed for nearly 150 school days by any adult. Unnoticed, and on a daily basis, Michaels had also, according to the prosecutors, licked peanut butter off the children's genitals, played the piano in the nude, and made them drink her urine and eat a "cake" of her feces. For 150 school days, not a single child ever said so much as a single word about any of these crimes because—again according to the prosecution—Kelly Michaels had forced them to keep at least 115 terrible secrets.

Although monstrous in its allegations, the case against Kelly Michaels was as much a work of the prosecution's feverish imagination as a construction of the law. A substantial body of evidence suggests that Kelly Michaels was convicted of crimes she did not commit. Her story deserves telling in some detail because the circumstances that resulted in her arrest, trial, and imprisonment bespeak a condition of national hysteria not unlike the hysteria that seized the

Massachusetts Bay Colony in the seventeenth century during the excitements of the Salem witch trials. If Kelly Michaels was unjustly convicted, it is because we live in an age of trial by accusation. Our society, at the moment, is quick to condemn anybody and everybody charged, on the flimsiest of evidence, with the crimes of abusing or molesting children. In the interest of a higher virtue (i.e., protecting the children), a credulous public and a sensationalist press stand willing to cast aside whatever civil liberties or constitutional rights obstruct the judgment of heaven.

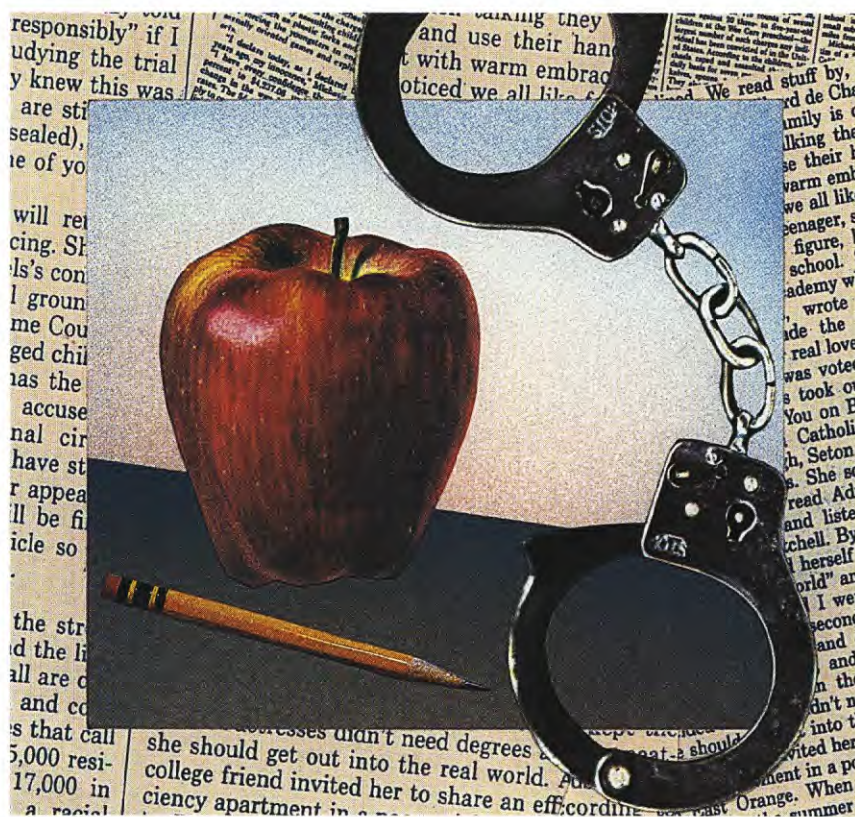
At the time of Kelly Michaels's conviction, I was working for WWOR-TV, New Jersey's largest television station. I reported and wrote commentaries about the media for the station's evening news program, and because the Michaels case was one of the biggest local stories, I had followed it for months. From the beginning, I found something strange about the state's case—something incomprehensible in the many counts of abuse, in the large number of children allegedly victimized, in the highly improbable circumstances in which Kelly Michaels was said to have accomplished the molestation of half the children in the school. I found no less strange the reactions of my colleagues to my casually voiced doubts to the effect that the case against Kelly Michaels was as rotten as last week's fish. Youngish journalists who prided themselves on their skepticism—types who automatically sniffed with suspicion at any and every pronouncement by a government official—were outraged by the merest suggestion that the state's charges against Kelly Michaels lacked credibility. In late July 1988, just before Michaels's sentence was to be handed down, I told one of the station's news managers that I planned to do a commentary on the media coverage of the trial. *The Village Voice* had published a lengthy story on the case by journalist Debbie Nathan that raised critical questions about the press coverage. The story provided, I thought, the perfect opportunity to raise certain, by now deeply nagging, questions of my own about this case.

"Forget it," the news managers informed me. This meant, in translation: This news organization is not prepared to air doubts about the trial of one of the most despised defendants ever convicted in a New Jersey court—a child molester.

Shortly after Kelly Michaels's sentencing, I

decided to go back and research the history of this case, beginning with the first allegations made against her in the spring of 1985. In the course of my research, I read through trial materials and interviewed most of the leading participants: the investigators, prosecutors, judge, and parents, as well as the convicted defendant herself. What emerged at the end of that research was not only the story of a young woman whom I believe to have been falsely accused and unjustly condemned but also an understanding of the ways in which the laws can be made to sustain the decrees of fear and superstition. In almost every detail, the prosecution of Kelly Michaels replicated the prosecution of similar cases being brought against alleged child molesters everywhere in the United States. The ac-

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used tend to be teachers, camp counselors, and members of "sex rings." The cases almost always rely on only the testimony of small children; and this testimony invariably comes to involve more and more victims, who describe more and more bizarre, cruel, and lurid acts. All the cases also make extensive use of child-abuse "specialists" and "investigators," who insist that parents, prosecutors, and jurors must—in a phrase whispered frequently at such trials and even affixed to posters and buttons—believe the children. As proof of the prevailing doctrine, Essex County Assistant Prosecutor Glenn Goldberg, who tried the state's case against Kelly Mi-

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chaels, kept a BELIEVE THE CHILDREN button pinned to his office bulletin board.

By and large, this commandment has been obeyed. People everywhere in the country have believed. Believed almost anything and everything told to them by witnesses under the age of six. Believed tales as fantastic as any fairy story ever told by the Brothers Grimm. In Sequim, Washington, investigators listened attentively as children in a local preschool charged that they had been taken by a teacher to graveyards and forced to witness animal sacrifices. In Chicago, children told sympathetic authorities of how they were made to eat a boiled baby. A Memphis preschool teacher, Frances Ballard, was acquitted of terrorizing children into watching her put a bomb in a hamster and exploding

mother) in Manhattan Beach, a well-to-do seaside city that is a part of greater Los Angeles, was said by the children to have stuck silverware in their anuses, taken them on visits to cemeteries, and killed a horse with a baseball bat. The parent who first came forth after believing her son, a woman named Judy Johnson, died in 1986 of an alcohol-related illness; not long after her initial charge against Buckey of child sodomy, she made a similar allegation against an AWOL marine, claiming that he also had sodomized the family dog.

The prosecution of Kelly Michaels took place in the midst of a national hysteria about the crimes of child abuse that, by the spring of 1985, had become as virulent and as contagious as the Asian flu. Kelly Michaels left the Wee Care Day Nursery on April 26, 1985, in order to accept a better-paying job in the nearby town of East Orange, New Jersey. Four days later, on April 30, one of her former students, a four-year-old boy whom I will call Terry Weldon,* inadvertently set in motion her transformation into an object of revulsion. His mother had taken him to his pediatrician for a checkup, and a nurse began to take his temperature by putting a thermometer in his rectum. Terry played quietly for a half-minute or so and then said, "That's what my teacher does to me at nap time at school." When the nurse asked him what he meant, he answered, "Her takes my temperature." His nap-time monitor was Kelly Michaels.

Kelly Michaels had not come to Maplewood from Pittsburgh, where she was raised, to teach preschoolers. Nor, for that matter, had she come east to settle in Maplewood. She loved the theater and wanted to be an actress. She was

pretty in a traditional, American-girl sort of way, with a dimply smile and eyes, as even her childhood photos show, that knew how to meet a camera lens. She was voted "best actress" of her high school, St. Benedict's Academy, and went on to major in theater at Seton Hill, a Catholic women's college near Pittsburgh. In the summer of 1984, then just a few credits shy of her B.A., she took up the offer of a college friend who had invited her to share an efficiency apartment in a poor, mostly black neighbor-

*All the names of the Wee Care preschoolers and of their parents have been changed.



it, and of fifteen other charges no less fantastic; but, in a trial to rival those of the Salem witches, she was convicted of kissing the genitals of a four-year-old boy.

The most sensational case of child abuse reached its denouement on January 18 of this year, when a jury in Los Angeles acquitted Ray Buckey and his mother, Peggy McMartin Buckey, on fifty-two counts—this after deliberating for nine weeks over evidence presented in the course of thirty-three months at a trial that cost the taxpayers of California an estimated \$15 million. Buckey, a teacher at the Virginia McMartin Preschool (founded by his grand-

hood in East Orange. For the time being, East Orange was as close as she could get to Manhattan's theaters and drama schools.

Up to this point, she had lived with her parents, John and Marilyn Michaels, and her four sisters and brothers in a pleasant, woodsy, middle-class section of Pittsburgh called White Oak Heights. Her early life had been, from all evidence, a happy one as the eldest child of a close-knit family. They were a talkative, bookish lot, given to heated debate on art and politics, which might explain Kelly Michaels's rather extraordinary command of the language—a faintly formal, old-fashioned eloquence that made her seem, at times, the child of another era.

When I met Kelly Michaels for the first time, in the dark visitors' cubicle at the women's prison in Clinton, New Jersey, two months after her sentencing, she still retained some of the wholesome look I had seen in her school photographs. Her shock at the accusations brought against her were still as fresh in her mind as at the moment when she was first questioned in 1985. Her gift for language allowed her to express not only rage at her accusers but also an intellectual scorn for the absurdity of their charges. On several subsequent occasions when I spoke to her, she never failed to voice her amazement that a jury had believed the charges. "To watch these witnesses, these prosecutors with their details—and none of it had ever happened," she once told me. "Yet, all these people were coming up to the stand to give descriptions of what never happened."

After arriving in East Orange, Michaels began looking for work. She answered a number of want ads, including one for a teacher's aide. She had never worked in the child-care field, but the director of the nursery was impressed with her. She was subsequently hired by Wee Care (the pay was about four dollars an hour) and began work there in September. Her mother, Marilyn, told me last year, when I visited her in White Oak Heights, that she had teased Kelly when she called to say she had begun working at a preschool. Be careful, she told her daughter, look at what is happening in Los Angeles to those teachers in the McMartin case.

Within a month at Wee Care, Kelly Michaels was promoted to teacher. She had impressed her supervisors and appeared to be popular with the three-year-olds whose class she took charge of and with the other children whom she supervised during nap time. Following days that she stayed home sick, children would run to greet her—a fact the prosecution would not deny but rather pointed to as evidence that Michaels "was an actress" and that "child abusers are very clever people." Michaels

liked the children and their parents too, but the salary proved impossible to live on. When she went home for Christmas, her parents told me, she said she planned to leave Wee Care and return to Pittsburgh. John Michaels, to his bitter regret, urged her to be responsible and finish out the year. Kelly Michaels returned to Wee Care but did not finish out the year; she left two months before the school was to close for the summer in order to take the job in East Orange.

Ten days after Terry Weldon's checkup, Essex County Investigator Richard Mastrangelo and Maplewood Detective Sergeant John Noonan knocked on the door of the apartment Kelly Michaels shared with her friend Cynthia. Terry Weldon's mother, upon arriving home after his examination, had fixed her son lunch and then phoned the doctor to talk about the temperature-taking incident. The doctor advised her to call the state child-protective agency, the Division of Youth and Family Services (DYFS). Her call was referred to the agency's Institutional Abuse Unit, which contacted the Child Abuse Unit of the Essex County prosecutor's office, which agreed to initiate an investigation. We have now in this country a vastly increased number of child-protection agencies and experts. This is largely a result of the passage in 1979 of the Federal Child Abuse Act, which dramatically increased funds available to states and localities for such agencies and experts. Funds begat staffs, which grew, as did their zeal.

On May 2, Terry's mother—the wife of a Maplewood police officer and the daughter of a prominent Essex County judge—brought him to the Essex County prosecutor's office in Newark, where he was questioned by the head of the office's Child Abuse Unit, Assistant Prosecutor Sara Sencer, now Sara McArdle. She happened to live in Maplewood.

McArdle questioned Terry, handing to him during the interview what is called, by child-abuse experts, an "anatomically correct" doll—that is, a rag doll that has an anus and genitalia. On the basis of what the child does with—and to—such a doll, investigators like McArdle say they can conclude whether and what type of abuse is likely to have occurred. Under questioning by McArdle, according to a prosecutor's report, Terry Weldon stuck his finger in the doll's rectum.

Terry also told McArdle that two other boys had had their temperature taken. Both were questioned. The boys seemed to know nothing about temperature-taking, but one of them, according to McArdle, said Michaels had touched his penis. Then a fourth allegation was made: The Weldons had notified Wee Care director Arlene Spector of their son Terry's story, and

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Spector, in turn, had notified the members of the school board. Under repeated questioning from his father, a board member—with the father telling him “he was his best friend and that he could tell him anything” (this from the prosecutor’s office report)—another boy said that Michaels had touched his penis with a spoon. A decision was made to bring Kelly Michaels in for questioning.

The two investigators who arrived at Kelly Michaels’s apartment on the morning of May 6 found only one bed in the apartment, and this, Michaels later said, at once attracted their attention. She said they exchanged sly and significant glances. She was told she was not under arrest and did not need a lawyer but that she was under investigation and would she please come to the prosecutor’s office for questioning. Once there, she waived her *Miranda* rights and spent several hours insisting that the allegations were unfounded and that she was innocent. About temperature-taking, she explained that teachers took it by placing plastic strips on the children’s foreheads. She was urged to take a lie-detector test and did; she passed. Two and a half years later, at Michaels’s trial, the county prosecutors prevented the results of this polygraph from being admitted into evidence, basing their objection on a state law stipulating that any person submitting to a police lie-detector test must first sign an agreement authorizing future use of the results. Michaels, who had never before been brought into a police station, knew nothing of this requirement; nor did the detectives questioning her see fit to mention it.

She was driven home, and, shaken though she was at the end of this day, she remembers reaching the conclusion that it must all have been some kind of bizarre misunderstanding. In one sense it was: The jury eventually rejected the charge that she had taken Terry Weldon’s temperature rectally—the very charge that provoked the entire investigation: anal penetration of the boy. But, as is invariably true in these cases, the first accusation was followed by more accusations—many more.

No one examining the scores of such child sexual-abuse cases can fail to be struck by the way in which, in almost every instance, an initial accusation leads to others and still others—and on and on, until the charges number in the hundreds. At one point during the McMartin case, the police announced they had thirty-six suspects and had uncovered as many as 1,200 alleged victims of sexual abuse. An investigation begun in Jordan, Minnesota, at about the same time that Judy Johnson first made her allegations about Ray Buckley, followed a similar—even stranger—pattern.

There, a case was opened after a woman named Christine Brown alleged that her daughter had been sexually abused by James Rud, a trash collector and a neighbor in the trailer park where she and her daughter lived. Other children in the trailer park were questioned, and some acknowledged that they, too, had been victimized—by Christine Brown. She was charged soon after with eighteen counts of criminal sexual activity. A mother of five with little money, Brown approached her older sister and brother-in-law, Helen and Tom Brown (the shared surname is coincidental), for help, and they agreed to mortgage their house to post Christine’s bail. Two months later, the prosecutor in the case, Kathleen Morris, had Tom and Helen arrested for child abuse, and they spent five days in jail. Several dozen local residents met at City Hall to protest the arrests, among them an automobile painter named Bob Bentz, his wife, Lois, and a local policeman, Greg Myers. Not long after, all three were arrested on charges of child abuse, along with Myers’s wife and a married couple who had driven the Browns home from jail.

In nearly all such cases, the allegations and the numbers of suspects begin to mount only after the entry of investigators and of representatives of child-abuse agencies. It is these experts who convince parents and children alike that the number of abuses and abusers is virtually limitless—beyond their imagination.

On May 15, 1985, nine days after Kelly Michaels had been brought in for questioning, Wee Care convened a meeting of parents. The school had sent out a letter on May 8, informing the parents that a former employee of the school was being investigated “regarding serious allegations made by a child,” and while this prompted a flurry of phone calls by parents to the school, no other allegations against Michaels emerged. The prosecutor’s office was set to wrap up its case—based on the allegations made by Terry Weldon and the two boys who alleged Michaels touched their penis—and present it to a grand jury. But the Wee Care board thought it best that the parents be informed about abuse by an expert, in this instance, Peg Foster, a social worker who codirected a Sexual Assault Unit at a Newark hospital.

On the evening of May 15, Foster told the assembled parents a number of things they had never heard before. She told them that sexual abuse is not unusual. She told them that, although she could point to no hard evidence—because no such evidence exists—she believed that one in three children in the United States has had an “inappropriate sexual experience” by the time he or she reaches the age of eighteen. She encouraged the parents to take their chil-

dren to their pediatricians to check for physical injury. She told them to go home and begin checking their sons and daughters carefully for genital soreness—and also for nightmares, biting, spitting, bed-wetting, masturbation, or for what might be construed in any way as sexual behavior, or, for that matter, for any sort of noticeable changes in behavior. She did not tell them, of course, that the “symptoms” are for many children a normal part of development.

On May 22, the state’s Division of Youth and Family Services—the agency that Terry Weldon’s mother had first contacted—initiated its own investigation. The agency had allowed the county prosecutor’s office to have the first chance at the case, but by law its staff was required to undertake its own inquiry. That afternoon, a DYFS social worker named Lou Fonolleras made his first of many visits to Wee Care and conducted his first of many interviews with the school’s children. It was Fonolleras, a roundish man of thirty-four with a B.A. in psychology, who played the crucial role in building the case against Kelly Michaels.

Something of the state of mind that Fonolleras brought to his work is perhaps revealed in his official report of his first day at Wee Care. Describing the large, stone-faced church’s many nooks and crannies, he noted that these would make ideal hiding places for child molesters. In his report, he described the school as a “pedophile’s paradise.” But no child he interviewed that first day told him that he or she had been abused by Kelly Michaels, or by anyone else. Two days after Fonolleras’s visit to Wee Care, the county prosecutor’s office brought its case to the grand jury, and the grand jury, agreeing that the state had a case, handed up an indictment. On June 12, Kelly Michaels was arrested and charged with six counts of abuse; she pleaded innocent to all charges. She was taken to the county jail, where she was confined in protective custody.

Fonolleras continued to suspect that there was more to the Wee Care case than six counts of abuse. When I met with him more than two years later, he explained that despite the denials of abuse voiced by the children he had talked with that day in May, he had glimpsed clues in “the children’s body language,” and that “you can’t go by what they say”—though, of course, he himself eventually did just that. On June 6, he returned to Wee Care at the behest of a parent who, following instructions, had noticed her son behaving strangely. During the course of this interview, Fonolleras has said, he learned of the “pile-up” game. The “pile-up” is said to have worked this way: During nap time in a basement classroom, Kelly Michaels would march her students upstairs to a third-floor

choir room, place kitchen utensils on the floor, and make the children strip and, once naked, roll around together.

In the days that followed, Fonolleras conducted interviews with other Wee Care children, bringing to these meetings not only crayons and paper but knives and forks and spoons. Remarkably, he made no tape recordings of these interviews, nor did he keep his written records. At the Michaels trial, he told the court that he had destroyed all the notes he took at these initial meetings because, at the time, he saw no reason to save them. He was not at this time gathering evidence for a criminal prosecution—although, as it turned out, there would have been no prosecution, beyond the six initial charges, had not Fonolleras, moved by what he heard in these unrecorded interviews, raised the specter of widespread child abuse. During my conversation with him, he explained that the only way to understand his technique of eliciting testimony about child abuse was to know what the children had told him in the very first interviews—the records of which, of course, he had thrown away.

Sometime in mid-June, Fonolleras called the county prosecutor’s office with the suggestion that it might want to look further into the Wee Care case. The prosecutor’s office and the DYFS agreed to launch a joint investigation and also brought in Peg Foster, who had earlier instructed the Wee Care parents on what she believed to be the symptoms of child abuse. For two months—during July and August of 1985—this investigative team talked with the Wee Care staff and with parents, and also recorded interviews with the children. These interviews, it is important to understand, are not like those that might take place between two adults. Listening to tapes of the interviews, one might be struck by how little the children actually confided on their own and also by the wholly fantastical nature of so much of what they did say. Most of the children were confused, had nothing to say, or flatly denied that anything had happened to them. It was also clear that what a child actually *said* during the questioning often carried little weight with the investigators. If a child persisted in denying that anything had been done to him or her, Fonolleras or another investigator would typically write: “At this time Hugh denied victimization. It should be noted [that] during the interview, Hugh was victimizing an anatomically correct doll.”

As a rule, the children were given knives and forks and then asked to show—on an anatomically correct doll—where Kelly had hurt them. On the tapes that I heard, a child’s first response more often than not was to poke the doll in the eye or the neck or a knee. Invariably, the listen-

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er then hears the voice of Fonolleras, urging, "Where else? Uh-huh, where else?" After a succession of "where else?" responses, the child winds up poking at a penis, or a vagina, or an anus. Here, the "where elses" stop. Later, Fonolleras's official report typically would note how a child "described" the penetration of her vagina or his anus.

Fonolleras was quick to praise those who confirmed his suspicions: "Boy, you're doing so good." But he was stern with those who responded with firm or frequent noes. Here is Fonolleras with one tiny recalcitrant: "If you don't help me, I'm going to tell your friends that you not only don't want to help me but you won't help them."

What follows is part of a transcript of an interview with Luke, age four, conducted by Fonolleras and Essex County Investigator Richard Mastrangelo.

FONOLLERAS: A lot of other kids have helped us since we saw you last.

LUKE: I don't have to. No!

FONOLLERAS: Did we tell you Kelly is in jail?

LUKE: Yes, my mother already told me.

FONOLLERAS [indicating Mastrangelo]: Did I tell you this is the guy who arrested her, put her in there? Don't you want to ask us any questions?

LUKE: No!

Fonolleras at this point handed Luke an anatomically correct doll, then proceeded with his questioning.

FONOLLERAS: What color did Kelly have down there? Brown like her head? Did she have hair under her arm?

LUKE: My daddy do.

At this point, Luke began to shriek, and there are indications that he was kicking Fonolleras. Fonolleras offered him a piece of cake and asked him if he would like to see Investigator Mastrangelo's badge. Mastrangelo then said to Luke, "So your penis was bleeding?" Luke laughed.

FONOLLERAS [taking a new tack]: Did Kelly play "Jingle Bells" with clothes on?

LUKE [screaming now]: No, I saw her penis! I peed on her!

FONOLLERAS: You peed on her?

LUKE: No, she peed on me!

At this time Luke told Fonolleras that he wanted to stop. But Fonolleras urged him to continue. He asked more questions about Luke's penis, about whether he put it in Kelly's mouth.

FONOLLERAS: Whose mouth did you have to put your penis in?

LUKE: Nobody.

FONOLLERAS: Did anybody kiss your penis?

LUKE: No. I want to go home.

FONOLLERAS: Did she put this fork in your bottom? Yes or no.

LUKE: I forgot.

FONOLLERAS: Did she do anything else to your bottom?

LUKE: That's all she did.

There followed a series of "I forgot" and "I don't know" responses. Finally, tiredly, Luke said, "Okay, okay, I'll try to remember." He then said—in an obviously playful, make-believe tone—"She put that in my heinie."

FONOLLERAS: The fork!

LUKE [shrieking]: Yes!

There were more questions, and more noes from Luke. Fonolleras then said, in a disappointed tone, "I thought you were going to help me." The session ends with Luke shouting, "It's all lies!"

If the parents of the Wee Care children harbored any doubts about these interviews and the resulting abuse charges, they kept those doubts to themselves. One Wee Care parent, grateful for the kindness Kelly Michaels had shown his child, did write to express his faith in her innocence. Still, the months of group meetings with investigators and other parents eroded his faith. At the trial, this father took the stand as a vocal witness for the prosecution.

As the investigations progressed, it became amply clear that some of the parents took as true every word of the stories of abuse they began hearing from their children. One mother explained (to a grand jury) how her four-and-a-half-year-old son had told her that Kelly had stuck a spoon and a pencil in his ear, that her aide, Brenda Sopchak, had given him a "truth drink," that Kelly had begged the aide not to call the police, that she had told the little boys she would cut them in pieces and throw them away so the mothers couldn't find them again.

Asked if she thought her son might have been fantasizing, the mother, a school board member, answered, "No." He was, she further explained, "merely recounting what had happened during the day."

If Kelly Michaels's fellow teachers harbored doubts about her guilt, they, too—with one notable exception—kept these doubts largely to themselves. There were children, it appears, who had told investigators that other teachers had been present when they were being molested by Kelly. Some of the children named every teacher in the school. This would explain the clear eagerness to please in the answers some teachers gave during their grand jury testimony. Before being questioned herself, Kelly Michaels's classroom aide, Brenda Sopchak, was played a tape of a child accusing her. She now began to remember things: Michaels's suspiciously even temper, how she seemed to be in a daydreamlike state at times, and the like. Another teacher testified that Kelly wore no underpants under her jeans. Only Wee Care's head

teacher, Diane Costa, remained unwaveringly supportive of Kelly Michaels, whom she described as a "model teacher." But Costa herself was indicted on the charge of failing to report child abuse, which meant that she could not testify at Michaels's trial without placing herself under the threat of prosecution. The indictment effectively silenced the one authoritative voice capable of undermining the state's case.

After closing for the summer, Wee Care did not reopen in September 1985. Only the members of the investigative team returned from time to time to the classrooms. Assessing their months of research, these investigators claimed that Kelly Michaels had, in her seven months at the school, sexually abused the entire Wee Care student body, fifty-one children. Two more grand juries were convened, and in December, Kelly Michaels was indicted on 235 counts of abuse against thirty-one children.

The trial of Kelly Michaels began on June 22, 1987. (One of the Wee Care families had moved out of Maplewood, and others had chosen not to expose their children to the rigors of a jury trial; as a result, the charges against Kelly Michaels now numbered 163.) Because the Michaels family had run out of money, Kelly Michaels was defended by a team of "pool attorneys" appointed by New Jersey's Office of the Public Defender. Pool attorneys are not salaried employees of the state but free-lancers permitted to pick and choose among available cases. Michaels's case went unassigned for four months: It would seem that many of these lawyers were reluctant to take on a case that looked as though it would drag on for months, or to defend a woman accused of sexually assaulting, among others, the grandson of a prominent local judge. (The judge, as it turned out, was the first witness called by the prosecution.)

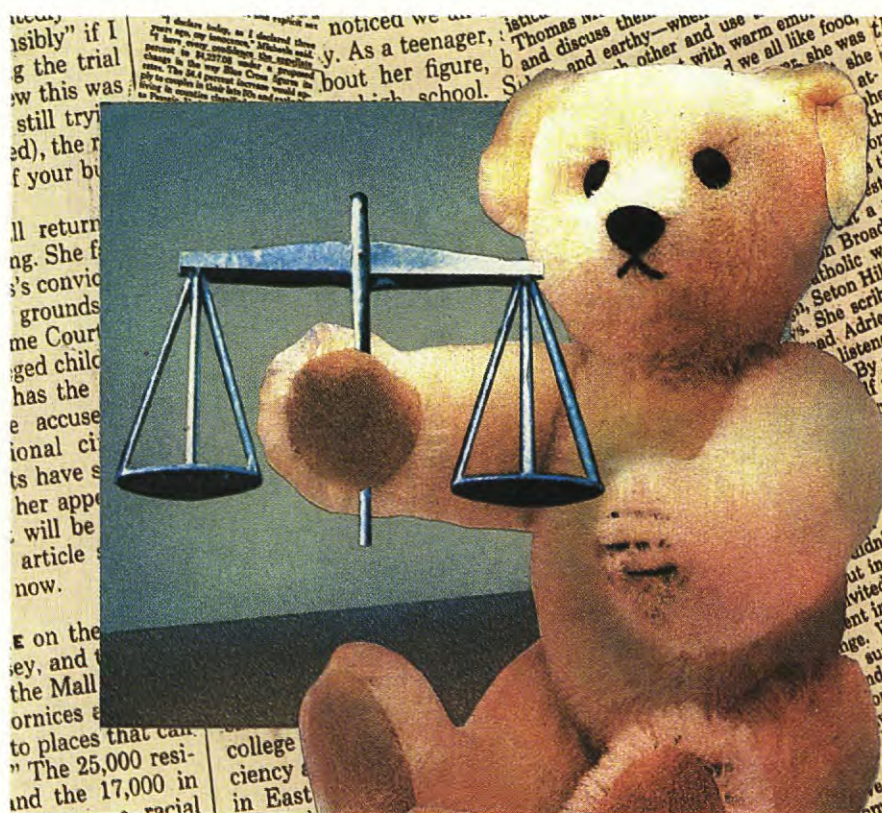
Harvey Meltzer and Robert Clark, the defense attorneys eventually assigned to the case, believed their client to be innocent. They hoped to base their defense on logistics and common sense—on the contention that no one could have abused children sexually in every corner of the school without anybody else finding out about it.

The prosecutors, for their part, knew their hopes lay in the emotional nature of the case. Lacking material evidence, the prosecutors

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They needed some sort of facsimile evidence, and in the summer of 1985, months before the 235-count indictment against Michaels was handed up, they began instructing Wee Care parents in the preparation of charts and diaries detailing the "symptoms" of abuse—the bed-wetting, nightmares, changes in behavior, and so on—that they had first learned of at the meeting at Wee Care in mid-May of that year. During my interviews at the prosecutor's office in the winter of 1988, I saw huge stacks of these charts. One of the more noteworthy symptoms of abuse listed on the charts was "child won't eat peanut butter." The children's lack of appetite

Lacking material evidence, the prosecutors sought to stir outrage—and, of course, to convince the jurors that they should simply believe the children



for peanut butter, the prosecutors contended, was proof of the charge made by the children that Michaels had spread peanut butter on their genitals and then licked it off. Sometimes it was peanut butter alone, but sometimes—as the testimony evolved in ever more elaborate detail—it was peanut butter and jelly.

I met that winter as well with a number of Wee Care parents who were eager to tell me all the significant changes they had noticed in their children, in particular their suddenly sexualized behavior. Each time I was told a new detail—how a child grabbed his father's genitals or talked about kissing penises—I inquired

No matter what else might be going on at home, the parents held that their children's problems stemmed from abuse

when this kind of behavior or talk had begun. Invariably I was told, "Just after disclosure." That is, not after Kelly Michaels is said to have begun sexually molesting the children, in the fall of 1984, but after the parents were told, in the spring of 1985, to look for portents and signs.

One mother told me, "My daughter was all over my husband. She had turned into a little five-year-old whore!"

I asked her when this behavior had begun. "After disclosure."

Disclosure, like so many other quasi-legalisms that support the accusations of child abuse, became a household word among the Wee Care parents. It never occurred to the mother in question or to any of the other moth-

a way of explaining all types of problems they had with their children. That their children had been molested at school now served to explain everything. As one parent said, "Everything my husband and I had passed off as just some phase our child was going through, we could look back on and say, 'Now, now we could understand why.'" Other parents cited the molestation as the cause of their marital breakup. No matter what else might be going on at home, parents held that their children's problems stemmed from abuse at Wee Care.

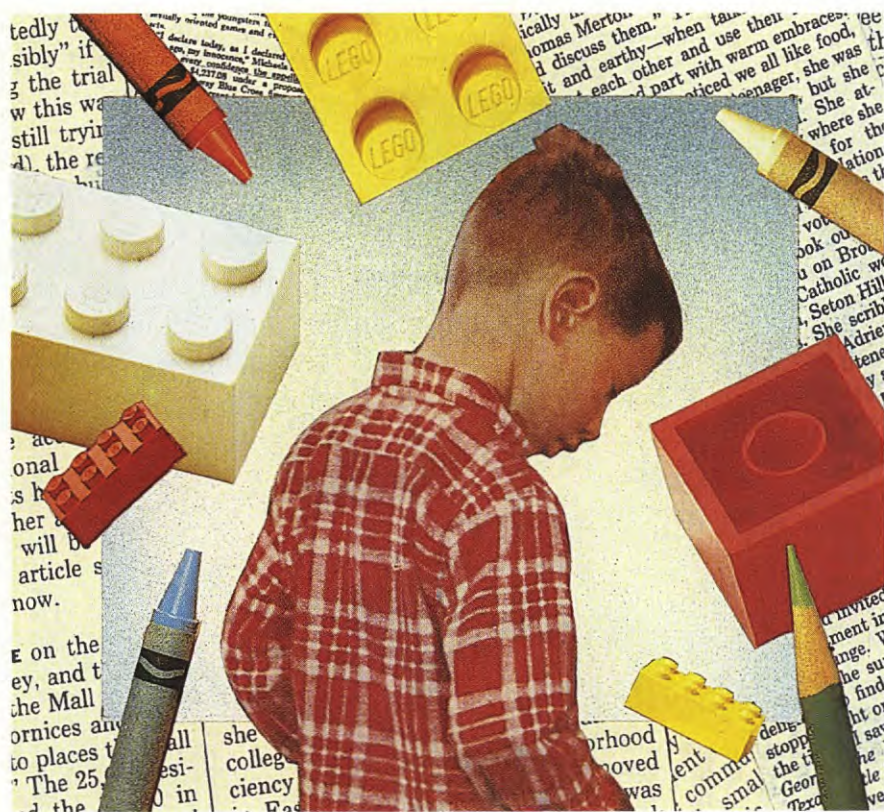
In court, the charts aided the parents in their testimony and perhaps aided Judge William Harth in his decision to allow such testimony. In a similar case, a higher state court in New Jersey subsequently ruled as inadmissible—as

hearsay—the testimony of parents on the subject of what their children told them. Michaels's lawyer Harvey Meltzer requested a mistrial based on this ruling, which was handed down after the prosecution had presented its case. The judge refused to grant the mistrial. Instead, he instructed the jury to disregard some twenty charges based on hearsay; but he did not give the instruction until much later, just prior to the jury's deliberation. Thus, the jurors had been allowed to listen for months to hearsay that at the last moment they were told to erase from their minds.

In Judge Harth's courtroom, the parent-plaintiffs were treated with unstinting consideration for their every concern, particularly the concern for anonymity. The guarantee of anonymity, of course, encourages the multiplication of charges and accusations. To the privacy of the parents and children Judge Harth accorded something akin to sacred status, while the name of the accused—like that of the accused and

their families at similar tribunals across the nation—was emblazoned in headlines, irremediably tarnished.

To protect the Wee Care families' anonymity, the judge strictly curtailed the amount of investigation into their backgrounds he would allow defense attorneys. To protect that anonymity, the judge sealed the trial transcript. Nor were the children required to testify in open court. They testified in the judge's chambers, and their testimony was shown to the jury on closed-circuit TV—a not uncommon arrangement at such child-abuse trials. Judge Harth also refused to allow the defense psychologists to



ers with whom I spoke that the hypersexuality of their children might have to do not with Kelly Michaels but with the exhaustive questioning, and lurid disclosures, to which they were subjected by investigators and by their parents. (There were parents, I learned, who kept separate charts listing suspicious behavior they began to remember having occurred prior to disclosure. But not one of these parents had found the behavior unusual enough *at the time* to consult a pediatrician or ask a Wee Care teacher about it.)

The charts were useful not only to the prosecution. They also provided some parents with

examine the children, as the prosecution doctors had been able to do. These children (who had, in fact, been analyzed and counseled for some two years prior to the trial) would, the judge said, be too traumatized to answer questions by a second set of psychologists. The defense argued in vain that its psychologists must have a chance to determine whether the children were, in fact, traumatized, but the judge held firm. It was a decision that violated the most fundamental principle of due process—the principle that both sides must be heard in a courtroom. Not even a cardinal principle of the justice system was a match, apparently, for the revered status accorded alleged victims of child abuse.

At the trial the children's testimony, given after two and a half years of preparation and training, was rich in detail, a startling difference from the earlier denials and bewilderment recorded during the investigative phase. One witness was Luke, who had shouted "It's all lies!" at Fonolleras's questions. Mindful of this taped outburst, prosecutor Sara McArdle asked Luke whether he hadn't meant he was *hoping* it was all lies. This time he didn't disappoint his interrogator: Yes, the child answered, he had been hoping it was all lies.

Still, even now there were child witnesses who continued to change stories, mid-testimony, or to deny that anything had happened. One child told the court that Kelly forced him to push a sword into her rectum. A lengthy and earnest colloquy then took place, between the attorneys and the judge, as to whether the child was saying *sword* or *saw*. After he had pushed the sword, or saw, into his teacher's rectum, the boy told the court, she told him to take it out.

"What did Kelly say when you took the sword out?" the child was then asked.

"She said, 'Thank you.'"

Brad Greene told the court that Kelly threatened to turn him into a mouse—that, in fact, she *had* turned him into a mouse for a little while during a plane trip to visit his grandmother. Child witness Celine Mauer said that she had been "tractored" by Kelly; that is, been abused, with other children, inside a tractor. Indeed, the prosecutors went to some trouble to substantiate this claim—bringing a representative of the Maplewood street maintenance department to confirm that a tractor had been parked in the vicinity of the school.

Who would have believed any of this? Surely no reasonable adult, no jury. Yet it was offered as evidence. Thanks to the current zeal to prosecute child abusers, strange new rules have come to obtain at these trials according to which the witnesses need not be credible all the time. These rules did not obtain at the McMar-

tin trial, at which jurors rejected the children's stories, but it did obtain at the trial of Kelly Michaels. Prosecutor Glenn Goldberg advised the jury at the outset that it was not necessary to believe everything the children said. Where child abuse is concerned, the prosecutor told them, "there is no physical evidence. Is the jury going to be able to understand this?"

In effect, the prosecutor asked the jurors if they could bring themselves to forget certain values with which they had been imbued as citizens of a democracy, values such as the importance of evidence in a criminal trial, and if they could suspend their belief in the Constitution in the interest of protecting children. As the verdict proved, they could.

Perhaps the most important witness for the prosecution was not a child or a parent but Bronx psychologist Eileen Treacy. An article in *New York* magazine later revealed that the curriculum vitae of this particular child-abuse "expert" exaggerated her credentials. The article also cited a ruling by a New Jersey judge, Mark Epstein, in a similar child-abuse case. That ruling declared, "The most damning witness [against the prosecution] was Eileen Treacy. . . Ms. Treacy's questioning gently but surely led [the child] where Ms. Treacy wanted to take him." The judge was convinced, he said, that Treacy would have been able to elicit the same accusations from children who had *not* been abused.

If a child said emphatically that nothing had happened, the denial, Treacy explained, was the very proof that the abuse *had* taken place. In this expert's view, all friendship or affection shown by teacher to child signified an effort to seduce. At the Michaels trial, Treacy testified that the Wee Care students were "the most traumatized group of children" she had ever seen. She explained the trauma by referring to the theories of Suzanne Sgroi, a pediatrician and the discoverer of the Child Sex Abuse Syndrome. According to Dr. Sgroi, the syndrome develops in a number of phases. There is the "engagement phase," during which time the abuser seduces the child into the activity. This is followed by the "secrecy phase," the "suppression phase," and so on; and Treacy explained each of them to the jury. "Proof of the suppression stage," she said, "is the succession of no, no, no answers." When one child, during testimony, expressed concern for Michaels, this demonstrated "that she [the child] had a relationship with Kelly, and that fits into the engagement phase."

Treacy, it should be said, did not limit herself to interpretations based on the theories of Dr. Sgroi. In one of the abuse diaries, a parent had noted that her child no longer liked tuna fish.

Not even the principle of due process was a match, apparently, for the revered status accorded alleged victims of child abuse

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This, Treacy pointed out to the jurors, was significant. "It's well known," she said, "that the smell of tuna fish is similar to the odor of vaginal excretions." In the winter of 1988, when I visited Treacy in her office in the Bronx, I remarked on the many children's drawings on the walls. She told me that if I looked closely at the drawings, I would "see how obvious *hands* are in all their pictures." The predominance of hands, she explained, was a strong sign that the children who drew these pictures had been molested.

To encounter Treacy's Kafkaesque testimony is to understand how a jury managed to find the accused in this case guilty, however improbable the evidence. The abuse expert, a psychologist, had in effect told the jury that they must suspend all rational belief if they were to understand the abuse the children had suffered. It was a world in which no meant yes, black meant white. Yet, the jury was told, they must believe its premises, believe the children, or else be counted guilty of betraying these young victims.

The principal witness for the defense was Dr. Ralph Underwager, an avowed opponent of the child-abuse investigators' techniques, their reliance on dolls and children's drawings, and their insistence on finding child abuse whether or not any took place. At the Michaels trial, Dr. Underwager said, "The child is interrogated and desperately is trying to figure out what are the rules, what's wanted of me by this powerful adult before me? The child says no, Kelly's clothes were *on*, when the interrogators want the response 'Her clothes were *off*.' And what happens? The interviewer doesn't stop, doesn't believe the child, repeats the question. It just tells the child: What you told me before isn't enough. It isn't right. It's not what I want. . . ." His testimony said, in effect, that nothing had happened to the Wee Care children except the visits of the investigators. The Wee Care parents I talked to vehemently agreed that, of everybody on the defense side, the person they hated the most was Dr. Underwager.

Defense attorneys Clark and Meltzer made the decision early not to present character witnesses to testify on Kelly Michaels's behalf. Such a witness may be asked anything under cross-examination, and what the attorneys feared most was the discovery that Michaels had been involved in two brief homosexual love affairs. Kelly Michaels refers to the liaisons as nothing more than youthful experiments, but the defense lawyers reasoned that the prosecution would seek to make a damaging connection between her sexual history and the criminal acts with which she was charged.

(Prosecutor Goldberg sought to nourish this view by close textual analysis of a Bob Dylan

song that Kelly Michaels had copied into her roll book. The lyrics included the lines "Your lover who just walked out the door / Has taken all his blankets from the floor." The prosecutor, who has an undergraduate major in psychology, told the jury that the song was very significant, that it was an extremely important clue to Kelly Michaels's secret life as a sexual criminal. The Wee Care children, he told the jury, "slept on blankets and mats.")

With no character witnesses called—no old classmates, friends, neighbors, or teachers to color in, with stories and comments, the outline of a normal life—the jurors saw only the Kelly Michaels of the Wee Care case, the abuser of children so luridly portrayed in the testimony.

For the jurors who doubted that one woman could commit so many awful crimes, Assistant Prosecutor Sara McArdle reminded them in her summation that Adolf Hitler, "one man," had persecuted not a "little school" but the "entire world"—"Jews, Gypsies, Czechs, and blacks." Blacks, of course, were not among Hitler's victims, but many of the jurors were black.

Bearing in mind, perhaps, that prosecutorial excess is one of the grounds relevant to an appeal, prosecutor McArdle later vehemently denied any intentional parallel between the defendant and Adolf Hitler. She went on to say that she could not imagine that anyone could read anything untoward into this simple historical analogy. Thus, the prosecution, which had vested so much faith in a lack of appetite for peanut butter, and which divined damning proofs of guilt in Bob Dylan lyrics in a roll book, now disdained as fanciful any notion that a comparison to Hitler might be something other than a neutral reference.

It took the jury thirteen days to reach its verdict that Michaels was guilty of 115 counts of abuse. Meltzer requested that the court consider granting his client bail pending appeal. The judge turned down the request: Michaels, he said, was a danger to the community. He said, "I just cannot forget the children."

But a three-member appellate panel agreed that, because of the legal questions the trial raised, Kelly Michaels should be granted bail pending appeal. Among the questions the judges doubtless had in mind was the defendant's constitutional right to face her accusers—denied in this trial, as in many of the other trials involving children's hearsay testimony.

News that Kelly Michaels might get bail raised storms of protest from the Wee Care parents. The prosecutors appealed. Local politicians, declaring themselves outraged, joined them. The parents marched and picketed. One mother, weeping, told reporters that when she had informed her child that Kelly had been con-

victed, the child had said, "Now I'm safe." "What do I tell her *now*? Now, my daughter's *not* safe!" The state's highest court, in short order, vacated the bail decision.

In the days immediately following the end of the McMartin trial and the acquittal of Ray Buckley and his mother, the *Los Angeles Times* published an analysis of the press coverage of the case. The headline above the first installment in the series could as easily have been affixed to analyses of the Michaels trial: WHERE WAS SKEPTICISM IN MEDIA? PACK JOURNALISM AND HYSTERIA MARKED... COVERAGE... FEW JOURNALISTS STOPPED TO QUESTION THE BELIEVABILITY OF THE PROSECUTION'S CHARGES.

During the trial, stories began leaking from the prosecutor's office suggesting that Kelly Michaels had herself been sexually abused by her parents. The stories were widely circulated among reporters covering the case. One of them, a television reporter, told me of stories she had heard that Kelly Michaels's mother had molested her and sent her nude photographs of herself; and of how Kelly Michaels's father—who, the story went, also molested his daughter—had called Wee Care every day to make sure that she was initiating the children in the practices of pederasty.

Such stories were not broadcast or printed. Still, they had enormous impact on the press, for they meshed nicely with current dogma—and the press is nothing if not up on the latest dogma—which holds that children who are molested become molesters themselves. The rumors that Kelly Michaels had been sexually abused by her parents thus counted heavily in persuading many reporters that she was guilty. In turn, these reporters, subtly and sometimes not so subtly, conveyed their belief to their readers and viewers.

Of course, the newspapers and the TV stations no longer concern themselves with Kelly Michaels, who will not come up before a parole board for twelve more years. When she does come up for parole, the Wee Care parents have vowed they will be there to see that it is denied. Her attorney is moving ahead with an appeal. In the meantime, Kelly Michaels sits in her small cell at the women's prison in Clinton, New Jersey, where the Wee Care parents are determined to keep her.

The Wee Care Day Nursery closed down in the aftermath of the investigation; the former Wee Care students, it would appear, thereafter went to another sort of school: one in which they were instructed, by child-agency investigators and by prosecutors, in the details of the sex crimes supposedly committed against them. Perhaps the worst thing about the long investiga-

tion and trial is that—however unfounded the charges—the child witnesses grow up having internalized the belief that they have been the victims of hideous sexual abuse. No one who saw them will soon forget the frenzied faces of thirteen- and fourteen-year-old former McMartin pupils in the hours following the verdict. These adolescents had spent their last six years—fully half their lives—instructed in the faith that they had been subjected, at ages four and five, to unspeakable sexual horrors; this belief they had come to hold as the defining truth of their lives and identities. It is not surprising that these children should have wept and raved when the verdict was handed down denying all that they believed in.

Believe the children is the battle cry of the child-abuse militants, who hold as an article of faith that a pederast lurks behind every door and blackboard. But child after child repeatedly said that Kelly Michaels had done nothing—and they had *not* been believed. The prosecutors had brought experts to court to testify that children denying abuse should not be believed. *Believe the children* apparently means—to those raising the rallying cry—believe the children *only* if they say they have been molested. "To believe a child's *no* is simplistic," prosecutor McArdle had told the jury.

The scores of investigations and trials of alleged child molesters, undertaken in the name of a good—protecting children—have irreparably shattered lives and reputations. It is not an unfamiliar pattern in our history. We are a society that, every fifty years or so, is afflicted by some paroxysm of virtue—an orgy of self-cleansing through which evil of one kind or another is cast out. From the witch-hunts of Salem to the communist hunts of the McCarthy era to the current shrill fixation on child abuse, there runs a common thread of moral hysteria. After the McCarthy era, people would ask: But how could it have happened? How could the presumption of innocence have been abandoned wholesale? How did large and powerful institutions acquiesce as congressional investigators ran roughshod over civil liberties—all in the name of the war on communists? How was it possible to believe that subversives lurked behind every library door, in every radio station, that every two-bit actor who had ever belonged to the wrong political organization posed a threat to the nation's security?

Years from now people doubtless will ask the same questions about our present era—a time when the most improbable charges of abuse find believers; when it is enough only to be accused by anonymous sources to be hauled off to the investigators; a time when the hunt for child abusers has become a national pathology. ■

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