

False memories of sexual abuse lead to terrible miscarriages of justice

Chris French

To avoid the innocent being convicted, police, lawyers and judges must understand the fickle nature of human memory



Patients with common psychological problems such as depression and anxiety are sometimes subjected to 'memory recovery' techniques. Photograph: Corbis

Thursday 25 November 2010 12.17 GMT

Many of those working in our legal system have such a poor understanding of the nature of human memory that miscarriages of justice are an almost inevitable consequence, according to a book published today by the British False Memory Society. *Miscarriage of Memory*, edited by William Burgoyne, Norman Brand, Madeline Greenhalgh and Donna Kelly, presents factual accounts of prosecutions in the UK that were based entirely upon memories of sexual abuse recovered during therapy in the absence of any supporting evidence.

Typically such cases occur when a vulnerable individual seeks help from a psychotherapist for a commonly occurring psychological problem such as anxiety, depression, low self-esteem, and so on. At this stage, the client has no conscious memories of ever being the victim of childhood sexual abuse and is likely to firmly reject any suggestion of such abuse. To a particular sort of well-meaning psychotherapist, however, such denial is itself evidence that the abuse really did occur.

Despite strong criticism from experimental psychologists, many psychotherapists still accept the Freudian notion of repression - the idea that when someone experiences extreme trauma, a defence mechanism kicks in that buries the memory of the traumatic event so deep that it cannot be retrieved into consciousness. Like radioactive waste, its presence is said to exert a malign influence. Indeed, the whole rationale of such therapy is that these hidden memories must be recovered and worked through in order to achieve psychological health.

During therapy, and often as a result of "memory recovery" techniques such as hypnotic regression and guided imagery, the client may gradually develop clear and vivid memories of abuse having taken place, typically at the hands of parents and other family members.

On the evidence of a huge amount of well-controlled research, we can now be confident that these memory recovery techniques are highly likely to give rise to false memories - apparent memories for events that never took place.

The memories can be detailed and extremely bizarre, involving ritualised Satanic abuse, gross acts of sexual perversion, cannibalism, human and animal sacrifice, and so on. But they may be nothing more than fleeting images. Indeed, some patients never manage to recover explicit "memories" of abuse but are convinced that such abuse must have occurred because their therapist, who is perceived as an authority figure, tells them that it is the only explanation for their unhappiness.

Whether the patient "recovers" explicit memories or not, the end result will be a family torn apart, with all the heartache, confusion and lasting emotional damage that entails.

It is, of course, far more likely that such cases will come to the attention of the legal system when explicit memories are involved. The book *Miscarriage of Memory* details several such cases.

Understandably, practitioners and social workers are legally required to inform the authorities when they suspect that sexual abuse has occurred and, equally understandably, the need to protect possible victims of abuse is paramount. Serious problems can arise, however, when the initial suspicions of abuse are not well-founded and when the legal system is in the hands of people who often do not fully appreciate the complexities of human memory.

Consider, for example, the comments of retired judge Gerald Butler, when asked whether we needed memory experts to explain to juries how people's memories work (speaking on "Can you trust your memory?" the BBC Radio 4 programme *Law in Action* in 2008):

"I think, frankly, that is a faintly ridiculous suggestion. We do have experts who can be very helpful ... there are handwriting experts, there are fingerprint experts, and of course there are the DNA experts who have turned out to be of immense value in the courts. But we also have juries who are there in order to use their common sense and when it is a situation that you weigh up a witness's evidence and decide whether he or she is telling the truth or that he or she has a faithful recollection of what has taken place, this is essentially a matter for the jury. It is not a matter for an expert."

In fact, many hundreds of people have been wrongfully convicted in the UK because juries and those involved in the legal system relied upon "common sense" in considering issues relating to memory. Several thousand case histories have been referred to the British False Memory Society and at least 672 of these are known to have involved the police or higher legal authorities.

It is imperative that those working in the legal system are familiar, at least in general terms, with the way that memory works. Experimental psychologists, following the initial controversy over the veracity of recovered memories back in the 1980s, have developed several reliable techniques to study factors that influence the formation and maintenance of false memories. The studies have proved beyond doubt that false memories can be produced quite readily in susceptible individuals.

Of course, false memories do not only arise in the context of sexual abuse allegations. As Professor Tim Valentine, an expert in psychology and the law at Goldsmiths, University of London, informs me:

"Witnesses' recall can be influenced by information acquired during an investigation. Just repeatedly questioning a witness tends to increase their confidence in both correct and mistaken answers. A shopkeeper who was a key witness in the Lockerbie bomb case was interviewed 20 times by the police, during which he was shown fragments of burnt clothing. He recalled a Libyan customer who had been in the shop nine months previously. Initially he said he did not sell the man any shirts. In court he described selling two shirts to the customer that were similar to fragments of clothing found in the suitcase that contained the bomb. Might this be a false memory induced by questioning about the shirts?"

Another dramatic case further illustrates the way in which witnesses can sometimes confuse the source of their memories, with potentially catastrophic results. Donald Thomson, an Australian psychologist, was bewildered when the police informed him that he was a suspect in a rape case, his description matching almost exactly that provided by the victim. Fortunately for Thomson, he had a watertight alibi. At the time of the rape, he was taking part in a live TV interview - ironically, on the fallibility of eyewitness testimony. It turned out that the victim had been watching Thomson on TV just before the rape occurred and had confused her memory of him with that of the rapist.

Well-controlled experiments have also shown conclusively that memory can become contaminated when co-witnesses discuss their recall of events, a phenomenon known as "memory conformity". Valentine provides one possible example of this in a high-profile British murder case in 1999:

"When Barry George first stood on an identity parade on suspicion of murdering Jill Dando, one witness identified him, but two neighbours made no identification. These three witnesses were given a lift home together. During the journey they discussed the identity parade and learned that the witness had identified number 2 in the line-up. Subsequently the other two witnesses made a statement identifying number 2. These 'partial identifications' were given as evidence in court. Barry George's conviction was quashed at his second appeal."

A huge amount of well-controlled research and analysis of myriad real-life legal cases have shown that to understand the complexity of human memory requires rather more than just "common sense".

*Chris French is a professor of psychology at Goldsmiths, University of London, where he heads the Anomalistic Psychology Research Unit. He edits the *The Skeptic**

Further reading

Brainerd, CJ, & Reyna, VF (2005) The Science of False Memory. Oxford: Oxford University Press.

Loftus, EF, & Ketcham, K (1994) The Myth of Repressed Memory: False Memories and Allegations of Sexual Abuse. New York: St Martin's Press.

McNally, RJ (2003) Remembering Trauma. Cambridge, MA: Harvard University Press.

Ofshe, R., & Watters, E (1994) Making Monsters: False Memories, Psychotherapy, and Sexual Hysteria. New York: Scribner.

Schacter, DL (2001) The seven sins of memory: How the mind forgets and remembers. Boston: Houghton Mifflin.